EAST END CROSSING
OHIO RIVER BRIDGES PROJECT

WVB East End Partners



Submitted to:
Indiana Finance Authority
c/o Indiana Government Center South
Conference Center Room 25
402 W. Washington Street
Indianapolis, IN 46204
ATTN: Silvia Perez

Submitted by:
WVB East End Partners
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October 26, 2012
3:00 PM EST

TECHNICAL PROPOSAL – VOLUME 1

REDACTED VERSION - ELECTRONIC

Exhibit E

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
A. Executive Summary		
Executive Summary **(Exclude price information)**	No forms are provided	Exhibit B, Section 3.1
B. Proposer Information, Certifications & Documents		
Proposal Letter	Form A	Exhibit B, Section 3.2.1
Authorization Documents	No forms are provided	Exhibit B, Section 3.2.1
Identification of Proposer and Equity Members	Form B-1	Exhibit B, Section 3.2.2
Information About Proposer Organization	Form B-2	Exhibit B, Section 3.2.2
Information About Major Participants, and Identified Contractors	Form B-3	Exhibit B, Section 3.2.2
Letter accepting joint and several liability, if applicable	No forms are provided	Exhibit B, Section 3.2.2
Responsible Proposer and Major Participant Questionnaire	Form C	Exhibit B, Section 3.2.3
Industrial Safety Record for Proposer and Major Participants	Form D (as applicable)	Exhibit B, Section 3.2.4
Personnel Work Assignment Form and Commitment of Availability	Form E	Exhibit B, Section 3.2.5
Letter(s) Regarding Pre-Proposal Submittals	No forms are provided	Exhibit B, Section 3.2.6
Non-Collusion Affidavit	Form F	Exhibit B, Section 3.2.7
Buy America Certification	Form G	Exhibit B, Section 3.2.8

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
DBE Certification	Form H No forms are provided for the DBE Performance Plan or Job Training Plan	Exhibit B, Section 3.2.9
Surety/Financial Institution Information	No forms are provided	Exhibit B, Section 3.2.10
Conflict of Interest Disclosure Statement	Form I	Exhibit B, Section 3.2.11
Equal Opportunity Employment Certification	Form Q	Exhibit B, Section 3.2.12
Lobbying Certification	Form R	Exhibit B, Section 3.2.13
Debarment and Suspension Certification	Form S	Exhibit B, Section 3.2.14
Insurance	No forms are provided	Exhibit B, Section 3.2.15
Confidential Contents Index	No forms are provided	Exhibit B, Section 3.2.16
C. Proposer Election of Termination for Convenience Calculation Method		
Election of Termination for Convenience Calculation Method	Form V	Exhibit B, Section 3.4
D. Volume 1 Appendices		
Copies of Organizational Documents	No forms are provided	Exhibit B, Section 3.2.2
Proposer Teaming Agreement or Key Terms	No forms are provided	Exhibit B, Section 3.2.2
Executed Contracts or Term Sheets/Heads of Terms	No forms are provided	Exhibit B, Section 3.2.2
E. Proposal Security (Proposal Bond or Proposal Letter of Credit)		
Proposal Bond	Form K-1	Exhibit B, Section 3.3.1
Proposal Letter of Credit	Form K-2	Exhibit B, Section 3.3.2

Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
F. Escrow Agreement		
Escrow Agreement	Form L	Exhibit B, Section 3.5
G. Preliminary Performance Plans		
Preliminary Project Management Plan	No forms are provided	Exhibit B, Section 4.1
Preliminary Project Baseline Schedule for Design and Construction	No forms are provided	Exhibit B, Section 4.1.4
Completion Deadlines	Form N	Exhibit B, Section 4.1.4
Design-Build Plan	No forms are provided	Exhibit B, Section 4.2
Operations and Maintenance Plan	No forms are provided	Exhibit B, Section 4.3
H. Volume 2 Appendices		
Key Personnel Resumes	No forms are provided	Exhibit B, Section 3.2.5
Technical Drawings, Graphs and Data	No forms are provided	Exhibit B, Section 4.2

Financial Proposal
Proposers shall follow the order of the Financial Checklist in their submissions. A referenced copy of this document shall be submitted with the Financial Proposal.

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
A.	**Updated financial information** Proposer must provide the corporate and financial information identified in Section 2.0 of Exhibit C, for the Proposer and Equity Members	Financial Proposal Volume 1 of 2 Separated by Entity	
A1	Audited Fiscal Financial Statements for all periods subsequent to SOQ and unaudited interim financial statements (Exhibit C, Section 2.0)	Financial Proposal Volume 1 of 2 Section A1 for each Entity	
A2	Financially Responsible Party letters of support (as required) (Exhibit C, Section 2.0)	Financial Proposal Volume 1 of 2 Section A2 for each Entity	
A3	For publicly held companies, most recent SEC 10-K and 10-Q reports and any 8-Ks filed since the SOQs (Exhibit C, Section 2.0)	Financial Proposal Volume 1 of 2 Section A3 for each Entity	
A4	Credit Ratings (Exhibit C, Section 2.0)	Financial Proposal Volume 1 of 2 Section A4 for each Entity	
A5	Letter regarding material change in financial condition since submission of the SOQ and for next reporting period (Exhibit C, Section 2.0)	Financial Proposal Volume 1 of 2 Section A5 for each Entity	
A6	Letter disclosing all material off balance sheet liabilities (Exhibit	Financial Proposal Volume 1 of 2 Section A6	

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	Financial Model Sheet Reference
	C, Section 2.0)	for each Entity	
B	**Financial Plan** (Exhibit C, Section 3.0)	Financial Proposal Volume 2 of 2 Section B	
B1	Financial Plan Executive Summary (Exhibit C, Section 3.1)	Financial Proposal Volume 2 of 2 Section B1	
B1	Identity of Financial Institution (Exhibit C, Section 3.2)	Financial Proposal Volume 2 of 2 Section B1	
B2	Range of Financing Sources (Exhibit C, Section 3.3)	Financial Proposal Volume 2 of 2 Section B2	
B3	Details for Core Lender(s) and Lead Underwriter(s) Commitment Letters (Exhibit C, Section 3.4)	Financial Proposal Volume 2 of 2 Section B3	
B4	[Reserved]		
B5	Details of Equity Source and letters from Equity Members (Exhibit C, Section 3.5)	Financial Proposal Volume 2 of 2 Section B5	
B6	Financial Advisor letter (Exhibit C, Section 3.6)	Financial Proposal Volume 2 of 2 Section B6	
B7	Schedule for Commercial and Financial Close (Exhibit C, Section 3.7)	Financial Proposal Volume 2 of 2 Section B7	
B8	Summary Cost Table and Financial Plan Summary Forms (Forms O and P, Exhibit C, Section 3.8)	Financial Proposal Volume 2 of 2 Section B8	Tab Form O Tab Form P
C	**MAP Proposal (Form J)** (Exhibit C, Section 4.0)	Financial Model Section C	Tab Form J
D	**Financial Model** (Exhibit C,	Financial Model	

	Financial Proposal Component	Location of information within submission documentation	
		Document Reference	**Financial Model Sheet Reference**
	Section 5.0)	Section D	
D1	Financial Model (Exhibit C, Section 5.1 to 5.2)	Financial Model Section D1	Tab Output – Project Tab Output – Sources & Uses Tab Output – Accounts
D2	Financial Model Assumptions Book (Exhibit C, Section 5.3)	Financial Model Section D2	Tab Assumptions Book
D3	Instructions on operations of the Financial Model (Exhibit C, Section 5.4)	Financial Model Section D3	
E	**Cost and Pricing Data** (Exhibit C, Section 6.0) (to be submitted to escrow)	Escrow	
F	**Independent Insurance Broker/Consultant Letter** (Exhibit C, Section 7.0)	Financial Proposal Volume 2 of 2 Section F	

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Information About Proposer Organization (Form B-2)

Information about Major Participants, and Identified Contractors (Form B-3)

3.2.3 Responsible Proposer and Major Participant Questionnaire (Form C)

- WVB East End Partners
- Walsh Investors, LLC
- VINCI Concessions
- Bilfinger Berger PI International Holding GmbH
- Walsh Construction Company/VINCI Construction Grands Projets Joint Venture
- Walsh Construction Company
- VINCI Construction Grands Projets
- Jacobs Engineering, Inc.

3.2.4 Industrial Safety Record for Proposer and Major Participants (Form D)

- Walsh Construction Company
- VINCI Construction Grands Projets

3.2.5 Personnel Work Assignment Form and Commitment of Availability (Form E)

- Walsh Investors, LLC
- VINCI Concessions
- Bilfinger Berger PI International Holding GmbH
- Walsh Construction Company
- VINCI Construction Grands Projets
- Jacobs Engineering, Inc.
- Third Rock Consultants
- Guthrie/Mayes
- International Bridge Technologies



3.2.6 Letters Approving Pre-Proposal Submittals

3.2.7 Non-Collusion Affidavit (Form F)

- WVB East End Partners
- Walsh Investors, LLC
- VINCI Concessions
- Bilfinger Berger PI International Holding GmbH

3.2.8 Buy American Certification (Form G)

3.2.9 DBE Certification (Form H)

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- WVB East End Partners
- Walsh Investors, LLC
- VINCI Concessions
- Bilfinger Berger PI International Holding GmbH
- Walsh Construction Company/VINCI Construction Grands Projets Joint Venture
- Walsh Construction Company
- VINCI Construction Grands Projets
- Jacobs Engineering, Inc.

3.2.13 Lobbying Certification (Form R)

- WVB East End Partners
- Walsh Investors, LLC
- VINCI Concessions
- Bilfinger Berger PI International Holding GmbH
- Walsh Construction Company/VINCI Construction Grands Projets Joint Venture
- Walsh Construction Company
- VINCI Construction Grands Projets
- Jacobs Engineering, Inc.

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C. (3.4) PROPOSER ELECTION OF TERMINATION FOR CONVENIENCE CALCULATION METHOD

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- Vinci Concessions
- Bilfinger Berger PI International Holding GmbH
- Walsh Investors, LLC
- Operating Agreement Term Sheet

Proposer Teaming Agreement

SPV/CJV Design Build Contract

SPV O&M Commitment

CJV/Lead Engineer Agreement

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A. Executive Summary

EXECUTIVE SUMMARY

WVB East End Partners (WVB) is proud to submit our vision and plan for the East End Crossing Project (the Project). Our proposal exceeds IFA goals while offering a distinctive commitment to quality, innovation and schedule efficiency. WVB appreciates the opportunity to submit a Proposal for this Project and looks forward to partnering with IFA to make it a reality.

1 TEAM PROJECT COMMUNITY

When the Louisville-Southern Indiana Ohio River Bridges Project began to gain momentum towards becoming a reality; designers, contractors and financers began collaborating and forming teams. It attracted local participants excited about the opportunity and impact on the economy, as well as, international players interested in the prospective work. Walsh Construction, as the leading local contractor in Indiana, reached out to other local firms to team, and then reached out to the international market to find the best partners that brought specialized expertise and organizations that aligned with IFA and INDOT's core values and goals.

Walsh Investors, VINCI Concessions, and Bilfinger Berger formed WVB to merge international expertise in finance, design, construction, and operations & maintenance projects of this caliber with the experience and understanding of local Indiana and Kentucky firms.

WVB East End Partners

WALSH INVESTORS

- Partnership owned by the Walsh family
- First long-term equity investment in a PPP transaction demonstrates financial commitment to the Project and IFA

VINCI CONCESSIONS

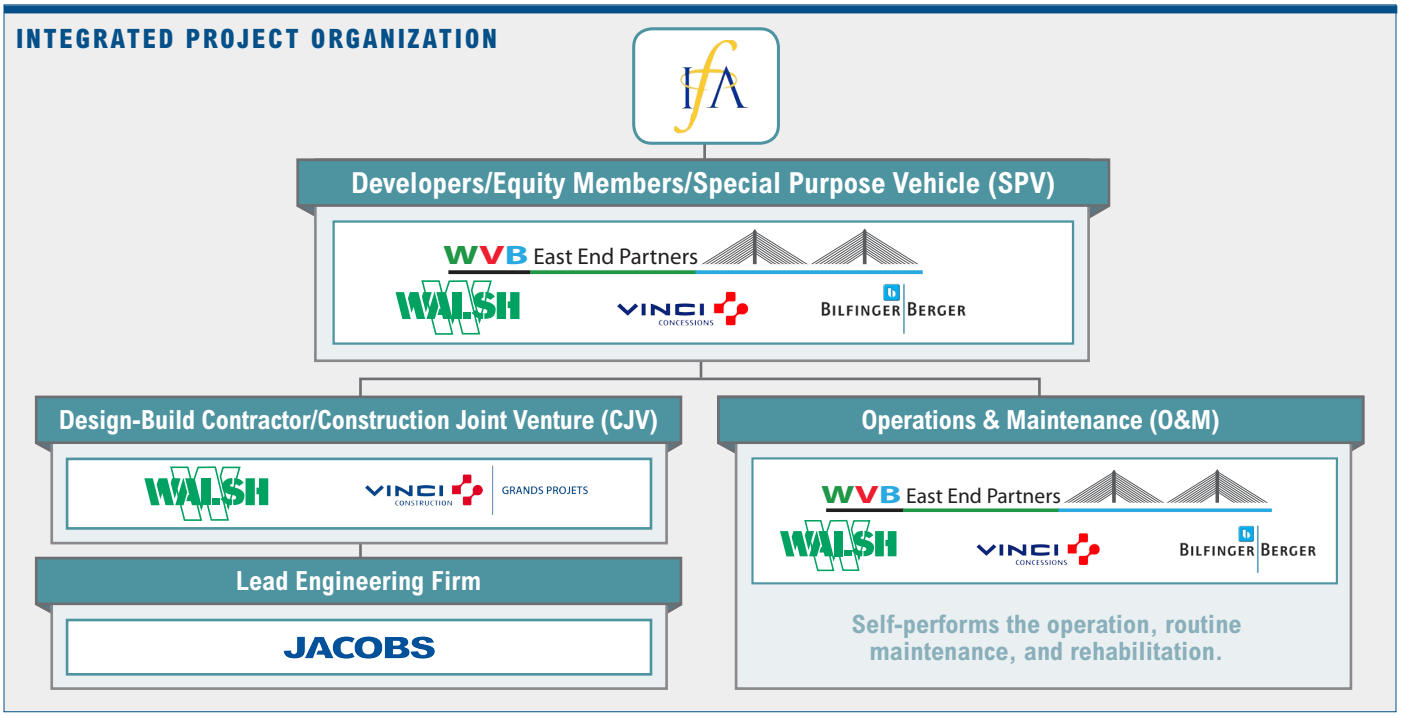
- Completed 47 PPP concessions, most still owned and operated
- Raised $7.5 billion in financing for PPP projects over the last five years

BILFINGER BERGER

- Completed 39 PPP concessions (33 availability-style payment,15 transportation, 10 availability style transportation projects)
- Global leader in availability-style payment road projects including four closed in North America

As WVB was formed, we identified a common goal of having all partners involved throughout the Project phases. This is reflected in the structure of our integrated Project organization.

WVB has developed and secured a very robust financing plan for the Project. WVB will utilize Senior Long Term Private Activity Bonds, Senior Short Term Private Activity Bonds (together, the PABs) and Equity in



This symbol highlights WVB's value added items throughout the proposal document sections.

combination with Milestone Payments to meet all of the Project's capital investment, start-up and operational requirements as well as appropriate financing costs.

Merrill Lynch, Pierce Fenner & Smith Incorporated (BAML), has been retained by WVB as a Lead Underwriter for the transaction and has provided a commitment to purchase and sell 100% of the PABs, valid until July 30, 2013. BAML has historically been one of the top senior managing underwriters of tax-exempt governmental purpose and tax-exempt private activity bond financings and is ranked "Number One" in the PABs category in terms of issuances since 2005 with 436 financings totaling over $25 billion.

Within the last two years, BAML has served as a joint book runner for four PPP financings utilizing PABs as the major capital component for the preferred proponent's financing solution. BAML completed their due diligence review of the Project with the help of their Lenders Technical Advisor, Insurance Advisor and Counsel. The Senior PABs obtained an initial indicative rating of BBB from Standard and Poor's.

The combination of BAML's ability to purchase and sell the bonds, coupled with the Equity Members' commitments to fund their respective share of the total equity investment, ensures the IFA that WVB's financial plan is executable and provides the greatest financial benefit to the IFA.

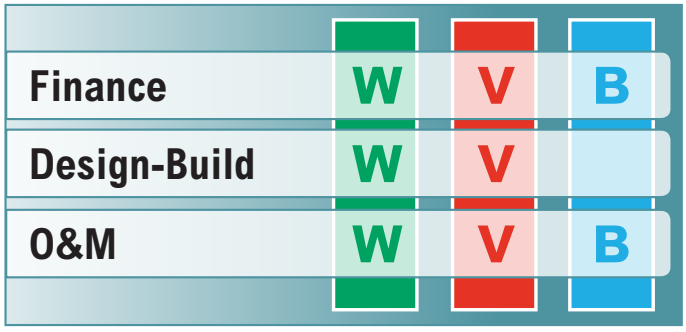
WVB will self-perform the operation and maintenance (O&M) solutions to provide excellent customer service for the traveling public during the operational term of the Project. WVB brings experience from the O&M of similar roadways and facilities around the world with shareholders currently servicing over 3,300 miles of roadway systems including four cable-stayed bridges. Our international expertise is reinforced by the local knowledge of Walsh Investors of Chicago.

WVB may subcontract specialized maintenance and rehabilitation works, utilizing contractors who worked in the construction phase. The lead CJV partner, Walsh Construction, is an established local Indiana firm, who will continue to work in Indiana and Kentucky. Local firms, Milestone and James H. Drew, working as committed subcontractors, will also be available for rehabilitation works.

Working back from the Handback Requirements, WVB has leveraged our global and local experience to provide design, construction methods, Project Management and O&M Management Plans that demonstrate our commitment to deliver long-term value added solutions to the IFA, INDOT and the people of Indiana and Kentucky. The commitment of WVB that starts with the financial investment is validated through our vertical integration, and will stand the test of time.

Vertical integration is one of the most important ingredients when financing and delivering a project of this size and complexity. It is the foundation of the management philosophy for the WVB Team; each member has a stake in multiple phases of the Project. To successfully coordinate delivery of these phases, WVB integrates all management processes into an Integrated Management System (IMS) which serves as the keystone of the WVB organization.

WVB'S VERTICALLY INTEGRATED STRUCTURE

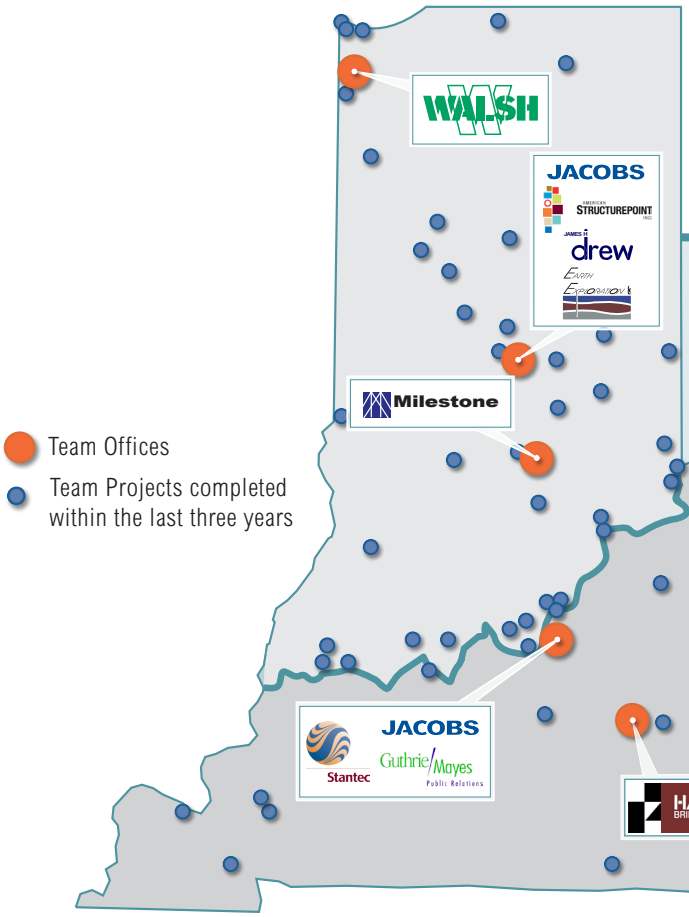


WVB will partner with IFA and INDOT to optimize Project solutions and diffuse unwelcome surprises during the Project. WVB provides a vertically integrated team that is committed to meet the needs of every Project component and is embracing whole life asset management.

By combining WVB's proven experience and expertise with integrated performance plans, **WVB will open the Project to revenue generating traffic by October 31, 2016 – eight months ahead of the IFA's June 30, 2017 target date.** This schedule minimizes construction impacts on the environment, local residents and the traveling public.

The Walsh-VINCI Construction Joint Venture (Walsh-VINCI CJV) combines the assets of Walsh Construction, the second largest heavy highway contractor in the U.S., with VINCI Construction Grands Projets, an affiliate of the second largest international contractor, and Jacobs Engineering, the third largest international design firm and fourth largest tunnel designer. Each firm has committed our most experienced and accomplished staff of professionals to this Project.

Walsh-VINCI CJV understands that this Project requires an integrated team with client focus, local knowledge and specialized technical expertise. The Walsh-VINCI CJV incorporates international resources with local knowledge to deliver. Members of the Walsh-VINCI CJV have completed hundreds of projects in Indiana and Kentucky.



WALSH | VINCI CONSTRUCTION GRANDS PROJETS
DESIGN-BUILD CJV

WALSH CONSTRUCTION COMPANY

- Midwest-based national contractor for 114 years
- Revenues over $3.5 billion annually
- Ranked 2nd Largest U.S. Heavy Contractor, ENR 2011
- Ranked 3rd Largest U.S. Bridge Builder, ENR 2011
- Ranked Largest Midwest Transportation Contractor, Midwest Construction Digest

VINCI CONSTRUCTION GRANDS PROJETS

- International contractor with over 100 years of construction experience
- Constructed 21 cable-stay bridges
- Constructed 76 tunnel projects
- International affiliates of VINCI Construction revenue over $14 billion annually

JACOBS ENGINEERING

- Revenues over $10 billion annually
- $5 billion of design-build transportation projects
- Extensive experience designing major river crossings and interchanges
- Ranked 3rd Largest Design Firm, ENR 2011

Local Presence

Walsh has averaged more than one million trade hours per year over the past three years in Kentucky and Indiana and is on pace to use 1.4 million trade hours by the end of 2012. This equates to approximately 650 trade employees in Indiana and Kentucky. No other team has this local presence.

Local team members have completed hundreds of projects in Indiana and Kentucky. Designers on our team were heavily involved in the early stages of the Project.

Walsh-VINCI CJV design subconsultants, including Stantec (formerly Entran) and American Structurepoint, were heavily involved in the early stages of the Ohio River Bridges development. For specialized items such as the cable-stayed bridge and tunnel, the Walsh-VINCI CJV has brought together the best-in-class design team, International Bridge Technologies, Buckland & Taylor, and Jacobs Engineering. The Walsh-VINCI CJV has taken a proactive approach to exceed the DBE (9%) and Workforce/Equal Employment Opportunity (15% minority/ 10% female) goals for the Project. To date, the Walsh-VINCI CJV has identified 2,033 DBE firms and held three DBE outreach events. This effort, led by DBE Coordinator Brenda Wolf, is based on the personal approach of getting to know the possible candidates and building relationships that lead to future success.

The Walsh-VINCI CJV have engaged local DBE consultants and included specialized key personnel from those firms. Employing local contractors, residents and DBE firms has been a priority and will continually be monitored, evaluated and improved throughout the Project.

WVB DBE OUTREACH EVENTS



WVB has formed an integrated team to partner with IFA. We look forward to the opportunity to move forward on this Project. WVB has achieved the best value for IFA as follows:

- Provide a fully committed financing plan using PABs and equity; Standard and Poor's has provided an indicative initial rating of BBB for the proposed debt.
- Provide a team with the greatest knowledge of the Project, well established relationships and unmatched experience on INDOT and KYTC projects.
- Deliver 8 months early to reduce impacts to the traveling public and allow early toll revenue.
- Use vertical integration for long term value.
- Bring proven PPP experience to guarantee success.
- Offer O & M experience to ensure user satisfaction.
- Incorporate, train, and mentor local trades, subcontractors and businesses to boost the economy.
- Develop tunnel design solutions of 14% shorter tunnel and state-of-the-art safety system to reduce risks and improve function.
- Incorporate roundabout design at SR 265/62/ Port Road to improve traffic flow and reduce maintenance.
- Provide 50-year concrete pavement – an optimum long term solution with added residual life.
- Provide a symbolic, memorable bridge that is transparent and compliments its surroundings.
- Select convex diamond tower cable-stayed bridge option that reduces long-term maintenance and optimizes design.

WVB is committed to provide the best value for money for IFA, INDOT, and the citizens of Indiana. We look forward to being IFA's preferred proposer.

Sincerely,

WVB East End Partners



Sid Florey, Project Executive

A. ORGANIZATION AND PROPOSAL CONTENTS

WVB provides IFA our proposal in the organization shown by ITP Exhibit E and includes a copy within each binder that highlights the included information. WVB's Technical Proposal highlights our management plans and technical solutions that are utilized to deliver an efficient, high-quality Project. The Technical Proposal includes:

TECHNICAL PROPOSAL	Volume 1 - Executive Summary and Forms
	Volume 2 - Preliminary Performance Plans
	Volume 2 Appendices
	Roll Plot Schematics
	Escrow Agreeement
	Proposal Security
	Animation

A flash drive containing the electronic files of the Technical Proposal is included.

WVB's Financial Proposal is divided into three binders:

FINANCIAL PROPOSAL	Volume 1 - Updated Financial Information
	Volume 2 - Financial Plan
	Financial Model

The required electronic documents for the Financial Proposal are included on a flash drive.

B. CHANGES TO PROPOSER'S SOQ

WVB East End Partners will provide and honor the commitments included in its Statement of Qualifications.

C. CHANGES IN ORGANIZATION AND PERSONNEL SINCE THE SOQ SUBMISSION

WVB's Team Members and Project Management organization proposed in the SOQ remains unchanged. Key Individuals presented in the SOQ have been modified as follows:

- **David Sikorski, PE, PP**: Named Project Manager
- **Phil Malin, PE, MBA**: Changed from Project Manager to Deputy Project Manager
- **Bruce Williams**: Named Deputy Project Manager - Technical in lieu of David Shier
- **Kristof Van Loon**: Changed from Deputy Project Manager Finance to Finance Director

Additional Key Personnel required by IFA in the Instruction to Proposers are identified here:

- **Dan Hartlage**: Public Information Coordinator
- **Brenda Wolf**: DBE Coordinator
- **Martine Julia-Sanchez**: Quality and Health/Safety/Environmental Manager
- **Courtney Norris, PE**: Construction Quality Manager
- **John E. Reid**: Construction Quality Control Manager
- **Michael Lawler, CSP**: Safety Manager
- **Gina Morris, PG**: Environmental Compliance Manager
- **Mark Hedrick, PE**: Utility Manager

D. PROPOSED MANAGEMENT, DECISION MAKING AND DAY-TO-DAY OPERATION STRUCTURE

WVB's Integrated Management System (IMS) identifies all strategic processes necessary for WVB to manage Project development and delivery, as well as, their interactions. Each strategic process is supported by a series of management processes. All processes within the IMS are documented and owned by a team member appointed by the WVB Steering Committee. Process owners are senior managers with direct responsibility for the delivery of that process. They have complete authority, competence and resources to:

- Disseminate procedures and objectives across the entire WVB team to achieve IFA goals.
- Collect, review and report the process to ensure satisfactory performance.
- Implement improvements and measure success against key performance indicators (KPIs).

Allocation of responsibility for each process provides an accessible single point of contact accountable for performance. Process owners are identified in the organization charts. Some processes have a unique owner for the whole Project, while other processes may require an owner at the SPV level and one at the construction joint venture level.

The WVB decision making hierarchy has four levels. Decisions are made and issues are resolved in a timely manner at the lowest possible level where implications of the issues are best recognized. Only if issues cannot be resolved in the defined time are they escalated.

DECISION MAKING HIERARCHY



Each of the Major Participants is committed to providing the specified people identified in the organization charts included in this submittal.

E. PRELIMINARY PROJECT MANAGEMENT PLAN

WVB's Project Management Plan (PMP) incorporates key personnel and best practices that are well-matched to mitigate risk and expedite delivery. The plan is based on proven processes from each of the member organizations, which are combined into a unified plan that is ISO compliant. WVB member, VINCI Construction Grands Projets' ISO certification resonates throughout WVB's IMS at all Project phases. The IMS will control delivery throughout the Project, including Quality, Safety and Sustainability Management Plans. The PMP:

- Outlines WVB's management philosophies, systems and procedures.
- Presents organization and resources to achieve Project objectives.
- Outlines interface with IFA, stakeholders, and the public.
- Encourages DBE and workforce diversity representing the faces of the region.
- Provides specific implementation plans for Project delivery with assigned responsibilities.

F. APPROACH TO ADDRESSING COMMUNITY RELATIONS AND INTERACTION WITH THE EAST END CROSSING

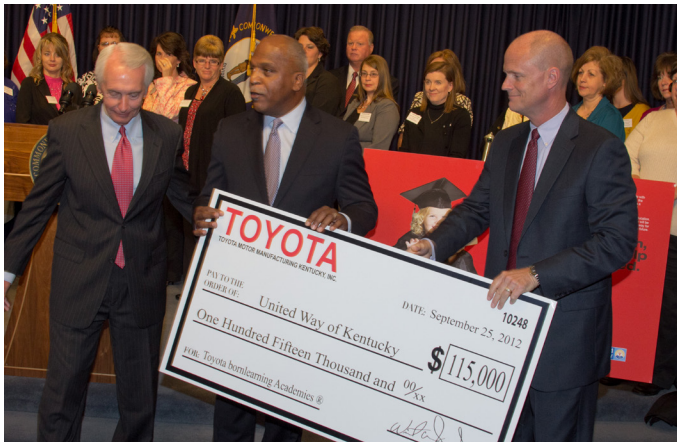
As WVB's Public Information Coordinator (PIC), Dan Hartlage of public relations firm Guthrie/Mayes, develops and implements WVB's Public Involvement Plan (PIP). As WVB's single point of contact with IFA's PIP Manager, Dan supports IFA on all communication and public involvement issues.

To achieve the public involvement and communication goals for this high-profile Project, WVB works with IFA and the community to:

- Maximize positive public involvement throughout all phases of the Project with participation in general outreach, special focus committees, Project tours, and special events.
- Minimize inconvenience to the public through communication efforts that inform and prepare those directly affected by construction activities.
- Comply with consultation commitments in the Amended MOA.
- Assist IFA in educating the public on the Project's importance to the region's mobility and economy.
- Provide the IFA PIP Team high-quality support, including written and illustrative materials that are ready to publish.

EXPERT LOCAL PUBLIC RELATIONS

Dan Hartlage (right) joins Kentucky Governor Steve Beshear (left) and Toyota Motor Manufacturing Kentucky president Will James in a check presentation at the Kentucky State Capitol.



WVB provides significant notifications to IFA's PIP Manager regarding lane closures, utility shutoffs, weekly construction updates, hazardous conditions, and traffic emergencies. WVB directs all requests for information received from the public to IFA and assists IFA in preparing the appropriate responses. The public involvement and communication efforts on this Project require an integrated, collaborative approach with seamless interaction between IFA and WVB. As the guide for this combined IFA/WVB effort, WVB develops a Community Outreach Plan (COP) that identifies communication strategies and actions to deliver a consistent message in all public involvement, public outreach, and communication activities.

G. APPROACH TO ADDRESSING ENVIRONMENTAL SENSITIVITY, SAFETY, TRAFFIC MANAGEMENT, AND CONSTRUCTION STAGING

Safety, environmental sensitivity and traffic management will be high priorities for WVB across all phases of the Project. Our Health, Safety, Environmental and Quality Manager (HSEQ), Martine Julia-Sanchez, will be responsible for all related matters and will report directly to the Steering Committee.

WVB will develop an Environmental Compliance and Mitigation Plan (ECMP) in line with VINCI's ISO 14001: 2004 certification. The plan will address all IFA environmental commitments and PPA requirements. The WVB Environmental Management Team will analyze all risks and regulatory requirements and will provide input and training for our design and construction teams to ensure our technical solutions comply. Impact mitigation measures will be specified for each sensitive area identified and close monitoring will be carried out at all phases of the Project.

Safety management will follow policies and principles of Safety First! No One Gets Hurt. WVB's project managers will demonstrate strong leadership to raise awareness on the importance of safety and actively engage everyone involved in the Project. Anticipating risks by employing lessons learned and risk analysis will promote proactive tracking and application of proper measures to avoid incidents. Analysis and reporting of incidents will foster continuous improvement of our team's safety practices.

NO ONE GETS HURT

WVB member Walsh Construction's proven safety culture contributed to 680,000 man-hours with no lost time accidents in 39 months of work on the Accelerate I-465 program.



The Walsh-VINCI CJV will develop an effective Transportation Management Plan (TMP) that focuses on safety and limiting impacts to the public and local communities while efficiently completing construction activities. The Walsh-VINCI CJV plan is guided by successful past experience and establishes methods to provide access to pedestrians; local businesses and residents; and accelerate the construction schedule, thereby reducing the overall duration of traffic impacts. A key element of Walsh-VINCI CJV's TMP is efficient distribution of information to the public. The Walsh-VINCI CJV TMP outlines methods to keep the public informed of ongoing construction and traffic changes by coordinating with IFA, INDOT, KYTC, local communities and agencies, public transportation facilities, key stakeholders, and emergency responders. Traffic remediation and emergency response plans will be developed in collaboration with local authorities and emergency services.

Construction staging will be planned to minimize disturbances around the Project site. Temporary works such as haul roads will be implemented inside the working area to avoid disturbing local traffic. Preparation of temporary roads will be timely to divert traffic in a safe and efficient manner when work on existing roads will be required. Site entrances and materials staging areas will be planned to minimize impact on neighboring roads.

H. APPROACH TO DBE REQUIREMENTS, MINORITY AND FEMALE OWNED BUSINESS ENTERPRISES

WVB is committed to exceeding the 9% Disadvantaged Business Enterprise (DBE) goal established for the

Project with an anticipated 9.23% participation. We accomplish this through an aggressive approach that includes:

- A Dedicated DBE Team
- Proactive Outreach and Community Engagement
- Specialized DBE Attention
- Packaged Work Scopes
- Required DBE Participation from Major Subcontractors
- Progress Reporting
- DBE Capacity-Building Program

WVB's DBE Team initiated personal contact with DBEs early in the Project pursuit process. The initial meetings, beginning in early March, have progressed over the last eight months.

In addition to meeting with certified and prequalified DBE firms, WVB's DBE Team has focused on outreach to DBE firms that are not yet prequalified or who meet the criteria for a DBE firm, but are not yet certified.

WVB recognizes that this outreach effort requires multiple layers of support (e.g., community, faith-based, public school, chambers of commerce, etc.) to identify and assist these firms. Key support comes from Maurice Sweeney from United Construction and Design Group. Maurice is the Diversity and Inclusion Advisor for our DBE Team. Maurice brings with him an impressive résumé in community involvement and DBE participation in the Southern Indiana/Greater Louisville Area, including as KYTC's Executive Director for the Office of Minority Affairs.

WVB meets the differing needs of DBE firms with a true sense of cooperation and partnership to elevate and expand technical, management and business capabilities of DBE firms through mentoring, training, and other specialized assistance.

I. INNOVATIVE CONCEPTS AND APPROVED ALTERNATIVE TECHNICAL CONCEPTS (ATCS) INCLUDED

WVB, with O&M input, put extensive effort in the proposal phase developing technical solutions and ATCs that are further described in our Design-Build Plan. **Table E-1** summarizes WVB's incorporated ATCs and key technical solutions.

TABLE E-1 WVB'S PROPOSED ALTERNATIVE TECHNICAL CONCEPTS & INNOVATIVE TECHNICAL SOLUTIONS

DESCRIPTION	BENEFITS
Roundabout Interchange (as submitted in ATC #3)	Improved safety, reduced environmental impacts and construction disturbances
[redacted]	[redacted]
Tunnel Pillar Width (ATC #5)	Reduction in construction traffic and construction disturbances
Ramp A Single Point Interchange (ATC #6)	Reduced long term maintenance for KYTC and improved traffic safety
East End Bridge Weathering Steel (ATC #9)	Improved aesthetic visibility with reduced maintenance and environmental impacts
Optimal Tunnel Section (ATC #14)	Reduced construction disturbances and long-term maintenance impacts
Optimal Shoulder Design (ATC #15)	Reduced long term maintenance and optimal value for money
Optimized Mainline Profile	Reduced rock blasting and haul off by 920,000 CY – Over 2 million truck miles
East End Bridge Optimizations	Improved efficiency and performance that provides reduced maintenance
50-year PCC Pavement Design	Increased residual life at handback, reduced long-term maintenance and disturbances
Tunnel Fire Life Safety	Improved safety performance and long-term asset for KYTC with reduced maintenance

J. APPROACH TO WORKING WITH IFA, THE DEPARTMENT AND THIRD PARTIES

WVB maintains transparency through ongoing communication with all external partners during every Project phase. Shortly after Project award, WVB will sponsor a Project partnering meeting to establish lines

of communication, goals, and meeting schedules as appropriate for stakeholder groups. WVB continues this partnering collaboration throughout Project execution with quarterly functions. To clarify communication with external parties, WVB establishes single points of contact for each key interface. David Sikorski, Project Manager, is the single point of contact for IFA. Through experience on recent Indiana and Kentucky projects, WVB's local team members Walsh Construction, Jacobs Engineering, American Structurepoint, Guthrie/Mayes, and Third Rock Consulting have established relationships with many stakeholders and agencies. These initial relationships improve coordination as many of the protocols and practices are known and understood by WVB. For efficient Project delivery, WVB co-locates with IFA in Utica, Indiana. Executing a Project of this size from a co-located office allows for daily face-to-face interaction between design, construction, and IFA personnel and improves communication, cooperation, and expedited decision-making.

David, with the support of the WVB Steering Committee, provides clear leadership, including objective setting and decision making. Every WVB manager is aware of their autonomy to make decisions. This encourages correct and rapid resolution of issues at the lowest possible level. WVB commits to resolve any challenges, keeping our focus on the priority of keeping the Project moving forward toward its successful completion.

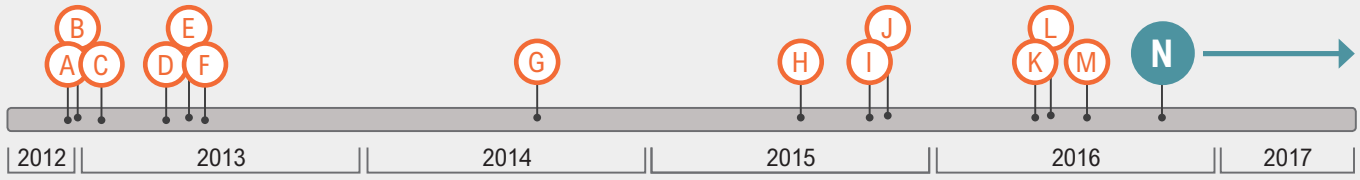
K. CONCEPTUAL PROJECT SCHEDULE

WVB is committed to reaching substantial completion by October 31, 2016. Our past portfolio of successful projects, coupled with the scheduling plan we have in place, provides assurance the construction will be safely completed eight months ahead of IFA's requirement. Significant benefits of this early completion include:

- Increased investor confidence that results from a shorter construction schedule, as reflected in the negotiated financing rates, offers better value for IFA.
- Opportunity for IFA to generate toll revenue eight months earlier than anticipated, allowing revenue-generating traffic by October 31, 2016.

WVB has developed and implemented the preliminary Project Management Plan including Integrated Management System, Key Personnel, and Task Managers during preliminary design. This allows WVB to hit the ground running upon commercial close and award of NTP 1. WVB has completed a detailed Project Schedule identifying the critical path items to support the design and construction schedule. WVB is prepared to engage in close coordination with IFA, local stakeholders, emergency services, environmental agencies, and the general public to generate the design and approvals needed to support this schedule.

KEY PROJECT MILESTONES



Project Milestones

- (A) **Notice to Proceed 1** 12/20/2012
- (B) **Commercial Close** 12/27/2012
- (C) **Start Design** 1/19/2013
- (D) **Financial Close** 4/1/2013
- (E) **Notice to Proceed 2** 5/8/2013
- (F) **Start Construction** 6/3/2013
- (G) **Complete Main Span Pier Foundations** 8/8/2014
- (H) **Complete Tunnel Excavation & Initial Liner** 7/10/2015
- (I) **Complete Western Limits of Section 6 Roadway** 10/5/2015
- (J) **Complete Main Span Towers** 10/9/2015
- (K) **Complete Final Tunnel Liner** 5/9/2016
- (L) **Complete Main Span Superstructure Erection** 5/13/2016
- (M) **Complete Eastern Limits of Section 4 Roadway** 7/21/2016
- (N) **Substantial Completion** 10/31/2016
- → **Start 35 Year Operating Period** 10/31/2016
  Commencement of Revenue Operations 10/31/2016

L. APPROACH TO OPERATION

WVB East End Partners' main objective for the Operations and Maintenance (O&M) of the East End Crossing is to safely provide a high quality rapid response service and maintain the roadway to reduce danger, delay and disruption to road users. The WVB O&M Team will be involved throughout the bid phase, to provide life cycle evaluation of technical solutions. This internal interaction across and between the WVB team ensures that operational improvements are built into the Project.

The WVB Project Manager during the design and construction phases, David Sikorski, will remain on site as the Project Manager during the Operating Phase. This will provide the smoothest possible transition. Under his leadership, WVB commits to self-perform the O&M work.

WVB's Structural Health Monitoring System for the Main Span Bridge provides valuable real-time information for proactive maintenance response during and after term of the Contract.

WVB's O&M Team will establish an O&M Plan (OMP) to be updated yearly that will address all O&M requirements during the lifetime of the Project. The OMP will include plans for Maintenance, Snow and Ice Control, Public Information, Rehabilitation works, Emergency Response and Coordination, Quality, Handback and Sustainability.

Operations: The WVB O&M Team provides continuous, 24/7 monitoring of the Project within the O&M limits with onsite vehicle patrols. WVB will be equipped with the flashing arrows and crash attenuator trucks needed for effective response to emergencies and the performance of routine maintenance. Prior to the Operating Period, the WVB O&M Team coordinates with INDOT, KYTC, and appropriate emergency responders to develop the Project Emergency Plan. All incidents will be recorded and analyzed to identify trends and areas of higher risk. Improvement measures will be implemented to increase safety in these areas.

Maintenance: The WVB O&M Team's routine maintenance strategy is structured around proactive preventive maintenance. Our comprehensive Maintenance Plan, with a frequent inspection program, ensures early identification of maintenance needs and their quick correction to prevent small deteriorations from becoming larger problems. WVB's approach is to maximize self-performance of the routine maintenance activities and work with expert subcontractors where necessary. Whether self-performing or subcontracting work, the WVB O&M Team focuses on safety. We complete a detailed risk assessment to identify, prioritize, and address all potential hazards.

A19 MOTORWAY

Vincent Meyer, WVB's O&M Manager, served as Maintenance Manager for 620 miles of highway on the ASF Network.



Capital Improvements/Replacements and Handback: The routine maintenance strategy described above will greatly reduce the need for large rehabilitation works for the life span of the Project. A rolling program for rehabilitation work is in place and sets the frequency and extent of the rehabilitation works in alignment with the regular inspections performed. Maintenance work staging will be planned and executed in a manner that minimizes traffic disruptions. Traffic management measures will be implemented and safety will be maintained at all times. Our Team worked backwards from the Handback Requirements to ensure that rehabilitation is performed to meet the target residual/useful life at the end of the Contract. Three Residual Life Inspections will be performed to plan maintenance works ahead of the Term of the Contract. A Handback Plan will be developed by the WVB O&M Team to be fully implemented six years prior to the end of the concession.

WVB's integrated team provides the ability to utilize local Indiana contractors from the Walsh-VINCI CJV, such as Walsh Construction, James H. Drew and Milestone, to complete major maintenance and rehabilitation work.

TABLE E-2 ROLES OF EQUITY MEMBERS AND MAJOR PARTICIPANTS (INCLUDING SHARES OF OWNERSHIP)

Firm Name	Role	Share of ownership in JV or other entity
Equity Members		
VINCI Concessions S.A.S.	Equity Member (Lead)	33 ⅓%
Walsh Investors, LLC	Equity Member	33 ⅓%
Bilfinger Berger PI International Holding GmbH	Equity Member	33 ⅓%
Major Participants (other than Equity Members)		
Walsh Construction Company	Design-Build Contractor Partner (Lead)	60%
VINCI Construction Grands Projets	Design-Build Contractor Partner	40%
Jacobs Engineering [Ltd.]	Lead Engineering Firm	n/a

TABLE E-3 RELATIONSHIP BETWEEN EQUITY MEMBERS/MAJOR PARTICIPANTS AND FINANCIALLY RESPONSIBLE PARTIES

Equity Member/ Major Participant	Financially Responsible Party	Relationship
VINCI Concessions S.A.S.	n/a	n/a
Walsh Investors, LLC	The Walsh Group	Affiliated Company
Bilfinger Berger PI International Holding GmbH	Bilfinger SE	Ultimate Parent Company
Walsh Construction Company	The Walsh Group	Parent Company
VINCI Construction Grands Projets	n/a	n/a

B. Proposer Information, Certification and Documents

3.2.1 Form A

FORM A

INDIANA FINANCE AUTHORITY
EAST END CROSSING
INSTRUCTIONS TO PROPOSERS

PROPOSAL LETTER

PROPOSER: WVB East End Partners

Proposal Date: October 26, 2012

The undersigned (**"Proposer"**) submits this proposal (this **"Proposal"**) in response to that certain Request for Proposals (as amended, the "**RFP**") issued by the Indiana Finance Authority (**"IFA"**), an independent public corporation created under the laws of the State of Indiana, dated July 31, 2012, to develop, design, construct, finance, operate and maintain the East End Crossing (the "**East End Crossing**"), as more specifically described herein and in the documents provided with the RFP (the **"RFP Documents"**). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Subject to the terms below, in consideration for IFA supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertake(s) jointly and severally:

a) subject to Section 4.6.2 of the ITP, to keep this Proposal open for acceptance initially for 180 days after the Proposal Due Date, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of IFA, in IFA's sole discretion; and

b) if this Proposal is accepted, to provide security (including bonds, insurance and letters of credit) for the due performance of the Public-Private Agreement (**"Agreement"**) as stipulated in the Agreement and the RFP.

If IFA properly draws on Proposer's Proposal Security in accordance with the terms, and subject to the conditions of the RFP Documents, and the surety or other financial institution providing the Proposal Security refuses to honor IFA's proper draw thereon, by its signature(s) below, the undersigned undertakes, on behalf of Proposer's Equity Members, and by such signature, Proposer's Equity Members each assume, joint and several liability to IFA for the entire stated amount (in the case of a Proposal Letter of Credit) or penal sum (in the case of a Proposal Bond) of the Proposal Security.

If selected by IFA, Proposer agrees to do the following or to cause the Developer to do the following: (a) if requested by IFA in its sole discretion, enter into good faith negotiations with IFA regarding the terms of the Agreement with IFA in good faith and in accordance with the

requirements of the RFP, (b) enter into the Agreement without varying or amending its terms (except for modifications agreed to by IFA, in its sole discretion) and satisfy all other conditions to award of the Agreement; and (c) perform its obligations as set forth in the ITP and Agreement, including compliance with all commitments contained in this Proposal.

The following individual(s) is/are authorized to enter into negotiations with IFA on behalf of the Proposer and Developer in connection with this RFP, the East End Crossing and the Agreement: Sidney R. Florey

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Executive Summary
- Technical Proposal, including Proposer Information, Certifications and Documents, and Proposal Security
- Financial Proposal

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

Addendum 1 issued August 17, 2012
Addendum 2 issued August 27, 2012
Addendum 3 issued September 10, 2012
Addendum 4 issued September 21, 2012
Addendum 5 issued October 5, 2012
Addendum 6 issued October 16, 2012

Addendum 7 issued October 19, 2012

_____

Responses issued September 10, 2012, September 21, 2012, October 4, 2012, October 16, 2012 and *[list other response dates]*_____

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the secure file transfer site for the East End Crossing, the Addenda and responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by Developer and do not contain internal inconsistencies, errors or omissions; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted a Reasonable Investigation in preparing this Proposal; and that it has notified IFA in writing of any deficiencies or errors in or omissions from any RFP Documents or other documents provided by IFA and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in the SOQ previously delivered to IFA (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such SOQ, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer understands that IFA is not bound to award the Agreement to the best financial Proposal or any Proposal that IFA may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any stipend that Department may pay Proposer in accordance with the Stipend Agreement and ITP Section 6.3. Proposer acknowledges that it has executed the Stipend Agreement and, in doing so, has irrevocably elected to accept the stipend offered for such work product.

Subject to Proposer's rights under the Public Records Act, Proposer consents to IFA's disclosure of its Proposal pursuant to Indiana Statutes 40.25 and 2 Indiana Administrative Procedures Code 96, to any Persons, in IFA's sole discretion, after award and execution of the Agreement by IFA. Proposer acknowledges and agrees to the disclosure terms of the ITP and that observers and individuals may conduct reviews on behalf of TIFIA and PABs with respect to the successful Proposal. Proposer expressly waives any right to contest such disclosures.

Proposer agrees that IFA will not be responsible for any errors, omissions, inaccuracies, inconsistencies or incomplete statements in this Proposal.

Proposer acknowledges the procurement protest procedures set forth in Section 7 of the ITP and agrees that if it files a protest of this procurement or award of an Agreement hereunder and that protest is denied or is otherwise unsuccessful, Proposer shall forfeit its Proposal stipend and shall be liable to IFA for IFA's costs incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by IFA as a consequence of the protest.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Indiana.

Proposer's business address:

1260 East Summit Street
(No.) (Street) (Floor or Suite)

Crown Point, IN 46307, USA
(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: NA

WVB East End Partners

By:

By: _____

Print Name: Sidney R. Florey Sidney R. Florey

Title: Project Executive

1. Sample signature block for corporation or limited liability company:

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for consortium, partnership or any other form of joint venture:

[Insert the proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

3. Sample signature block for attorney in fact:

[Insert the proposer's name]

By: _____

Print Name: _____
Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

A. If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation. If the Proposer is a limited liability company, enter the state or country of organization.

B. Describe in detail the legal structure of the Proposer/Developer and Equity Members.

1. If Proposer/Developer/Equity Member is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for the Proposer/Developer/Equity Member and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.

2. If Proposer/Developer/Equity Member is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.

3. If Proposer/Developer/Equity Member is a consortium, joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Proposer/Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP.

4. If Proposer/Developer/Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for Proposer/Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and

joint venture) certified by an appropriate individual. Attach evidence to the Proposal Letter, in respect of the Proposal, and to each letter required under the Proposal Letter that the person signing has authority to do so. If any entity is not yet formed, so state and indicate that these documents will be provided prior to commercial close as required by the ITP. For purposes of clarity, Proposer may append to the Proposal Letter a letter from each person signing the Proposal that such person has the authority to do so, which shall suffice for the purposes of the requirements set forth in this Section B.4.

5. If an Equity Member is an investment fund, acting by and through its fund manager, the incorporation, formation and organizational documents of the fund manager shall satisfy the requirements for organizational documents under this Section B.

For purposes of this Section B, the term "organizational documentation" in respect of an Equity Member shall mean such entity's certificate of formation/articles of incorporation/certificate of partnership/joint venture agreement, or equivalent charter documentation; provided, further, that such entity shall provide its partnership agreement/operating agreement/bylaws/equivalent joint venture or investment fund internal governing organizational documentation prior to commercial close as required by the ITP.

C. With respect to authorization of execution and delivery of the Proposal and validity thereof, if Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If Proposer is a consortium or other form of joint venture, such evidence shall be in the form of a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If Proposer is a consortium, joint venture or a partnership, the Proposal must be executed by all consortium or joint venture members or all general partners, as applicable.

D. Developer's partnership agreement, limited liability company operating agreement, charter or joint venture agreement, as applicable, must include an express provision satisfactory to IFA, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners, members or shareholders, as applicable, no joint venture member, partner, member or shareholder, as applicable, shall be entitled to stop, hinder or delay work on the East End Crossing. Proposers should submit the applicable agreement to IFA and identify on a cover page where in the agreement the

provision can be found. If Developer is not yet formed, provide draft organizational documents and indicate where the provision is found.

VINCI CONCESSIONS

Walsh Investors, LLC
929 W. Adams St.
Chicago, IL 60607

Bilfinger Berger PI International Holding GmbH
Gustav-Stresemann-Ring 1
D-65189 Wiesbaden
Germany

VINCI Construction Grands Projets
5, Cours Ferdinand-de-Lesseps – 92851
Rueil-Malmaison, France,
Chicago, IL 60607

Walsh Construction Company
929 W. Adams St.
Chicago, IL 60607

October 17, 2012

Re: Letter Agreement Pertaining to Submission of the Proposal for the Project (this "Letter Agreement")

Dear Sir/Madam:

We refer to the Preliminary Teaming Agreement entered into on April 2, 2012 (the "Preliminary Teaming Agreement") and the related Amendment to the Preliminary Teaming Agreement entered into on October ▪, 2012 (the "Amendment") by and between VINCI Concessions SAS ("Vinci"), Walsh Investors, LLC ("Walsh Investors"), Bilfinger Berger Project Investments, Inc. ("Bilfinger") ("Vinci, Bilfinger and Walsh Investors, collectively, the "Sponsors"), VINCI Construction Grands Projets ("VCGP") and Walsh Construction Company ("Walsh Construction") (VCGP and Walsh Construction, collectively, the "CJV") (Sponsors and CJV, collectively the "Parties" or the "Proposer") (the Preliminary Teaming Agreement and the Amendment, shall be referred to herein, collectively, as the "Agreement"). Unless defined otherwise herein, capitalized terms used in this Letter Agreement shall have the meaning set out in the Agreement.

Whereas:

In accordance with Clauses 2.3 and 2.4, respectively, of the Agreement, the Sponsors will manage the Proposer's participations in the bidding process and the CJV will act as the lead contractor. Also, in accordance with Clause 2.3 of the Agreement, the Sponsors will make decisions as to the Proposal on a unanimous basis.

In accordance with Section 2.7 of the Agreement, VINCI is to nominate an Authorized Representative to represent the Proposer in its interaction with the Indiana Finance Authority (the "IFA") and Mr. Sidney R. Florey, Business Development Manager, North-America of VINCI has been nominated by VINCI and confirmed by the Parties as Authorized Representative.

On or about October 19, 2012 the IFA issued Addendum #7 to the RFP which is the final draft of the RFP for the Project (the "Final Draft RFP").

The Parties are submitting the Proposal based on the Final Draft RFP (for purposes of clarity, in the event a subsequent version of the RFP is released by the IFA prior to the Proposal Submission Date the Proposal will be based on such a subsequent version). The Proposal is the result of a co-operative effort undertaken by the Parties and other team members during the RFP process and will be finally reviewed and validated by all Parties and other team members on October 25, 2012.

Now therefore, in light of the foregoing, by countersigning this Letter Agreement, each Party confirms, in accordance with Clause 2.7 of the Agreement, that:

1. It has received and reviewed the RFP documents and the Proposal;

2. It agrees to the submission of the Proposal and to the contents of Proposal;

3. It has verified and confirms the accuracy and completeness of any and all data, materials and certifications or representations prepared by it or pertaining to it and included in the Proposal,

4. It agrees to and shall comply with any commitments or undertakings made in the Proposal to the extent such commitments or undertakings are made on its behalf;

5. All Parties authorize Mr. Sidney R. Florey, to sign the Proposal (including all forms that are required to be signed by the Proposer pursuant with the terms of the Final Draft RFP) in the name and on behalf of the Proposer, in accordance with the provisions and requirements of the Final Draft RFP; and

6. All Parties, having made all reasonable enquiries, have jointly concluded that the Proposal is, in all material respects, compliant with the requirements of the RFP. Having made such a conclusion, the Parties agree not to claim against each other for any subsequent determination by the Authority that the Proposal is not compliant with any requirement of the RFP.

Please return to us a copy of this Letter Agreement, duly countersigned by your duly authorized representative, by 6PM CST on October 25, 2012. In accordance with the terms of the Agreement, VINCI will only submit the Proposal to the IFA provided it has received from all Parties a duly countersigned copy of this Letter Agreement by the aforementioned date. This Letter Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PDF and facsimile signatures shall be deemed original signatures for all purposes.

Yours sincerely,

Sidney R. Florey
On behalf of VINCI Concessions SAS

AGREED AND ACCEPTED:

VINCI Construction Grands Projets

By: _____

Name: Martine TUIA-SANCHEZ

Title: Bid Manager

AGREED AND ACCEPTED:

Walsh Investors, LLC

By: Gregory A. Ciambrone

Name: Gregory A. Ciambrone

Title: Authorized Representative

AGREED AND ACCEPTED:

Walsh Construction Company

By: _____

Name: MATTHEW WALSH

Title: Director

AGREED AND ACCEPTED:

BILFINGER BERGER PI INTERNATIONAL HOLDING GmbH

By: _____

Name: DIRK SÖHNGEN NICK DAWSON

Title: MANAGING DIRECTOR MANAGING DIRECTOR

WALSH INVESTORS, LLC

By: _____

Name: _____

Title: _____

WALSH CONSTRUCTION COMPANY

By: _____

Name: _____

Title: _____

VINCI CONSTRUCTION GRANDS PROJETS

By: _____

Name: _____

Title: _____

POWER OF ATTORNEY

VINCI Concessions S.A.S., incorporated under the laws of France and registered under number 410 001 952 at the Register of Trade and Companies of Nanterre (France) and with a capital of EUR 4,306, 925,672 the registered office of which is at 9, Place de l'Europe, 92500 Rueil-Malmaison, France (the "**Company**"), represented by Mr. Louis-Roch BURGARD, Chief Executive Officer ("*Directeur Général Délégué*") hereby appoints:

Mr. Fadi SELWAN, Director Business Development

Mr. Kristof VAN LOON, Project Director North-America

Mr. Sid FLOREY, Business Development North-America

Mr. Olivier MATHIEU, Chief Financial and Asset Management Officer

(the "**Attorneys**")

as a true and lawful attorney-in-fact of the Company, to, each individually, with the power to grant a substitute power of attorney:

1. act in the name of the Company and on behalf of the Company and perform all acts, which the Attorney finds reasonable or necessary in relation to and throughout the procurement process (the "**Procurement**") to be organised by the Indiana Finance Authority (IFA) (the "**Authority**") in relation to the Ohio River Bridges – East End Crossing project as further detailed in the request for Proposals ("RFQ") issued by IFA in July 2012, as amended (the "**Project**").

2. In relation to the Procurement in particular, but without any limitations whatsoever,

   (i) To sign all documents, which must be submitted to the Authority in connection with the Procurement or the Project in the name and on behalf of the Company;

   (ii) Without limiting the foregoing, generally to execute and perform any other acts in the name and on behalf of the Company that ought to be executed or performed of every nature and kind whatsoever relating, directly or indirectly, to the matters set forth in paragraph 1 above, including the signature of agreements with other team members or with advisers and other service providers engaged in the context of the Company's participation in the Procurement.

This Power of Attorney shall become effective on the date of its signature and expire on 15 February 2013.

Rueil-Malmaison (France), 18 October 2012

Louis-Roch BURGARD
Directeur Général Délégué
VINCI Concessions SAS

Resolution By Special Meeting of the Members of
Walsh Investors, LLC

We, the undersigned, being all of the Members of Walsh Investors, LLC, a limited liability company formed under the laws of the State of Delaware ("Company"), do hereby certify that the following is a correct and true copy of a resolution duly and unanimously adopted by the Members of Walsh Investors, LLC, at a meeting held the 19th day of October, 2012, at which time the following resolutions were duly adopted in accordance with the procedures set forth in the limited liability agreement of the Company and that said resolutions have not been amended, rescinded or revoked, and are in no way in conflict with any of the provisions of the Company's limited liability agreement.

BE IT RESOLVED that the following individuals or such other persons as this Company may designate from time to time, either in writing or by their apparent authority, are and shall hereinafter be duly authorized to execute legal documents which bind Walsh Investors, LLC, including but not limited to bid documents, proposals, contracts, change orders, applications for payment, waivers of lien, financial, banking and lending documents and all other documents necessary and appurtenant to the business of Walsh Investors, LLC:

DANIEL J. WALSH
MATTHEW M. WALSH
GREGORY A. CIAMBRONE

BE IT FURTHER RESOLVED that the foregoing resolution shall continue in force until express written notice of its rescission or modification has been received.

IN WITNESS WHEREOF, We have hereunto set our hand and the Seal of the Walsh Investors, LLC this 19th day of October, 2012.

By: **DW Partners, L.P.**, Member

Signed: _____
Daniel J. Walsh
Managing Partner

(SEAL)

By: **MW Partners, L.P.**, Member

Signed: _____
Matthew M. Walsh
Managing Partner

RESOLUTION OF THE
BOARD OF DIRECTORS OF
WALSH CONSTRUCTION COMPANY

I hereby certify that I am the Secretary of Walsh Construction Company, a corporation duly organized and existing under the laws of the State of Illinois, and that the following is a correct and true copy of a resolution duly adopted by the Board of Directors of Walsh Construction Company by unanimous consent and which shall have the same force and effect as though adopted at a special meeting held the 25th day of October, 2012, pursuant to and in accordance with the Illinois Business Corporation Act of 1983 as amended, and that such resolution has not been rescinded nor modified and is in full force and effect:

BE IT RESOLVED by this Board of Directors that the following individuals, in addition to any other individuals previously authorized by resolution, are and shall hereinafter be duly authorized to execute legal documents that bind Walsh Construction Company regarding all matters, including but not limited to bid proposal documents and contracts:

DANIEL J. WALSH
MATTHEW M. WALSH

BE IT FURTHER RESOLVED that the foregoing resolution shall continue in force until express written notice of its rescission or modification has been received.

IN WITNESS WHEREOF, I have hereunto set my hand and the Seal of the Walsh Construction Company this 25th day of October, 2012.

Matthew M. Walsh IV
Secretary
Walsh Construction Company

(SEAL)

FUHRMANN WALLENFELS

Kooperation von Partnerschaftsgesellschaften

WIESBADEN
DIETER WALLENFELS
DR. STEFAN RUTKOWSKY, LL. M., Notar a. D.[1]
KORNELIA WAHL-SCHNEIDERS, Notarin
PETER SCHIRMER, Notar[2]
ULRIKE POLI
DR. TOBIAS STAUDER
JÖRG LUKOWSKY[3, 4]
PROF. DR. CHRISTIAN RUSS, Notar
DR. MANFRED ANTONI
DR. STEFAN REIS, Dipl.-Wirtschaftsingenieur
MARKUS SENG
EIKE CARL BORNEMANN
VERENA HOFMEIER

FUHRMANN WALLENFELS Wiesbaden
Rechtsanwälte Partnerschaftsgesellschaft
Bahnhofstraße 67
65185 Wiesbaden
Telefon: +49 (0) 611 44 90 91
Telefax: +49 (0) 611 48 451
E-Mail: wiesbaden@fuhrmann-wallenfels.de
Internet: www.fuhrmann-wallenfels.de

BERLIN
DR. JOACHIM FUHRMANN, Notar a. D.
DR. MARKUS FUHRMANN, Notar
ANNE SCHLEISIEK, Notarin[3]
RALF SCHULZ
DR. ELKE RÖHLE
THOMAS GRÄFE, Notar
LUITGARD BEHLE-HELD[5]
BERND R. NEUMEIER
SVEN WECKER, LL. M.[10]
MARCO KLÄRING, LL. M.[6, 7]
DR. REBEKKA FUHRMANN[8]

FUHRMANN WALLENFELS Berlin
Rechtsanwälte Partnerschaftsgesellschaft
Amtsgericht Charlottenburg PR 596 B
Kurfürstendamm 224
10719 Berlin
Telefon: +49 (0) 30 884 49 60
Telefax: +49 (0) 30 881 71 03
E-Mail: berlin@fuhrmann-wallenfels.de

FRANKFURT AM MAIN
FRANK G. SIEBICKE
DR. ULRICH WANNER-LAUFER[4, 6]
GÖTZ SCHNEIDER-ROTHHAAR[9, 11]
WERNER SCHIELEK, LL. M., Notar
KARLA KÖHLER, Notarin a. D.[3]
KARINA PETRI-SIEBICKE
ANDREA FRIEDRICH, Maître en Droit
MATHIAS LEIDGEB

FUHRMANN WALLENFELS Frankfurt am Main
Rechtsanwälte Partnerschaftsgesellschaft
Amtsgericht Frankfurt am Main PR 1794
Schaumainkai 91
60596 Frankfurt am Main
Telefon: +49 (0) 69 69 59 79 60
Telefax: +49 (0) 69 69 59 79 89
E-Mail: frankfurt@fuhrmann-wallenfels.de

1) Steuerberater
2) Fachanwalt für Erbrecht
3) Fachanwältin / Fachanwalt für Arbeitsrecht
4) Fachanwalt für Steuerrecht
5) Fachanwältin für Bau- u. Architektenrecht
6) Fachanwalt für Handels- und Gesellschaftsrecht
7) CWSL, San Diego, USA
8) Mediatorin
9) International Association of Entertainment Lawyers (IAEL)
10) Gewerblicher Rechtsschutz
11) Fachanwalt für Urheber- u. Medienrecht

Bilfinger Berger PI International Holding GmbH
Gustav-Stresemann-Ring 1
65189 Wiesbaden

Wiesbaden, 08. Oktober 2012
1680/11R43N / St D14/700-12

Notarielle Bescheinigung gemäß § 21 (1) 1. BNotO

Der unterzeichnende Notarvertreter bescheinigt hiermit aufgrund des am heutigen Tage erfolgten Abrufs der Daten aus dem elektronisch geführten Handelsregister des Amtsgerichts Wiesbaden **zu HRB 13322**, dass die allgemeine Vertretungsregelung der dort eingetragenen **Bilfinger Berger PI International Holding GmbH** mit dem Sitz in Wiesbaden lautet:

> Ist nur ein Geschäftsführer bestellt, so vertritt er die Gesellschaft allein. Sind mehrere Geschäftsführer bestellt, so wird die Gesellschaft durch zwei Geschäftsführer oder durch einen Geschäftsführer gemeinsam mit einem Prokuristen vertreten.

Geschäftsführer der o.g. Gesellschaft sind:
1. Herr Nicholas Cobbet gen. Nick **Dawson,** *17.03.1955, Marlow/United Kingdom,
2. Herr Dirk **Söhngen**, *19.07.1963, Frankfurt am Main.

Wiesbaden, 08.10.2012

PETER SCHIRMER NOTAR IN WIESBADEN

(Dr. Rutkowsky)
als amtlich bestellter Vertreter
des Notars Peter Schirmer

Certified Translation from the German Language
[Translator's annotations in brackets [ ] or in footnotes]

Letterhead: Law firm of Fuhrmann Wallenfels, Wiesbaden Office

To: **Bilfinger Berger PI International Holding GmbH**
Gustav-Stresemann-Ring 1
65189 Wiesbaden

Dated at Wiesbaden on this 8th of October, 2012
1680/11R43N/ST D 14/700-12

Notarial Attestation
pursuant to § 21 (1) 1. BNotO[1]

The undersigned Deputy Notary herewith certifies by virtue of today's retrieval of the data from the Commercial Register[2] maintained electronically by the Local Court of Wiesbaden on **HRB 13322**, that the provisions for the general power of representation for **Bilfinger Berger PI International Holding GmbH** recorded therein, with its registered office in Wiesbaden, reads as follows:

> If only one managing director has been appointed, he shall have sole power of representation. If multiple managing directors have been appointed, the company will be represented by two managing directors acting jointly or by one managing director acting together with a "Prokurist" (authorized signatory).

Managing Directors of the aforementioned company are:

1. Mr. Nicholas (known as "Nick") Cobbet Dawson, DOB: 17/03/1955, Of Marlow, United Kingdom
2. Mr. Dirk Söhngen; DOB: 19/07/1963, of Frankfurt am Main

Dated at Wiesbaden on this 8th day of October, 2012

[Signature]
(Dr. Rutkowsky)
as officially appointed deputy of the
Notary Peter Schirmer

[*Official Rubber Stamp*: Peter Schirmer, Notary in Wiesbaden]

In my capacity as a duly authorized translator for the courts and notaries in the Federal Republic of Germany, I HEREBY CERTIFY that the foregoing is a true and correct translation from the German of the notarial attestation issued on 8 Oct. 2012 (700-12), of which I have seen the original. The translation comprises one (1) page.

Wiesbaden, this 15th day of October, 2012

Barbara Müller 29912c

BARBARA MÜLLER staatl. gepr. Dolmetscherin allgemein ermächtigte Übersetzerin der englischen Sprache für die Gerichte und Notare im Lande Hessen Kaiser-Friedrich-Ring 61 * Tel.: 0611/84 24 65185 WIESBADEN

[1] Bundesnotarordnung = German federal rules and regulations for notaries – Transl.
[2] Handelsregister = Commercial Register, i.e. German Register of Companies – Transl.

3.2.2 Forms B-1, B-2 and B-3

FORM B-1

IDENTIFICATION OF PROPOSER AND EQUITY MEMBERS

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, e-mail)	ROLE OF ENTITY IN PROPOSER ORGANIZATION	Indiana Contractor License and Kentucky Contractor License (if applicable)	Description of Work/Services To Be Performed By Entity (if applicable)
WVB East End Partners 1260 East Summit Street,Crown Point, IN 46307 Sidney R. Florey 407-470-6639 (T) 646-400-5868(F) Sidney.florey@vinci.com	Proposer	NA	Proposer
Walsh Investors, LLC 929 West Adams Street, Chicago, IL 60607 Greg Ciambrone 312-563-5471 (T) 312-563-5447 (F) gciambrone@walshgroup.com	Equity Partner	NA	Equity Member of Proposer

Vinci Concessions SAS 9, Place de l'Europe, 92851 Rueil-Malmaison, France Kristof Van Loon 917-734-2054 (T) 646-400-5868 (F) Kristof.vanloon@vinci.com	Equity Partner	NA	Equity Member of Proposer
Bilfinger Berger PI International Holding GmbH Gustav-Stresemann-Ring 1, D-65189 Wiesbaden, Germany Thilo Tecklenburg 604-678-6539 (T) 604-678-6531 (F) Thilo.tecklenburg@pi.bilfinger.com	Equity Partner	NA	Equity Member of Proposer

The above information is true, correct and accurate.

Executed 24 October, 2012.

S. R. Florey
(Signature)

Sidney R. Florey
(Name Printed)

Authorized Representative/Project Executive
(Title)

WVB East End Partners

(Proposer)

FORM B-2

INFORMATION ABOUT PROPOSER ORGANIZATION

1.0 Name of Proposer: WVB East End Partners
Name of Developer An LLC to be formed by WVB East End Partners

2.0 Type of entity: Proposer: Unincorporated Consortium
Developer: LLC to be formed prior to Commercial Close

3.0 Proposer's address: 1260 East Summit Street

Crown Point, IN 46307

315-207-3905 Telephone

646-400-5868 Facsimile

4.0 How many years has Proposer, Developer and each Equity Member been in its current line of business and how many years has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name
WVB East End Partners	8 months	8 months
Walsh Investors, LLC	12	12
Vinci Concessions SAS	100+	12
Bilfinger Berger PI International Holding GmbH	10	1

5.0 Under what other or former names has Proposer, Developer and Equity Members operated?

Proposer:_____

Vinci Concessions SAS : GTM and CGE____

Bilfinger Berger PI International holding GmbH : Wing Erst Vermögensverwaltungs-GmbH, Baulderstone Hornibrook BOT GmbH, Bilfinger Berger PI Australia Holding GmbH_

_____:_____

_____:_____

6.0 Proposer shall review its SOQ previously submitted to IFA and list below any Key Personnel and other key staff members and their relevant experience that have been approved by IFA since the submission of the SOQ. Except as updated by the following information, Proposer's SOQ is hereby incorporated as if set forth in full and Proposer represents and warrants to IFA that the information set forth in the SOQ, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information or omit to state a material fact necessary in order to make the information not misleading. Attach separate sheets if necessary.

David Sikorski for Phil Malin as Project Manager,
Phil Malin to Deputy Project Manager
Bruce Williams for Dave Shier – Deputy Project Manager-Technical,
Martine Julia-Sanchez for Courtney Norris – Quality Manager (Courtney will assume new Key Position of Construction Quality Manager)
Courtney Norris as Construction Quality Manager – (was Quality Manager on SOQ)
John Reid as Construction Quality Control Manager
Kristof Van Loon as Financial Director – (was Deputy Project Manager-Finance on SOQ)
Dan Hartlage as Public Information Coordinator –(was Public relations Manager on SOQ
Brenda Wolf as DBE Coordinator – (was DBE/EEO Cordinator on SOQ)
Mark Hedrick as Utility Manager – (was Utilities Coordinator on SOQ)
Mike Lawler as Safety Manager – (was Safety Manager on SOQ)
Gina Morris as Environmental Compliance Manager

SEE RESUMES IN TECHNICAL PROPOSAL VOLUME 2 APPENDICES

7.0 List all Indiana and Kentucky licenses held by Proposer, Developer and any Equity Member. Attach copies of all Indiana and Kentucky licenses. Attach a separate sheet if necessary.

NA

8.0 The Proposal shall include the following information regarding the Surety/Bonding companies or banking institutions committing to provide the Payment and Performance Bonds in accordance with Section 17.2 of the Agreement:

(a) Name and address of bonding company(ies) that will provide the surety bonds required by the Agreement (must be licensed in the State of Indiana and the Commonwealth of Kentucky and listed on the Department of the Treasury's Listing and Approved Sureties (http://fms.treas.gov/c570/c570.html) and rated "A" or higher by at least two of the following three rating agencies: Fitch, Moody's or Standard and Poor's and rated "A-, X" or higher according to A.M. Best's Financial Strength Rating and Financial Size), and the name, phone number and address of the designated agent.

(b) Whether or not the listed bonding company has defaulted on any obligation within the past ten years, and, if so, a description and details of the circumstances and the outcome of such default.

(c) If the performance security is in the form of a letter of credit, the name of the bank or financial institution issuing the letter of credit (must have long-term, unsecured debt ratings of not less than "A-/A3" from one of the major national rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's Ratings Group)).

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed 24 Oct., 2012.

S. R. Florey
(Signature)

Sidney R. Florey
(Name Printed)

Authorized Representative
(Title)

WVB East End Partner
(Proposer)

TRAVELERS

Travelers Bond, Home Office
(860) 277-9355
(860) 277-3931 (fax)
One Tower Square, 2S2B
Hartford, CT 06183

October 26, 2012

Indiana Finance Authority
Attn: Silvia Perez
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204

RE: Ohio River Bridges Project – The East End Crossing
Walsh Construction Company / Vinci Construction Grands Projets, Bonding Capacity

Dear Ms. Perez:

Please be advised that **Walsh Construction Company / Vinci Construction Grands Projets** is a joint venture composed of two participants, Walsh Construction Company and VINCI Construction Grands Projets. It is the considered opinion of the undersigned surety company, that these are two of the outstanding construction organizations in North America. Their combined skill, integrity and financial responsibility as a joint venture are unquestioned.

The undersigned surety, licensed to do business in Indiana and the Commonwealth of Kentucky, have reviewed the PPA Documents, including Article 17 of the Agreement, and are prepared to issue the Performance Bond and Payment Bond in the form and amount required by the Agreement. We have read the RFP (including the ITP) and addenda and have evaluated the backlog and work in progress for the members of the joint venture in determining our willingness to issue the Performance and Payment Bonds.

Please be advised that any final bond authorization is subject to a review of the final contract terms, bond forms, project financing and any other pertinent underwriting considerations at the time of the request.

It is the position of the listed bonding company that it has not defaulted on any of its obligations as surety within the past ten years.Notwithstanding the foregoing, from time to time certain obligees and/or claimants may have alleged or asserted that the listed bonding company was in default of one or more of its alleged obligations under a surety bond. It is the listed bonding company's position that such allegations have stemmed from good faith disputes over the timing or scope of an underlying obligation of the listed bonding company or, in some cases, whether any obligation even existed. In such cases, the listed bonding company has fully and timely discharged its obligations as they have been determined, whether judicially, voluntarily or by some other method of resolution.

This letter does not constitute an assumption of liability. The issuance of bonds in connection with this project is a matter solely between the surety and **Walsh Construction Company / Vinci Construction Grands Projets** and we assume no liability to you or to an third parties by the issuance of this letter.

Sincerely,
Travelers Casualty and Surety Company of America
Treasury Listing: $ 165,208,000
A.M. Best Rating: A+ XIV
Standard and Poor's Rating: AA
Fitch Rating: AA

BY: _____ (Seal)

Jodi Wallace, Attorney-in-Fact
AEW Insurance Agency, LLC
929 W. Adams
Chicago, IL 60607
312-563-5925

CONFIDENTIAL

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

TRAVELERS

POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 225482 **Certificate No.** 005006381

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Brian R. Walsh, J. William Ernstrom, Jodi Wallace, and Kerry Pecora

of the City of Chicago, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 21st day of August, 2012.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Illinois
County of Cook

On this 26 day of October, 2012, before me personally appeared Jodi Wallace, known to me to be the Attorney-in-Fact of **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA,** the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first written above.

KERRY PECORA
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
July 30, 2016

58440-6-11Printed in U.S.A.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER
CONFIDENTIAL

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

WARNING THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 26 day of October, 20 12.

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

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FORM B-3

INFORMATION ABOUT MAJOR PARTICIPANTS AND IDENTIFIED CONTRACTORS

[This form will be used to provide information about any Major Participants (excluding Equity Members that do not fall into categories (a) through (h) of the definition of Major Participants) and any other Contractors that have been identified as of the Proposal Due Date.]

Proposer Name WVB East End Partners_____

Name of Entity and Contact Information (address, representative, phone, fax, e-mail)	**Address of Head Office**	**Indiana Contractor License and Kentucky License (if applicable)**	**Description of Work/Services To Be Performed By Entity (if applicable)**
Walsh Construction Company Dan Walsh 312-563-5428 (T) 312-563-5447 (F) dwalsh@walshgroup.com	929 West Adams Street Chicago, IL 60607	NA	Design-Build Contractor
Vinci Construction Grands Projects Thierry Portafaix 425-286-1623 (T) 33 1 47 16 41 80 (F) Thierry.portafaix@vinci-construction.com	5, cours Ferdinand de Lesseps, 92851 Rueil-Malmaison CEDEX, France	NA	Design-Build Contractor
Jacobs Engineering Group, Inc. Peter Brettell 303-820-5426 (T) 303-820-2402 (F) Peter.brettell@jacobs.com	1111 So. Arroyo Parkway Pasadena, CA 91105	NA	Design

Walsh Construction-VCGP JV Steve Kehle 312-563-5966 312-563-5447 (F) sgkehle@walshgroup.com	929 West Adams Street Chicago, IL 60607	NA	Design-Build Contractor

If any Major Participant or Contactor identified above is a single purpose entity formed for the East End Crossing, complete the following matrix for each such single purpose entity:

Name of major Participant/Contractor	Form of Entity (partnership, joint venture, LLC, corporation, etc.)	Entities with Ownership Interest	Percentage of Ownership Interest
Walsh-VCGP JV	Joint venture	Walsh Construction	60%
		VCGP	40%

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants resulting in an agreement to enter into any Contracts with respect to the East End Crossing, except for those listed above. Proposer agrees that it will follow applicable PPA Documents requirements with respect to Contractors. Proposer further declares that it has carefully examined the RFP Documents and acknowledges that IFA has determined that a Proposer's efforts to obtain participation by Contractors could reasonably be expected to produce 9% DBE participation of the Total Project Capital Cost for the professional services and construction portions of the Work.

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed 24 Oct., 2012.

S. R. Florey
(Signature)

Sidney R. Florey
(Name Printed)

Authorized Representative _____
(Title)

WVB East End Partners _____
(Proposer)

3.2.3 Form C

FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: WVB East End Partners

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: Proposer – WVB East End Partners

1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection.

The term **"affiliate"** means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in North America.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

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b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes ___ No ✓

e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

CONFIDENTIAL

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed 24 Oct, 2012.

S. R. Flo

(Signature)

Sidney R. Florey

(Name Printed)

Authorized Representative

(Title)

(Name of Organization)

WVB East End Partners

CONFIDENTIAL

FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: WVB East End Partners

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: Walsh Investors, LLC

1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection.

The term **"affiliate"** means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in North America.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No X

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b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes _X_ No ___

e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes _X_ No ___

f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

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If yes, please explain the circumstances. If no, so state.

Yes _X_ No ___

g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

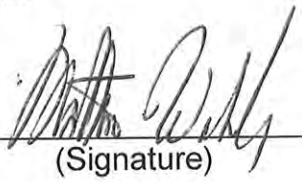
Yes ___ No _X_

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed _October 17_, 2012.



(Signature)

Matthew Walsh
(Name Printed)

Manager
(Title)

Walsh Investors, LLC
(Name of Organization)

CONFIDENTIAL

Response to 1.d)

United States ex. Rel. Greg Hudalla v. Walsh Construction Company. A complaint was filed and served against Walsh Construction Company on the above referenced matter in 2008. The complaint alleged violations of the false claims act. Walsh denied all charges. The parties settled the matter in 2011.

United States of America, ex rel., Peter M. Day and Peter M. Day, on his own behalf v. Archer Western Contractors, Ltd. and Alberici Constructors, Inc., and The Walsh Group, Ltd. – On December 20, 2011, the above captioned lawsuit was filed against Archer Western Contractors, its parent company, The Walsh Group, Ltd., and its joint venture partner, Alberici Constructors, Inc. The Complaint alleged violations of 31 USC 3729 the False Claims Act and wrongful termination of employment. Walsh denied all charges. At the end of January, 2012, the counts for False Claims Act violations were dismissed.

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Response to 1.e)

WALSH - ADVERSE EEOC DETERMINATIONS - LAST TEN YEARS (Response to 1.e.)

Zelma White v. Walsh

Complaint filed on 12/6/2001. While working as a laborer, she claims she requested but was denied overtime. She was laid off on 12/5/01. She is alleging discrimination based on her race, black. Walsh denied the charges. EEOC found probable cause. Case is currently in litigation.

Marvin Greene v. Walsh

Complaint filed on 12/6/2001. Greene claims he was denied overtime and eventually laid off because of his race, black. Walsh denied the charges. EEOC found probable cause. Case is currently in litigation.

Terrence Jackson v. Walsh

Complaint filed on 12/7/2001. Jackson alleges he experienced workplace discrimination and was terminated due to his race, black. Walsh denied the charges. EEOC found probable cause. Case is currently in litigation.

Jackie White v. Walsh

Complaint filed on 2/21/2002. White alleges that he experienced workplace discrimination and was terminated due to his race, black. Walsh denied the charges. EEOC found probable cause. Case is currently in litigation.

William Hall

Complaint filed on 11/10/2006. Mr. Hall, not an employee of Walsh, rather an employee of International Decorators, alleges racial discrimination by an employee of another subcontractor, Advance Mechanical. EEOC investigates based on "putative employer" theory. Walsh denies charges. EEOC finds probable cause. Walsh settled and participated in conciliation with EEOC.

Jasen Winfrey

Complaint filed on 6/28/2007. Mr. Winfrey, not an employee of Walsh, rather an employee of International Decorators, alleges racial discrimination by an employee of Advance Mechanical (this case is analogous to William Hall, above). EEOC investigates based on "putative employer" theory. Walsh denies charges. EEOC finds probable cause. Walsh settled and participated in conciliation with EEOC.

Janice Lenoir

Complaint filed on August 26, 2003. Janice Lenoir was a Walsh who claims she was sexually harassed. Walsh denied charges. EEOC found probable cause. Walsh settled and participated in conciliation efforts with EEOC.

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Response to 1.f)

PREVAILING WAGE OR OVERTIME COMPENSATION DETERMINATIONS

Archer Western and Walsh Construction Company, as large national general contractors, have on a few occasions, received determinations that a subcontractor or lower tier subcontractor, has failed to comply with laws governing prevailing wages or overtime compensation. In all such cases, Walsh and Archer quickly resolve the matter to the satisfaction of the agency. Further information related to these matters is available upon request.

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FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: WVB East End Partners_____

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: Vinci Concessions SAS_____

1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection.

The term **"affiliate"** means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in North America.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

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b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes ___ No ✓

e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

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If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No ✓

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed 26 Oct., 2012.

Van Loon Kristof

(Signature)

Kristof Van Loon

(Name Printed)

Project Director – North America

(Title)

Vinci Concessions SAS

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FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: **WVB East End Partners**

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: **Bilfinger Berger PI International Holding GmbH ("BBPIIH")**

1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection.

The term **"affiliate"** means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in North America.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes _X_ No ___

Bilfinger Berger's civil division, an Affiliate of BBPIIH, is involved in a dispute with Metro Vancouver over a construction contract for the Seymour Capilano Tunnel. Metro

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Vancouver hired Bilfinger Berger in 2004 to construct twin tunnels, initially estimated to cost about USD 100 million. Bilfinger Berger suspended work on the project in January 2008, due to concerns about the safety of underground workers after three incidents with falling rocks resulting in injury. Metro Vancouver then terminated Bilfinger Berger's right to perform further work on the project in May, 2008 and launched a law suit against Bilfinger Berger. In April 2009, Metro Vancouver awarded a contract for completion of the twin tunnels to a different company. Bilfinger Berger has filed a counterclaim for reimbursement of costs as well as a court order for return of equipment. The parties conducted a mediation in 2010 but were unable to resolve the issue. The matter is expected to go to court in 2014.

Prior to the sale of the business unit to Balfour Beatty in June, 2011, Bilfinger Berger was the owner of Fru-Con Construction (Fru-Con). Fru-Con was involved in a series of investigations by the U.S. Labor Department's Occupational Safety and Health Administration (OSHA) regarding the Maumee River Crossing Project in Toledo, Ohio. The OSHA has reached agreement with Fru-Con resolving citations issued following an investigation into the February 16, 2004 bridge collapse and fatalities. The agreement also resolves citations resulting from a March 18, 2004 inspection of Fru-Con at another Toledo site where concrete work was performed.

A key element in the settlement is Fru-Con's agreement to employ at least one independent, qualified consultant with expertise in bridge construction at any Fru-Con project in the U.S. involving bridges. The company has also agreed to implement all recommendations made by the consultant on the Maumee River Project, and report those safety improvements to OSHA.

Further, Fru-Con agreed that all worker safety complaints at the Maumee River Crossing Project will be investigated immediately and any hazardous conditions will be corrected. Fru-Con also agreed to pay USD 930,000 in penalties, and agreed to allow OSHA access to the worksite for inspection purposes even in the absence of any complaint.

In 2007, a further accident happened on the same construction site relating to a fatal fall of one employee due to a scaffolding which had broken free from the bridge. The OSHA has been involved in the investigations of any related breach of safety regulation.

Further details and contact persons at OSHA can be found on www.ohsa.gov.

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b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes _X_ No ___

[redacted]

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[redacted]

d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes _X_ No ___

Prior to the sale of the business unit to Balfour Beatty in June, 2011, Bilfinger Berger was the owner of Fru-Con Construction (Fru-Con). Fru-Con was involved in a contract dispute with the Sacramento Municipal Utilities District (SMUD) over a contract to construct a 500 MW combined cycle power plant in Herald, California. In February, 2005, SMUD terminated the contract with Fru-Con based on allegations of late and defective performance and sued Fru-Con in California State Court. A jury verdict in the State proceeding was rendered on June 5, 2009 which found Fru-Con to be liable to SMUD for an aggregate amount of USD 40,661,829 plus pre-judgment interest, including amounts in respect of costs and liquidated damages, as well as an amount of USD 10,000 as a civil penalty for a breach of the California False Claims Act (CFCA). Regarding the CFCA, the jury found that there had been a misrepresentation in connection with a milestone on a payment invoice. Fru-Con disputes the jury verdict, including this finding, and the jury verdict is under appeal. Fru-Con filed a separate, but related suit in federal court, and, before the California State Court had entered judgment, brought a motion for summary judgment in the federal district court as to SMUD's CFCA claims. The federal court, which for purposes of the summary judgment proceedings was required to assume the facts in SMUD's favor, found that even with such an assumption, there was no basis for determining that Fru-Con had knowingly made false claims. Fru-Con has posted security in cash for the full amount of the State Court judgment. The Bilfinger Berger group retained responsibility for this litigation when it sold the Fru-Con business. It is expected that the appeal process may take until as late as 2015 to be fully completed.

Flovac, Inc. a manufacturer of vacuum sewage systems, brought an antitrust case in May, 2012 in the US District Court of Puerto Rico, against an Affiliate of BBPIIH, Airvac, also a manufacturer of vacuum sewage systems, and Airvac's President, Mark Jones. The complaint alleges that Airvac and Jones have entered into a "conspiracy," principally between themselves but also with unidentified third-parties, to persuade municipalities to issue specifications for vacuum sewage systems that exclusively require the use of Airvac"s systems. Flovac also alleges that Airvac and Jones have disparaged and made misrepresentations about Flovac"s products. Airvac believes the complaint is without merit and has brought a motion to dismiss the plaintiff's complaint for failure to state a claim.

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e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed October 23, 2012.

Nick Dawson
Managing Director
Bilfinger Berger PI International Holding GmbH

CONFIDENTIAL

FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: WVB East End Partners

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: Walsh Construction - Vinci Construction Grands Projets Construction Joint Venture

1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection.

The term **"affiliate"** means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in North America.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

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b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No X

c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No X

d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes ___ No X

e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes ___ No X

f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

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If yes, please explain the circumstances. If no, so state.

Yes ___ No X

g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No X

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed October 17, 2012.

(Signature)

Steven G. Kehus

(Name Printed)

Sr. V.P.

(Title)

Walsh Construction-VCGP Construction Joint Venture

(Name of Organization)

CONFIDENTIAL

JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT was made and entered into, effective this 19th day of October 2012, by and between the following Parties:

PARTY	PRINCIPAL PLACE OF BUSINESS	PLACE OF INCORPORATION
Walsh Construction Company ("Walsh")	929 West Adams Chicago, IL 60607	Illinois
VINCI Construction Grands Projets ("VCGP")	5, Cours Ferdinand-de-Lesseps 92500 Rueil-Malmaison France	Nanterre, France

WITNESSETH:

WHEREAS, the parties are interested in submitting a bid for, and in obtaining a contract from a concession (the"Concession"), comprised of Vinci Concessions S.A.S. ("Vinci Concessions") and Walsh Investors, LLC ("Walsh Investors") and Bilfinger Berger Project Investment, Inc. ("Bilfinger"), which in turn is submitting a proposal to the Indiana Finance Authority (the "Owner") for the construction of a project known as the Ohio River Bridges – East End P3 Project (the design and construction of the Project being hereinafter called the "Work" and the said contract being hereinafter called the "Contract"); and

WHEREAS, the parties hereto have agreed to form a Joint Venture which will bid for and seek to obtain such Contract from the Concession; and

WHEREAS, the parties hereto desire to set forth their rights and interests in such Joint Venture, and to set forth their duties and obligations under the Contract which might be awarded as a result of the aforesaid bid;

NOW THEREFORE, in consideration of the mutual promises and agreements herein set forth, the parties hereby agree to constitute themselves as a Joint Venture for the purpose of submitting a bid to the Concession for the performance of the Contract and for the purpose of performing and completing the construction of the Project in the event that the Contract is awarded to them but not for any other purposes. This Agreement contemplates only the furnishing and performance of the work, labor and materials necessary for the submission of the bid and for the completion of the Contract, and the parties are not making any permanent agreement to develop or undertake any project other than the Project. Nothing in this Agreement shall be construed as a limitation of the power or rights of either party hereto to carry on its separate business for its sole benefit except, however, the parties hereto shall cooperate with each other according to the terms

and spirit hereof in the performance and completion of the Contract pursuant to this Agreement. The parties hereby agree that such joint bid shall be filed and such Contract, if awarded to them, shall be performed and completed by them as a Joint Venture subject to the following terms and conditions:

ARTICLE 1: NAME

The name of the Joint Venture shall be the **"Walsh Construction Company / Vinci Construction Grands Projets JV"** and the business of the Joint Venture shall for convenience be carried on under that name and under no other name.

ARTICLE 2: BID

a) The parties hereto agree to jointly prepare a bid for the construction of the Project to be submitted to the Concession or its agent as may be required under the invitation to bid documents on the official bid date. Should the parties fail to agree as to the form, the terms, or conditions of the bid, then, in such event, the Joint Venture and this Agreement shall terminate automatically without notice, subject to the rights and obligations of the parties accrued prior to such termination and subject further to the following:

However, under no circumstances shall any Party be liable to the other Party for any indirect or consequential loss or damage (including but not limited to any loss of contract, loss of profit, loss of revenue), whether claimed in tort, equity, common law or statute arising from the failure of the Parties to agree as to the form, terms or conditions of the bid.

Notwithstanding the foregoing, the parties agree to exercise their best efforts and to proceed reasonably and with due diligence to agree to the form and the terms and conditions of the bid.

b) Any negotiations with the Concession or any sureties, subsequent to the submission of the bid, whether before or after the awarding of the Contract, shall be conducted by the Executive Committee defined later herein.

c) Except as is provided in this Agreement, during the term of this Agreement none of the parties to this Agreement shall, without the previous written consent of the other party, directly or indirectly bid for or take any interest for its own benefit in the execution or carrying out of the construction of the Project or any part thereof or any services preparatory thereto and each of the parties shall do all in its power to ensure the observance of this prohibition by all persons from time to time in its employment and all of its subsidiaries or parent company as defined by Federal or State law.

d) In the event an affiliate and/or subsidiary of one of the Parties, is interested in submitting a quote for any portion of this Project, the affiliate and/or subsidiary shall treat the design, means and methods, agreed to with the Parties as confiendnital and shall not share with other proposers

e) Except as is herein provided to the contrary, or unless otherwise mutually agreed upon by the parties hereto:

(i) each of the parties hereto shall [redacted]; and

(ii) no payment shall be made by the Joint Venture [redacted] unless by prior mutual agreement.

f) If the parties are required to issue a bid bond in connection with their bid for construction of the Project, [redacted]

g) If the bid is accepted by the Owner and Concession, or if the parties are successful in negotiating the Contract subsequent to the submission of the bid, the parties shall execute a contract, and shall take such other steps as may be required to make the Contract a legal and binding agreement among the parties, and the Owner/ Concession. If the bid is not accepted by the Owner and if the parties are not successful in negotiating the Contract with the Owner within six (6) months of submission of the bid or longer if required by RFP, then this Agreement shall terminate, subject to the rights and obligations of the parties accrued prior to such termination.

ARTICLE 3: PARTICIPATION OF PARTIES

a) Except as may be provided to the contrary in this Agreement, the interests of the parties in any profits, and their respective shares in any losses and liabilities that may result from the performance of the Contract, and their interests in all property, equipment and other assets acquired by the Joint Venture, and all monies received in connection with the performance of the Contract shall be as follows:

PARTY	PROPORTIONATE SHARE
Walsh	[redacted]

VCGP	[redacted]

(the said percentage for each party being hereinafter called its "Proportionate Share").

b) [redacted] The obligations under this subparagraph shall survive completion or termination of the Project or this Agreement.

c) Each of the parties agrees to place at the disposal of the Joint Venture as directed by the Executive Committee the benefit of all its experience, technical knowledge and skill and shall in all respects bear it's share of the responsibility and burden of completing the Contract including the provision of information, advice and assistance for the execution of the Work.

ARTICLE 4: EXECUTIVE COMMITTEE

a) To facilitate the handling of any and all matters and questions in connection with performance of the Contract and to direct, manage and supervise the business of the Joint Venture including, but not limited to the performance of the Contract and the execution of the Works, a Joint Venture Executive Committee shall be established comprised of one representative from each of the parties hereto. Each of the parties hereby appoints the following representative and alternate to act for it in all such matters with full and complete authority to act on its behalf in relation to any and all matters and things in connection with, arising out of, or in relation to any and all matters, questions and things involving performance of the Contract.

[redacted] under the project and under any Contracts or Agreements arising there from, which have been authorized by the Executive Committee of the Joint Venture. The following individuals are authorized to execute documents on behalf of the Joint Venture.

PARTY	REPRESENTATIVE	ALTERNATE
Walsh	[redacted]	
VCGP	[redacted]	

Any party may at any time and from time to time change its appointed representative or alternate by filing with the other party a written notice in accordance with this Agreement. The alternate representatives shall serve only when the primary representative is absent or unable to serve.

b) The representatives of the parties constituting the Joint Venture Executive Committee, who are designated in accordance with this Agreement shall hereafter be known as the Executive Committee and shall meet on a monthly basis or as requested by any member of the Executive Committee, subject to ten (10) days notice (or such lesser or greater period upon which the members of the Executive Committee may agree), to act on matters within the mandate of the Executive Committee. Such meetings shall be in person, by telephone conferencing or by video conference. The draft of the resolution shall be prepared by the Managing Party within 14 days after the meeting and circulated to the parties for comments if any, within three days after the receipt of the draft. A resolution in writing, signed by all of the members of the Executive Committee shall be as valid as if it had been passed at a meeting of the Executive Committee.

c) [redacted]

[redacted]

d) Every decision of the Executive Committee upon any of the matters within its mandate under this Agreement in the form of an executed resolution shall be binding upon the parties as if the same had been included in the provisions of this Agreement at the time of the execution hereof.

e) If neither the representative of a party nor his alternate attends a duly convened meeting of the Executive Committee, the meeting shall be adjourned and requested again giving notice as aforesaid. Should neither the representative of a party nor his alternate still not attend, then the meeting shall proceed in their absence.

f) The Executive Committee shall have the mandate to deal with all decisions, commitments, agreements, understandings and all other matters pertaining to negotiations with the Concession or any sureties subsequent to the submission of the bid and pertaining to performance of the Contract.

The Executive Committee shall have power and authority:

i) to supervise and control the performance of the Managing Party and of the Project Manager later defined herein;

ii) to approve the Project Manager [redacted] as well as the list of the personnel which it considers to occupy executive positions in the performance of the project;

iii) to exercise control and make decisions on general policy matters related to the Joint Venture which are not specifically delegated to the Managing Party, or the Project Manager;

iv) to review for approval the Project Manager's recommendations in such matters as the overall plan for execution of the Work, [redacted] the determination of requirements and plans for the acquisition, rent or lease of any plant, tool or equipment and their respective rate, the determination of the need for and the terms of subcontract or

material supply agreements in excess of [redacted] the approval of salary schedules, [redacted]

v) to delegate the authority to act for and bind the parties to this Agreement in connection with all or any part of the performance of the Work. Said delegation of authority to either one of the parties, or to any other person or persons may be revoked at any time;

vi) to receive and review reports on the progress of the Work made by the Project Manager. The contents and timing of reports shall be determined by the Executive Committee pursuant to Exhibit D. The Project Manager shall meet with the Executive Committee when requested by said Committee;

vii) to determine the amount of any reserves required for any warranty period in respect of any unsettled claims, demands or other contingents of the Joint Venture relating to the Work;

viii) to determine the contractual policy and the claims policy toward the Concession, suppliers and subcontractors (including the decision to refer to arbitration or litigation) and agree on the material changes to the terms and conditions of the Contract;

ix) to approve the general terms, conditions, criteria and policies relating to the employment contracts, salaries and bonuses, travelling expenses and to approve Project Manager's request for the termination of the employment of senior personnel;

x) to approve budgets and financial forecasts and decisions on the general financing policy of the JV (including without limitation the contracting of loans and other financial instruments);

xi) to approve the balance sheets and accounts, verification of the requirements for cash and the cash flow forecast and establishment of the working capital;

xii) to set the name of the banks of the Joint Venture, the list of acceptable securities and investments, the financial investment policy of the JV and the financial reporting period year end for the Joint Venture;

xiii) to set the policy concerning insurance, bonds and guarantees;

xiv) to approve work programs and methods of execution of the Works;

xv) to agree the dissolution of the JV and the closure of its activities and accounts; and

xvi) generally to act in the fields where its support or determination is specifically required in this Agreement.

g) All business transacted at meetings of the Executive Committee shall be recorded in suitable minutes by the Managing Party and distributed to all parties hereto for comment, correction and acceptance within two weeks.

ARTICLE 5: MANAGEMENT OF THE PROJECT

The management of the Project shall be held by the Managing Party with the support of the Technical Manager.

5.1 MANAGING PARTY

a) [redacted] The Managing Party shall have charge and supervision over the timely and satisfactory performance of the Contract under the superior authority and control of the Executive Committee.

b) The Project Manager shall have authority to appoint and replace from time to time the various salaried and hourly personnel necessary to develop and operate the Work, and to negotiate, execute and deliver purchase orders, rental agreements, labor agreements, subcontracts and such other agreements as are necessary and appropriate to carry out the Contract in accordance with the corresponding policy decided by the Executive Committee. The Project Manager will collaborate with the Deputy Project Manager when executing such authority. The Managing Party shall not consent to any major extension to the scope of the Work without the unanimous approval of the Executive Committee.

c) The Managing Party shall be responsible to establish a project office in the proximity of the work and conduct all business affairs on behalf of the Joint Venture including but not limited to payment of wages and accounts, and furnishing statements and reports concerning the financial status of the Joint Venture and progress of the Work in the form and as required by the Executive Committee. The Project Manager shall furnish each of the parties with a monthly cost report and a monthly financial statement calculated on the percent of completion basis; these reports and statements will be approved by the Project Manager after collaborating with the Deputy Project Manager. The Managing Party also shall arrange for a year-end audit to be performed by an independent accounting firm selected by the Executive Committee.

d) All of the administrative, accounting, taxation and financial tasks of the joint venture shall be handled by the Project Team [redacted], who shall

act strictly within the framework of the instructions received from the Executive Committee per Exhibit C.

e) The Project Manager shall review each Parties' Quality, Health & Saftey Sustainability policies and make recommendations to the Executive Committee concerning the appropriate implementation of such policies as appropriate for this project. Both Parties shall have an annual right, upon appropriate notice to the Project Manager, to carry out joint or separate independent audits of the Quality, Health & Safety and Sustainability performance of the project, with full unrestrained access to documentation and records, and to report their conclusions to the Project Manager and Executive Committee.

5.2 TECHNICAL MANAGER

a) [redacted] The Design Build Coordinator shall carry out his responsibilities in accordance with the policy set by the Project Manager and approved by the Executive Committee.

b) [redacted] propose the Construction Manager to the Project Manager and Executive Committee, for approval by the Executive Committee. The Construction Manager shall act as the Deputy Project Manager.

c) A detailed and complete Technical Management Plan shall be prepared by the Design Build Coordinator and be submitted by Project Manager for approval by the Executive Committee.

d) [redacted]

ARTICLE 6: PROJECT PERSONNEL

a) The Managing Party shall propose a Project Manager to be approved by the Executive Committee, who shall serve at its pleasure and be subject to its control and the control of the Executive Committee. The Project Manager shall be delegated responsibility for the practical execution and carrying out of the Work and shall have such specific powers as the Executive Committee may, from time to time, delegate. The Project Manager will collaborate with the Deputy Project Manager, while retaining ultimate decision-making authority, subject to the Executive Committee's Authority.

b) Each party agrees that it shall supply and make available to the Project Manager such of its supervisory, managerial and other personnel as shall reasonably be required in order to successfully perform the Contract, as determined by the Executive Committee. Such employees shall remain in the employment of the particular party and shall not be employees of the Joint Venture but shall cooperate with and serve under the authority of the Project Manager. [redacted]

c) Hourly personnel and salaried personnel not available from the parties hereto shall be hired by the Joint Venture.

d) Each Party agrees that upon entering into this Agreement and for a period of not less than one year following the completion of the Contract, the Parties shall not make offers, enticements and/or inducements to cause employees of another Party to leave the employ of that Party and enter into employment with the other Party and/or any affiliate or subsidiary of the Party. This provision is limited to a Party's employee who participated in some material way with the Work.

e) [redacted] Accordingly, in connection with or in carrying on its or his duties or responsibilities pursuant to this Agreement or under the Contract, none of the parties hereto, the Managing Party, the Project Manager, the members of the Executive Committee and their respective directors, officers and employees shall be liable to the Joint Venture or either of the parties hereto for its or his acts or omissions, whether or not such acts or omissions are negligent, provided that it or he is not acting in bad faith. The Joint Venture shall indemnify and save harmless all such persons for any claims, losses, damages and costs arising from or in connection with its or his carrying out its or his duties or responsibilities under this Agreement or the Contract except in the event of such bad faith.

ARTICLE 7: WORKING CAPITAL

a) [redacted]

[redacted]

b) The Managing Party will make use of working capital, investing it prudently in low-risk, short-term securities, so that it will earn interest without interfering with payment of current obligations of the Joint Venture as they become in accordance with EXHIBIT E.

c) The Executive Committee will comply with the working capital guidelines attached in EXHIBIT A and the investment guidelines in EXHIBIT E.

d) [redacted]

e) [redacted]

f) [redacted]

g) [redacted]

h) [redacted]

i) [redacted]

ARTICLE 8: BANKING

a) The Managing Party upon decision and approval of the Executive Committee, shall open the following bank accounts in the name of the Joint Venture and in banks designated by the Executive Committee:

i) Bank accounts (the "Collecting Accounts") where all the amounts paid by the Concession shall be credited, shall, be operated by the joint signature [redacted]

The following will be credited to these accounts:

ii) [redacted]

iii) [redacted]

All persons authorized to draw against the funds of the Joint Venture shall be bonded in such company or companies and in such amounts as the Executive Committee shall determine. The premiums on any such bonds shall be paid by the Joint Venture. Neither party will unreasonably restrain and/or refuse to authorize withdrawal of funds for payment of proper expenses relating to the Work.

b) Unless otherwise previously agreed in writing by the Executive Committee, no payments shall be made or monies withdrawn from any such bank account or accounts except for the purposes of the Joint Venture. Monies not immediately required for the purposes of the Joint Venture [redacted]

c) No money shall be borrowed or financing arranged for the account of the Joint Venture, nor shall any assets of the Joint Venture be charged, assigned, mortgaged, pledged or hypothecated, unless approved by the Executive Committee. If any monies are so borrowed, they shall be repaid in full prior to return of any working capital and distribution of gains or profits.

d) Any act under this Article 8 shall comply with EXHIBIT E.

ARTICLE 9: ACCOUNTING

a) Separate books of account of the Joint Venture and its operation shall be kept by Joint Venture personnel and maintained at the office of the Joint Venture. Financial Statements and other reports as listed in Exhibit D or as directed by the Executive Committee, of the financial condition of the Joint Venture shall be made to each party as pursuant Exhibit D or upon demand by the Executive Committee. All records of the Joint Venture shall be open to examination and photocopy at any reasonable time by any of the parties hereto. Such records and documents shall not be removed from the place where they are usually kept, without the previous consent of the Executive Committee.

b) Annual audits may be made and furnished each party by an independent firm of accountants selected by the Executive Committee upon the request of either party and the Project is [redacted] complete. Upon completion of the Contract, if requested by either party, there shall be a final audit of all accounts, records and other pertinent data and a complete and final accounting shall be furnished each party for its approval and acceptance.

c) The cost of independent audits and the keeping and maintaining of the separate books of account during the course of the Work shall be a part of the cost of the Joint Venture. To the extent records must be kept subsequent to the completion, and acceptance by all the parties, of the final accounting, they shall be kept at such

place as the parties shall determine and the cost shall be borne by the parties in accordance with their Proportionate Shares.

d) The currency of the account of the Joint Venture shall be United States of America (U.S.A.) dollars.

ARTICLE 10: BONDS & INSURANCE

a) The Managing Party shall obtain and maintain insurance on behalf of the Joint Venture and each of the parties hereto as required by the Executive Committee or under the Contract including, without limiting the generality of the foregoing, liability insurance respecting the Work and insurance respecting fire and other perils on all equipment and other assets of the Joint Venture. The type and amount of insurance will be determined by the Executive Committee which shall approve the coverage and cost of said insurance prior to its purchase. All contract performance, payment and other bonds that may be required by the Joint Venture shall be obtained and maintained in the name of the Joint Venture by the Managing Party. [redacted] All parties shall lend their best efforts to obtain any and all bonds and insurance required in connection with the Joint Venture. Each party shall execute such indemnity agreements and other agreements as may be required by the companies writing the bonds.

b) All premiums for bonds and insurance required on the project and in the name of the Joint Venture shall be [redacted]

c) The insurance broker for all bonds and insurance required by the Joint Venture shall be determined by the Executive Committee.

d) [redacted]

ARTICLE 11: TREATMENT OF COSTS

a) Costs incurred by any of the parties hereto in the performance of the Contract or while directly engaged in the business of the Joint Venture shall be reimbursed by

the Joint Venture to such party subject to the prior agreement of a representative of each party. Reimbursable costs shall be limited to:

i) [redacted]

ii) [redacted]

iii) [redacted]

iv) [redacted]

b) Additional cost breakdowns are provided for in Exhibit E.

c) [redacted]

d) Direct job costs for field supervision, labor, materials, equipment, subcontractors, insurance, bonds, taxes, supplies, services, relocation costs and other expenses necessary for the performance of the Contract shall be incurred and paid directly by the Joint Venture.

e) Each party shall submit to the Joint Venture, at least five (5) days before billings are to be submitted by the Joint Venture to the Concession under the Contract, documentation approved by its designated representative, showing amounts due such party for costs incurred to date. Such documentation shall be in such form as to enable the Joint Venture in all respects to meet the billing requirements of the specifications of the Contract (if appropriate).

f) [redacted]

g) Other off-site services may be required to support the performance of the Contract by any of the parties, and if pre-approved by the Executive Committee, appropriate reimbursement shall be made to the parties for the cost of such services as determined by the Executive Committee. [redacted] These general services shall be performed according to a services agreement between the parties and the Joint Venture. The services provided and invoiced to the Parties shall be fully documented and the amounts charged shall comply with the arm's length principle to be accepted as a cost for the Joint Venture. [redacted]

h) [redacted]

ARTICLE 12: TAXES

Taxes and duties levied upon the Joint Venture as an entity, if any, shall be borne by the Joint Venture [redacted] For income tax purposes, Federal, State, or otherwise, the parties hereby elect and agree that [redacted]

The Managing Party shall prepare and file all Joint Venture tax returns and reports required under law on the "percentage of completion" method. The other party shall be allowed sufficient time to review the Joint Venture's annual Federal and State Partnership returns prior to filing and shall be provided all financial records and returns [redacted] The Managing Party shall be designated as the Tax Matters Partner ("TMP") pursuant to IRC 6221. The TMP's authority is limited such that it may not bind the other party to an audit, administrative adjustment, settlement agreement, a petition for review of a final partnership administrative adjustment or any change in the Joint Venture's returns as filed that will affect the partys' tax liability without the approval of the other party.

ARTICLE 13: ASSETS

a) All tools and equipment used in the Work shall be purchased, rented or leased by the Joint Venture at competitive prices in accordance with the guidelines agreed by the Executive Committee. The Joint Venture may purchase, rent or lease such tools and/or equipment in the name of the Joint Venture, providing however, any capital expenditures in excess of fifty thousand dollars ($50,000.00) shall first be approved by the Executive Committee. Either party hereto may rent its own tools and equipment to the Joint Venture providing that the terms of this ARTICLE are complied with. Equipment rented from a party hereto at a rental rate [redacted] shall be deemed to be competitive pricing provided they are competitive when compared with 3rd parties quotes.

b) The Project Manager shall notify all parties of the need for rented equipment and allow all parties the opportunity to furnish rented equipment to the Joint Venture.

c) Equipment rented from a party shall not exceed [redacted] duration without approval of the Executive Committee and shall be [redacted] at a rate to be negotiated and agreed by the Executive Committee.

d) During the course of the Work and upon completion of the Work, the Project Manager shall determine what part of the plant, equipment, tools and salvageable materials belonging to the Joint Venture are no longer needed for completion of the Contract, and shall dispose of the same in such manner, at such times, and at such prices as the Executive Committee shall determine. In the event the Executive Committee is unable to unanimously agree as to a manner, a time and price for any such disposition, the plant, equipment, tools and salvageable materials so determined to be surplus shall be disposed of as follows:

   i) the Joint Venturers shall employ, at the expense of the Joint Venture, a qualified person to examine and appraise each such piece of plant, equipment, tools and salvageable materials. A copy of such appraisal shall be sent promptly to each party hereto. Each party shall have the privilege to notify the Joint Venture in writing within ten (10) days of the date of receipt

of such appraisal of which, if any, such pieces of plant, equipment, tools and salvageable materials each party wishes to purchase at the price set forth in such appraisal, and any party so notifying the Joint Venture of its desire to purchase any such piece of plant, equipment, tools and salvageable materials shall be permitted to do so at the price set forth in such appraisal at any time within thirty (30) days after so notifying the Joint Venture of its desire to purchase; provided, however, in case more than one party desires to purchase the same lot or piece of plant, equipment, tools or salvageable materials the same shall be divided by the Executive Committee among the parties based on highest negotiated price received, each party having the opportunity to a final bid;

ii) any such piece of plant, equipment, tools or salvageable materials not disposed of pursuant to subparagraph (i) above may be sold by the Joint Ventureat the appraised value thereof set forth in the appraisal referred to in subparagraph (i) above;

iii) any piece of plant, equipment, tools and salvageable materials not disposed of pursuant to subparagraphs (i) and (ii) shall be distributed by the Executive Committee to the parties in proportion to their interest in the Joint Venture according to a formula based upon the appraised value referred to in subparagraph (i) above; and

iv) when a party has acquired any surplus plant, equipment, tools or materials pursuant to the foregoing, it shall thereafter be responsible for its prompt removal and care.

ARTICLE 14: DISTRIBUTION OF ASSETS/LIABILITIES

a) The Executive Committee may determine from time to time during the course of the Work, that some of the Assets held and acquired by the Joint Venture may be divided among or paid to the parties, [redacted]

b) [redacted]

c)



d)

ARTICLE 15: TERMINATION AND DEFAULTS

a) This Agreement shall commence as of the day and date first above written and it shall remain in full force and effect until terminated by written agreement of the parties hereto or until terminated as otherwise provided herein or until payment to the parties of all monies due to them under this Agreement and settlement of all liabilities under or in respect of performance of the Contract or otherwise in respect of the Work, or if the bid has not been submitted by March 1, 2014

b) If any party hereto (the "Defaulting Party") shall:

i) commit an act of bankruptcy; or

ii) become bankrupt; or

if, in respect of any party hereto (the "Defaulting Party"):

iii) an order is made or a resolution is passed for the winding-up or other termination of its existence; or

iv) a liquidator, receiver or receiver-manager of its business or undertaking is duly appointed; or

v) an order debarring or suspending it from contracting for public construction work is issued;

then at the sole discretion of the non-defaulting party, the Defaulting Party's interest in the Joint Venture shall forthwith terminate and the Defaulting Party's amount of Joint Venture profits shall be fixed at the amount realized as of the date of the default. [redacted]

c) If any party hereto (the "Defaulting Party") shall default in any of its obligations under this Agreement including, without limiting the generality of the foregoing, does not make reasonable effort to make available personnel as reasonably required by the Executive Committee, does not make reasonable effort to make available the benefit of its experience, technical knowledge and skill or fail to contribute its share of working capital (subject to ARTICLE 7), then the other party (the "Non-Defaulting Party") may give written notice to the Defaulting Party specifying the event of default.

In the event that the Defaulting Party does not cure its default within seven (7) days after receipt of such notice then the Non-Defaulting Party may terminate the Defaulting Party's interest in the Joint Venture. Notwithstanding the foregoing, the Non-Defaulting Party shall not have the right to terminate the Defaulting Party's interest in the Joint Venture in the case of an event of default under this sub-paragraph c) if such event of default is incapable by its nature (as opposed to the circumstances, including the financial circumstances, of the Defaulting Party) of being cured within seven (7) days and if the Defaulting Party commences curing such default within seven (7) days after receipt of such notice and thereafter diligently and continuously proceeds with the curing of such default.

d) Upon termination of the Defaulting Party's interest in the Joint Venture:

i) the Non-Defaulting Party may take over and complete the Work;

ii) the Defaulting Party shall have no entitlement to share in any of the profits of the Joint Venture;

iii) the Defaulting Party shall have no right to participate in the management or operation of the Joint Venture;

iv) the Defaulting Party shall continue to be liable for all existing and future losses and liabilities of the Joint Venture including liabilities to the Non-Defaulting Party under ARTICLE 2 hereof, [redacted] and

v) the Defaulting Party shall only be entitled to the return of its contributions to working capital upon completion of the Work and after payment of all other liabilities of the Joint Venture.

e) Any Defaulting Party hereunder shall indemnify and hold harmless the Non-Defaulting Party for any loss, claims or liabilities which the Non-Defaulting Party may incur arising out of any breach of this Joint Venture Agreement by the Defaulting Party. The Defaulting Party further agrees to pay all legal expenses required of or by the Non-Defaulting Party to protect their interests or defend any action arising out of the Defaulting Party's breach, including court costs and disbursements and fees on a solicitor and his own client basis.

f) The remedies herein provided shall be in addition to and shall not limit any remedies the Non-Defaulting Party may have at law or in equity or otherwise.

g) If there is a change in control or existence of a party or parent company of such party the other party(ies) may purchase the first Party's interest in the Joint Venture at a fair market price. Change in control means the addition or departure of any person or entity having a ten percent (10%) or greater ownership interest in any party or parent company of such party.

ARTICLE 16: SUCCESSORS AND ASSIGNMENT

a) It being acknowledged that each party is entering into this Agreement in reliance upon the other party being and remaining a party to this Agreement, no party may assign, transfer, pledge or hypothecate its interest, whether directly or by merger with or acquisition by another entity, or any part thereof, in the Joint Venture or in the Contract or in this Agreement or in any property or monies of the Joint Venture except with prior written consent of the other party and upon such terms as it may reasonably require.

b) Subject to the foregoing provisions, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors, permitted assigns and legal representatives.

ARTICLE 17: DISPUTES

Any dispute or difference arising out of or relating to the Work or in connection with this Agreement, shall, [redacted], then any controversy or claim arising out of or relating to this Agreement or breach thereof shall be settled by mediation under the Construction Industry Mediation Procedures of the American Arbitration Association. If within 30 days after service of a written demand for mediation, the mediation does not result in settlement of the dispute, then any unresolved controversy or claim arising from or relating to this contract or breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry

Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The language shall be English and the venue of arbitration shall be Indianapolis, Indiana.

ARTICLE 18: GOVERNING LAW

This Agreement shall in all respects be governed by and construed and interpreted in accordance with the laws of the State in which the Project is situated. Subject to ARTICLE 17 hereof, the parties hereto agree to submit to the jurisdiction of the courts having jurisdiction in the location of the Project and to accept service by registered letter of any proceedings issued out of the said courts not withstanding that said Party may then be located outside the jurisdiction of the said courts.

ARTICLE 19: LEGAL COUNSEL

a) The Managing Party shall consider retaining legal counsel agreeable to and approved by the Executive Committee for use in connection with any matters of concern to the Joint Venture which may require legal counsel or assistance. The expense of legal counsel shall be borne by the Joint Venture.

b) Such legal counsel shall represent the Joint Venture and shall not represent the individual interests of any party relating to the Joint Venture, the Contract, the Work or this Agreement without the consent of the others. If separate counsel is required to represent the interests of any party, such party shall be solely responsible for selecting and compensating its legal counsel.

ARTICLE 20: NOTICE

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail, or by fax addressed to the recipient as follows:

a) To: Walsh Construction Company

at:	929 West Adams Street Chicago, IL 60607

Attention: Daniel Walsh

b) To: VCGP Construction Grands Projets

at:	5, Cours Ferdinand-de-Lesseps 92851 Rueil-Malmaison

Attention: Thierry Portafaix

or to such other address/fax number as may be designated by notice given by any party to the other. Any communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the fifth (5th) Business Day following the deposit thereof in the mail and, if given by fax, on the day of transmittal thereof. In the event of the disruption of postal service, communications shall be given only by personal service or by transmittal by fax.

ARTICLE 21: PUBLICITY

Any advertisement, press release or statement by any party hereto which involves the other party hereto or the Joint Venture shall meet with prior approval of the Executive Committee. All such advertisements, press releases or statements where practicable shall make due reference to an acknowledgement of the work performed or to be performed by all parties under the Contract.

ARTICLE 22: OWNERSHIP AND USE OF DOCUMENTS

All documents produced for or by the Joint Venture shall be owned by the Joint Venture. Upon termination of this Agreement, each party shall own an undivided interest in such documents [redacted] The documents shall be stored at a location determined by the Executive Committee and no party shall use these documents for other projects without the prior written consent of the other. Any party may make duplicate copies of such documents without consent of the other party.

ARTICLE 23: INTERPRETATION

a) The captions and headings used herein are for convenience and reference only and shall not limit or expand, or be referred to in interpreting or construing the provisions hereof.

b) Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporation and vice versa where the context so requires.

ARTICLE 24: FURTHER ASSURANCES

Each party hereto shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

ARTICLE 25: TIME OF THE ESSENCE

Time shall be of the essence of this Agreement.

ARTICLE 26: NO PARTNERSHIP

Nothing in this Agreement or in the relationship of the parties respecting the Joint Venture or the Work is intended to create nor shall it be construed to create or confirm a partnership between them.

ARTICLE 27: UNENFORCEABILITY

Unenforceability of any part of this Agreement shall affect that part of this Agreement only and the rest of this Agreement shall remain in force and unaffected.

ARTICLE 28: ENTIRE AGREEMENT

This Agreement constitutes the entire integrated agreement between the parties in regard to the subject matter hereof, subject to no other oral or written proposals, agreements or understandings whatsoever and, subject to sub-paragraph 4(d), may only be subsequently supplemented or amended by a written agreement subscribed by the parties hereto.

ARTICLE 29: COUNTERPARTS

The Agreement may be executed in any number of counterparts, each of which shall be deemed an original and together shall constitute but a single instrument.

ARTICLE 30: NO THIRD PARTY BENEFICIARIES

The parties intend that this Joint Venture Agreement be for the exclusive benefit and use of the parties hereto; this agreement is not intended to benefit any third party.

ARTICLE 31: SIGNATURE AUTHORITY

The parties agree that the following persons are and shall hereinafter be duly authorized to execute legal documents that bind the Joint Venture including but not limited to bid proposal documents and contracts:

Daniel Walsh	President	Walsh Construction Company (Managing Member)
Steven Kehle	Business Group Leader	Walsh Construction Company (Managing Member)
Bradley Koester	Business Group Leader	Walsh Construction Company (Managing Member)
Thierry Portafaix	Director of North America	VINCI Construction Grands Projects
Eric Chambraud	Chief Operating Officer	VINCI Construction Grands Projects

Either Party may from time to time add or replace persons authorized as defined above after a formal written notification to the other Party.

IN WITNESS WHEREOF the parties hereto have affixed the signatures of their officers duly authorized in that behalf.

Walsh Construction Company

Per: _____
Name: **Daniel J. Walsh**
Title **President**

VINCI Construction Grands Projects

Per: _____
Name: **Martine Julia-Sanchez**
Title

CONFIDENTIAL

CERTIFICATE OF AUTHENTICITY
FOR JOINT VENTURE AGREEMENT
WALSH CONSTRUCTION COMPANY /
VINCI CONSTRUCTION GRANDS PROJETS JV

I, **Daniel J. Walsh**, the duly appointed and acting President of Walsh Construction Company, the Managing Member of the Walsh Construction Company / Vinci Construction Grands Projets JV (the "JOINT VENTURE"), DO HEREBY CERTIFY on this date of October 25, 2012, THAT:

Attached to this Certificate is a true, complete and correct copy of the Joint Venture Agreement of the Joint Venture and any amendments thereto, and such Joint Venture Agreement remains in full force and effect as of the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Authenticity as of the date first written above.

By: _____
Name: Daniel J. Walsh
Title: **President, Walsh Construction Company, Managing Member**

CONFIDENTIAL

FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: WVB East End Partners

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: Walsh Construction Company

Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection.

The term **"affiliate"** means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in North America.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No X___

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b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No X___

c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No X___

d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes X___ No ___

e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes X___ No ___

f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

CONFIDENTIAL

If yes, please explain the circumstances. If no, so state.

Yes _X_ No ___

g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

1. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed October 17, 2012.

(Signature)

Dan Walsh
(Name Printed)

President
(Title)

Walsh Construction Company
(Name of Organization)

CONFIDENTIAL

Response to 1.d)

United States ex. Rel. Greg Hudalla v. Walsh Construction Company. A complaint was filed and served against Walsh Construction Company on the above referenced matter in 2008. The complaint alleged violations of the false claims act. Walsh denied all charges. The parties settled the matter in 2011.

United States of America, ex rel., Peter M. Day and Peter M. Day, on his own behalf v. Archer Western Contractors, Ltd. and Alberici Constructors, Inc., and The Walsh Group, Ltd. – On December 20, 2011, the above captioned lawsuit was filed against Archer Western Contractors, its parent company, The Walsh Group, Ltd., and its joint venture partner, Alberici Constructors, Inc. The Complaint alleged violations of 31 USC 3729 the False Claims Act and wrongful termination of employment. Walsh denied all charges. At the end of January, 2012, the counts for False Claims Act violations were dismissed.

CONFIDENTIAL

Response to 1.e)

WALSH - ADVERSE EEOC DETERMINATIONS - LAST TEN YEARS (Response to 1.e.)

Zelma White v. Walsh	Complaint filed on 12/6/2001. While working as a laborer, she claims she requested but was denied overtime. She was laid off on 12/5/01. She is alleging discrimination based on her race, black. Walsh denied the charges. EEOC found probable cause. Case is currently in litigation.
Marvin Greene v. Walsh	Complaint filed on 12/6/2001. Greene claims he was denied overtime and eventually laid off because of his race, black. Walsh denied the charges. EEOC found probable cause. Case is currently in litigation.
Terrence Jackson v. Walsh	Complaint filed on 12/7/2001. Jackson alleges he experienced workplace discrimination and was terminated due to his race, black. Walsh denied the charges. EEOC found probable cause. Case is currently in litigation.
Jackie White v. Walsh	Complaint filed on 2/21/2002. White alleges that he experienced workplace discrimination and was terminated due to his race, black. Walsh denied the charges. EEOC found probable cause. Case is currently in litigation.
William Hall	Complaint filed on 11/10/2006. Mr. Hall, not an employee of Walsh, rather an employee of International Decorators, alleges racial discrimination by an employee of another subcontractor, Advance Mechanical. EEOC investigates based on "putative employer" theory. Walsh denies charges. EEOC finds probable cause. Walsh settled and participated in conciliation with EEOC.
Jasen Winfrey	Complaint filed on 6/28/2007. Mr. Winfrey, not an employee of Walsh, rather an employee of International Decorators, alleges racial discrimination by an employee of Advance Mechanical (this case is analogous to William Hall, above). EEOC investigates based on "putative employer" theory. Walsh denies charges. EEOC finds probable cause. Walsh settled and participated in conciliation with EEOC.
Janice Lenoir	Complaint filed on August 26, 2003. Janice Lenoir was a Walsh who claims she was sexually harassed. Walsh denied charges. EEOC found probable cause. Walsh settled and participated in conciliation efforts with EEOC.

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Response to 1.f)

PREVAILING WAGE OR OVERTIME COMPENSATION DETERMINATIONS

Archer Western and Walsh Construction Company, as large national general contractors, have on a few occasions, received determinations that a subcontractor or lower tier subcontractor, has failed to comply with laws governing prevailing wages or overtime compensation. In all such cases, Walsh and Archer quickly resolve the matter to the satisfaction of the agency. Further information related to these matters is available upon request.

CONFIDENTIAL

FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: WVB East End Partners

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: Vinci Construction Grands Projets

1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection.

The term **"affiliate"** means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in North America.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X__

CONFIDENTIAL

b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes ___ No _X_

e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

CONFIDENTIAL

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed Oct 19th, 2012.

(Signature)

Martine Tucia-Sanchez
(Name Printed)

Sustainability Director & Bid Manager
(Title)

Vinci Construction Grands Projets
(Name of Organization)

CONFIDENTIAL

VINCI CONSTRUCTION | GRANDS PROJETS

POUVOIR

Je soussigné Eric CHAMBRAUD., agissant au nom et en qualité de Directeur Opérationnel Europe-Amériques - Russie de la société VINCI Construction Grands Projets, Société par Actions Simplifiée au capital de 67 853 865 € dont le siège social est à RUEIL-MALMAISON (92500) (FRANCE), 5 cours Ferdinand de Lesseps, immatriculée au Registre du Commerce et des Sociétés de NANTERRE sous le numéro 343 088 134,

Et en vertu d'un pouvoir qui m'a été conféré
le 1er décembre 2011
par Alain BONNOT,
Président de la Société VINCI Construction Grands Projets,

donne par la présente délégation, pouvoir à

Madame Martine JULIA SANCHEZ,

A l'effet de signer la soumission dans le cadre du projet « OHIO RIVER BRIDGE » aux Etats Unis ».

Et, à cet effet :

1. Représenter la société vis-à-vis de tous tiers,
2. Signer tous actes et pièces,
3. Remettre ou se faire remettre tous documents,
4. Constituer tous mandataires,
5. Elire domicile,

Et plus généralement, faire le nécessaire.

Fait à Rueil-Malmaison, le 1er octobre 2012

POWER

In the undersigned, Eric CHAMBRAUD, acting on behalf and in the capacity of Director for Europe – Americas and Russia of the VINCI Construction Grands Projets company, a simplified limited company with a share capital of € 67 853 865 whose registered address is in RUEIL-MALMAISON (92500) (FRANCE), 5, cours Ferdinand de Lesseps, registered in the business register of NANTERRE under n° 343 088 134,

By virtue of the powers I was granted on 1st December 2011
by Alain BONNOT
Chairman and Chief Executive Officer of the VINCI Construction Grands Projets company,

Hereby grant delegation and power to

Mrs Martine JULIA SANCHEZ,

To the end of signing the submission as part of the project "OHIO RIVER BRIDGE" in the USA.

And to such end :

1. Represent the company with third parties,
2. Sign all deeds and documents,
3. Give or be given all documents,
4. Appoint representatives,
5. Select official addresses,

And more generally, do as necessary.

Done in Rueil-Malmaison, on October 1st, 2012

5, cours Ferdinand-de-Lesseps
F-92851 Rueil-Malmaison Cedex
Tél : +33 1 47 16 47 00
Fax : +33 1 47 51 33 60
Internet : www.vinci-construction.com/projets

Société par Actions Simplifiée au Capital de 67 853 865 Euros
343 088 134 RCS Nanterre – SIRET : 343 088 134 00055
APE 4213 A – TVA FR 33343088134

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FORM C

RESPONSIBLE PROPOSER AND MAJOR PARTICIPANT QUESTIONNAIRE

PROPOSER'S NAME: WVB East End Partners

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: _____

Jacobs Engineering Group, Inc.

1. Questions

Proposer/Equity Member/Major Participant shall respond either "yes" or "no" to each of the following questions. If the response is "yes" to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. Proposer/Equity Member/Major Participant shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection.

The term **"affiliate"** means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in North America. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in North America.

Within the past ten years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

a) Been disqualified, debarred, removed or otherwise prevented from bidding or proposing on or completing a federal, state or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes ___ No X

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b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

c) Had filed against it, him or her, any criminal complaint, indictment or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes _X_ See Attachment A No ___

e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law.

If yes, please explain the circumstances. If no, so state.

Yes _X_ See Attachment A No ___

f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor and Workforce Development, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

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If yes, please explain the circumstances. If no, so state.

Yes _X_ See Attachment A No ___

g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes ___ No _X_

Explain the circumstances underlying any "yes" answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Indiana that the foregoing declaration is true, correct and accurate.

Executed October 18th, 2012.



(Signature)

Peter D. Brettell
(Name Printed)

Vice President
(Title)

Jacobs Engineering Group, Inc.
(Name of Organization)

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FORM C ATTACHMENT A

Form C, Question 1. d)

In 2006, the City of Larkspur, California filed suit against Sverdrup Civil, Inc. and others relating to a 1994 contract for earthquake retrofit work and other services performed by Sverdrup Civil in connection with a bridge in Northern California. The City alleged that Sverdrup Civil's design was deficient and that Sverdrup Civil had a duty to disclose all material facts related to the quality of its work and all potential issues which could or would flow from that work. The project was completed in 1995, well in advance of Jacobs Engineering Group Inc.'s acquisition of Sverdrup Civil in 1999. Based on Jacobs' ownership of Sverdrup Civil, Jacobs was included as a defendant in the suit. The City's claim for negligent design was withdrawn. The remaining claims went to trial in August 2008. On September 18, 2008, the jury found that Sverdrup had intentionally concealed or made a false promise with intent to deceive about an important fact upon which the City had relied, and Jacobs was therefore liable to the City for damages of $8.3 million as successor in interest. However, the jury did not find that Sverdrup acted with malice, oppression or fraud.

Form C, Question 1. e)

Jacobs Engineering Group Inc. and its affiliates ("Jacobs") form an organization that is comprised of approximately 125 operating companies, having a total current employment complement of over 50,000 persons and revenues of approximately $10 billion. From time to time and in the ordinary course of its business, Jacobs is subject to various claims and disputes involving employment discrimination. The following matters, while not involving any final adjudications of violations, fairly may be considered as involving circumstances where an agency "found" violations of employment discrimination laws or affirmative action. The following matters are representative but not considered a complete listing, as we question the completeness of our records.

1) *Overstreet v. Jacobs Technology Inc.* – The EEOC issued a probable finding of age discrimination and issued a Right to Sue letter. Overstreet proceeded to file a lawsuit, but the parties engaged a mediator and settled the matter.

2) *Hysmith v. Jacobs Technology Inc.* – The EEOC issued a Right to Sue letter after finding probable gender discrimination. Hysmith filed a lawsuit, but the court dismissed the case upon granting Jacobs' motion for summary judgment.

3) *Romeu v. Jacobs Engineering Group* – The Pennsylvania Human Relations Commission found probable cause that Jacobs discriminated against Romeu based on his age. Romeu filed a lawsuit in federal court which was later dismissed for lack of prosecution.

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4) *KlingStubbins, Inc.* – This is a company that Jacobs acquired in November 2011. KlingStubbins has operated under a Conciliation Agreement with the Office of Federal Contract Compliance Programs related to minor clerical obligations. This Conciliation Agreement is dated August 23, 2010 and expired March 31, 2012.

Form C, Question 1. f)

Jacobs Engineering Group Inc. and its affiliates ("Jacobs") form an organization that is comprised of approximately 125 operating companies, having a total current employment complement of over 50,000 persons and revenues of approximately $10 billion. From time to time and in the ordinary course of its business, Jacobs is subject to various claims and disputes involving prevailing wages and overtime compensation. The following matters may be considered as involving circumstances where an agency "found" violations of prevailing wage or overtime compensation laws. The following matters are representative but not considered a complete listing, as we question the completeness of our records.

1) *U.S. DOL Investigation, Jacobs Santa Ana Office* – An investigation covering the years 2009 and 2010 found violations of the Fair Labor Standards Act. A Back Wage Compliance And Payment Agreement was entered into in August 2011, and nine (9) employees were paid back wages.

2) *Thomas Delaney v. Jacobs Engineering Group Inc.* – The plaintiff filed a claim with the California Labor Commissioner in May 2011, contending that he was owed overtime premium wages. The Commissioner determined that the plaintiff was properly classified as exempt but was being paid on an hourly basis, and ordered back pay for overtime premium.

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CERTIFICATE OF AUTHORITY

I, Curtis A. Fisher, do hereby certify that I am the Assistant Secretary of Jacobs Engineering Group, Inc., a corporation duly organized under the laws of the State of Delaware, in the United States of America (the "Company"). I do further certify that Peter D. Brettell is a Vice President of the Company and is duly authorized by the By-Laws, Articles of Incorporation, general resolutions and other authority of the Company to execute and deliver contracts and agreements for and on behalf of the Company. I further certify that such authority has not been repealed, rescinded, or amended.

IN WITNESS WHEREOF, I have hereunto set my hand and attached the Corporate Seal of the Company on this 25th day of October, 2012.

Curtis A. Fisher
Assistant Secretary



3.2.4 Form D

STATEMENT IN LIEU OF FORM D

PROPOSER'S NAME: WVB East End Partners

NAME OF TEAM MEMBER: Walsh Investors, LLC

ROLE OF TEAM MEMBER: Equity Member

Walsh Investors, LLC is an Equity Member only and will not perform or supervise installation and/or construction on the East End Crossing. Furthermore, Walsh Investors, LLC has no industrial safety history. The industrial safety record of Walsh Construction Company is included in Walsh Construction Company's Form D.

STATEMENT IN LIEU OF FORM D

PROPOSER'S NAME: WVB East End Partners

NAME OF TEAM MEMBER: VINCI Concessions SAS

ROLE OF TEAM MEMBER: Equity Member

VINCI Concessions SAS is an Equity Member only and will not perform or supervise installation and/or construction on the East End Crossing. Furthermore, VINCI Concessions SAS has no industrial safety history. The industrial safety record of VINCI Construction Grands Projets is included in VINCI Construction Grands Projets' Form D.

STATEMENT IN LIEU OF FORM D

PROPOSER'S NAME: WVB East End Partners

NAME OF TEAM MEMBER: Bilfinger Berger PI Industrial Holding GmbH

ROLE OF TEAM MEMBER: Equity Member

Bilfinger Berger PI Industrial Holding GmbH is an Equity Member only and will not perform or supervise installation and/or construction on the East End Crossing. Furthermore, Bilfinger Berger PI Industrial Holding GmbH has no industrial safety history.

STATEMENT IN LIEU OF FORM D

PROPOSER'S NAME: WVB East End Partners

NAME OF TEAM MEMBER: Walsh Construction-VINCI Construction Grands Projets Construction Joint Venture

ROLE OF TEAM MEMBER: Design-Build Contractor

The joint venture between Walsh Construction Company and VINCI Construction Grands Projets is a new entity formed specifically for the purpose of the East End Crossing project. The joint venture has no industrial safety history at this time. Walsh Construction Company and VINCI Construction Grands Projets have not previously worked together in any joint ventures. The industrial safety records of the individual members of the Construction Joint Venture (Walsh Construction Company and VINCI Construction Grands Projets) are included in each company's respective Form D (attached).

FORM D

INDUSTRIAL SAFETY RECORD
FOR EQUITY MEMBERS AND MAJOR PARTICIPANTS

PROPOSER'S NAME: WVB East End Partners

NAME OF TEAM MEMBER: Walsh Construction Company

ROLE OF TEAM MEMBER: Design-Build Contractor Joint Venture Member

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This form shall be filled out separately and provided for each Equity Member and Major Participant of Proposer's team that has undertaken work in the United States and will perform or supervise construction and installation Work for the East End Crossing, and including information for any entity affiliated with such team member that has undertaken work in the United States. Information must be provided with regard to all construction, installation and integration work undertaken in the United States (including the State of Indiana and the Commonwealth of Kentucky) by the entity, with separate statistics relative to the State of Indiana and the Commonwealth of Kentucky. For team members that are members of joint ventures, information as to the joint venture shall be provided as though 100% of the results were for the listed participant. Proposer may be requested to submit additional information or explanation of data which IFA may require for evaluating the safety record.

For purposes of this form, the term "affiliated" means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in the United States. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in the United States.

	2007	2008	2009	2010	2011
1) Total Hours Worked (in thousands)	14,229.593	13,365.525	12,683.440	11,867.997	12,671.280
Nationwide:	736,102.50	408,050.50	363,501.75	754,254.50	0
Indiana:	0	0	0	0	249,161.75
Kentucky:					
2) Number of fatalities:*	1	2	0	2	0
Nationwide:					
Indiana:	0	0	0	1	0
Kentucky:	0	0	0	0	0
3) Number of lost workdays:*	2,857	2,324	801	1,103	1,072
Nationwide:					
Indiana:	336	1	78	60	0
Kentucky:	0	0	0	0	3
4) Number of lost workdays* cases:	38	30	21	20	22
Nationwide:	4	1	3	2	0
Indiana:____					
Kentucky:	0	0	0	0	1
5) Number of injury/illness* cases:	193	137	96	128	152
Nationwide:					
Indiana:	16	3	4	10	0
Kentucky:	0	0	0	0	3
6) Number of days of* restricted work activity due to injury/illness:	2,116	1,224	1,155	1,274	1,057
Nationwide:	0	0	87	72	0
Indiana:	0	0	0	0	0
Kentucky:					

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	2007	2008	2009	2010	2011
7) Incidence Rate** Lost Workday Cases Nationwide: Indiana: Kentucky: Days Lost Nationwide: Indiana: Kentucky:	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
8) Worker's Compensation Experience Modifier Nationwide: Indiana: Kentucky:	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

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* The information required for these items is the same as required for columns 3 to 6, Code 10, Log and Summary of Occupational Injuries and Illnesses, OSHA Form 200.

** Incidence Rate = No. Injuries (Cases) x 200,000 / Total Hours Worked

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury under the laws of the State of Indiana that the information is true and accurate within the limitation of those records.

Walsh Construction Company	
Name of Company (Print)	Signature
1260 East Summit Street	President
Address	Title

Crown Point	IN 46307	219-661-2450
City	State and ZIP Code	Telephone Number

(or international address, if applicable)

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FORM D

INDUSTRIAL SAFETY RECORD
FOR EQUITY MEMBERS AND MAJOR PARTICIPANTS

PROPOSER'S NAME: WVB East End Partners

NAME OF TEAM MEMBER: Vinci Construction Grands Projets

ROLE OF TEAM MEMBER: Design-Build Contractor Joint Venture Member

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This form shall be filled out separately and provided for each Equity Member and Major Participant of Proposer's team that has undertaken work in the United States and will perform or supervise construction and installation Work for the East End Crossing, and including information for any entity affiliated with such team member that has undertaken work in the United States. Information must be provided with regard to all construction, installation and integration work undertaken in the United States (including the State of Indiana and the Commonwealth of Kentucky) by the entity, with separate statistics relative to the State of Indiana and the Commonwealth of Kentucky. For team members that are members of joint ventures, information as to the joint venture shall be provided as though 100% of the results were for the listed participant. Proposer may be requested to submit additional information or explanation of data which IFA may require for evaluating the safety record.

For purposes of this form, the term "affiliated" means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Participant as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Participant), and other financially liable or responsible parties for the entity, that within the past five years have engaged in business or investment in the United States. The information sought for affiliates is limited to the projects and matters that have occurred within the past five years in the United States.

	2007	2008	2009	2010	2011
1) Total Hours Worked (in thousands)					
Nationwide:	203	377	352	267	174
Indiana:	0	0	0	0	0
Kentucky:	0	0	0	0	0
2) Number of fatalities:*					
Nationwide:	0	0	0	0	0
Indiana:					
Kentucky:					
3) Number of lost workdays:*					
Nationwide:	0	73	350	2	116
Indiana:	0	0	0	0	0
Kentucky:	0	0	0	0	0
4) Number of lost workdays* cases:					
Nationwide:	0	4	4	1	0
Indiana:	0	0	0	0	0
Kentucky:	0	0	0	0	0
5) Number of injury/illness* cases:					
Nationwide:	5	17	10	12	5
Indiana:	0	0	0	0	0
Kentucky:	0	0	0	0	0

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	2007	2008	2009	2010	2011
6) Number of days of* restricted work activity due to injury/illness:					
Nationwide:	117	85	610	256	4
Indiana:	0	0	0	0	0
Kentucky:	0	0	0	0	0
7) Incidence Rate**					
Lost Workday Cases	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Nationwide:					
Indiana:					
Kentucky:					
Days Lost					
Nationwide:					
Indiana:					
Kentucky:					
8) Worker's Compensation Experience Modifier					
Nationwide:	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Indiana:					
Kentucky:					

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* The information required for these items is the same as required for columns 3 to 6, Code 10, Log and Summary of Occupational Injuries and Illnesses, OSHA Form 200.

** Incidence Rate = No. Injuries (Cases) x 200,000 / Total Hours Worked

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury under the laws of the State of Indiana that the information is true and accurate within the limitation of those records.

VINCI CONSTRUCTION G.P.
Name of Company (Print)

Signature

5 cours Ferdinand de Lesseps
Address

Sustainability Director
Title

Rueil Malmaison f 92851 FRANCE
City State and ZIP Code

+33 1 47 16 37 06
Telephone Number

(or international address, if applicable)

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3.2.5 Form E

FORM E

PERSONNEL WORK ASSIGNMENT FORM AND COMMITMENT OF AVAILABILITY

Name of Proposer: WVB East End Partners

Key Personnel Assignment	Name of Individual Assigned and Employer
Project Executive (if different than the Project Manager)	Sid Florey – Vinci Concessions
Project Manager	David Sikorski – Vinci Concessions
Deputy Project Manager(s)	Phil Malin – Bilfinger Berger Bruce Williams – Walsh Construction Greg Ciambrone – Walsh Investors
Financial Director (responsible for management and control of the East End Crossing finances)	Kristof Van Loon – Vinci Concessions
Public Information Coordinator	Dan Hartlage – Guthrie/Mayes
DBE Coordinator	Brenda Wolf – Walsh Construction
Lead Engineer	Marcos Loizias, P.E. – Jacobs
Lead Bridge Engineer (if different from Lead Engineer)	Dan Tassin, P.E. – International Bridge Technologies (IBT)
Lead Tunnel Engineer (if different from Lead Engineer or Lead Bridge Engineer	Brij Goyal, P.E. – Jacobs
Construction Manager	Brian Hoppel – Walsh Construction
Bridge Construction Manager (if different from Construction Manager)	Pierre Morand – Vinci CGP
Tunnel Construction Manager (if different from Construction Manager or Bridge Construction Manager)	Frederic Sciblo – Vinci CGP
Quality Manager	Martine Julia-Sanchez – Vinci CGP

Construction Quality Control Manager	John Reid – Walsh Construction
Construction Quality Manager	Courtney Norris – Walsh Construction
Design Quality Assurance Manager	Bruce Peterson, P.E. – Jacobs
Utility Manager	Mark Hedrick – Walsh Construction
Safety Manager	Mike Lawler – Walsh Construction
Environmental Compliance Manager	Gina Morris, PG – Third Rock Consultants
Operations and Maintenance Manager	Vincent Meyer – Vinci Concessions

Proposer's Name: WVB East End Partners (the "Proposer")

Employer's Name: Vinci Concessions (the "Employer")

Employer's Name: Walsh Investors, LLC (the "Employer")

Employer's Name: Bilfinger-Berger (the "Employer")

Employer's Name: Walsh Construction Company (the "Employer")

Employer's Name: Vinci Construction Grands Projets (the "Employer")

Employer's Name: Jacobs Engineering (the "Employer")

Employer's Name: International Bridge Technologies (IBT) (the "Employer")

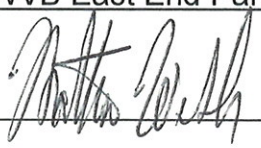
Employer's Name: Guthrie/Mayes (the "Employer")

Employer's Name: Third Rock Consultants (the "Employer")

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the East End Crossing and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: WVB East End Partners

Signed: 

Printed Name: Matthew Walsh

Title: Manager

Employer's Name: Walsh Investors, LLC

Date: 10/17/12

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the East End Crossing and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: WVB East End Partners

Signed: Van Loon Kristof

Printed Name: KRISTOF VAN LOON

Title: PROJECT DIRECTOR NORTH AMERICA

Employer's Name: Vinci Concessions SAS

Date: 26 October 2012

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the East End Crossing and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: WVB East End Partners

Nick Dawson
Managing Director

Dirk Söhngen
Managing Director

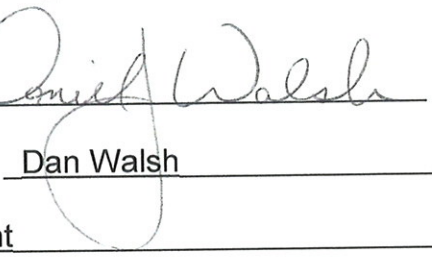
Bilfinger Berger ~~Project Investments~~ International Holding GmbH

Date: 22 OCTOBER 2012

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the East End Crossing and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: WVB East End Partners

Signed: 

Printed Name: Dan Walsh

Title: President

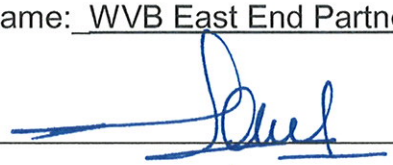
Employer's Name: Walsh Construction Company

Date: 10/17/12

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the East End Crossing and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: WVB East End Partners

Signed: 

Printed Name: Martine Tuia - Sanchez

Title: Sustainability Director & Bid Manager

Employer's Name: Vinci Construction Grands Projets

Date: October 19th 2012.

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the East End Crossing and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: WVB East End Partners

Signed: _____

Printed Name: Peter D.Brettell

Title: Vice President

Employer's Name: Jacobs Engineering Group, Inc.

Date: October 18th, 2012

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the East End Crossing and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: WVB East End Partners

Signed: Molly F Davis

Printed Name: Molly F. Davis

Title: President

Employer's Name: Third Rock Consultants, LLC

Date: October 18, 2012

ARTICLES OF ORGANIZATION

OF

THIRD ROCK CONSULTANTS, LLC

0506530.06

John Y. Brown III
Secretary of State
Received and Filed
12/07/2000 12:39 PM
Fee Receipt: $40.00
Ahanly - LAOO

The undersigned organizer, desiring to form a limited liability company under the Kentucky Limited Liability Company Act, hereby states the following:

1. NAME. The name of the limited liability company is Third Rock Consultants, LLC.

2. REGISTERED AGENT. The name and address of the registered agent are:

Molly Foree Davis
2514 Regency Road, Suite 104
Lexington, Kentucky 40503

3. PRINCIPAL OFFICE. The address of the initial principal office of the limited liability company is:

2514 Regency Road, Suite 104
Lexington, Kentucky 40503

4. MANAGEMENT. The limited liability company is to be managed by one or more managers.

IN WITNESS WHEREOF, the undersigned has duly executed these Articles of Organization this 4th day of December, 2000.

Molly F. Davis

MOLLY FOREE DAVIS, Organizer

CDMC

CONSENT OF REGISTERED AGENT

The undersigned, having been named in these Articles of Organization as the registered agent of the Company, hereby consents to serve in that capacity.

MOLLY FOREE DAVIS

The foregoing instrument
was prepared by:

Emily M. Dorisio, Esq.
GREENEBAUM DOLL & MCDONALD PLLC
333 West Vine St., Suite 1400
Lexington, Kentucky 40507
(859) 231-8500

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the East End Crossing and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: WVB East End Partners

Signed: Dan Hartlage

Printed Name: DAN HARTLAGE

Title: PRINCIPAL

Employer's Name: GUTHRIE / MAYES

Date: 10/18/12

Guthrie/Mayes
Public Relations

September 25, 2012

To Whom It May Concern:

As the registered agent for Guthrie/Mayes & Associates, Inc., I hereby give Charles D. Hartlage authority to sign any and all necessary documents on behalf of Guthrie/Mayes & Associates.

Regards,

Clair Nichols
Principal/Registered Agent

Guthrie/Mayes & Associates, Inc.
502/584-0371
Fax 502/584-0207

710 West Main Street
Suite 210
Louisville, Kentucky 40202-2676

www.guthriemayes.com
E-Mail: pr@guthriemayes.com

Founding Partner,
WORLDCOM Public Relations Group
The WORLDCOM Public Relations Group
Offices in the U.S. and Major Cities of the World.

PARP
0143528
Alison Lundergan Grimes
KY Secretary of State
Received and Filed
6/11/2012 4:20:55 PM
Fee receipt: $15.00

Commonwealth of Kentucky
Alison Lundergan Grimes, Secretary o

Alison Lundergan Grimes
Secretary of State
P. O. Box 1150
Frankfort, KY 40602-1150
(502) 564-3490
http://www.sos.ky.gov

Annual Report
Online Filing

ARP

Company: GUTHRIE/MAYES & ASSOCIATES, INC.
Company ID: 0143528
State of origin: Kentucky
Formation date: 1/3/1980 12:00:00 AM
Date filed: 6/11/2012 4:20:55 PM
Fee: $15.00

Principal Office

710 W. MAIN ST.
LOUISVILLE, KY 40202

Registered Agent Name/Address

CLAIR NICHOLS
710 W. MAIN ST.
LOUISVILLE, KY 40202

Current Officers

President	Clair Nichols	710 W. MAIN ST.,LOUISVILLE,KY 40202
Secretary	James A Eggers	710 W. MAIN ST.,LOUISVILLE,KY 40202
Vice President	Charles D Hartlage	710 W. MAIN ST.,LOUISVILLE,KY 40202
Vice President	James A Eggers	710 W. MAIN ST.,LOUISVILLE,KY 40202

Directors

Director	Clair Nichols	710 W. MAIN ST.,LOUISVILLE,KY 40202
Director	Charles D Hartlage	710 W. MAIN ST.,LOUISVILLE,KY 40202
Director	James A Eggers	710 W. MAIN ST.,LOUISVILLE,KY 40202

Signatures

Signature Nancy Calloway
Title Business Affairs Manager

COMMITMENT OF AVAILABILITY

Understanding IFA's concern that the personnel resources specifically represented and listed in this Proposal actually be assigned to the East End Crossing and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Agreement, the Employer's named key personnel and other individuals of Employer named in the Proposal will be committed, available and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the PPA Documents.

Proposer's Name: WVB East End Partners

Signed: _____

Printed Name: DANIEL TASSIN

Title: PRESIDENT

Employer's Name: INTC BRIDGE TECHNOLOGIES

Date: 19 OCT. 2012

CERTIFICATE OF AUTHORITY

I, Michael W. Smart, do hereby certify that I am the Secretary of International Bridge Technologies, Inc., a corporation duly organized under the law of the State of California, in the United States of America (the "Company"). I do further certify that Daniel M. Tassin is the President of the Company and is duly authorized by the By-Laws, Articles of Incorporation, general resolutions and other authority of the Company to execute and deliver contracts and agreements for and on behalf of the Company. I further certify that such authority has not been repealed, rescinded, or amended.

IN WITHNESS WHEREOF, I have hereunto set my hand and attached the Corporate Seal of the Company on this 25th day of October, 2012.

Michael W. Smart

Secretary

3.2.6 Pre-Proposal Submittal Letters

Indiana Finance Authority

August 21, 2012

Sid Florey, Project Executive
WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307

Subject: Lead Underwriter

Dear Mr. Florey,

Reference is made to that certain Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) issued by the Indiana Finance Authority ("IFA") on July 31, 2012 (as amended, the "RFP"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

Pursuant to Section 1.9.3.1 and Section 2.4 of the ITP, IFA hereby approves Merrill Lynch, Pierce, Fenner & Smith Incorporated to act as Lead Underwriter for WVB East End Partners ("Proposer").

Note that the foregoing approval shall not constitute approval of any PABs issuance or engagement agreement or any waiver of the requirements of the RFP.

Nothing contained herein shall modify the terms of the ITP and IFA reserves all rights thereunder.

Please let us know if you have any questions.

Sincerely,

Jacob Blasdel
Project Manager

06 September 2012

Silvia Perez
Indiana Finance Authority
One North Capital, Suite 900
Indianapolis, IN 46204

Re.: Key Staff Changes

Dear Ms. Perez:

As detailed in the Instructions to Proposers, dated July 31, 2012, WVB East End Partners requests approvals for the changes to our personnel listed as Key Staff in our SOQ as detailed below. As directed, we are herewith enclosing one (1) original and five (5) copies of resumes that detail the qualifications of the personnel that we wish to substitute.

Substitutions from original SOQ (ITP 2.11.2):

- Sid Florey as Project Executive has been removed from the proposal as the position is not listed as Key Staff in the current form of the RFP.
- David Sikorski for Phil Malin as Project Manager
- Phil Malin to Deputy Project Manager
- Bruce Williams for Dave Shier – Deputy Project Manager-Technical
- Martine Julia-Sanchez for Courtney Norris – Quality Manager (Courtney will assume ne Key Position of Construction Quality Manager)

New Key personnel added by RFP (ITP 2.11.3):

- Construction Quality Manager – Courtney Norris (as Quality Manager on SOQ)
- Construction Quality Control Manager – Martin Maxey
- Financial Director – Kristof VanLoon (was Deputy Project Manager-Finance on SOQ)
- Public Information Coordinator – Dan Hartlage (was Public relations Manager on SOQ
- DBE Coordinator – Brenda Wolf (was DBE/EEO Cordinator on SOQ)
- Utility Manager – Mark Hedrick (was Utilities Coordinator on SOQ)
- Safety Manager – Mike Lawler (was Safety Manager on SOQ)
- Environmental Compliance Manager – Gina Morris

Thank you for your consideration of these changes.

Sincerely,

Sidney Florey,
WVB East End Partners

19 September 2012

Ms. Silvia Perez
Project Manager
Indiana Finance Authority
1 North Capitol, Suite 900
Indianapolis, IN 46204

Re.: Key Staff Clarifications

Dear Ms. Perez:

In response to your letter of 17 September 2012 requesting clarifications and additional information for Key Staff changes, we are providing the following information:

- Item A – Mr. Sikorski, while employed for another firm, was formerly the Project Manager for the Lender's Technical Advisor role for the I-635 Managed Lane project. He completed that role in 2008. He is fully available and committed for the Project Manager role for the East End Crossing Project.
- Item B – E-mail addresses for Mr. Sikorski's contacts:
  - John Keller jkeller@turnpike.state.nj.us
  - Stephen Manera smanera@hntb.com
  - Luis Tejerina l.tejerina@samsung.com
- Item C – The titles on the resumes have been revised to match the titles prescribed in the RFP. We are resubmitting our entire submittal to avoid confusion.
- Item D – Commitment letters are attached.

Please do not hesitate to ask should you require any additional information or clarifications regarding this submittal.

Very truly yours,

Sidney Florey
Project Executive
WVB East End Partners

27 September 2012

Silvia Perez
Indiana Finance Authority
One North Capital, Suite 900
Indianapolis, IN 46204

Re.: Key Staff Changes
Construction Quality Control Manager

Dear Ms. Perez:

In your letter of 25 September 2012 regarding Key Staff changes, you disapproved our proposed Construction Quality Control Manager. In response, we are proposing the individual named below. As directed, we are herewith enclosing one (1) original and five (5) copies of the resume that details the qualifications of the personnel that we wish to substitute.

New Key personnel added by RFP (ITP 2.11.3):

- Construction Quality Control Manager – John Reid

Thank you for your consideration of this change.

Sincerely,

for
Sidney Florey,
WVB East End Partners

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

September 26, 2012

Via email

WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307
Attn: Sidney R. Florey, Project Executive
FAX No. 291-661-2469
email: sidney.florey@vinci.com

RE: East End Crossing, Key Personnel

Dear Mr. Florey:

Reference is made to the Request for Proposals (the "RFP," Volume 1 of which, the "ITP") for the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project), issued by the Indiana Finance Authority ("IFA") on July 31, 2012 (as amended).

We are in receipt of your Pre-Proposal Submittals related to new and changed Key Personnel via letter dated September 6, 2012. We are also in receipt of your clarification letter dated September 19, 2012. We understand your request to be, among others, approval of new, and changes to, Key Personnel, pursuant to Sections 2.11 and 2.4 of the ITP.

Pursuant to Sections 2.4, 2.11 and 8.1 of the ITP, IFA hereby approves:

- Mr. Sikorski as Project Manager
- Mr. Malin as Deputy Project Manager
- Mr. Williams as Deputy Project Manager
- Mr. Van Loon as Financial Director
- Ms. Julia-Sanchez as Quality Manager
- Ms. Norris as Construction Quality Manager
- Mr. Hartlage as Public Information Coordinator
- Ms. Wolf as DBE Coordinator
- Mr. Hedrick as Utility Manager
- Mr. Lawler as Safety Manager
- Ms. Morris as Environmental Compliance Manager

in each case, for WVB East End Partners.

Please note that the last date for resubmittal of Pre-Proposal Submittals has been specified for those whom IFA has disapproved in our letter to you, dated September 25, 2012.

Nothing in this letter modifies or alters the terms of the RFP, including IFA's rights thereunder, and such terms shall remain in full force and effect.

Sincerely,

Silvia Perez
IFA Project Manager

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

October 5, 2012

Via email

WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307
Attn: Sidney R. Florey, Project Executive
FAX No. 291-661-2469
email: sidney.florey@vinci.com

RE: East End Crossing, Key Personnel

Dear Mr. Florey:

Reference is made to the Request for Proposals (the "RFP," Volume 1 of which, the "ITP") for the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project), issued by the Indiana Finance Authority ("IFA") on July 31, 2012 (as amended).

We are in receipt of your revised Pre-Proposal Submittal related to Key Personnel via letter dated September 27, 2012. We understand your request to be, among others, approval of new Key Personnel, pursuant to Sections 2.11 and 2.4 of the ITP.

Pursuant to Sections 2.4, 2.11 and 8.1 of the ITP, IFA hereby approves Mr. Reid to act as Construction Quality Control Manager for WVB East End Partners.

Nothing in this letter modifies or alters the terms of the RFP, including IFA's rights thereunder, and such terms shall remain in full force and effect.

Sincerely,

Silvia Perez
IFA Project Manager

ALTERNATIVE TECHNICAL CONCEPTS

WVB is including the following Alternative Technical Concepts (ATCs) in our Proposal:

- [redacted]
- **ATC 5:** Tunnel Shortening (Pillar Width)
- **ATC 6:** Ramp A Modification
- **ATC 9:** East End Bridge Uncoated Weathering Steel
- **ATC 14:** Optimal Tunnel Cross Section and Fire Life Safety
- **ATC 15:** Alternate Shoulder Pavement Design Section

Approvals from IFA for each of these Alternative Technical Concepts follow. WVB notes that ATC #3 (Roundabout Interchange) was deemed by IFA to be within the requirements of the RFP and therefore acceptable but not an Alternative Technical Concept. WVB has included the Roundabout design in the Proposal and is including the IFA approval in this section.

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

August 16, 2012

Sidney Florey, Project Executive
WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307

RE: East End Crossing RFP, ATCs WVB #1, #2, #4 and #8

Dear Mr. Florey:

The Indiana Finance Authority ("IFA") has reviewed Alternative Technical Concepts ("ATC") nos. WVB #1, #2, #4, and #8 submitted by WVB East End Partners on August 2 and 3, 2012 in response to the Request for Proposals for the East End Crossing issued by the IFA on July 31, 2012 (as amended, the "RFP").

IFA's responses to the referenced ATCs are included in Attachment 1.

IFA appreciates your continued interest in the East End Crossing project.

Sincerely,

Jacob Blasdel
IFA Project Manager

Attachment

CONFIDENTIAL

ATTACHMENT 1

WVB East End Partners

August 16, 2012

1. ATC WVB # 1 – The ATC does not qualify as an ATC and may not be included in the Proposer's Proposal.

2. ATC WVB # 2 – The ATC does not qualify as an ATC and may not be included in the Proposer's Proposal.

3. 

4. ATC WVB # 8 – The ATC is not acceptable for inclusion in the Proposal.

Please note that previously requested clarifications for ATC WVB #1 and ATC WVB #2 are no longer required because of the above responses. If the Proposer wishes additional clarifications regarding ATC WVB #4, the Proposer may provide a written request for clarification under Section 2.3.1 of the ITP.

CONFIDENTIAL

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

August 30, 2012

Sidney Florey, Project Executive
WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307

RE: East End Crossing RFP, ATC WVB #5

Dear Mr. Florey:

The Indiana Finance Authority ("IFA") has reviewed Alternative Technical Concept ("ATC") no. WVB #5 submitted on August 2, 2012 by WVB East End Partners in response to the Request for Proposals for the East End Crossing issued by the IFA on July 31, 2012 (as amended, the "RFP").

IFA's response to the referenced ATC is included in Attachment 1.

IFA appreciates your continued interest in the East End Crossing.

Sincerely,

Silvia Perez
IFA Project Manager

Attachment

CONFIDENTIAL

ATTACHMENT 1

WVB East End Partners

August 30, 2012

1. ATC WVB #5 – The ATC is acceptable for inclusion in the Proposal with the following conditions:
    - The Proposer shall demonstrate as part of Design Review and throughout the development of Design Documents that the global pillar stability has a minimum factor of safety of 1.4 for initial support of pillar and a minimum factor of safety of 2.0 for final support of pillar.
    - The Proposer shall be responsible and bear the schedule and monetary risk of any modifications to any Environmental Approvals required for or arising out of this ATC.
    - The Proposer shall be responsible and bear the schedule and monetary risk of any new or modified Governmental Approvals required for or arising out of this ATC.

If the Proposer wishes additional clarifications regarding an ATC submittal, the Proposer may provide a written request for clarification under Section 2.3.1 of the ITP.

CONFIDENTIAL

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

August 22, 2012

Sidney Florey, Project Executive
WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307

RE: East End Crossing RFP, ATCs WVB #6, 9, 11, 12 and 13

Dear Mr. Florey:

The Indiana Finance Authority ("IFA") has reviewed the Alternative Technical Concepts ("ATC") nos. WVB #6, 9, 11, 12 and 13 submitted on August 2 and 17, 2012 by WVB East End Partners in response to the Request for Proposals for the East End Crossing issued by the IFA on July 31, 2012 (as amended, the "RFP").

IFA's responses to the referenced ATCs are included in Attachment 1.

IFA appreciates your continued interest in the East End Crossing.

Sincerely,

Jacob Blasdel
IFA Project Manager

Attachment

CONFIDENTIAL

ATTACHMENT 1

WVB East End Partners

August 22, 2012

1. ATC WVB #6 – The ATC is acceptable for inclusion in the Proposal with the following conditions
    - The Proposer shall be responsible for performing all necessary noise studies and providing any additional mitigation measures required to avoid creating additional noise impacts greater than those created by the Reference Design.
    - The Proposer shall demonstrate that their proposed design will provide an overall intersection level of service of C or better in the 2030 Design Year, and that all movements within the intersection will perform at level of service of D or better in the 2030 Design Year.
    - The Proposer shall demonstrate that queues at the proposed KY841/US42 intersection will not block the adjacent Bridgepointe Blvd. intersection.
    - The Proposer shall be responsible and bear the schedule and monetary risk of any modifications to any Environmental Approvals required for or arising out of this ATC.
    - The Proposer shall be responsible and bear the schedule and monetary risk of any new or modified Governmental Approvals required for or arising out of this ATC.

2. ATC WVB #9 – The ATC is acceptable for inclusion in the Proposal with the following conditions
    - Weathering steel shall be coated at piers and abutments in accordance with the Indiana Design Manual Section 407.
    - The Proposer shall be responsible and bear the schedule and monetary risk of any modifications to any Environmental Approvals required for or arising out of this ATC.
    - The Proposer shall be responsible and bear the schedule and monetary risk of any new or modified Governmental Approvals required for or arising out of this ATC.

3. ATC WVB #11 – The ATC is not acceptable for inclusion in the Proposal.

4. ATC WVB #12 – The ATC appears to be within the requirements of the RFP and does not qualify as an ATC (provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, IFA reserves the right to require compliance with the requirements of the RFP and PPA Documents (without regard to the submittal), in which event the Proposer will not be entitled to modify its Proposal or obtain a Change Order for additional compensation or a time extension under the Agreement). Please see Addendum #1 TP Section 19.

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5. ATC WVB #13 - The ATC appears to be within the requirements of the RFP and does not qualify as an ATC (provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, IFA reserves the right to require compliance with the requirements of the RFP and PPA Documents (without regard to the submittal), in which event the Proposer will not be entitled to modify its Proposal or obtain a Change Order for additional compensation or a time extension under the Agreement). Please see Addendum #1 TP Section 19.

If the Proposer wishes additional clarifications regarding an ATC submittal, the Proposer may provide a written request for clarification under Section 2.3.1 of the ITP.

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

August 30, 2012

Sidney Florey, Project Executive
WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307

RE: East End Crossing RFP, ATC WVB #14

Dear Mr. Florey:

The Indiana Finance Authority ("IFA") has reviewed Alternative Technical Concept ("ATC") no. WVB #14 submitted on August 17, 2012 by WVB East End Partners in response to the Request for Proposals for the East End Crossing issued by the IFA on July 31, 2012 (as amended, the "RFP").

IFA's response to the referenced ATC is included in Attachment 1.

IFA appreciates your continued interest in the East End Crossing.

Sincerely,

Silvia Perez
IFA Project Manager

Attachment

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ATTACHMENT 1

WVB East End Partners

August 30, 2012

1. ATC WVB #14 – This ATC has several elements and each element has been considered separately. IFA's decisions with respect to the deviations requested in this ATC are as follows:
    - The deviation requested with respect to the Tunnel Roadway Width with reduced shoulders through the tunnel does not qualify as an ATC and may not be included in the Proposer's Proposal. The roadway width requirements as described in the Technical Provisions shall apply.
    - With respect to the Tunnel Walkways:
        - The deviation requested with respect to the inside or left hand walkway (viewed in the direction of traffic) appears to be within the requirements of the RFP and does not qualify as an ATC (provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, IFA reserves the right to require compliance with the requirements of the RFP and PPA Documents (without regard to the submittal), in which event the Proposer will not be entitled to modify its Proposal or obtain a Change Order for additional compensation or a time extension under the Agreement). The inside walkway shall be 2'-6" minimum width as required by the Technical Provisions.
        - In accordance with Section 3.2.4 of the Instructions to Proposers ("ITP"), IFA has determined that the RFP contains an error, ambiguity or mistake with respect to the outside or right hand walkways (viewed in the direction of traffic) – and intends to correct the error, ambiguity or mistake, regardless of the impact on the proposed ATC (including that such ATC no longer qualifies or is eligible for consideration as an ATC). After reviewing the modifications to the RFP, if the Proposer believes that this element of the submittal qualifies as an ATC and wants IFA to consider the submittal, it should resubmit the same for consideration.
    - The deviation requested with respect to the Cross Passage Spacing is not acceptable for inclusion in the Proposal. The requirements of the Technical Provisions and the applicable NFPA 502 standard shall apply.
    - The deviation with respect to the Carbon Monoxide Monitoring System is not acceptable for inclusion in the Proposal. The intent is to monitor CO levels in the tunnel itself rather than in the cross passages.
    - The deviation with respect to Fixed Fire Suppression System appears to be within the requirements of the RFP and does not qualify as an ATC (provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, IFA reserves the right to require compliance with the requirements of the RFP and PPA

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Documents (without regard to the submittal), in which event the Proposer will not be entitled to modify its Proposal or obtain a Change Order for additional compensation or a time extension under the Agreement).

- The deviation with respect to Tunnel Drainage appears to be within the requirements of the RFP and does not qualify as an ATC (provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, IFA reserves the right to require compliance with the requirements of the RFP and PPA Documents (without regard to the submittal), in which event the Proposer will not be entitled to modify its Proposal or obtain a Change Order for additional compensation or a time extension under the Agreement).

If the Proposer wishes additional clarifications regarding an ATC submittal, the Proposer may provide a written request for clarification under Section 2.3.1 of the ITP.

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

August 24, 2012

Sidney Florey, Project Executive
WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307

RE: East End Crossing RFP, ATC WVB #15

Dear Mr. Florey:

The Indiana Finance Authority ("IFA") has reviewed Alternative Technical Concept ("ATC") no. WVB #15 submitted on August 17, 2012 by WVB East End Partners in response to the Request for Proposals for the East End Crossing issued by the IFA on July 31, 2012 (as amended, the "RFP").

IFA's response to the referenced ATC is included in Attachment 1.

IFA appreciates your continued interest in the East End Crossing.

Sincerely,

Jacob Blasdel
IFA Project Manager

Attachment

CONFIDENTIAL

ATTACHMENT 1

WVB East End Partners

August 24, 2012

1. ATC WVB #15 – The ATC is acceptable for inclusion in the Proposal with the following conditions:
    - The Proposer shall include full depth inside shoulders matching the mainline pavement section.
    - The Proposer's design shall meet one of the following two criteria:
        1. The Proposer's outside shoulder pavement thickness shall be the same depth as the mainline pavement where the two pavement sections abut. The shoulder pavement may then taper to no less than 6 inches at the outside edge, or
        2. The Proposer shall design the outside shoulder pavement for a five (5) year cumulative traffic loading in year 35.
    - The Proposer shall be responsible and bear the schedule and monetary risk of any modifications to any Environmental Approvals required for or arising out of this ATC.
    - The Proposer shall be responsible and bear the schedule and monetary risk of any new or modified Governmental Approvals required for or arising out of this ATC.

If the Proposer wishes additional clarifications regarding an ATC submittal, the Proposer may provide a written request for clarification under Section 2.3.1 of the ITP.

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Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

August 24, 2012

Sidney Florey, Project Executive
WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307

RE: East End Crossing RFP, ATC WVB #3

Dear Mr. Florey:

The Indiana Finance Authority ("IFA") has reviewed the Alternative Technical Concept ("ATC") no. WVB #3 submitted on August 17, 2012 by WVB East End Partners in response to the Request for Proposals for the East End Crossing issued by the IFA on July 31, 2012 (as amended, the "RFP").

IFA's response to the referenced ATC is included in Attachment 1.

IFA appreciates your continued interest in the East End Crossing.

Sincerely,

Jacob Blasdel
IFA Project Manager

Attachment

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ATTACHMENT 1

WVB East End Partners

August 24, 2012

1. ATC WVB #3 – The ATC appears to be within the requirements of the RFP as revised by Addendum #1 (Table 9-32) and does not qualify as an ATC, provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, IFA reserves the right to require compliance with the requirements of the RFP and PPA Documents (without regard to the submittal), in which event the Proposer will not be entitled to modify its Proposal or obtain a Change Order for additional compensation or a time extension under the Agreement. Please note the revised Level of Service requirements appearing in Addendum #1(Table 11-1).

CONFIDENTIAL

Indiana Finance Authority

August 21, 2012

Sid Florey, Project Executive
WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307

Subject: Model Auditor

Dear Mr. Florey,

Reference is made to that certain Request for Proposals to Develop, Design, Construct, Finance, Operate and Maintain the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) issued by the Indiana Finance Authority ("IFA") on July 31, 2012 (as amended, the "RFP"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

Pursuant to Section 2.4 and Section 5.10.2 of the ITP, IFA hereby approves Operis Business Engineering Limited to act as model auditor for WVB East End Partners ("Proposer").

Note that the foregoing approval shall not constitute approval of any form of opinion or engagement agreement or any waiver of the requirements of the RFP. The Proposer remains solely responsible for ensuring that the model auditor and the model auditor submittals and opinions are compliant with the terms of the RFP. In particular, we note that the Operis materials appear to limit reliance relating to Relief Events in a manner inconsistent with Section 5.10.2 of the ITP, which provides that the opinion must state that the Financial Model is suitable for use in connection with the Relief Event procedures set forth in the Agreement.

Nothing contained herein shall modify the terms of the ITP and IFA reserves all rights thereunder.

Please let us know if you have any questions.

Sincerely,

Jacob Blasdel
Project Manager

CONFIDENTIAL

CONFIDENTIAL

Ms. Silvia Perez
IFA
One North Capital
Suite 900
Indianapolis, Indiana 46204

October 17, 2012

Subject: Credit Spreads and Bench Mark Spreads

Dear Ms. Perez:

In accordance to Section 5.10.3 of the Instructions to Proposers ("ITP"), please find attached documents relating to the submittal of Credit Spreads and Benchmark Rates.

Specifically using Table 6 of Form P, attached for your approval are 4 scenarios that account for ratings at either the BBB or BBB- level assuming various amortization profiles.

Also attached is the Thompson Reuters screen shot taken at 10.00am EST October 17th, 2012 supporting the Benchmark Rate (MMD Curve) and a document by our Underwriter outlining credit spread comparables as requested in the ITP.

Members of the WVB Partners consortium are available upon your request to answer any questions you may have on the material supplied.

Best Regards

Sidney R. Florey
Authorized Representative
WVB East End Partners

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Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

October 19, 2012

Via email

WVB East End Partners ("Proposer")
1260 East Summit Street
Crown Point, Indiana 46307
Attn: Sidney R. Florey, Project Executive
FAX No. 291-661-2469
email: sidney.florey@vinci.com

RE: East End Crossing, Benchmark Rates and Credit Spreads

Dear Mr. Florey:

Reference is made to the Request for Proposals (the "RFP," Volume 1 of which, the "ITP") for the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project), issued by the Indiana Finance Authority ("IFA") on July 31, 2012 (as amended). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the ITP.

We are in receipt of your submittal related to Benchmark Rates and credit spreads dated October 17, 2012, with additional clarifications of October 18, 2012.

Pursuant to Sections 2.4, 5.10.3 and 5.10.4 of the ITP, IFA hereby approves the Benchmark Rates and credit spreads submitted for purposes of Proposer's submittal of the Proposal.

Nothing in this letter modifies or alters the terms of the RFP, including IFA's rights thereunder, and such terms shall remain in full force and effect.

Sincerely,

Silvia Perez
IFA Project Manager

3.2.7 Form F

FORM F

NON-COLLUSION AFFIDAVIT

STATE OF IL)
)SS:
COUNTY OF Cook)

Each of the undersigned, being first duly sworn, deposes and says that:

A. Matthew Walsh is the Manager of Walsh Investors, LLC and Sid Florey is the Business Development Manager, North America of Vinci Concessions and Dirk Söhngen and Nick Dawson are the Managing Directors of Bilfinger Berger, which entity(ies) are the members of WVB East End Partners, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of Proposer or any other Proposer, or to fix any overhead, profit or cost element (including the Maximum Availability Payment or its components) included in the Proposal, or of that of any other Proposer, or to secure any advantage against IFA or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

_____	S. R. Florey
(Signature)	(Signature)
_____	Sidney R. Florey
(Name Printed)	(Name Printed)
_____	Authorized Representative
(Title)	(Title)
	WVB East End Partners

(Signature)	(Signature)
(Name Printed)	(Name Printed)
(Title)	(Title)

Subscribed and sworn to before me this 24 day of Oct, 2012.

OFFICIAL SEAL
RITA CURTIS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 06/15/2016

Rita Curtis
Notary Public in and for
said County and State

[Seal]

My commission expires: 6-15-16.

FORM F

NON-COLLUSION AFFIDAVIT

STATE OF IL)
)SS:
COUNTY OF Cook)

Each of the undersigned, being first duly sworn, deposes and says that:

A. Matthew Walsh is the Manager of Walsh Investors, LLC and Sid Florey is the Business Development Manager, North America of Vinci Concessions and Dirk Söhngen and Nick Dawson are the Managing Directors of Bilfinger Berger, which entity(ies) are the members of WVB East End Partners, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of Proposer or any other Proposer, or to fix any overhead, profit or cost element (including the Maximum Availability Payment or its components) included in the Proposal, or of that of any other Proposer, or to secure any advantage against IFA or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

_____	_____
(Signature)	(Signature)
_____	Matthew Walsh
(Name Printed)	(Name Printed)
_____	Manager, Walsh Investors, LLC
(Title)	(Title)

(Signature)	(Signature)
(Name Printed)	(Name Printed)
(Title)	(Title)

Subscribed and sworn to before me this 19th day of Oct, 2012.

Notary Public in and for
said County and State

[Seal]
My commission expires: 8.11.15.

OFFICIAL SEAL
CAROL FOERSTER
Notary Public – State of Illinois
My Commission Expires August 11, 2015

FORM F

NON-COLLUSION AFFIDAVIT

STATE OF IL)
)SS:
COUNTY OF COOK)

Each of the undersigned, being first duly sworn, deposes and says that:

A. Matthew Walsh is the Manager of Walsh Investors, LLC and Sid Florey is the Business Development Manager, North America of Vinci Concessions and Dirk Söhngen and Nick Dawson are the Managing Directors of Bilfinger Berger, which entity(ies) are the members of WVB East End Partners, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of Proposer or any other Proposer, or to fix any overhead, profit or cost element (including the Maximum Availability Payment or its components) included in the Proposal, or of that of any other Proposer, or to secure any advantage against IFA or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

_____	S. R. Florey
(Signature)	(Signature)
_____	Sidney R. Florey
(Name Printed)	(Name Printed)
_____	Business Development Mgr - North America
(Title)	(Title)
	Vinci Concessions, SAS

(Signature)	(Signature)
(Name Printed)	(Name Printed)
(Title)	(Title)

Subscribed and sworn to before me this 24 day of Oct, 2012.

OFFICIAL SEAL
RITA CURTIS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 06/15/2016

Notary Public in and for
said County and State

[Seal]

My commission expires: 6-15-16.

FORM F

NON-COLLUSION AFFIDAVIT

Wiesbaden, Germany.

Each of the undersigned, being first duly sworn, deposes and says that:

A. Matthew Walsh is the Manager of Walsh Investors, LLC and Sid Florey is the Business Development Manager, North America of Vinci Concessions and Dirk Söhngen and Nick Dawson are the Managing Directors of Bilfinger Berger Project Investments International Holding GmbH, which entity(ies) are the members of WVB East End Partners, the entity making the foregoing Proposal..

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of Proposer or any other Proposer, or to fix any overhead, profit or cost element (including the Maximum Availability Payment or its components) included in the Proposal, or of that of any other Proposer, or to secure any advantage against IFA or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

Nick Dawson

Managing Director

Dirk Söhngen

Managing Director

Bilfinger Berger ~~Project Investments~~ International Holding GmbH

D27/1646-12

Deed No. 905 of the Register of Deeds for 2012-S

I herewith certify the overleaf signature personally made in my presence by

- Mr. **Nick Dawson,**
  born on 17 March 1955,

  business address:
  Gustav-Stresemann-Ring 1, D-65189 Wiesbaden, Germany
  - known to me-
  acting on behalf of
  Bilfinger Berger PI International Holding GmbH
  Gustav-Stresemann-Ring 1, D-65189 Wiesbaden, Germany

a company having its registered office in Wiesbaden.

On request of the appeared I went to take the signature in the business premises of Bilfinger Berger PI International Holding GmbH, Gustav-Stresemann-Ring 1, D-65189 Wiesbaden, Germany.

I asked for a preliminary engagement referring to sec. 3 art. 1 no. 7 BeurkG. The answer of the person was negative.

Wiesbaden, 19 October 2012

PETER SCHIRMER
NOTAR IN WIESBADEN

- Peter Schirmer -
Notary

D27/1650-12

Deed No. 910 of the Register of Deeds for 2012-S

I herewith certify the overleaf signature personally made in my presence by

- Mr. **Dirk Söhngen,**
  born on 19 July 1963,

  business address:
  Gustav-Stresemann-Ring 1, D-65189 Wiesbaden, Germany
  -known to me-
  acting on behalf of
  Bilfinger Berger PI International Holding GmbH
  Gustav-Stresemann-Ring 1, D-65189 Wiesbaden, Germany

a company having its registered office in Wiesbaden.

From inspection of the electronic Commercial Register of the District Court of Wiesbaden, Section B No. 13322, made on 19 October 2012, I herewith certify that the said Bilfinger Berger PI International Holding GmbH, is there entered and that Mr. Nick Dawson and Mr. Dirk Söhngen are jointly authorised to represent it.

On request of the appeared I went to take the signature of Mr. Söhngen in the business premises of Bilfinger Berger PI International Holding GmbH, Gustav-Stresemann-Ring 1, D-65189 Wiesbaden, Germany.

I asked for a preliminary engagement referring to sec. 3 art. 1 no. 7 BeurkG. The answer of the person was negative.

Wiesbaden, 22 October 2012

- Peter Schirmer -
Notary

3.2.8 Form G

FORM G

BUY AMERICA CERTIFICATION

(To be signed by authorized signatory(ies) of Proposer)

The undersigned Proposer hereby certifies on behalf of itself and all contractors (at all tiers) the following with regard to the East End Crossing:

a. Proposer shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Agreement only if domestic steel and iron will be used on the East End Crossing. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the design-build contract price.

b. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.

c. At Proposer's request, IFA may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by IFA.

Date: 24 October 2012

Signature: [signature]

Title: Authorized Representative

Proposer's Name: WVB East End Partners

3.2.9 Form H

FORM H

DBE CERTIFICATION

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

The following goal for participation by Disadvantaged Business Enterprises is established for professional services and construction work on the East End Crossing.

DBE

9%

DBE Certification

By signing the Proposal, the Proposer certifies that (1) the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Proposer will provide a good faith effort to substantiate the attempt to meet the goal; and (2) if awarded the Agreement, the Developer will submit a final DBE Performance Plan meeting the requirements set forth in Section 7.10.3 of the Agreement and the DBE Special Provisions attached as Exhibit 7 to the Agreement.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Bond provided by the Proposer will become property of IFA and the Proposer will be precluded from participating in any reprocurement of the Agreement for the East End Crossing.

Sidney R. Florey
[name]

Project Executive/Authorized Representative
[title]

3.2.10 Surety Information

TRAVELERS

Travelers Bond, Home Office
(860) 277-9355
(860) 277-3931 (fax)
One Tower Square, 2S2B
Hartford, CT 06183

October 26, 2012

Indiana Finance Authority
Attn: Silvia Perez
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204

RE: Ohio River Bridges Project – The East End Crossing
Walsh Construction Company / Vinci Construction Grands Projets, Bonding Capacity

Dear Ms. Perez:

Please be advised that **Walsh Construction Company / Vinci Construction Grands Projets** is a joint venture composed of two participants, Walsh Construction Company and VINCI Construction Grands Projets. It is the considered opinion of the undersigned surety company, that these are two of the outstanding construction organizations in North America. Their combined skill, integrity and financial responsibility as a joint venture are unquestioned.

The undersigned surety, licensed to do business in Indiana and the Commonwealth of Kentucky, have reviewed the PPA Documents, including Article 17 of the Agreement, and are prepared to issue the Performance Bond and Payment Bond in the form and amount required by the Agreement. We have read the RFP (including the ITP) and addenda and have evaluated the backlog and work in progress for the members of the joint venture in determining our willingness to issue the Performance and Payment Bonds.

Please be advised that any final bond authorization is subject to a review of the final contract terms, bond forms, project financing and any other pertinent underwriting considerations at the time of the request.

It is the position of the listed bonding company that it has not defaulted on any of its obligations as surety within the past ten years.Notwithstanding the foregoing, from time to time certain obligees and/or claimants may have alleged or asserted that the listed bonding company was in default of one or more of its alleged obligations under a surety bond. It is the listed bonding company's position that such allegations have stemmed from good faith disputes over the timing or scope of an underlying obligation of the listed bonding company or, in some cases, whether any obligation even existed. In such cases, the listed bonding company has fully and timely discharged its obligations as they have been determined, whether judicially, voluntarily or by some other method of resolution.

This letter does not constitute an assumption of liability. The issuance of bonds in connection with this project is a matter solely between the surety and **Walsh Construction Company / Vinci Construction Grands Projets** and we assume no liability to you or to an third parties by the issuance of this letter.

Sincerely,
Travelers Casualty and Surety Company of America
Treasury Listing: $ 165,208,000
A.M. Best Rating: A+ XIV
Standard and Poor's Rating: AA
Fitch Rating: AA

BY: _____ (Seal)

Jodi Wallace, Attorney-in-Fact
AEW Insurance Agency, LLC
929 W. Adams
Chicago, IL 60607
312-563-5925

CONFIDENTIAL

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

POWER OF ATTORNEY

TRAVELERS

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 225482 **Certificate No.** 005006381

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Brian R. Walsh, J. William Ernstrom, Jodi Wallace, and Kerry Pecora

of the City of Chicago, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 21st day of August, 2012.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

State of Illinois
County of Cook

On this 26 day of October, 2012, before me personally appeared Jodi Wallace, known to me to be the Attorney-in-Fact of **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA,** the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first written above.

KERRY PECORA
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
July 30, 2016

58440-6-11Printed in U.S.A.

CONFIDENTIAL

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 26 day of October, 20 12.

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER
CONFIDENTIAL

3.2.11 Form I

FORM I

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Proposer's attention is directed to 23 CFR Part 636, Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

> Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposers are advised that in accordance with Section 2.10.2 of the Instructions to Proposers, certain firms will not be allowed to participate on any Proposer's team for the East End Crossing because of their work with IFA in connection with the East End Crossing procurement and document preparation.

1. Disclosure Pursuant to Section 636.116(2)(v)

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Developer, the Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. If no disclosure is necessary, indicate "None".

Proposer should disclose (a) any current contractual relationships with IFA, (b) any past, present, or planned contractual or employment relationships with any IFA member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any IFA member, officer, or employee if Proposer is awarded the contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer should also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

S. R. Flory
Signature

Sidney R. Flory
Name

Project Executive / Authorized Representative
Title

WVB East End Partners
Company Name

October 19, 2012
Date

WVB East End Partners

24 October 2012

Silvia Perez
Project Manager
Indiana Finance Authority
One North Capital, Suite 900
Indianapolis, IN 46204

Re. Form I Disclosure

Dear Ms. Perez,

It has recently come to our attention that Third Rock Consulting performed various environmental tasks associated with the Ohio River Bridges Projects. This work was performed for H.W. Lochner, Inc. for Section 4 dating back to 2003. WVB East End Partners does not believe that this prior work presents a conflict, but is disclosing same in abundance of caution and in the interests of full transparency. Third Rock Consulting performed all work as a subconsultant to H.W. Lochner. Third Rock's work for H.W. Lochner is summarized in the attached letter from Third Rock dated October 16, 2012. Included in this work are a noise study; evaluation of issues related to the collection, storage, and discharge of stormwater; a traffic noise impact study and noise barrier analysis; and an assessment of streams and wetlands that may be impacted by Section 4.

Third Rock Consultants has submitted a letter to the appropriate agencies detailing all pertinent information, and requesting a written determination with regards to a conflict of interest. Third Rock Consulting's potential involvement with WVB East End Partners on the East End Crossing Project is limited to the position of Environmental Compliance Manager. Gina Morris, a Third Rock employee, is the proposed Environmental Compliance Manager and was approved by IFA (see attached letter from IFA dated September 26, 2012). In this position, she would ensure compliance with proposed environmental mitigation measures. Further, **H.W. Lochner, the company for which Third Rock performed all work related to the Ohio River Bridges project, has been determined not to have an organizational conflict of interest** (see attached letter from INDOT and KYTC dated August 29, 2011). As such, we do not believe that Third Rock Consulting's prior work for H.W. Lochner related to the Louisville-Southern Indiana Ohio River Bridges project creates an organizational conflict of interest but we desire confirmation from IFA that our assumption is correct.

Sincerely,

Sidney R. Florey,
Project Executive
WVB East End Partners

THIRD ROCK
WWW.THIRDROCKCONSULTANTS.COM

October 16, 2012

Indiana Finance Authority
Attention: Sylvia Perez
1 North Capitol Avenue, Suite 900
Indianapolis, IN 46204

Re: *Request for Conflict of Interest Determination*
Louisville-Southern Indiana Ohio River Bridges Project, East Crossing

Dear Ms. Perez:

Third Rock Consultants, LLC (Third Rock) has been requested by Walsh Construction Company to formally request a determination of conflict of interest status regarding the above project. Third Rock's role as a team member with Walsh Construction is Environmental Coordinator to ensure compliance with proposed mitigation measures. Third Rock was retained by H.W. Lochner, Inc. (Lochner) intermittently since 2003 to perform various environmental tasks for Section 4 of the Louisville and Southern Indiana Ohio River Bridges project. These activities are summarized below.

In 2003, Third Rock performed a noise study as a baseline document for the Environmental Impact Statement, which was submitted to Kentucky Transportation Cabinet in 2006. The author of the report, Elizabeth Bullock PE, is no longer retained by Third Rock. Gina Morris PG provided technical review of the document. The approximate fee was $90,000.

In 2007, Lochner requested Third Rock to evaluate a number of issues related to the collection, storage, and discharge of stormwater from Section 4 of the referenced project. Third Rock evaluated the following issues:

- Determine permit requirements for the discharge of storm water from the collection system.
- Evaluate any issues related to the collection and retention of hazardous materials released from the roadway.
- Ensure the needs and concerns of the Louisville Water Company related to the wellhead protection area are considered.

Gerry Fister PG submitted a technical memorandum to Lochner in 2007. The fee for this work was incorporated into the initial work effort discussed above.

In 2011, Lochner renewed Third Rock's contract to perform a traffic noise impact study and noise barrier analysis for the FEIS Selected Alternative and the FEIS Modified Selected Alternative in support of the Supplemental Environmental Impact Statement. Both reports addressed the impacted noise sensitive receptors, the measured existing noise levels, predicted design year noise levels, a comparison between the predicted design year noise levels and the design noise level guidelines. The study also assessed the feasibility of noise abatement methods. This report was written by Craig Morgan PE as a sub-consultant through T.H.E. Engineers, Inc. to Third Rock and was given technical review by Jennifer Shelby PE and Gina Morris. The approximate fee for this work was $52,000.

Also in 2011, Third Rock conducted an assessment of all aquatic resources (streams and wetlands) that may be impacted by Section 4 of the project. Third Rock also prepared and submitted permit applications and the required supporting documentation for USACE Section 404 permitting and KDOW Water Quality Certification (Section 401). The activities in support of the permit applications were done by Gina Morris and Rain Storm in 2011. The fee for this work was $13,000.

Third Rock does not believe this prior involvement constitutes a conflict of interest with any future participation in environmental compliance matters by Third Rock on the East Crossing Project. We look forward to a favorable determination from IFA.

Very truly yours,

Molly F. Davis
President
mforee@thirdrockconsultants.com

pc: Bruce Williams, Walsh Construction Company

Consultant Selection Review Committee Recommendation

Conflict of interest disclosures related to the Louisville-Southern Indiana Ohio River Bridges Project

August 29, 2011

The following firms have submitted conflict of interest disclosures with respect to prior and ongoing services related to the Louisville-Southern Indiana Ohio River Bridges Project: Buckland & Taylor LTD; AECOM; URS; Stantec; Michael Baker Jr., Inc.; PB Americas, Inc.; H.W. Lochner, Inc.; Burgess & Niple, Inc.; American Structurepoint, Inc.; Butler, Fairman and Seufert, Inc.; Janssen & Spaans Engineering, Inc.; QK4; ENTRAN; Palmer Engineering; and WMB, Inc.. The disclosure documents are attached.

Based on the disclosure statements each firm submitted, each state's Selection Review Committee (SRC) does not believe any conflicts of interest exist with these firms at this time because: 1.) the work each firm has completed beyond the original Environmental Impact Statement has been abandoned or is preliminary in nature, 2.) none of the firms have submitted stamped plans to either Indiana or Kentucky that will be used in the bidding documents, and 3.) neither Kentucky nor Indiana has issued any of these firms a notice to proceed with additional services beyond those necessary to evaluate alternatives for development the Supplemental Environmental Impact Statement. Furthermore, the Environmental Impact Statement has been made public and is available to all potential bidders.

The SRC recommends that firms who perform additional State DOT design services beyond those required to complete the Supplemental Environmental Impact Statement or that provide stamped plans to be submitted with the bidding documents not be allowed to participate on private construction proposer teams. Should a firm decide to participate on additional State DOT design services, they should make a disclosure statement to both States certifying they are not working on a private construction proposer team. Furthermore, the SRC recommends that the project managers monitor participation to ensure no firm involved in the preparation of bid documents participates in private construction proposer teams allowed to bid on the project.

Sincerely,

Michael B. Cline
Commissioner

Sincerely,

Michael W. Hancock, P.E.
Secretary

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN 46204

September 26, 2012

Via email

WVB East End Partners
1260 East Summit Street
Crown Point, Indiana 46307
Attn: Sidney R. Florey, Project Executive
FAX No. 291-661-2469
email: sidney.florey@vinci.com

RE: East End Crossing, Key Personnel

Dear Mr. Florey:

Reference is made to the Request for Proposals (the "RFP," Volume 1 of which, the "ITP") for the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project), issued by the Indiana Finance Authority ("IFA") on July 31, 2012 (as amended).

We are in receipt of your Pre-Proposal Submittals related to new and changed Key Personnel via letter dated September 6, 2012. We are also in receipt of your clarification letter dated September 19, 2012. We understand your request to be, among others, approval of new, and changes to, Key Personnel, pursuant to Sections 2.11 and 2.4 of the ITP.

Pursuant to Sections 2.4, 2.11 and 8.1 of the ITP, IFA hereby approves:

- Mr. Sikorski as Project Manager
- Mr. Malin as Deputy Project Manager
- Mr. Williams as Deputy Project Manager
- Mr. Van Loon as Financial Director
- Ms. Julia-Sanchez as Quality Manager
- Ms. Norris as Construction Quality Manager
- Mr. Hartlage as Public Information Coordinator
- Ms. Wolf as DBE Coordinator
- Mr. Hedrick as Utility Manager
- Mr. Lawler as Safety Manager
- Ms. Morris as Environmental Compliance Manager

in each case, for WVB East End Partners.

Please note that the last date for resubmittal of Pre-Proposal Submittals has been specified for those whom IFA has disapproved in our letter to you, dated September 25, 2012.

Nothing in this letter modifies or alters the terms of the RFP, including IFA's rights thereunder, and such terms shall remain in full force and effect.

Sincerely,

Silvia Perez
IFA Project Manager

3.2.12 Form Q

FORM Q

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of WVB East End Partners, that:
(Name of entity making certification)

[check one of the following boxes]

☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☑ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

☑ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: S. T. Flaherty

Title: ~~Project Executive~~ Authorized Representative WVB East End Partners

Date: 26 October 2012

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Non-Equity Members or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

.

FORM Q

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of Walsh Investors, LLC, that:
(Name of entity making certification)

[check one of the following boxes]

☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: Manager, Walsh Investors, LLC

Date: 10/17/2012

If not Proposer, relationship to Proposer: Equity Member

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Non-Equity Members or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

.

FORM Q

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of Vinci Concessions SAS, that:
(Name of entity making certification)

[check one of the following boxes]

☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☑ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

☑ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: Van Loon Kreslof

Title: PROJECT DIRECTOR NORTH AMERICA

Date: 26 October 2012

If not Proposer, relationship to Proposer: Equity Member

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Non-Equity Members or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

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FORM Q

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of **Bilfinger Berger ~~Project Investments~~ International Holding GmbH**, that:

[check one of the following boxes]

☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☒ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

☒ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Nick Dawson

Managing Director

Dirk Söhngen

Managing Director

Date: 22 OCTOBER, 2012

Bilfinger Berger ~~Project Investments~~ International Holding GmbH, Equity Member

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Non-Equity Members or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

FORM Q

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of Walsh Construction Company-Vinci CGP Construction Joint Venture, that:

(Name of entity making certification)

[check one of the following boxes]

☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: Sr. V.P.

Date: 10-19-2012

If not Proposer, relationship to Proposer: Design-Build Contractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Non-Equity Members or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

.

FORM Q

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of Walsh Construction Company, that:
(Name of entity making certification)

[check one of the following boxes]

☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: President, Walsh Construction Company

Date: 10/17/2012

If not Proposer, relationship to Proposer: Design-Build Contractor Joint Venture Member

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Non-Equity Members or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

.

FORM Q

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of Vinci Construction Grands Projets, that:
(Name of entity making certification)

[check one of the following boxes]

☑ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☑ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: Sustainability Director of Bid Manager

Date: October 19th 2012

If not Proposer, relationship to Proposer: Design-Build Contractor Joint Venture Member

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Non-Equity Members or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

.

FORM Q

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Proposer, Equity Members, Major Participants and proposed Contractors]

The undersigned certifies on behalf of Jacobs Engineering Group, Inc., that:
(Name of entity making certification)

[check one of the following boxes]

☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

[check one of the following boxes]

☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: Vice President

Date: October 18th, 2012

If not Proposer, relationship to Proposer: Lead Engineer

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, Major Non-Equity Members or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

3.2.13 Form R

FORM R

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer ✓ Equity Member ____ Major Participant ____ proposed Contractor ___certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.

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 undersigned 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.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject

to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

Date: October 19th, 2012

Firm/Entity: WVB East End Partners

Signature: [signature]

Title: Project Executive / Authorized Representative

Proposer: WVB East End Partners

[Copy this form and modify as needed for execution by Proposer, Equity Members, Major Participants, and all proposed Contractors]

FORM R

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer ____ Equity Member _X___ Major Participant ____ proposed Contractor ___certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.

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 undersigned 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.

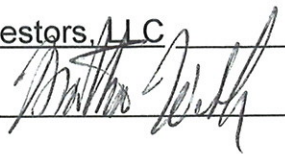
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject

to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

Date: 10/17/12

Firm/Entity: Walsh Investors, LLC

Signature: 

Title: Manager

Proposer: WVB East End Partners

FORM R

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer ____ Equity Member ✓ Major Participant ____ proposed Contractor ___certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.

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 undersigned 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.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject

to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

Date: 26 October 2012

Firm/Entity: VINCI CONCESSIONS SAS

Signature: Yan Loon Kreisler

Title: PROJECT DIRECTOR NORTH AMERICA

Proposer: WVB EAST END PARTNERS

[Copy this form and modify as needed for execution by Proposer, Equity Members, Major Participants, and all proposed Contractors]

FORM R

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Equity Member certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.

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 undersigned 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.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject

to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

Date: OCTOBER 22nd 2012

Nick Dawson

Managing Director

Dirk Söhngen

Managing Director

PI SJ

Bilfinger Berger ~~Project Investments~~ International Holding GmbH

Equity Member of WVB East End Partners

[Copy this form and modify as needed for execution by Proposer, Equity Members, Major Participants, and all proposed Contractors]

FORM R

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer ____ Equity Member ____ Major Participant _X___ proposed Contractor ___certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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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 undersigned 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.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject

to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

Date:_____

Firm/Entity: Walsh Construction-Vinci CGP Construction Joint Venture

Signature: _____

Title: Sr V.P.

Proposer: WVB East End Partners

FORM R

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer ____ Equity Member ____ Major Participant _X___ proposed Contractor ___certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.

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 undersigned 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.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject

to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

Date: 10/17/12

Firm/Entity: Walsh Construction Company

Signature: 

Title: President

Proposer: WVB East End Partners

FORM R

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer ____ Equity Member ____ Major Participant __X__ proposed Contractor ___certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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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 undersigned 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.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject

to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

Date: October 19th, 2012

Firm/Entity: Vinci Construction Grands Projets

Signature: _____

Title: Sustainability Director & Bid Manager

Proposer: WVB East End Partners

[Copy this form and modify as needed for execution by Proposer, Equity Members, Major Participants, and all proposed Contractors]

FORM R

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer ____ Equity Member ____ Major Participant _X_ proposed Contractor ___certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.

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 undersigned 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.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject

to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

Date: October 18th, 2012

Firm/Entity: Jacobs Engineering Group, Inc.

Signature: [signature]

Title: Vice President

Proposer: WVB East End Partners

[Copy this form and modify as needed for execution by Proposer, Equity Members, Major Participants, and all proposed Contractors]

3.2.14 Form S

FORM S

DEBARMENT AND SUSPENSION CERTIFICATION

The undersigned Proposer certifies on behalf of itself and all Equity Members, Major Participants and Contractors the following:

The undersigned certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

b. Have not within a 3-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;

c. 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 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where Proposer is unable to certify to any of the statements in this certification, it shall attach a certification to its Proposal or bid stating that it is unable to provide the certification and explaining the reasons for such inability.

Date: October 19th, 2012

Proposer: VVB East End Partners

Signature: [signature]

Title: Project Executive / Authorized Representative

3.2.15 Insurance Certificates

Willis

October 18, 2012

Telephone: 248-539-6600
Fax: 248-735-7585
Website: www.willis.com

Direct Line: 248-539-6638
Direct Fax: 248-735-7585
E-mail: mary.ellen.rudzinski@willis.com

Indiana Finance Authority
One North Capital
Suite 900
Indianapolis, Indiana 46204

RE: The East End Crossing – Ohio River Bridges
Public-Private Agreement

Please accept this letter as written evidence that we have read the Public-Private Agreement for the above-referenced project and, in the event our client,

WVB East End Partners
1260 East Summit Street
Crown Point, IN 46307

is selected as the Preferred Proposer for this project, the entities required to obtain insurance under the Public-Private Agreement have the capability of obtaining such insurance in the coverages and under the conditions listed in the Agreement, and we will provide certificate(s) of insurance evidencing such insurance coverage is placed. We verify that the coverage being represented meets the Developer's obligation under the Public-Private Agreement, including Article 17 and Exhibit 19, with respect to coverage limits and other terms.

Said certificates will be in the form required, state the type and limits of coverage, deductibles, and termination provisions of the policy, and will have attached all additional insured endorsements as requested in Section 17.1.2.4 of the Public-Private Agreement.

If you have questions, please do not hesitate to contact our office. Thank you.

Sincerely,

Mary Ellen Rudzinski

Mary Ellen Rudzinski, CIC
Assistant Vice President
Business Unit Compliance Officer

Willis North America
32255 Northwestern Hwy.
Suite 201
Farmington Hills, MI 48334

3.2.16 Confidential Contents Index

CONFIDENTIAL CONTENTS INDEX			
Proposal	**Volume/Section**	**Description**	**Page(s)**
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	Volume 1 Section 3.2.3	Form C Walsh Investors LLC	all pages
	Volume 1 Section 3.2.3	Form C VINCI Concessions SAS	all pages
	Volume 1 Section 3.2.3	Form C Bilfinger Berger PI International Holding GmbH	all pages
	Volume 1 Section 3.2.3	Form C Walsh-VCGP Construction Joint Venture	all pages
	Volume 1 Section 3.2.3	Form C Walsh Construction Company	all pages
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	Volume 1 Appendices	Operating Agreement Term Sheet	all pages
	Volume 1 Appendices	WVB Teaming Agreement	all pages
	Volume 1 Appendices	Design-Build Commitment Letter (including Design-Build Contract)	all pages
	Volume 1 Appendices	Lead Engineer Agreement	all pages
	Volume 2 Section 4.1.1.a	Backlog Information	pg. 10
	Volume 2 Appendices	Project Animation	Flash Drive
FINANCIAL	Volume 1 Section A1	Financial Statements -- Walsh Investors LLC	all pages
	Volume 1 Section A1	Financial Statements -- Walsh Group	all pages
	Volume 1 Section A1	Financial Statements -- Walsh Construction Company	all pages
	Volume 1 Section A1	Financial Statements -- VINCI Concessions SAS	all pages
	Volume 1 Section A1	Financial Statements -- Bilfinger Berger	all pages
	Volume 1 Section A2	Financially Responsible Parties Letters of Support (Walsh)	all pages
	Volume 1 Section A2	Financially Responsible Parties Letters of Support (VINCI)	all pages
	Volume 1 Section A2	Financially Responsible Parties Letters of Support (Bilfinger)	all pages
	Volume 2 Section B	Financial Plan	all pages
	Financial Model Section C	Form J -- MAP Proposal	all pages
	Financial Model Section D	Financial Model	all pages
	Full Financial Model Printout	Financial Model	all pages

C. Proposer Election of Termination for Convenience Calculation Method

FORM V

TERMINATION FOR CONVENIENCE CALCULATION METHOD

Should IFA terminate the Agreement according to Section 20.1 of the Agreement, the undersigned Proposer hereby chooses to be paid a compensation amount equal to the ***Forward Looking Termination for Convenience Amount***, and irrevocably and unconditionally renounces and waives any right to claim the ***Backward Looking Termination for Convenience Amount.***

Date: 24 October 2012

Proposer: WVB East End Partners

Signature: [signature]

Title: Authorized Representative

D. Volume 1 Appendices

Organizational Documents

With regards to the East End Crossing RFP – Form A

Organizational Documents

WVB East End Partners, as the Proposer, is a consortium that is yet unformed. If named as Preferred Proposer by IFA for the East End Crossing, this consortium shall form an LLC and the organizational documents shall be provided prior to commercial close as required by the ITP.

WVB East End Partners (the Consortium) comprises:

VINCI Concessions SAS (Equity Member of 33.33%) – a company incorporated under the laws of France with organization number 410 001 952 and whose registered office is at 9, Place de l'Europe, 92851 Rueil_Malmaison, France

Walsh Investors, LLC (Equity Member of 33.33%) – a limited liability company organized and existing under the laws of Delaware located at 929 West Adams Street, Chicago, Illinois 60607 USA

Bilfinger Berger PI International GmbH, as represented by Bilfinger Berger Project Investments, Inc. (Equity Member of 33.33%), a limited liability company organized and existing under the laws of Germany located at Gustav-Stresemann-Ring 1, D-65183 Wiesbaden, Germany

The organizational documents for each of these entities are included in this Proposal.

VINCI Concessions

« Société par Actions Simplifiée » au capital de/with a share capital of 4.306.925.672 €
Siège Social/Head Office : 9 Place de l'Europe - 92500 Rueil-Malmaison
410 001 952 RCS Nanterre

Copie certifiée conforme/True certified copy
VINCI Concessions SAS
Le Directeur Général Délégué/Chef Executive Officer

Louis-Roch BURGARD

DECISION DU DIRECTEUR GENERAL DELEGUE EN DATE DU 25 octobre 2012

Je, soussigné, Louis-Roch BURGARD, Directeur Général Délégué de VINCI Concessions, Société par Actions Simplifiée de droit français, au capital de 4.306.925.672 euros, dont le siège social est situé à Rueil-Malmaison – 92500 (France), 9, Place de l'Europe, immatriculée au Registre du Commerce et des Sociétés de Nanterre, sous le numéro 410 001 952,

Attendu que, en ma qualité de Directeur Général Délégué de VINCI Concessions, j'ai le pouvoir requis pour adopter cette résolution au nom et pour le compte de VINCI Concessions SAS, en vertu de l'article 13 des statuts de VINCI Concessions SAS et de ma nomination en tant que Directeur Général Délégué en date du 21 octobre 2008 ;

Après avoir rappelé que VINCI Concessions SAS participe, en tant qu'apporteur d'un tiers (1/3) des fonds propres du soumissionnaire dénommé WVB East End Partners, à l'Appel d'Offres public pour le projet « **East End Crossing – Ohio River Bridges** » (le « **Projec** »), lancé par la Indiana Finance Authority (« **IFA** ») en coopération avec la Indiana Departement of Transportation pour la conception, construction, financement, opération et maintenance d'un pont à péages et d'infrastructures routières et autres associées, à travers la rivière Ohio, liant Clark County, Indiana et Jefferson County, Kentucky (Etats-Unis), tel que décrit en plus de détails dans la « Request for Proposals » en date du 31 Juillet 2012, telle que modifiée (« l'**Appel d'Offres** »);

DECISION OF THE CHIEF EXECUTIVE OFFICER DATED October 25, 2012

I, the undersigned, Louis-Roch BURGARD, acting as Chief Executive Officer of VINCI Concessions, a Company (« Société par Actions Simplifiée ») incorporated under the laws of France, with a share capital of 4,306,925,672 euro, with Head Office at Rueil-Malmaison – 92500 (France) 9, Place de l'Europe, registered with the Registry of the Nanterre Commercial Court under number 410 001 952,

Whereas I, acting in the capacity of Chief Executive Officer of VINCI Concessions SAS, have the requisite authority to issue this resolution in the name and on behalf of VINCI Concessions SAS, pursuant to Clause 13 of the Articles of Association of VINCI Concessions SAS and my appointment as Chief Executive Officer, dated October 21, 2008;

Whereas VINCI Concessions SAS will participate, as 1/3 Equity Member of the Proposer named WVB East End Partners (the "**WVB East End Partners**"), in the public tender for the East End Crossing – Ohio River Bridges project (the "**Project**") tendered by the Indiana Finance Authority("**IFA**") in cooperation with the Indiana Department of Transportation for the design, construction, financing, operation and maintenance of a tolled bridge facility and associated roadway and facilities across the Ohio River, connecting Clark County, Indiana and Jefferson County, Kentucky (USA), as further described in the Request for Proposals dated July, 31, 2012, as amended (the "**Request for Proposals**" or "**RFP**");

CONFIDENTIAL

Après avoir rappelé que VINCI Concessions SAS a revu la documentation de l'Appel d'Offres lancé par IFA ;	Whereas VINCI Concessions SAS has reviewed and considered the RFP documentation issued by IFA;
Après avoir rappelé que VINCI Concessions SAS a participé à l'élaboration de l'Offre, y inclus l'Offre Financière;	Whereas, VINCI Concessions SAS has participated as an Equity Member in the preparation of the Proposal of WVB East End Partners, including its Financial Proposal;
Après avoir rappelé que l'Offre Financière prévoit que VINCI Concessions SAS fournira un tiers (1/3) des fonds propres et/ou prêts d'actionnaires requis en conformité avec les conditions détaillées dans l'Offre Financière ;	Whereas, the Financial Proposal provides that VINCI Concessions SAS will provide its one third of the required equity and/or shareholder loan commitment in accordance with the terms detailed in the Financial Proposal;
Après avoir rappelé que VINCI Concessions SAS a les fonds nécessaires à sa disposition pour s'acquitter des ses engagements en conformité avec les conditions de l'Offre Financière	Whereas, VINCI Concessions SAS has sufficient funds available to fulfill its commitments as per the terms of the Financial Proposal;
Décide, au nom et pour le compte de VINCI Concessions SAS, que :	Decide on behalf of VINCI Concessions SAS that:
Le contenu de l'Offre, y inclus l'Offre Financière à soumettre par WVB East End Partners en réponse à l'Appel d'Offres lancé par IFA, est ici approuvé.	The contents of the Proposal, including Financial Proposal (as these terms are defined in the RFP), to be delivered by WVB East End Partners in response to the RFP issued by the IFA are hereby approved.

VINCI Concessions SAS
Le Directeur Général Délégué/Chief Executive Officer

Louis-Roch BURGARD

CONFIDENTIAL

VINCI Concessions

« Société par Actions Simplifiée » au capital de/with a share capital of 4.306.925.672 €
Siège Social/Head Office : 9 Place de l'Europe - 92500 Rueil-Malmaison
410 001 952 RCS Nanterre

Copie certifiée conforme/True certified copy
VINCI Concessions SAS
Le Directeur Général Délégué/Chef Executive Officer

Louis-Roch BURGARD

DECISION DU DIRECTEUR GENERAL DELEGUE EN DATE DU 25 octobre 2012

Je, soussigné, Louis-Roch BURGARD, Directeur Général Délégué de VINCI Concessions, Société par Actions Simplifiée de droit français, au capital de 4.306.925.672 euros, dont le siège social est situé à Rueil-Malmaison – 92500 (France), 9, Place de l'Europe, immatriculée au Registre du Commerce et des Sociétés de Nanterre, sous le numéro 410 001 952,

Attendu que, en ma qualité de Directeur Général Délégué de VINCI Concessions, j'ai le pouvoir requis pour adopter cette résolution au nom et pour le compte de VINCI Concessions SAS, en vertu de l'article 13 des statuts de VINCI Concessions SAS et de ma nomination en tant que Directeur Général Délégué en date du 21 octobre 2008 ;

Après avoir rappelé que VINCI Concessions SAS participe, en tant qu'apporteur d'un tiers (1/3) des fonds propres du soumissionnaire dénommé WVB East End Partners, à l'Appel d'Offres public pour le projet « **East End Crossing – Ohio River Bridges** » (le « **Projec** »), lancé par la Indiana Finance Authority (« **IFA** ») en coopération avec la Indiana Departement of Transportation pour la conception, construction, financement, opération et maintenance d'un pont à péages et d'infrastructures routières et autres associées, à travers la rivière Ohio, liant Clark County, Indiana et Jefferson County, Kentucky (Etats-Unis), tel que décrit en plus de détails dans la « Request for Proposals » en date du 31 Juillet 2012, telle que modifiée (« l'**Appel d'Offres** »);

DECISION OF THE CHIEF EXECUTIVE OFFICER DATED October 25, 2012

I, the undersigned, Louis-Roch BURGARD, acting as Chief Executive Officer of VINCI Concessions, a Company (« Société par Actions Simplifiée ») incorporated under the laws of France, with a share capital of 4,306,925,672 euro, with Head Office at Rueil-Malmaison – 92500 (France) 9, Place de l'Europe, registered with the Registry of the Nanterre Commercial Court under number 410 001 952,

Whereas I, acting in the capacity of Chief Executive Officer of VINCI Concessions SAS, have the requisite authority to issue this resolution in the name and on behalf of VINCI Concessions SAS, pursuant to Clause 13 of the Articles of Association of VINCI Concessions SAS and my appointment as Chief Executive Officer, dated October 21, 2008;

Whereas VINCI Concessions SAS will participate, as 1/3 Equity Member of the Proposer named WVB East End Partners (the "**WVB East End Partners**"), in the public tender for the East End Crossing – Ohio River Bridges project (the "**Project**") tendered by the Indiana Finance Authority("**IFA**") in cooperation with the Indiana Department of Transportation for the design, construction, financing, operation and maintenance of a tolled bridge facility and associated roadway and facilities across the Ohio River, connecting Clark County, Indiana and Jefferson County, Kentucky (USA), as further described in the Request for Proposals dated July, 31, 2012, as amended (the "**Request for Proposals**" or "**RFP**");

CONFIDENTIAL

Après avoir rappelé que VINCI Concessions SAS a revu la documentation de l'Appel d'Offres lancé par IFA ;	Whereas VINCI Concessions SAS has reviewed and considered the RFP documentation issued by IFA;
Après avoir rappelé que VINCI Concessions SAS a participé à l'élaboration de l'Offre, y inclus l'Offre Financière;	Whereas, VINCI Concessions SAS has participated as an Equity Member in the preparation of the Proposal of WVB East End Partners, including its Financial Proposal;
Après avoir rappelé que l'Offre Financière prévoit que VINCI Concessions SAS fournira un tiers (1/3) des fonds propres et/ou prêts d'actionnaires requis en conformité avec les conditions détaillées dans l'Offre Financière ;	Whereas, the Financial Proposal provides that VINCI Concessions SAS will provide its one third of the required equity and/or shareholder loan commitment in accordance with the terms detailed in the Financial Proposal;
Après avoir rappelé que VINCI Concessions SAS a les fonds nécessaires à sa disposition pour s'acquitter des ses engagements en conformité avec les conditions de l'Offre Financière	Whereas, VINCI Concessions SAS has sufficient funds available to fulfill its commitments as per the terms of the Financial Proposal;
Décide, au nom et pour le compte de VINCI Concessions SAS, que :	Decide on behalf of VINCI Concessions SAS that:
Le contenu de l'Offre, y inclus l'Offre Financière à soumettre par WVB East End Partners en réponse à l'Appel d'Offres lancé par IFA, est ici approuvé.	The contents of the Proposal, including Financial Proposal (as these terms are defined in the RFP), to be delivered by WVB East End Partners in response to the RFP issued by the IFA are hereby approved.

VINCI Concessions SAS
Le Directeur Général Délégué/Chief Executive Officer

Louis-Roch BURGARD

CONFIDENTIAL

VINCI Concessions

« Société par Actions Simplifiée » au capital de/with a share capital of 4.306.925.672 €
Siège Social/Head Office : 9 Place de l'Europe - 92500 Rueil-Malmaison
410 001 952 RCS Nanterre

DECISION DU DIRECTEUR GENERAL DELEGUE EN DATE DU 25 octobre 2012

DECISION OF THE CHIEF EXECUTIVE OFFICER DATED October 25, 2012

Je, soussigné, Louis-Roch BURGARD, Directeur Général Délégué de VINCI Concessions, Société par Actions Simplifiée de droit français, au capital de 4.306.925.672 euros, dont le siège social est situé à Rueil-Malmaison – 92500 (France), 9, Place de l'Europe, immatriculée au Registre du Commerce et des Sociétés de Nanterre, sous le numéro 410 001 952,

I, the undersigned, Louis-Roch BURGARD, acting as Chief Executive Officer of VINCI Concessions, a Company (« Société par Actions Simplifiée ») incorporated under the laws of France, with a share capital of 4,306,925,672 euro, with Head Office at Rueil-Malmaison – 92500 (France) 9, Place de l'Europe, registered with the Registry of the Nanterre Commercial Court under number 410 001 952,

Attendu que, en ma qualité de Directeur Général Délégué de VINCI Concessions, j'ai le pouvoir requis pour adopter cette résolution au nom et pour le compte de VINCI Concessions SAS, en vertu de l'article 13 des statuts de VINCI Concessions SAS et de ma nomination en tant que Directeur Général Délégué en date du 21 octobre 2008 ;

Whereas I, acting in the capacity of Chief Executive Officer of VINCI Concessions SAS, have the requisite authority to issue this resolution in the name and on behalf of VINCI Concessions SAS, pursuant to Clause 13 of the Articles of Association of VINCI Concessions SAS and my appointment as Chief Executive Officer, dated October 21, 2008;

Après avoir rappelé que VINCI Concessions SAS participe, en tant qu'apporteur d'un tiers (1/3) des fonds propres du soumissionnaire dénommé WVB East End Partners, à l'Appel d'Offres public pour le projet « **East End Crossing – Ohio River Bridges** » (le « **Projec** »), lancé par la Indiana Finance Authority (« **IFA** ») en coopération avec la Indiana Departement of Transportation pour la conception, construction, financement, opération et maintenance d'un pont à péages et d'infrastructures routières et autres associées, à travers la rivière Ohio, liant Clark County, Indiana et Jefferson County, Kentucky (Etats-Unis), tel que décrit en plus de détails dans la « Request for Proposals » en date du 31 Juillet 2012, telle que modifiée (« l'**Appel d'Offres** »);

Whereas VINCI Concessions SAS will participate, as 1/3 Equity Member of the Proposer named WVB East End Partners (the "**WVB East End Partners**"), in the public tender for the East End Crossing – Ohio River Bridges project (the "**Project**") tendered by the Indiana Finance Authority("**IFA**") in cooperation with the Indiana Department of Transportation for the design, construction, financing, operation and maintenance of a tolled bridge facility and associated roadway and facilities across the Ohio River, connecting Clark County, Indiana and Jefferson County, Kentucky (USA), as further described in the Request for Proposals dated July, 31, 2012, as amended (the "**Request for Proposals**" or "**RFP**");

CONFIDENTIAL

Après avoir rappelé que VINCI Concessions SAS a revu la documentation de l'Appel d'Offres lancé par IFA ;

Whereas VINCI Concessions SAS has reviewed and considered the RFP documentation issued by IFA;

Après avoir rappelé que VINCI Concessions SAS a participé à l'élaboration de l'Offre, y inclus l'Offre Financière;

Whereas, VINCI Concessions SAS has participated as an Equity Member in the preparation of the Proposal of WVB East End Partners, including its Financial Proposal;

Après avoir rappelé que l'Offre Financière prévoit que VINCI Concessions SAS fournira un tiers (1/3) des fonds propres et/ou prêts d'actionnaires requis en conformité avec les conditions détaillées dans l'Offre Financière ;

Whereas, the Financial Proposal provides that VINCI Concessions SAS will provide its one third of the required equity and/or shareholder loan commitment in accordance with the terms detailed in the Financial Proposal;

Après avoir rappelé que VINCI Concessions SAS a les fonds nécessaires à sa disposition pour s'acquitter des ses engagements en conformité avec les conditions de l'Offre Financière

Whereas, VINCI Concessions SAS has sufficient funds available to fulfill its commitments as per the terms of the Financial Proposal;

Décide, au nom et pour le compte de VINCI Concessions SAS, que :

Decide on behalf of VINCI Concessions SAS that:

Le contenu de l'Offre, y inclus l'Offre Financière à soumettre par WVB East End Partners en réponse à l'Appel d'Offres lancé par IFA, est ici approuvé.

The contents of the Proposal, including Financial Proposal (as these terms are defined in the RFP), to be delivered by WVB East End Partners in response to the RFP issued by the IFA are hereby approved.

VINCI Concessions SAS
Le Directeur Général Délégué/Chief Executive Officer

Louis-Roch BURGARD

CONFIDENTIAL

POWER OF ATTORNEY

VINCI Concessions S.A.S., incorporated under the laws of France and registered under number 410 001 952 at the Register of Trade and Companies of Nanterre (France) and with a capital of EUR 4,306, 925,672 the registered office of which is at 9, Place de l'Europe, 92500 Rueil-Malmaison, France (the "**Company**"), represented by Mr. Louis-Roch BURGARD, Chief Executive Officer ("*Directeur Général Délégué*") hereby appoints:

Mr. Fadi SELWAN, Director Business Development

Mr. Kristof VAN LOON, Project Director North-America

Mr. Sid FLOREY, Business Development North-America

Mr. Olivier MATHIEU, Chief Financial and Asset Management Officer

(the "**Attorneys**")

as a true and lawful attorney-in-fact of the Company, to, each individually, with the power to grant a substitute power of attorney:

1. act in the name of the Company and on behalf of the Company and perform all acts, which the Attorney finds reasonable or necessary in relation to and throughout the procurement process (the "**Procurement**") to be organised by the Indiana Finance Authority (IFA) (the "**Authority**") in relation to the Ohio River Bridges – East End Crossing project as further detailed in the request for Proposals ("RFQ") issued by IFA in July 2012, as amended (the "**Project**").

2. In relation to the Procurement in particular, but without any limitations whatsoever,

   (i) To sign all documents, which must be submitted to the Authority in connection with the Procurement or the Project in the name and on behalf of the Company;

   (ii) Without limiting the foregoing, generally to execute and perform any other acts in the name and on behalf of the Company that ought to be executed or performed of every nature and kind whatsoever relating, directly or indirectly, to the matters set forth in paragraph 1 above, including the signature of agreements with other team members or with advisers and other service providers engaged in the context of the Company's participation in the Procurement.

This Power of Attorney shall become effective on the date of its signature and expire on 15 February 2013.

Rueil-Malmaison (France), 18 October 2012

Louis-Roch BURGARD
Directeur Général Délégué
VINCI Concessions SAS



CONFIDENTIAL

Registry of the Commercial Court of Nanterre
4 rue Pablo Neruda
92020 NANTERRE CEDEX
www.infogreffe.fr

Trade Register No. 410 001 952 R.C.S. NANTERRE
(1996 B 06425)

Corporate Identification Certificate
EXTRACT FROM THE REGISTER OF TRADE AND COMMERCIAL COMPANIES
as of September 28, 2012

IDENTIFICATION

Corporate Name:	**VINCI CONCESSIONS**
Identification number:	410 001 952 R.C.S. NANTERRE
File number:	1996 B 06425
Date of registration:	November 28, 1996

INFORMATION ON THE ENTITY

Legal Form:	*Société par actions simplifiée* (simplified joint stock company)
With a capital of:	4,306,925,672.00 Euros
Address of the Registered Office:	9 Place de l'Europe, 92500 Rueil Malmaison, France
Duration of the company:	Until November 28, 2095
Accounts closed as of:	December 31 of each year
Incorporation – Filing of the Instrument of Incorporation:	November 28, 1996 under number 29646 with the Registry of the Commercial Court of Nanterre
Publication:	"La Loi", issue of November 18, 1996

MANAGEMENT

Chairman	Mr. Huilliard, Xavier Born on June 27, 1954 in Paris 75015 (France) A citizen of France Of 2 Place Alexandre I, 78000 Versailles (France)
Deputy Chief Operating Officer:	Mr. Burgard, Louis-Roch Born on December 16, 1969 in Paris 75015 (France) A citizen of France Of 25bis rue du Château, 92200 Neuilly sur Seine (France)
Incumbent Auditors:	DELOITTE & ASSOCIES (Trade Register No. 572 028 041 R.C.S. NANTERRE) Of 185C Avenue Charles de Gaulle, 92200 Neuilly sur Seine (France) Legal form: *Société anonyme* (joint stock company)
Incumbent Auditors	KPMG S.A. (Trade register No. 775 726 417 R.C.S. NANTERRE) Of 3 Cours du Triangle, Immeuble Le Palatin, 92939 Paris La Défense Cedex (France) Legal form: *Société anonyme* (joint stock company)
Substitute Auditor:	BEAS (Trade Register No. 315 172 445 R.C.S. NANTERRE) Of 7-9 Villa Houssay, 92200 Neuilly sur Seine (France) Legal Form: *Société à responsabilité limitée* (private limited liability company)
Substitute Auditor:	Mr. Caubrière, François Born on December 3, 1957 in Sainte Adresse 76310 (France) A citizen of France

In the background: Commercial Court
Registry
Republic of France

7, rue Pierre Bocher - 95230 SOISY
Monique ROUZET LELIÈVRE
Expert - Traducteur
Agréé par la Cour de Cassation
ANGLAIS
Tél. : 01 39 89 13 11 - Fax : 01 39 89 74 93

CONFIDENTIAL

Registry of the Commercial Court of Nanterre
4 rue Pablo Neruda
92020 NANTERRE CEDEX
www.infogreffe.fr

Trade Register No. 410 001 952 R.C.S. NANTERRE
(1996 B 06425)

Corporate Identification Certificate
EXTRACT FROM THE REGISTER OF TRADE AND COMMERCIAL COMPANIES
as of September 28, 2012

Of 1 Cours Valmy, 92923 Paris La Défense Cedex (France)

INFORMATION ON THE BUSINESS

Origin of the company:	The company is being formed
Origin of the business:	Creation of a business
Activity:	Design, financing, development and operation of any constructions and their annexes of any sort or nature. The object of the company also consists of the undertaking in any form whatsoever of any public and private works, in particular in the field of the study and building of any constructions and their annexes of any sort or nature.
Address of the main place of business:	9 Place de l'Europe, 92500 Rueil Malmaison (France)
Beginning of operation:	on November 1, 1996
Operating mode:	Direct operation

Issued in Nanterre on September 28, 2012 on 2 pages
The Clerk,

Stamp: COMMERCIAL COURT OF NANTERRE (signature)
(Hauts-de-Seine)
Republic of France

End of certificate

Je soussigné Eric de la HAYE SAINT HILAIRE
Notaire à Paris, certifie
la signature de M. Monique ROUZET LELIEVRE
apposée ci-contre
Paris, le 11 octobre 2012

1, rue Pierre Bocher - 95230 SOISY
Monique ROUZET LELIÈVRE
Expert - Traducteur
Agréé par la Cour de Cassation
ANGLAIS
Tél. : 01 39 89 13 11 - Fax : 01 39 89 74 93

CERTIFIED TRANSLATION
TRUE TO THE ORIGINAL
IN FRENCH, VISAED NE
VARIETUR SUB NO. 12/684
SOISY, October 10, 2012

CONFIDENTIAL

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. *République française* Etats Unis

Le présent acte public

2. a été signé par..Me Saint Hilaire.....

3. agissant en qualité de...Notaire.....

4. est revêtu du sceau/timbre de..Son étude.....

.....

Attesté

5. à Paris

6. le.....11 OCT. 2012.....

7. *par le Procureur général près la Cour d'appel de Paris*

.....

8. sous n° .....66.62.....

9. Sceau

Michel LERNOUT

Avocat Général

10. Signature :

.....

.....

COUR D'APPEL DE PARIS

COUR D'APPEL DE PARIS

"L'Apostille confirme seulement l'authenticité de la signature, du sceau ou timbre sur le document. Elle ne signifie pas que le contenu du document est correct ou que la République française approuve son contenu"

CONFIDENTIAL

Greffe du Tribunal de Commerce de NANTERRE
4 Rue Pablo Neruda
92020 NANTERRE CEDEX
www.infogreffe.fr

Extrait Kbis

IMMATRICULATION AU REGISTRE DU COMMERCE ET DES SOCIETES
Extrait au 28 Septembre 2012

IDENTIFICATION

Dénomination sociale :	**VINCI CONCESSIONS**
Numéro d'identification :	410 001 952 R.C.S. NANTERRE
Numéro de gestion :	1996 B 06425
Date d'immatriculation :	28 Novembre 1996

RENSEIGNEMENTS RELATIFS A LA PERSONNE

Forme juridique :	Société par actions simplifiée
Au capital de :	4 306 925 672,00 Euros
Adresse du siège :	9 Place De L'Europe 92500 Rueil Malmaison
Durée de la société :	Jusqu'au 28 NOVEMBRE 2095
Date d'arrêté des comptes :	31 Décembre
Constitution - Dépôt de l'acte constitutif :	Au Greffe du Tribunal de Commerce de NANTERRE le 28 Novembre 1996 sous le numéro 29646
Publication :	La Loi du 18 Novembre 1996

ADMINISTRATION

Président	Monsieur HUILLARD XAVIER *né(e) le* 27/06/1954 à PARIS 75015 *de nationalité* Française *demeurant* 2 Place Alexandre I 78000 Versailles
Directeur général délégué	Monsieur BURGARD Louis-Roch *né(e) le* 16/12/1969 à PARIS 75015 *de nationalité* Française *demeurant* 25 Bis Rue Du Château 92200 Neuilly Sur Seine
Commissaire aux comptes titulaire	DELOITTE & ASSOCIES (572 028 041 R.C.S. NANTERRE) 185 C Avenue Charles De Gaulle 92200 Neuilly Sur Seine *Forme juridique* Société anonyme
Commissaire aux comptes titulaire	KPMG S.A (775 726 417 R.C.S. NANTERRE) 3 Cours Du Triangle Immeuble Le Palatin 92939 Paris La Defense Cedex *Forme juridique* Société anonyme
Commissaire aux comptes suppléant	BEAS (315 172 445 R.C.S. NANTERRE) 7-9 Villa Houssay 92200 Neuilly Sur Seine *Forme juridique* Société à responsabilité limitée
Commissaire aux comptes suppléant	Monsieur CAUBRIERE François *né(e) le* 03/12/1957 à STE ADRESSE 76310 *de nationalité* Française

1, rue Pierre Bocher - 95230 SOISY
Monique
ROUZET LELIÈVRE
Expert - Traducteur
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1/2

CONFIDENTIAL

Greffe du Tribunal de Commerce de NANTERRE
4 Rue Pablo Neruda
92020 NANTERRE CEDEX
www.infogreffe.fr

410 001 952 R.C.S. NANTERRE
(1996 B 06425)

Extrait Kbis

IMMATRICULATION AU REGISTRE DU COMMERCE ET DES SOCIETES
Extrait au 28 Septembre 2012

demeurant 1 Cours Valmy 92923 Paris La Defense Cedex

RENSEIGNEMENTS RELATIFS A L'ACTIVITE COMMERCIALE

Origine de la société :	Cette société se constitue
Origine du fonds ou de l'activité :	Création d'un fonds de commerce
Activité :	La conception, le financement, la promotion, l'exploitation de tous ouvrages et leurs annexes de quelque nature qu'ils soient.La société a aussi pour objet l'entreprise, sous toutes formes, de tous travaux publics et particuliers, notamment dans le domaine de l'etude et de la construction de tous ouvrages et leurs annexes de quelque nature qu'ils soient .
Adresse de l'établissement principal :	9 Place De L'Europe 92500 Rueil Malmaison
Commencement d'activité le :	01 Novembre 1996
Mode d'exploitation :	Exploitation directe

Extrait délivré à NANTERRE, le 28 septembre 2012 sur 2 page(s)

Le Greffier,

TRIBUNAL DE COMMERCE DE NANTERRE (Hauts-de-Seine)

Fin de l'extrait

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Monique ROUZET LELIÈVRE
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For A
CERTIFIED TRANSLATION
TRUE TO THE ORIGINAL
IN FRENCH, VISAED NE
VARIETUR SUB NO. 12/684
SOISY, October 10, 2012

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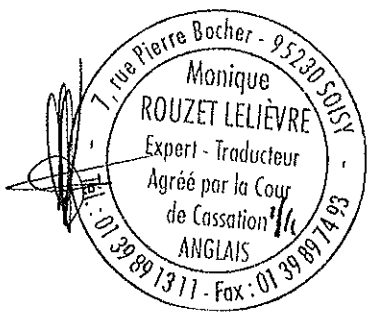
VINCI Concessions

A *société par actions simplifiée* (simplified joint-stock company) with a capital of €4,306,925,672
Registered Office: 9, Place de l'Europe - 92500 Rueil Malmaison, France
Registered with the Registrar of Trade and Companies of Nanterre under No. 410 001 952

ARTICLES 0F ASSOCIATION

Version of September 28, 2011

Certified copy
Vinci Concessions SAS
The Chief Executive Officer
(signature)
Louis-Roch Burgard



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TITLE I - LEGAL FORM - CORPORATE NAME – REGISTERED OFFICE – CORPORATE OBJECT – DURATION

ARTICLE 1 – Legal form

The Company was initially incorporated as a *société anonyme* (joint stock company).

It was transformed into a *société par actions simplifiée* (simplified joint stock company) on October 21, 2008 by decision of the Joint Ordinary and Extraordinary General Meetings held on the same day.

The Company will continue to exist as between the owners of the existing stocks and of any stocks which may be created in the future.

The Company may have several stockholders or one single stockholder without its legal form being changed.

It is governed by the statutory provisions in force and by these Articles of Association.

ARTICLE 2 – Corporate name

The Company's name is: **VINCI Concessions**

On all deeds and documents issued by the Company, the corporate name must be immediately preceded or followed by the terms "*société par actions simplifiée*" or the abbreviation "S.A.S." with mention of the Company's capital.

ARTICLE 3 – Registered Office

The registered office is situated at: **9, Place de l'Europe, 92500 Rueil Malmaison, France.**

It may be transferred elsewhere by decision of the Chairman of the Company, who is duly empowered to amend the Articles of Association accordingly.

ARTICLE 4 – Company's object

The Company's object is the design, financing, promotion and operation in any form of any constructions and their adjoining structures of any type whatsoever. The purpose of the Company also consists in undertaking, in any form, all types of public and private works, including but not limited to the design and building of all types of constructions and their adjoining structures of any type whatsoever.

To this effect, it may carry out or cause to be carried out, both on its own behalf and on behalf of any French or foreign third parties:

- the development of any land and of any buildings and structures;

- the taking-up of options on, the acquisition, exchange, division, sale, rental, concession, management and administration of any land and buildings, both on the surface and in the subsoil;

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- the undertaking of any public or private works and of services, in any form;

- the construction, acquisition, exchange, division, sale, rental, concession, management and administration of any public or private constructions, both on the surface and in the subsoil ;

- the creation of any companies, in any form, of any trade unions, of any holdings, the taking-up of any interests in any country and in any form whatsoever, particularly by way of contributions, holdings, subscriptions or purchases of stocks, bonds and other securities or even in the form of a partnership in any firms or companies the main or secondary purpose of which is directly or indirectly related to that of the Company or is likely to promote the development thereof.

The Company may carry out the aforementioned operations in France, in the French overseas departments and territories and abroad, either on its own or under joint ventures, or through any form of negotiation, whether directly or by way of assignments, leasing agreements or control works, or on a brokerage or commission basis.

In addition, it may be involved in any kind of exploitation, either independently or via any other means of any type or nature, create any non-trading partnerships and commercial companies, make any contributions to existing companies, merge or form an alliance with them, subscribe to, purchase and resell any securities or corporate interests, take over any partnerships and make any loans, credits or advances.

ARTICLE 5 – Duration

The Company's duration is ninety-nine years as from its registration with the Registry of Trade and Commercial Companies unless it is extended or the Company is wound up by anticipation.

TITLE II - CAPITAL - FORM OF THE STOCKS – RIGHTS AND OBLIGATIONS ATTACHED TO THE STOCKS

ARTICLE 6 – Company's capital

The Company's capital is 4,306,925,672 Euros divided into 384,546,935 fully paid stocks of the same category with a par value of 11.20 Euros each.

ARTICLE 7 - Stocks

Since the Company may not make any public issue, the securities it issues must be registered.

The stocks are registered in an account in accordance with the regulations in force and the relevant practices and customs.

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Any stockholder may ask the Company to issue a certificate of account registration.

TITLE III -
TRANSFER AND LEASE OF STOCKS - EXCLUSION OF STOCKHOLDERS

Articles 8 through 11 below shall not apply in the event the Company is owned by a single member.

ARTICLE 8 – Common provisions applicable to the transfer of stocks

Definitions:

A) Transfer: means any operation carried out either free of charge or for a consideration and giving rise to the transfer of the full ownership, bare ownership or beneficial ownership of the securities issued by the Company, namely: disposal, sale, transfer, exchange, contribution to a company, merger or similar operation, disposal of assets under receivership proceedings, setting-up of trusts, pledging, liquidation or universal transfer of assets.

B) Stock or Security: means securities issued by the Company and giving immediate or deferred access, in any way whatsoever, to the allotment of a right in and to the Company's capital and/or to a voting right within the Company, as well as equity warrants, and subscription and allotment rights attached to said securities.

C) Reclassification operation: means any operation aiming at transferring Company stocks within each of the groups of stockholders set up by each associated Company and the companies or entities that it controls or which control it directly or indirectly pursuant to Section L 233-3 of the French Commercial Code, or which are under control of the same company.

Procedure for the transfer of stocks

The transfer of stocks issued by the Company is effectuated by transfer from one account to another against production of a transfer form. The transfer will be recorded in a numbered and initialed register of transfers.

ARTICLE 9 – PREEMPTIVE RIGHTS

1. Any transfer of Company stocks, even between stockholders, is subject to the stockholders' preemptive rights in accordance with the terms set forth below.

2. The transferor must notify the Chairman and each of the stockholders of his plan to transfer stocks, by registered mail with return receipt requested indicating:

- the number of stocks involved;
- information on the contemplated transferee: first and last names, address and citizenship or, where the transferee is a corporate entity, its corporate name, registered office, Trade and Companies Register number, the amount and distribution of its capital, the identity of its directors and managers;
- the price and terms of the contemplated transfer.

The date on which the transferor's notification is received will mark the beginning of a three-month period on the expiry of which the transferor may freely complete the contemplated transfer, provided that no preemptive rights have been exercised with respect to all of the relevant stocks and subject to having complied with the approval procedure stipulated in the Article entitled "Approval" of these Articles of Association.

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3. Each stockholder will have preemptive rights with respect to the stocks which are the subject matter of the contemplated transfer. Said preemptive rights can be exercised by notifying the Chairman within two (2) months of receiving the aforementioned notification. This notification shall be made via registered mail with return receipt requested specifying the number of stocks each stockholder wishes to acquire.

4. Upon the expiry of the two-month period referred to in paragraph 3 above and before the expiry of the three-month period set forth in paragraph 2 above, the Chairman shall notify the results of the preemption to the transferor by registered mail with return receipt requested.

Where the preemptive rights exercised exceed the number of stocks the transfer of which is contemplated, the relevant stocks will be allotted by the Chairman to the stockholders who have expressed their desire to acquire stocks proportionally to their share in the Company's capital, and within the limits of their requests.

Where the preemptive rights are less than the number of stocks the transfer of which is contemplated, the preemptive rights will be deemed not to have been exercised, and the transferor will be free to transfer the stocks to the transferee mentioned in his notification, provided the approval procedure referred to in the Article below entitled "Approval" is complied with.

5. Should preemptive rights be exercised, the transfer of stocks shall take place within two (2) months, on the basis of the price mentioned in the transferor's notification.

ARTICLE 10 -Approval

1. The stocks may only be transferred with the prior approval of the general meeting of stockholders unless in the event of transfers between stockholders or of the reclassification operations referred to below.

2. Requests for approval must be notified by registered mail with return receipt requested sent to the Chairman indicating the number of stocks the transfer of which is contemplated, the sale price and the transferee's first and last names, address and citizenship or, where the transferee is a corporate entity, its full identification (corporate name, registered office, Trade and Companies Register number, the amount and distribution of its capital, the identity of its directors and managers). Said request for approval will be forwarded to the stockholders by the Chairman.

3. The Chairman will have a three (3)-month period as from receipt of the request for approval to inform the transferor of the decision reached by the general meeting of stockholders. Said notification shall be made by registered mail with return receipt requested. Failing any reply within the above time frame, the approval shall be deemed to have been granted.

4. No reasons need be given concerning the decision to grant or deny approval.

5. In the case of approval, the transferor may freely complete the transfer under the terms and conditions set forth in the request for approval. The transfer of stocks shall then be completed within thirty days of the approval decision: if the transfer has not been completed within the aforementioned period, the approval shall become null and void.

6. If the approval is denied, the Company shall within one (l) month of the notification by which the approval was denied, purchase the transferor's stocks or cause them to be purchased by one or more third parties approved in accordance with the abovementioned procedure.

If the stocks have not been purchased within said one-month period for reasons attributable to the Company, the transferee or transferees shall be deemed to have been approved.

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If the stocks are purchased by the Company, the latter must either sell them or cancel them within six (6) months of their acquisition.

The price at which the stocks are bought by a third party or by the Company will be set by common agreement between the parties. Failing any agreement, the price will be determined by an appraiser, under the conditions set forth in Section 1843-4 of the French Civil Code.

Simple Reclassification Operation within one group of stockholders

Transfers or assignments of Company stocks resulting from a simple reclassification operation within the same group of stockholders may be freely conducted.

They shall be notified to the Chairman and the stockholders by registered mail with return receipt requested at least 15 days before the contemplated reclassification operation takes place. The notification shall come with an explanatory note certifying that the transferee belongs to the transferor's group and that it is therefore merely a simple reclassification operation.

ARTICLE 11 - Nullity of stock transfers

Any transfers of stocks made in violation of the provisions of Articles 8 through 10 of these Articles of association shall be null and void.

TITLE IV
RUNNING AND MANAGEMENT OF THE COMPANY

ARTICLE 12 – Chairman of the Company

The Company is run and managed by a Chairman, who is a natural person or a corporate entity and may but need not be a stockholder.

Designation

The Company is represented either by its Chairman or by the Chairman of the Company's Steering Committee.

13.2.1.1 The Chairman of the Company is appointed by a collective decision of the stockholders.

The Chairman is appointed for a term of six (6) years. He may resign at any time provided he informs the stockholders thereof.

The Chairman may be removed from office at any time by unanimous decision of the stockholders. Said removal from office will not give rise to any compensation.

Remuneration

The Chairman's remuneration is set by a collective decision of the stockholders.

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Powers

The Chairman runs the Company and represents it in its dealings with third parties. To that effect, he is vested with all the powers necessary to act under all circumstances on behalf of the Company, within the limits of the Company's object and of the powers expressly conferred upon the stockholders by way of collective decisions in accordance with the statutory provisions and these Articles of Association.

The Chairman may issue sureties, endorsements and guarantees on behalf of the Company, with the faculty to delegate his powers, for up to an annual total amount for the Company of 200 million Euros, for a period of one year expiring at the latest on the date of the decision ruling on the financial statements of the year, it being understood that said €200 million limit shall not apply to sureties, endorsements and guarantees which may be issued in favor of any tax and customs administrations during the above period. Beyond the €200 million limit, the issue of sureties, endorsements and guarantees shall be submitted to the approval of the stockholders or sole stockholder.

The Chairman may, under his own responsibility, grant any delegation of powers to any third party for one or more specific purposes.

The Chairman may appoint one or more natural persons having a permanent authorization to certify copies of the Company' Articles of Association, copies or extracts of the minutes of the stockholders' or sole stockholder's proceedings, decisions of the Chairman and to sign the notices to attend the Annual General Meetings of the Company by authority.

ARTICLE 13 – Chief Executive Officers

Designation

The Company is also run by one or two Chief Executive Officers who must be natural persons

The Chief Executive Officer(s) is/are appointed by the Chairman and may have an employment contract with the Company.

Term of office

The Chief Executive Officer(s) is/are appointed for the duration of the Chairman's term of office. I the event the Chairman's term of office is terminated, the Chief Executive Officer(s) will remain in office until a new Chairman is appointed.

They may be dismissed at any time without any mandatory due cause, by decision of the Chairman, acknowledged in the form of minutes.

The dismissal of a Chief Executive Officer may not give rise to any indemnity.

Remuneration

The Chief Executive Officer(s) may receive remuneration for the discharge of his/their duties. Said remuneration is set by the Chairman. Any changes to the remuneration of the Chief Executive Officer shall be made in the same fashion.

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Powers

Unless any limitation is set in the appointment decision or by any later decision, the Chief Executive Officer(s) shall have the same powers as the Chairman, in particular the power to represent the Company in its dealings with third parties.

The Chief Executive Officer(s) may issue sureties, endorsements and guarantees on behalf of the Company, with the faculty to delegate his powers, for up to an annual total amount for the Company of 200 million Euros, for a period of one year expiring at the latest on the date of the decision ruling on the financial statements of the year, it being understood that said €200 million limit shall not apply to sureties, endorsements and guarantees which may be issued in favor of any tax and customs administrations during the above period. Beyond the €200 million limit, the issue of sureties, endorsements and guarantees shall be submitted to the approval of the stockholders or sole stockholder.

The Chief Executive Officer(s) may, under his/their own responsibility, grant any delegation of powers to any third party for one or more specific purposes.

ARTICLE 14 – Workers' representation

The representatives of the Works Council will exercise the rights provided for in Section L2323-66 of the French Labor Code vis-à-vis the Chairman or either of the Chief Executive Officers.

The Works Council shall be informed of the collective decisions made in the same fashion as the stockholders.

TITLE V - COLLECTIVE DECISIONS OF THE STOCKHOLDERS

ARTICLE 15 – Jurisdiction of the stockholders

The only decisions that fall within the jurisdiction of the stockholders or of the sole stockholder are those for which law and these Articles of Association require a collective decision of the stockholders.

ARTICLE 16 – Procedure for decisions of the stockholders or sole stockholder

Collective decisions will be made at meetings convened or on the initiative of the Chairman or of either Chief Executive Officers.

At the discretion of the stockholders or sole stockholder, they are made at a general meeting or by way of minutes of decisions signed by all stockholders or the sole stockholder. They may also be made by any electronic means of telecommunications.

Throughout the liquidation of the Company, collective decisions will be made either at duly convened meetings or on the initiative of the liquidator.

Any stockholder may take part in collective decisions, either personally or via a proxy or from a distance electronically, in conformity with the provisions of law and these Articles of Association, regardless of the number of stocks he owns. He must provide proof of his identity and of the registration of his stocks in his account on the day on which the collective decision is made, at least three business days prior to the meeting.

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Subject to the mandatory legal provisions or unless otherwise provided in these Articles of Association, collective decisions shall be made by a simple majority.
Each stock entitles to one vote. The voting rights attached to the stocks are proportional to the fraction of capital they represent.

ARTICLE 17 - General Meetings

When decisions are made at a General Meeting, the meeting is convened by the Chairman or either of the Chief Executive Officers at the registered office or at any other place mentioned in the notice to attend.
Pursuant to Section L 2323-67 of the French Labor Code, the Works Council may apply to courts in order that an agent may be appointed to convene a general meeting of stockholders in the event of emergency.

General meetings of stockholders are convened by any means of communication at least three (3) days prior to the date of the meeting. The notice must set out the business on the agenda of the meeting.

However, a general meeting may be held forthwith if all the stockholders so agree.

General meetings will be chaired by the Chairman or, in his absence, by a stockholder designated by the general meeting of stockholders.

Stockholders may be represented at general meetings by another stockholder or by a third party. Written proxies may be given by any means, including by fax.

In the event of remote voting by means of an electronic voting form, or of voting by proxy granted by way of an electronic signature, voting will take place in the conditions provided for in the regulations in force, i.e. in the form of a secured electronic signature within the meaning of Decree No. 2001-272 of March 30, 2001, or in the form of a reliable identification procedure guaranteeing its relation with the action it concerns.
The Chairman of the Meeting shall draft minutes of the proceedings which shall contain the information set forth in the article below.

Collective decisions made at general meetings must be recorded in writing in the form of minutes drawn up in a special register which is numbered and initialed. The minutes will be signed by the Chairman of the meeting and by all attending stockholders.

The minutes shall state the date and place of the meeting, and the first and last names and the capacity of the Chairman of the meeting, the identity of all attending or represented stockholders, the documents and information disclosed to the stockholders prior to the meeting, a summary of the proceedings, the text of the resolutions put to vote, and for each resolution, how each stockholder has voted.

ARTICLE 18 – Collective decisions

In the event of a collective decision resulting from the unanimous consent of all of the stockholders as expressed in a deed, said deed shall mention the documents and information disclosed to the stockholders prior thereto. The deed will be signed by all the stockholders or the sole stockholder and recorded in the special register of minutes, duly numbered and initialed as referred to in Article 17 above.

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The minutes shall state the date and place of the meeting, and the first and last names and the capacity of the Chairman of the meeting, the identity of all attending or represented stockholders, the documents and information disclosed to the stockholders prior to the meeting, a summary of the proceedings, the text of the resolutions put to vote, and for each resolution, how each stockholder has voted.

ARTICLE 19 - Right of communication and information

When collective decisions must be made in conformity with the law regarding the Chairman's and/or the Statutory Auditors' reports, the reports shall be sent to the stockholders eight (8) days before the date on which the minutes of the stockholders' decision are drafted.

The stockholders may, at any time, provided they do not interfere with the due course of the Company, consult at the registered office and, if necessary, take copies, for the last three financial years, of the company records, inventory, financial statements, profit and loss accounts for the last five years, consolidated financial statements, if any, and of the Chairman's and Statutory Auditors' reports.

In the event of collective decisions on the financial statements, the stockholders may be provided with the financial statements and with the consolidated financial statements, if any, for the previous year, at the Company's expense.

TITLE VI
ACCOUNTING PERIOD – AUDIT AND APPROVAL OF THE FINANCIAL STATEMENTS – ALLOCATION OF THE PROFIT OR LOSS

ARTICLE 20 – Accounting Period

The accounting period begins on January 1 and ends on December 31 of each year.

At year-end each year, the Board of Directors, in the conditions laid down by the statutes and regulations in force, shall prepare the inventory and the financial statements and draft a written management report.

Said documents will be made available to the Statutory Auditors in the conditions set forth in the statutes and regulations in force.

ARTICLE 21 - Audits

One or more statutory auditors and one or more substitute auditors are appointed and will discharge their duties in conformity with the laws in force.

ARTICLE 22 – Approval of the financial statements

The Chairman shall prepare the financial statements of the year.

Within six months of year-end, the stockholders shall rule on the financial statements by way of a collective decision based on the management report drawn up by the Chairman and on the reports of the statutory auditor or auditors.

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Where consolidated financial statements are prepared, these will be submitted with the group's management report and the statutory auditors' reports when said collective decision is made.

ARTICLE 23 – Allocation and distribution of the profit or loss

The share of each stockholder in the profit and his contribution to losses are proportional to the fraction of capital he owns.

After approving the financial statements and acknowledging the existence of a distributable profit, the stockholders will decide either to distribute the same in its entirety or partially, or to earmark it to one or more of the reserve accounts the appropriation and use of which are determined by the stockholders.

The stockholders may decide, by way of a collective decision, to distribute any sum taken from the retained earnings or from the available reserve funds while expressly stipulating the reserve items from which said amounts were transferred. However, dividends will be taken on a priority basis from the distributable profit of the year.

The procedure for payment of the dividend will be determined by a collective decision of the stockholders or, failing so, by the Chairman.

TITLE VII
LIQUIDATION OF THE COMPANY - DISPUTES

ARTICLE 24 – Liquidation of the Company

Upon the expiry or early winding-up of the Company, a collective decision of the stockholders shall determine the liquidation method and appoint one or more Liquidators whose powers it will specify and who will discharge their duties in accordance with the law.

Where all the stocks are held by one single stockholder, the winding-up of the Company will give rise, when the sole stockholder is a corporate entity, to the transfer of all of the Company's assets to the sole stockholder, without any liquidation procedure, in accordance with the provisions of Section 1844-5 of the French Civil Code.

ARTICLE 25 - DISPUTES

Any dispute related to the Company's affairs which may arise during the life of the Company or during its liquidation, as between the stockholders or as between a stockholder and the Company, will be referred to the Commercial Court having jurisdiction over the place where the registered office is situated.

****

Je soussigné Eric de la HAYE SAINT HILAIRE
Notaire à Paris, certifie
la signature de M. Monique Rouzet LELIÈVRE
apposée ci-dessous
Paris, le 11 octobre 2012

CERTIFIED TRANSLATION
TRUE TO THE ORIGINAL
IN FRENCH, VISAED NE
VARIETUR SUR NO. 12/683
SOISY, October 10, 2012

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APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. *République française* Etats-Unis

Le présent acte public

2. a été signé par Me Saint Hilaire

3. agissant en qualité de Notaire

4. est revêtu du sceau/timbre de Son étude

Attesté

5. à Paris

le 12 OCT. 2012

6. *Le Procureur général près la Cour d'appel de Paris*

Michel LERNOUT

Avocat Général

7. sous n° 66852

8. Sceau :

9. Signature :

"L'Apostille confirme seulement l'authenticité de la signature, du sceau ou timbre sur le document. Elle ne signifie pas que le contenu du document est correct ou que la République française approuve son contenu"

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VINCI Concessions

Société par Actions Simplifiée au capital de 4 306 925 672 euros
Siège social : 9, Place de l'Europe - 92500 Rueil-Malmaison
410 001 952 RCS Nanterre

STATUTS

Edition du 28 septembre 2011

Copie certifiée conforme
VINCI Concessions SAS
Le Directeur Général Délégué

Louis-Roch BURGARD

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TITRE – FORME – DENOMINATION – SIEGE – OBJET – DUREE

ARTICLE 1 - Forme

La Société a été constituée à l'origine sous la forme de Société Anonyme.

Elle a été transformée en Société par actions simplifiée le 21 octobre 2008 suivant décision de l'Assemblée Générale Mixte Ordinaire et Extraordinaire du même jour.

La Société continue d'exister entre les propriétaires des actions existantes et de celles qui seraient créées ultérieurement.

La Société pourra être pluripersonnelle ou unipersonnelle sans que la forme sociale n'en soit modifiée.

Elle est régie par les dispositions légales applicables et par les présents statuts.

ARTICLE 2 - Dénomination sociale

La dénomination sociale est : **VINCI Concessions.**

Sur tous les actes et documents émanant de la Société, la dénomination sociale doit être précédée ou suivie immédiatement des mots «Société par actions simplifiée» ou des initiales «S.A.S.» et de l'énonciation du capital social.

ARTICLE 3 - Siège social

Le siège social est situé à : **9, Place de l'Europe – 92500 Rueil-Malmaison.**

Il peut être transféré par décision du Président qui est habilité à modifier les statuts en conséquence.

ARTICLE 4 - Objet

La Société a pour objet la conception, le financement, la promotion et l'exploitation sous toutes les formes de tous ouvrages et de leurs annexes de quelque nature qu'ils soient. La Société a aussi pour objet l'entreprise, sous toutes ses formes, de tous travaux publics et particuliers ; notamment dans le domaine de l'étude et de la construction de tous ouvrages et leurs annexes de quelque nature qu'ils soient.

A ces effets, elle pourra procéder ou faire procéder, tant pour son propre compte que pour le compte de tous tiers français ou étrangers :

- à la mise en valeur de tous terrains et de tous immeubles et ouvrages ;
- à la prise d'option, l'acquisition, l'échange, le partage, la vente, la location, la concession, la gestion et l'administration de tous terrains et immeubles, tant en surface qu'en tréfonds ;

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- à l'entreprise, sous toutes ses formes, de tous travaux publics et particuliers et de toutes prestations de services ;

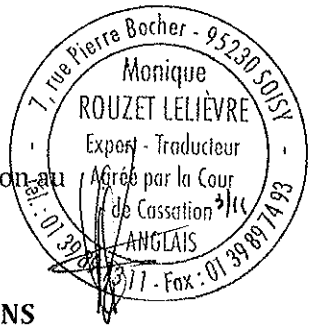
- à la construction, l'acquisition, l'échange, le partage, la vente, la location, la concession, la gestion et l'administration de tous ouvrages publics ou privés, tant en surface qu'en tréfonds ;

- à la constitution de toutes sociétés, sous toutes formes, de tous syndicats, de toutes participations, à la prise de tous intérêts en tous pays et sous quelque forme que ce soit, notamment par voie d'apports, participations, souscriptions ou achat d'actions, d'obligations et tous autres titres ou encore sous forme de commandite dans toutes entreprises ou sociétés ayant un objet principal ou secondaire se rattachant directement ou indirectement à celui de la Société ou de nature à favoriser son développement.

La Société pourra faire lesdites opérations tant en France, dans les départements et territoires français d'Outre Mer qu'à l'étranger, soit seule, soit en participation, soit en négociation sous quelque forme que ce soit, soit directement, soit par cession, location ou régie, soit au courtage et à la commission.

Elle pourra, en outre, faire toutes exploitations, soit par elle-même, soit par tous autres modes sans aucune exception, créer toutes sociétés tant civiles que commerciales, faire tous apports à des sociétés existantes, fusionner ou s'allier avec elles, souscrire, acheter et revendre tous titres et droits sociaux, prendre toutes commandites et faire tous prêts, crédits et avances.

La Société pourra faire toutes opérations industrielles, financières, mobilières ou immobilières se rattachant directement ou indirectement à son objet social, ainsi qu'à tous objets similaires ou connexes ou susceptibles d'en faciliter la réalisation.



ARTICLE 5 - Durée

La société a une durée de quatre-vingt dix-neuf années à compter de son immatriculation au Registre du Commerce et des Sociétés, sauf dissolution anticipée ou prorogation.

TITRE II - CAPITAL SOCIAL - FORME DES ACTIONS - DROITS ET OBLIGATIONS ATTACHES AUX ACTIONS

ARTICLE 6 - Capital social

Le capital social est fixé à la somme de 4 306 925 672 euros. Il est divisé 384.546.935 actions d'une valeur nominale de 11,20 euros chacune, entièrement libérées et toutes de la même catégorie.

ARTICLE 7 - Actions

La Société ne pouvant faire appel public à l'épargne, les valeurs mobilières émises par celle-ci sont obligatoirement nominatives.

Elles sont inscrites en compte conformément à la réglementation en vigueur et aux usages applicables.

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Tout associé peut demander à la Société la délivrance d'une attestation d'inscription en compte.

TITRE III TRANSMISSION ET LOCATION DES ACTIONS - EXCLUSION D' ASSOCIES

Les articles 8 à 11 ci-après ne s'appliquent pas si la société est unipersonnelle.

ARTICLE 8 - Dispositions communes applicables aux cessions d'actions

Définitions

A) **Cession** : signifie toute opération à titre onéreux ou gratuit entraînant le transfert de la pleine propriété, de la nue-propriété ou de l'usufruit des valeurs mobilières émises par la Société, à savoir : cession, transmission, échange, apport en Société, fusion et opération assimilée, cession judiciaire, constitution de trusts, nantissement, liquidation, transmission universelle de patrimoine.

B) **Action** ou **Valeur mobilière** : signifie les valeurs mobilières émises par la Société donnant accès de façon immédiate ou différée et de quelque manière que ce soit, à l'attribution d'un droit au capital et/ou d'un droit de vote de la Société, ainsi que les bons et droits de souscription et d'attribution attachés à ces valeurs mobilières.

C) **Opération de Reclassement** signifie toute opération de Cession des actions de la Société intervenant à l'intérieur de chacun des groupes d'associés, constitué par chaque Société associée et les sociétés ou entités qu'elle contrôle ou qui la contrôlent directement ou indirectement au sens de l'article L 233-3 du Code de commerce, ou qui sont contrôlées par la même société.

Modalités de transmission des actions

La transmission des actions émises par la Société s'opère par un virement de compte à compte sur production d'un ordre de mouvement. Ce mouvement est inscrit sur le registre des mouvements coté et paraphé.

ARTICLE 9 - Préemption

1. Toute cession des actions de la Société même entre associés est soumise au respect du droit de préemption conféré aux associés et ce, dans les conditions ci-après.

2. L'associé Cédant notifie au Président, et à chacun des associés par lettre recommandée avec demande d'avis de réception son projet de cession mentionnant :

- le nombre d'actions concernées ;
- les informations sur le cessionnaire envisagé : nom, prénoms, adresse et nationalité ou s'il s'agit d'une personne morale dénomination, siège social, numéro RCS, montant et répartition du capital, identité de ses dirigeants sociaux ;
- le prix et les conditions de la cession projetée.

La date de réception de la notification de l'associé Cédant fait courir un délai de trois (3) mois, à l'expiration duquel, si les droits de préemption n'ont pas été exercés en totalité sur les actions concernées, le Cédant pourra réaliser librement la cession projetée, sous réserve de respecter la procédure d'agrément prévue à l'article 'Agrément' des statuts.

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3. Chaque associé bénéficie d'un droit de préemption sur les actions faisant l'objet du projet de cession. Ce droit de préemption est exercé par notification au Président dans les deux (2) mois au plus tard de la réception de la notification ci-dessus visée. Cette notification est effectuée par lettre recommandée avec demande d'avis de réception précisant le nombre d'actions que chaque associé souhaite acquérir.

4. A l'expiration du délai de deux mois prévu au 3 ci-dessus et avant celle du délai de trois mois fixé au 2 ci-dessus, le Président doit notifier à l'associé Cédant par lettre recommandée avec demande d'avis de réception les résultats de la préemption.

Si les droits de préemption exercés sont supérieurs au nombre d'actions dont la cession est envisagée, les actions concernées sont réparties par le Président entre les associés qui ont notifié leur volonté d'acquérir au prorata de leur participation au capital de la Société et dans la limite de leurs demandes.

Si les droits de préemption sont inférieurs au nombre d'actions dont la cession est envisagée, les droits de préemption sont réputés n'avoir jamais été exercés et l'associé Cédant est libre de réaliser la cession au profit du cessionnaire mentionné dans sa notification, sous réserve de respecter la procédure d'agrément prévue à l'article *"Agrément"* ci-après.
5. En cas d'exercice du droit de préemption, la cession des actions devra être réalisée dans un délai de deux (2) mois moyennant le prix mentionné dans la notification de l'associé Cédant.

ARTICLE 10 - Agrément

1. Les actions ne peuvent être cédées, à l'exception des cessions entre associés ou des opérations de reclassements mentionnées ci-après, qu'avec l'agrément préalable de la collectivité des associés.

2. La demande d'agrément doit être notifiée par lettre recommandée avec demande d'avis de réception adressée au Président de la Société et indiquant le nombre d'actions dont la cession est envisagée, le prix de la cession, les nom, prénoms, adresse, nationalité de l'acquéreur ou s'il s'agit d'une personne morale, son l'identification complète (dénomination, siège social, numéro RCS, montant et répartition du capital, identité de ses dirigeants sociaux). Cette demande d'agrément est transmise par le Président aux associés.

3. Le Président dispose d'un délai de trois (3) mois à compter de la réception de la demande d'agrément pour faire connaître au Cédant la décision de la collectivité des associés. Cette notification est effectuée par lettre recommandée avec demande d'avis de réception. A défaut de réponse dans le délai ci-dessus, l'agrément sera réputé acquis.

4. Les décisions d'agrément ou de refus d'agrément ne sont pas motivées.

5. En cas d'agrément, l'associé Cédant peut réaliser librement la cession aux conditions notifiées dans sa demande d'agrément. Le transfert des actions doit être réalisé au plus tard dans les trente jours de la décision d'agrément : à défaut de réalisation du transfert dans ce délai, l'agrément serait frappé de caducité.

6. En cas de refus d'agrément, la Société est tenue dans un délai de un (1) mois à compter de la notification du refus d'agrément, d'acquérir ou de faire acquérir les actions de l'associé Cédant par un ou plusieurs tiers agréés selon la procédure ci-dessus prévue.

Si le rachat des actions n'est pas réalisé du fait de la Société dans ce délai d'un mois; l'agrément du ou des cessionnaires est réputé acquis.

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En cas d'acquisition des actions par la Société, celle-ci est tenue dans un délai de six (6) mois à compter de l'acquisition de les céder ou de les annuler.

Le prix de rachat des actions par un tiers ou par la Société est déterminé d'un commun accord entre les parties. A défaut d'accord, le prix sera déterminé à dire d'expert, dans les conditions de l'article 1843-4 du Code civil.

Opération de Reclassement simple au sein d'un même groupe d'associés

Les cessions ou transmissions d'actions de la Société résultant d'une opération de reclassement simple au sein d'un même groupe d'associés, sont libres.

Elles devront être notifiées au Président et aux associés par lettre recommandée avec demande d'avis de réception, 15 jours au moins avant la réalisation de l'opération de reclassement envisagée. La notification devra être accompagnée d'une note explicative justifiant de la réalité de l'appartenance du cessionnaire au groupe de l'associé Cédant et qu'il ne s'agit donc que d'une opération de reclassement simple.

ARTICLE 11 - Nullité des cessions d'actions

Toutes les cessions d'actions effectuées en violation des dispositions des articles 8 à 10 des présents statuts sont nulles.

TITRE IV - ADMINISTRATION DE LA SOCIETE

ARTICLE 12 - Président de la Société

La Société est représentée, dirigée et administrée par un Président, personne morale ou personne physique, associée ou non associée de la Société.

Désignation

Le Président, personne morale, devra être représenté par une personne physique.
Le Président est désigné par décision collective des associés.

Durée des fonctions

Le Président est nommé pour une durée de six (6) ans. Il peut résilier ses fonctions à tout moment à charge pour lui d'en informer les associés.

Le Président peut être révoqué ad nutum et sa révocation n'ouvre droit à aucune indemnité. Elle est prononcée par décision unanime des associés.

Rémunération

La rémunération du Président est fixée par décision collective des associés.

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Le Président dirige la Société et la représente à l'égard des tiers. A ce titre, il est investi de tous les pouvoirs nécessaires pour agir en toutes circonstances au nom de la Société, dans la limite de l'objet social et des pouvoirs expressément dévolus par les dispositions légales et les présents statuts aux décisions collectives des associés.

Le Président est autorisé à émettre des cautions, avals et garanties au nom de la Société, avec faculté de déléguer, dans la limite d'un plafond global annuel pour la Société de 200 millions d'euros, pour une durée d'un an expirant au plus tard à la date de la décision appelé à approuver les comptes de l'exercice, étant précisé que ce plafond de 200 millions d'euros ne s'applique pas aux cautions, avals, et garanties qui pourraient être délivrées au profit de toutes administrations fiscales et douanières au cours de cette période. Au delà de ce plafond de 200 millions d'euros, l'émission de cautions, avals et garanties devra faire l'objet d'une autorisation des associés ou de l'associé unique.

Le Président peut, sous sa responsabilité, consentir toutes délégations de pouvoirs à tout tiers pour un ou plusieurs objets déterminés.

Le Président peut nommer une ou plusieurs personnes physiques ayant délégation permanente pour certifier conforme les statuts de la Société, les copies ou extraits des procès-verbaux des délibérations des associés ou de l'associé unique, des décisions du Président et signer pour ordre les convocations aux éventuelles Assemblées Générales de la Société.

ARTICLE 13 - Directeurs Généraux Délégués

Désignation

La Société est également dirigée par un ou deux Directeurs Généraux Délégués qui sont obligatoirement des personnes physiques.

Le(s) Directeur(s) Général(aux) Délégué(s) est (sont) nommé(s) par le Président. Il(s) peut (peuvent) bénéficier d'un Contrat de travail au sein de la Société.

Durée des fonctions

Le(s) Directeur(s) Général(aux) Délégué(s) est (sont) nommé(s) pour la durée du mandat du Président. En cas de cessation des fonctions du président, le(s) directeur(s) Général(aux) Délégué(s) restent en fonction jusqu'à nomination d'un nouveau Président.

Il(s) peut (peuvent) être révoqué(s) à tout moment, et sans qu'un motif soit nécessaire, par décision du Président constatée dans un procès-verbal.

La révocation des fonctions de Directeur Général Délégué n'ouvre droit à aucune indemnité.

Rémunération

Le(s) Directeur(s) Général(aux) Délégué(s) peut (peuvent) se voir allouer une rémunération au titre de ses (leurs) fonctions. Cette rémunération est fixée par le Président. Les modifications de la rémunération du Directeur Général Délégué interviennent dans les mêmes formes.

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Pouvoirs

Sauf limitation fixée par la décision de nomination ou par une décision ultérieure, le(s) Directeur(s) Général(aux) Délégué(s) dispose(nt) des mêmes pouvoirs que le Président et notamment du pouvoir de représenter la Société à l'égard des tiers.

Le(s) Directeur(s) Général(aux) Délégué(s) sont autorisés à émettre des cautions, avals et garanties au nom de la Société, dans la limite d'un plafond global annuel pour la Société de 200 millions d'euros, pour une durée d'un an expirant au plus tard à la date de la décision appelée à approuver les comptes de l'exercice, étant précisé que ce plafond de 200 millions d'euros ne s'applique pas aux cautions, avals, et garanties qui pourraient être délivrées au profit de toutes administrations fiscales et douanières au cours de cette période. Au delà de ce plafond de 200 millions d'euros, l'émission de cautions, avals et garanties devra faire l'objet d'une autorisation des associés ou de l'associé unique.

Le(s) Directeur(s) Général(aux) Délégué(s) peut (peuvent), sous sa (leur) responsabilité, consentir toutes délégations de pouvoirs à tout tiers pour un ou plusieurs objets déterminés.

ARTICLE 14 - Représentation sociale

Les délégués du Comité d'entreprise exercent les droits prévus par l'article L2323-66 du Code du travail auprès du Président ou d'un des Directeurs Généraux Délégués.

Le Comité d'entreprise doit être informé des décisions collectives dans les mêmes conditions que les associés.

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TITRE V - DECISIONS COLLECTIVES DES ASSOCIES

ARTICLE 15 - Compétence des associés

Les seules décisions qui relèvent de la compétence des associés ou de l'associé unique sont celles pour lesquelles la loi et les présents statuts imposent une décision collective des associés.

ARTICLE 16 - Modalités des décisions des associés ou de l'associé unique

Les décisions collectives sont prises sur convocation ou à l'initiative du Président ou d'un Directeur Général Délégué.

Elles résultent, au choix des associés ou de l'associé unique, soit de la réunion d'une assemblée soit d'un procès-verbal de décisions signé par tous les associés ou par l'associé unique. Elles peuvent également être prises par tous moyens de télécommunication électronique.
Pendant la période de liquidation de la Société, les décisions collectives sont prises sur convocation ou à l'initiative du Liquidateur.

Tout associé a le droit de participer aux décisions collectives, personnellement ou par mandataire, ou à distance, par voie électronique, dans les conditions prévues par la loi et les présents statuts, quel que soit le nombre d'actions qu'il possède. Il doit justifier de son identité et de l'inscription en compte de ses actions au jour de la décision collective trois jours ouvrés au

moins avant la réunion de l'assemblée.

Sous réserve des dispositions impératives de la loi, ou de stipulations contraires des présents statuts, les décisions collectives sont adoptées à la majorité simple.
Chaque action donne droit à une voix. Le droit de vote attaché aux actions est proportionnel à la quote-part du capital qu'elles représentent.

ARTICLE 17 - Assemblées

Lorsque les décisions sont prises en Assemblée Générale, celle-ci se réunit sur convocation du Président ou d'un des Directeurs Généraux Délégués au siège social ou en tout autre lieu mentionné dans la convocation.
Selon l'article L 2323-67 du Code du travail, le Comité d'entreprise peut demander en justice la désignation d'un mandataire chargé de convoquer l'assemblée générale des associés en cas d'urgence.

La convocation est effectuée par tous moyens de communication trois (3) jours au moins avant la date de la réunion. Elle indique l'ordre du jour.

Toutefois, l'assemblée peut se réunir sans délai si tous les associés y consentent.

L'assemblée est présidée par le Président ou, en son absence par un associé désigné par l'assemblée.

Les associés peuvent se faire représenter aux délibérations de l'assemblée par un autre associé ou par un tiers. Les pouvoirs peuvent être donnés par tous moyens écrits et notamment par télécopie.

En cas de vote à distance au moyen d'un formulaire de vote électronique, ou d'un vote par procuration donné par signature électronique, celui-ci s'exerce dans les conditions prévues par la réglementation en vigueur, soit sous la forme d'une signature électronique sécurisée au sens du décret N°2001-272 du 30 mars 2001, soit sous la forme d'un procédé fiable d'identification garantissant son lien avec l'acte auquel elle se rattache.
Le Président de Séance établit un procès-verbal des délibérations devant contenir les mentions prévues à l'article ci-après.

Les décisions collectives prises en assemblée doivent être constatées par écrit dans des procès-verbaux établis sur un registre spécial coté et paraphé. Les procès-verbaux sont signés par le Président de l'Assemblée et par les associés présents.

Les procès-verbaux doivent indiquer la date et le lieu de la réunion, les nom, prénoms et qualité du Président de Séance, l'identité des associés présents et représentés, les documents et informations communiqués préalablement aux associés, un résumé des débats, ainsi que le texte des résolutions mises aux voix et pour chaque résolution le sens du vote de chaque associé.

ARTICLE 18 - Décisions collectives

Lorsque les décisions collectives résultent du consentement unanime de tous les associés exprimé dans un acte, cet acte doit mentionner les documents et informations communiqués préalablement aux associés. Il est signé par tous les associés ou l'associé unique et retranscrit sur le registre spécial des procès verbaux, coté et paraphé visé à l'article 17 ci-dessus.

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Les procès-verbaux doivent indiquer la date et le lieu de la réunion, les nom, prénoms et qualité du Président de Séance, l'identité des associés présents et représentés, les documents et informations communiqués préalablement aux associés, un résumé des débats, ainsi que le texte des résolutions mises aux voix et pour chaque résolution le sens du vote de chaque associé.

ARTICLE 19 - Droit de communication et d'information

Lorsque les décisions collectives doivent être prises en application de la loi sur le ou les rapports du Président et/ou des Commissaires aux comptes, le ou les rapports doivent être communiqués aux associés huit (8) jours avant la date d'établissement du procès-verbal de la décision des associés.

Les associés peuvent à toute époque mais sous réserve de ne pas entraver la bonne marche de la Société, consulter au siège social, et, le cas échéant prendre copie, pour les trois derniers exercices, des registres sociaux, de l'inventaire et des comptes annuels, du tableau des résultats des cinq derniers exercices, des comptes consolidés, s'il y a lieu, des rapports de gestion du Président et des rapports des Commissaires au comptes.

S'agissant de la décision collective statuant sur les comptes annuels, les associés peuvent obtenir communication aux frais de la Société des comptes annuels et, le cas échéant, des comptes consolidés du dernier exercice.

TITRE VI – EXERCICE SOCIAL - CONTROLE ET APPROBATION DES COMPTES – AFFECTATION ET REPARTITION DES RESULTATS

ARTICLE 20 - Exercice social

L'exercice social commence le 1er janvier et finit le 31 décembre.

A la clôture de chaque exercice le Conseil d'Administration, dans les conditions prescrites par les dispositions législatives et réglementaires en vigueur, dresse l'inventaire, les comptes annuels et établit un rapport de gestion écrit.

Ces documents sont mis à la disposition des Commissaires aux Comptes dans les conditions prévues par les dispositions législatives et réglementaires en vigueur.

ARTICLE 21 - Contrôle des comptes

Un ou plusieurs Commissaires aux Comptes titulaires et suppléants sont nommés et exercent leur mission conformément à la loi.

ARTICLE 22 - Approbation des comptes annuels

Le Président établit les comptes annuels de l'exercice.

Dans les six mois de la clôture de l'exercice, les associés doivent statuer par décision collective sur les comptes annuels, au vu du rapport de gestion du Président et des rapports du ou des Commissaires aux comptes.

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Lorsque des comptes consolidés sont établis, ils sont présentés avec le rapport de gestion du groupe et les rapports des Commissaires aux comptes, lors de cette décision collective.

ARTICLE 23 - Affectation et répartition des résultats

La part de chaque associé dans les bénéfices et sa contribution aux pertes est proportionnelle à sa quotité dans le capital social.

Après approbation des comptes et constatation de l'existence d'un bénéfice distribuable, les associés décident sa distribution, en totalité ou en partie, ou son affectation à un ou plusieurs postes de réserves dont ils règlent l'affectation et l'emploi.

La décision collective des associés peut décider la mise en distribution de toute somme prélevée sur le report à nouveau bénéficiaire ou sur les réserves disponibles en indiquant expressément les postes de réserves sur lesquels ces prélèvements sont effectués. Toutefois, les dividendes sont prélevés par priorité sur le bénéfice distribuable de l'exercice.

La décision collective des associés ou, à défaut, le Président, fixe les modalités de paiement des dividendes.

TITRE VII – LIQUIDATION DE LA SOCIETE – CONTESTATIONS

ARTICLE 24 - Liquidation de la Société

A l'expiration de la Société ou en cas de dissolution anticipée, une décision collective des associés décide du mode de liquidation et nomme un ou plusieurs Liquidateurs dont elle détermine les pouvoirs et qui exercent leurs fonctions conformément à la loi.

Si toutes les actions sont réunies en une seule main, la dissolution de la Société entraîne, lorsque l'associé unique est une personne morale, la transmission universelle du patrimoine à l'associé unique, sans qu'il y ait lieu à liquidation, conformément aux dispositions de l'article 1844-5 du Code civil.

ARTICLE 25 – Contestations

Les contestations relatives aux affaires sociales, survenant pendant la durée de la Société ou au cours de sa liquidation entre les associés ou entre un associé et la Société, seront soumises au tribunal de commerce du lieu du siège social.

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For A
CERTIFIED TRANSLATION
TRUE TO THE ORIGINAL
IN FRENCH, VISAED NE
VARIETUR SUB NO. 12/683
SOISY, October 10, 202

certified copy of the

1, rue Pierre Bocher - 95230 SOISY
Monique
ROUZET LELIÈVRE
Expert - Traducteur
Agréé par la Cour
de Cassation
ANGLAIS
Tél. : 01 39 89 13 11 - Fax : 01 39 89 74 93

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Certified copy of the original
(signature)

DECISIONS OF MR Xavier HUILLARD,

Chairman of VINCI Concessions

I, Xavier Huillard, acting in the capacity of Chairman of VINCI Concessions, a *société par actions simplifiée* (simplified joint stock company) with capital of € 3,275,481,440, whose registered office is situated at 1, cours Ferdinand de Lesseps, Rueil-Malmaison (92500), France, and which is registered with the Registrar of Trade and Commercial Companies of Nanterre under number 410 001 952,

Take the following decisions:

Appointment of a Chief Executive Officer and powers

The Chairman has decided to appoint Mr. Henri Stouff as Chief Executive Officer for the duration of his chairmanship, i.e. until the end of the General Meeting of Stockholders which will rule on the financial statements for the year ended as of December 31, 2013.

In his capacity as Chief Executive Officer and in accordance with Article 13 of the Articles of Association of the company, Mr. Henri Stouff will have the same managerial and representation powers as the Chairman in order to act in any circumstances on behalf of the Company in all fields pertaining to French motorway concessions.

Mr. Henri Stouff shall not receive any remuneration for the discharge of his duties as Chief Executive Officer of the Company.

Appointment of a Chief Executive Officer and powers

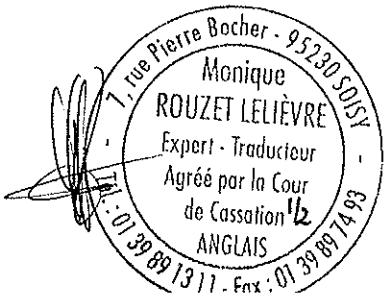
The Chairman has decided to appoint Mr. Louis-Roch Burgard as Chief Executive Officer for the duration of his chairmanship, i.e. until the end of the General Meeting of Stockholders which will rule on the financial statements for the year ended as of December 31, 2013.

In his capacity as Chief Executive Officer and in accordance with Article 13 of the Articles of Association of the company, Mr. Louis-Roch Burgard will have the same managerial and representation powers as the Chairman in order to act in any circumstances on behalf of the Company, in all fields but those pertaining to French motorway concessions which shall lie within the jurisdiction of Mr. Henri Stouff, Chief Executive Officer.

Mr. Louis-Roch Burgard shall not receive any remuneration for the discharge of his duties as Chief Executive Officer of the Company.

Authorisation to issue sureties, endorsements and guarantees

In accordance with Article 13 of the Articles of Association of the Company, the Chairman has specified that the Chief Executive Officers can issue sureties, endorsements and guarantees within the limit of a total annual amount for the company of €200 million, for a duration of one year expiring at the latest on the date of the meeting called to approve the financial statements for 2008, it being understood that this limit of €200 million does not apply to sureties, endorsements and guarantees which may be issued in favor of any tax and Customs administrations during this period. Beyond this limit of €200 million, the issuance of sureties, endorsements and guarantees must be submitted to the approval of the stockholders or sole stockholder.



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Powers for the purpose of formalities

The Chairman has decided to give a permanent delegation of powers to Mrs. Brigitte Simon and Mrs. Sophie Doré, with the right to act separately, to certify copies of the Articles of Association of the Company, copies or extracts of the minutes of the proceedings of the stockholders or of the sole stockholder and of the decisions of the Chairman and to sign by authority the notices to attend the General Meetings, if any, of the Company.

Signed in Rueil-Malmaison
In quadruplicate
On October 21, 2008

Xavier HUILLARD
Chairman
(signature)

CERTIFIED TRANSLATION
TRUE TO THE certified copy of the
IN FRENCH, VISAED NE
VARIETUR SUB NO. 12/685
SOISY, October 10, 2012

Je soussigné Eric de la HAYE SAINT HILAIRE
Notaire à Paris, certifie
la signature de M. Monique Rouzet Lelièvre
apposée ci-contre
Paris, le 11 octobre 2012

7, rue Pierre Bocher - 95230 SOISY
Monique ROUZET LELIÈVRE
Expert - Traducteur
Agréé par la Cour de Cassation
ANGLAIS
Tél. : 01 39 89 13 11 - Fax : 01 39 89 74 93

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Certifié conforme à l'original

DECISIONS DE MONSIEUR Xavier HUILLARD,

Président de VINCI Concessions

Je soussigné Xavier HUILLARD, agissant en qualité de Président de VINCI Concessions, Société par actions simplifiée au capital de 3 275 481 440 euros, dont le siège social est à Rueil-Malmaison (92500) 1, cours Ferdinand de Lesseps, immatriculée au Registre du Commerce et des Sociétés de NANTERRE sous le n° 410 001 952,

Prends les décisions suivantes :

Nomination d'un Directeur Général Délégué et pouvoirs

Le président décide de nommer Monsieur Henri STOUFF en qualité de Directeur Général Délégué pour la durée de son mandat de Président, soit jusqu'à l'issue de l'Assemblée Générale des associés qui statuera sur les comptes de l'exercice clos le 31 décembre 2013.

En sa qualité de Directeur Général Délégué et conformément à l'article 13 des statuts de la société, Monsieur Henri STOUFF dispose des mêmes pouvoirs de direction et de représentation de la société que le Président pour agir en toutes circonstances au nom de la Société dans les domaines relevant des concessions autoroutières françaises.

Monsieur Henri STOUFF ne percevra pas de rémunération pour l'exercice de ses fonctions de Directeur Général Délégué de la Société.

Nomination d'un Directeur Général Délégué et pouvoirs

Le Président décide de nommer Monsieur Louis-Roch BURGARD en qualité de Directeur Général Délégué pour la durée de son mandat de Président, soit jusqu'à l'issue de l'Assemblée Générale des associés qui statuera sur les comptes de l'exercice clos le 31 décembre 2013.

En sa qualité de Directeur Général Délégué et conformément à l'article 13 des statuts de la société, Monsieur Louis-Roch BURGARD dispose des mêmes pouvoirs de direction et de représentation de la société que le Président pour agir en toutes circonstances au nom de la Société, à l'exception des domaines relevant des concessions autoroutières françaises qui relèveront de la responsabilité de Monsieur Henri STOUFF, Directeur Général Délégué.

Monsieur Louis-Roch BURGARD ne percevra pas de rémunération pour l'exercice de ses fonctions de Directeur Général Délégué de la Société.

Autorisation d'émettre des cautions, avals et garanties

Conformément à l'article 13 des statuts de la Société, le Président précise que les Directeurs généraux Délégués pourront émettre des cautions, avals et garanties dans la limite d'un plafond global annuel pour la société de 200 millions d'euros, pour une durée d'un an expirant au plus tard à la date de la décision appelée à approuver les comptes de l'exercice 2008, étant précisé que ce plafond de 200 millions d'euros ne s'applique pas aux cautions, avals, et garanties qui pourraient être délivrées au profit de toutes administrations fiscales et douanières au cours de cette période. Au delà de ce plafond de 200 millions d'euros, l'émission de cautions, avals et garanties devra faire l'objet d'une autorisation des associés ou de l'associé unique.

1, rue Pierre Bocher - 95230 SOISY
Monique
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Expert - Traducteur
Agréé par la Cour
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Pouvoirs pour formalités

Le Président donne délégation permanente à Mesdames Brigitte SIMON et Sophie DORÉ, avec faculté d'agir séparément, pour certifier conforme les statuts de la Société, les copies ou extraits des procès-verbaux des délibérations des associés ou de l'associé unique, des décisions du Président et signer pour ordre les convocations aux éventuelles Assemblées Générales de la Société.

Fait à Rueil-Malmaison
En 4 exemplaires
Le 21 octobre 2008

Xavier HUILLARD
Président

For A
CERTIFIED TRANSLATION
TRUE TO THE ORIGINAL
IN FRENCH, VISAED NE
VARIETUR SUB NO. 12/685
SOISY, October 10, 2012

Monique ROUZET LELIÈVRE
Expert - Traducteur
Agréé par la Cour de Cassation
ANGLAIS
2 rue Pierre Bocher - 95230 SOISY
01 39 89 13 11 - Fax : 01 39 89 74 93

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October 19, 2012

Indiana Finance Authority
One North Capitol Ave., Suite 900
Indianapolis, IN 46204

Re: ORB East End Crossing Project
Walsh Investors, LLC
Additional Information – Response to B. 4.

Dear Sir or Madam,

Please accept this letter and its enclosures as the response of Walsh Investors, LLC to paragraph B. 4. of the Proposal section entitled "Additional Information to be Provided with Proposal Letter." The requested information for Walsh Investors, LLC is as follows:

Walsh Investors, LLC is a limited liability company comprised of two members holding a 50/50 ownership interest:

MW Partners, L.P. **50%**
929 W. Adams Street
Chicago, IL 60607

DW Partners, L.P. **50%**
929 W. Adams Street
Chicago, IL 60607

The Certified Limited Liability Company Operating Agreement for Walsh Investors, LLC is enclosed.

A Resolution of Walsh Investors, LLC showing evidence of signature authority is enclosed.

If you have any questions regarding the subject information or if you require any additional information, please do not hesitate to contact us. Thank you.

Sincerely,
Walsh Investors, LLC

Matthew M. Walsh
Encls.

929 West Adams Street, Chicago, Illinois 60607
P: 312-563-5400 F: 312-563-5466 www.walshgroup.com
An Equal Opportunity Employer

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Resolution By Special Meeting of the Members of Walsh Investors, LLC

We, the undersigned, being all of the Members of Walsh Investors, LLC, a limited liability company formed under the laws of the State of Delaware ("Company"), do hereby certify that the following is a correct and true copy of a resolution duly and unanimously adopted by the Members of Walsh Investors, LLC, at a meeting held the 19th day of October, 2012, at which time the following resolutions were duly adopted in accordance with the procedures set forth in the limited liability agreement of the Company and that said resolutions have not been amended, rescinded or revoked, and are in no way in conflict with any of the provisions of the Company's limited liability agreement.

BE IT RESOLVED that the following individuals or such other persons as this Company may designate from time to time, either in writing or by their apparent authority, are and shall hereinafter be duly authorized to execute legal documents which bind Walsh Investors, LLC, including but not limited to bid documents, proposals, contracts, change orders, applications for payment, waivers of lien, financial, banking and lending documents and all other documents necessary and appurtenant to the business of Walsh Investors, LLC:

DANIEL J. WALSH
MATTHEW M. WALSH
GREGORY A. CIAMBRONE

BE IT FURTHER RESOLVED that the foregoing resolution shall continue in force until express written notice of its rescission or modification has been received.

IN WITNESS WHEREOF, We have hereunto set our hand and the Seal of the Walsh Investors, LLC this 19th day of October, 2012.

By: **DW Partners, L.P.**, Member

Signed: _____
Daniel J. Walsh
Managing Partner

(SEAL)

By: **MW Partners, L.P.**, Member

Signed: _____
Matthew M. Walsh
Managing Partner

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CERTIFICATE OF AUTHENTICITY
OPERATING AGREEMENT
WALSH INVESTORS, LLC

The undersigned, **DW Partners, L.P. and MW Partners, L.P.**, the duly appointed and acting Members of **Walsh Investors, LLC**, a limited liability company duly organized and existing under the laws of the State of Delaware (the "Company"), DO UNANIMOUSLY HEREBY CERTIFY on this date of October 19, 2012, THAT:

Attached to this Certificate is a true, complete and correct copy of the Operating Agreement of the Company and any amendments thereto, and such Operating Agreement remains in full force and effect as of the date hereof.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Authenticity as of the date first written above.

By: **DW Partners, L.P.**, Member

Signed: _____
Daniel J. Walsh
Managing Partner

By: **MW Partners, L.P.**, Member

Signed: _____
Matthew M. Walsh
Managing Partner

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LIMITED LIABILITY COMPANY OPERATING AGREEMENT
Of
WALSH INVESTORS, L.L.C.

This Limited Liability Company Operating Agreement of **WALSH INVESTORS, L.L.C.**, is made as of January 27, 2000, by and between **MW PARTNERS, L.P.**, an Illinois limited partnership ("**MW**"), and **DANIEL J. WALSH** ("**DJW**").

A. The parties hereto wish to organize and form a limited liability company ("**Company**") under the laws of the State of Delaware, and in consideration therewith wish to set forth their agreements as stated herein.

B. The parties hereto, on the terms, provisions and conditions contained in this Agreement, wish to organize the Company for the (i) acquisition, development, ownership, management, operation, leasing, mortgaging and selling of real estate within the United States, (ii) investing in, becoming a partner, member or shareholder of or making loans to entities acquiring, developing, owning, managing, operating, leasing or selling real estate within the United States, and (iii) any and all matters incident to the foregoing that are agreed to by the Members.

NOW, THEREFORE, in consideration of (i) the foregoing Recitals, which are deemed to form a part of this Agreement as if fully restated herein, (ii) the covenants and conditions herein contained, and (iii) other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MW and DJW, intending to be legally bound hereby, agree as follows:

ARTICLE I

DEFINED TERMS

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Article I shall, for the purposes of this Agreement, have the meanings herein specified.

"Act" means the Delaware Limited Liability Company Act, as amended from time to time.

"Affiliate" means, with respect to a specified Person, any Person that directly or indirectly controls, is controlled by, or is under common control with, the specified Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

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"Agreement" means this Limited Liability Company Operating Agreement, as amended, modified, supplemented or restated from time to time.

"Articles" means the Articles of Organization and any and all amendments thereto and restatements thereof filed on behalf of the Company with the office of the Secretary of State of the State of Delaware pursuant to the Act.

"Assignee" means any Person who is an assignee of a Member's interest in the Company, or any part thereof, and who does not become a Member pursuant to Section 11.1 hereof.

"Capital Account" means, with respect to any Member, the account maintained for such Member in accordance with the provisions of Section 4.4 hereof.

"Capital Contribution" means, with respect to each Member, the aggregate amount of (i) money contributed to the Company by that Member, and (ii) the initial fair market value of any property (other than money) contributed to the Company pursuant to Section 4.1 hereof with respect to the Units held by such Member. In the case of a Member who acquires an interest in the Company by virtue of an assignment in accordance with the terms of this Agreement, "Capital Contribution" has the meaning set forth in Article IV hereof.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding federal tax statute enacted after the date of this Agreement. A reference to a specific Section (§) of the Code refers not only to such specific section but also to any corresponding provision of any federal tax statute enacted after the date of this Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Agreement containing such reference.

"Company" means Walsh Investors, L.L.C., the limited liability company hereby established under and pursuant to the Act and this Agreement.

"Covered Person" means a Member, any Affiliate of a Member, any officers, directors, members, partners, employees, representatives or agents of a Member, or any employee or agent of the Company or its Affiliates.

"Fiscal Year" means (i) the period commencing upon the formation of the Company and ending on December 31, 2000, (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31, or (iii) any portion of the period described in Clause (ii) of this sentence for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction pursuant to Article VI hereof.

"Liquidating Trustee" has the meaning set forth in Section 12.3 hereof.

"Losses" means, for each Fiscal Year, the net losses of the Company for such Fiscal Year, determined on the cash method of accounting.

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"Member" means any Persons named as a Member of the Company on Schedule A hereto and includes any Person admitted as an Additional Member or a Substitute Member pursuant to the provisions of this Agreement, and "Members" means two (2) or more of such Persons when acting in their capacities as members of the Company. For purposes of the Act, the Members shall constitute one (1) class or group of members.

"Net Cash Flow" means, for each Fiscal Year or other period of the Company, the gross cash receipts of the Company from all sources, but excluding any amounts, such as gross receipts taxes, that are held by the Company as a collection agent or in trust for others or that are otherwise not unconditionally available to the Company, less all amounts paid by or for the account of the Company during the same Fiscal Year or other period (including, without limitation, payments of principal and interest on any Company indebtedness), and less any amounts determined by the unanimous vote of all of the Members to be necessary to provide a reasonable reserve for working capital needs or any other contingencies of the Company. Net Cash Flow shall be determined in accordance with the cash receipts and disbursements method of accounting and otherwise in accordance with generally accepted accounting principles, consistently applied. Net Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, depletion, similar allowances or other non-cash items, but shall be increased by any reduction of reserves previously established.

"Person" means any individual, association, partnership (general or limited), joint venture, trust, estate, limited liability company or partnership, or other legal entity or organization.

"Profits" means, for each Fiscal Year, the net profits of the Company for such Fiscal Year, determined on the cash method of accounting.

"Property" means (i) any and all real estate or interest(s) in real estate owned by the Company, including, but not limited to, leases, mortgages, easements and the like, (ii) membership, shareholder, partner or beneficiary interests of the Company in any entity, and (iii) all contracts, agreements and other tangible and intangible benefits owned by the Company.

"Purpose" has the meaning set forth in Section 3.1 hereof.

"Substitute Member" means a Person who is admitted to the Company as a Member pursuant to Section 11.1 hereof, and who is named as a Member on Schedule A to this Agreement.

"Tax Matters Partner" has the meaning set forth in Section 9.1 hereof.

"Treasury Regulations" means the income tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

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"Unit(s)" means an interest in the Company representing such fractional part of the interest of all Members pursuant to this Agreement as is equal to the quotient of one (1) divided by the total number of Units.

Section 1.2. Headings. The headings and subheadings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

ARTICLE II

THE COMPANY

Section 2.1. Formation.

(a) The Members, by execution of this Agreement and the filing of the Articles, hereby enter into and form the Company as a limited liability company under and pursuant to the Act.

(b) The name and mailing address of each Member shall be listed on Schedule A attached hereto. The Company shall be required to update Schedule A from time to time as necessary to accurately reflect the information therein. Any amendment or revision to Schedule A made in accordance with this Agreement shall not be deemed an amendment to this Agreement. Any reference in this Agreement to Schedule A shall be deemed to be a reference to Schedule A as amended and in effect from time to time.

Section 2.2. Name. The name of the Company formed and continued hereby is Walsh Investors, L.L.C.

Section 2.3. Term. The term of the Company commenced on the date the Articles were filed in the office of the Secretary of State of the State of Delaware and shall continue until December 31, 2050, unless dissolved before such date in accordance with the provisions of this Agreement.

Section 2.4. Registered Agent and Office. The Company's registered agent and office in the State of Delaware shall be Lexis Document Services, Inc., 30 Old Rudnick Lane, Suite 100, Dover, Kent County, Delaware. The Company's registered agent and office for business other than in the State of Delaware shall be Larry Kibbon, c/o Walsh Construction Company of Illinois, 929 West Adams Street, Chicago, Illinois 60607. At any time, the Members, by unanimous vote, may designate another registered agent and/or registered office.

Section 2.5. Principal Place of Business. The principal place of business of the Company in the State of Delaware shall be 30 Old Rudnick Lane, Suite 100, Dover, Kent County, Delaware. The principal place of business of the Company other than in the State of Delaware shall be at c/o Walsh Construction Company, 929 West Adams Street, Chicago Illinois

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60607. The Members, by unanimous vote, may change the location of the Company's principal place of business.

Section 2.6. Qualification in Other Jurisdictions. One of the Members shall cause the Company to be qualified, formed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction in which the Company transacts business. A Member, as an authorized person, within the meaning of the Act, shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

ARTICLE III

PURPOSE AND POWERS OF THE COMPANY

Section 3.1. Purpose. The purpose of the Company ("**Purpose**") is to (i) acquire, develop, own, manage, operate, lease, mortgage and sell real estate within the United States, (ii) invest in, become a partner, member, shareholder or other interest holder of or make loans to Persons acquiring, developing, owning, managing, operating, leasing or selling real estate within the United States, and (iii) undertake any and all matters incident to the foregoing that are agreed to by all of the Members.

Section 3.2. Powers of the Company. The Company, by unanimous vote of the Members, shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the Purpose, including, but not limited to, the power:

(a) to conduct its business, carry on its operations and have and exercise the powers granted to a limited liability company by the Act in any state, territory, district or possession of the United States, or in any foreign country that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(b) to purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of domestic or foreign corporations, associations, general or limited partnerships, trusts, limited liability companies, partnerships or individuals, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality of any of them;

(c) to invest and reinvest its funds, to take and hold real and personal property for the payment of funds so loaned or invested;

(d) to sue and be sued, complain and defend, and participate in administrative or other proceedings, in its name;

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(e) to employ agents of the Company, and define their duties and fix their compensation;

(f) to indemnify any Person in accordance with the Act;

(g) to cease its activities and cancel its Articles;

(h) to negotiate, enter into, renegotiate, extend, renew, terminate, modify, amend, waive, execute, acknowledge or take any other action with respect to any note payable to the Company, contract or security agreement in respect of any assets of the Company;

(i) to pay, collect, compromise, litigate, arbitrate or otherwise adjust or settle any and all other claims or demands of or against the Company or to hold such proceeds against the payment of contingent liabilities; and

(j) to make, execute, acknowledge and file any and all documents or instruments necessary, convenient or incidental to the accomplishment of the Purpose of the Company.

ARTICLE IV
CAPITAL CONTRIBUTIONS, UNITS, CAPITAL ACCOUNTS AND ADVANCES

Section 4.1. Capital Contributions.

(a) It is agreed that each of the Members set forth on Schedule A attached hereto has made concurrently with the execution and delivery of this Agreement has made those initial capital contributions to the Company that are set forth opposite such Member's name on said Schedule A.

(b) Except as unanimously agreed to by the Members, no Member shall be required to make any additional capital contribution to the Company.

Section 4.2. Units. A Member's interest in the Company shall be represented by the Unit or Units held by such Member. Each Member's respective Units shall be set forth on Schedule B attached hereto. Each Member hereby agrees that its interest in the Company and in its Units shall for all purposes be personal property. No Member has any interest in specific Company property.

Section 4.3. Status of Capital Contributions.

(a) Except as otherwise provided in Section 9.1 hereof, the amount of a Member's Capital Contributions may be returned to it, in whole or in part, at any time, but only by the approval of all of the Members. Subject to the provisions of Section 9.1

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hereof, any such returns of Capital Contributions shall be made to all Members in proportion to the number of Units then held by each Member. Notwithstanding the foregoing, no return of a Member's Capital Contributions shall be made hereunder if such distribution would violate applicable state law. In addition, unless agreed to by all of the Members and such agreement does not violate any obligation to which the Company is then bound, no return of a Member's Capital Contributions shall be made hereunder unless and until any and all debts of the Company have been paid in full. Under circumstances requiring a return of any Capital Contribution, no Member shall have the right to demand or receive property other than cash, except as may be specifically provided in this Agreement.

(b) No Member shall receive any interest, salary or drawing with respect to its Capital Contributions or its Capital Account or for services rendered on behalf of the Company or otherwise in its capacity as a Member, except as otherwise specifically provided in this Agreement.

(c) Except as otherwise provided herein and by applicable state law, the Members shall be liable only to make their Capital Contributions pursuant to Section 4.1 hereof, and no Member or Assignee shall be required to lend any funds to the Company or, after a Member's Capital Contributions have been fully paid pursuant to Section 4.1 hereof, to make any additional capital contributions to the Company, unless otherwise agreed to by all of the Members. No Member shall have any personal liability for the repayment of any Capital Contribution of any other Member or Assignee.

Section 4.4. Capital Accounts.

(a) An individual Capital Account shall be established and maintained for each Member in accordance with the following provisions:

(i) to such Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits, and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company assets distributed to such Member; and

(ii) to such Member's Capital Account there shall be debited the amount of cash and the fair market value of any Company assets distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(b) Upon any transfer of a Member's interest in the Company, the transferee shall succeed to the allocable portion of the transferor's Capital Account.

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MEMBERS AND MEETINGS OF MEMBERS

Section 5.1. Powers of Members. The business and affairs of the Company shall be managed by and under the direction of the Members as they shall unanimously agree. Each Member shall, in good faith, attempt to devote to the affairs an equal amount of their respective time and attention. The Members shall have the power to exercise any and all rights or powers granted to the Members pursuant to the express terms of this Agreement and as provided in the Act.

Section 5.2. Reimbursements. The Company shall reimburse the Members for all ordinary and necessary out-of-pocket expenses incurred by the Members on behalf of the Company.

Section 5.3. Partition. Each Member waives, until termination of the Company, any and all rights that it may have to maintain an action for partition of the Company's property.

Section 5.4. Resignations or Withdrawals. Except for the death or dissolution of a Member, no Member may resign or withdraw from the Company without the consent of all of the other Members. In such event, the Company shall dissolve unless the business of the Company is continued without dissolution in accordance with Section 12.2(c) hereof. The Company may recover damages for breach of this Section 5.4 if any Member violates this Section 5.4 and may offset the Company's damages against any amount owed to a resigning or withdrawing Member for distributions.

Section 5.5. Meetings of Members.

(a) The annual meeting of the Members shall be held, in each year, at such place either within or without the State of Delaware as shall be designated by all of the Members and stated in the notice of the meeting or in a duly executed waiver of notice thereof. Special meetings of Members for any purpose or purposes may be held, at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

(b) Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each Member entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

(c) Any Member who desires to so act shall prepare and make, at least ten (10) days before every meeting of Members, a complete list of the Members entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each Member and the number of Units registered in the name of each Member. Such list shall be open to the examination of any Member, for any purpose germane to the meeting during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be

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specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Member who is present.

(d) Special meetings of the Members, for any purpose or purposes, may be called by a Member.

(e) Business transacted at any special meeting of Members shall be limited to the purposes stated in the notice.

(f) A quorum at all meetings of the Members for the transaction of business shall be all of the Members in person or represented by proxy. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

(g) When a quorum is present at any meeting of all Members, present in person or represented by proxy, shall decide any question brought before such meeting.

(h) Unless otherwise provided in this Agreement, each Member shall at every meeting of the Members be entitled to one vote.

(i) Members may participate in any meeting of the Members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

(j) Each Member may designate, in writing, an individual to participate on such Member's behalf at any meeting of the Members. Unless the Members are notified otherwise, in writing, by MW, MW hereby appoints Matthew M. Walsh, Jr. to represent MW at any meetings of the Members.

ARTICLE VI

ALLOCATIONS

Section 6.1. **Allocation of Profits**. Any net profit of the Company for any Fiscal Year shall be allocated as follows:

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(a) First, pro rata to the Members in an amount equal to the cumulative net losses allocated to them in prior years pursuant to Section 6.2(b) hereof, until the cumulative net profits allocated to them pursuant to this Section 6.1(a) for such year and all prior years are equal to such losses;

(b) Next, pro rata to the Members in an amount equal to the cumulative net losses allocated to them in prior years pursuant to Section 6.2(a) hereof, until the cumulative net profits allocated to them pursuant to this Section 6.1(b) for such year and all prior years are equal to such losses; and

(c) The balance, if any, to the Members in proportion to the number of Units held by each Member.

Section 6.2. Allocation of Losses. Any net loss of the Company for any year shall be allocated as follows:

(a) First, to those Members with a positive balance in their Capital Accounts, in proportion to and to the extent of such positive balances; and

(b) The balance, if any, to the Members in proportion to the number of Units held by each Member.

Section 6.3. Allocation Rules.

(a) For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly or other basis, as determined by the Treasurer using any method that is permissible under §706 of the Code and the Treasury Regulations thereunder.

(b) Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Profits and Losses for the Fiscal Year in question.

(c) The Members are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their shares of Company income and loss for income tax purposes.

Section 6.4. Tax Allocations; Section 704(c) of the Code. In accordance with §704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial fair market value.

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ARTICLE VII

DISTRIBUTIONS

Section 7.1. Distribution Rules. Prior to making any distribution, the Company shall pay any and all debts of the Company in full, and shall reimburse any and all advances made to the Company. All distributions made pursuant to this Section 9.1 shall be made as determined by the all of the Members. The Company shall distribute to the Members amounts of Net Cash Flow in the following order:

(a) First, amounts equal to the Members' respective Capital Contributions; and

(a) Second, all amounts of Net Cash Flow remaining undistributed following a distribution made in accordance with this Section 7.1 shall be distributed to the Members on a pro rata basis in proportion to the number of Units held by each Member.

All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment distribution or allocation to the Company or the Members shall be treated as amounts distributed to the Members pursuant to this Article VII for all purposes of this Agreement.

Section 7.2. Limitations on Distribution. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to any Member on account of its interest in the Company, if such distribution would violate any provision of the Act.

ARTICLE VIII

BOOKS AND RECORDS

Section 8.1. Books, Records and Financial Statements.

(a) At all times during the continuance of the Company, the Company shall maintain, at its principal place of business, separate books of account for the Company that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the operation of the Company business in a consistent manner in accordance with this Agreement. Such books of account, together with a certified copy of this Agreement and of the Articles, shall at all times be maintained at the principal place of business of the Company and shall be open to inspection and examination at reasonable times by each Member and its duly authorized representative for any purpose reasonably related to such Member's interest in the Company. The books of account and the records of the Company shall be examined by and reported upon as of the end of each Fiscal Year by the Treasurer or, if required by all of the Members, by a firm of independent certified

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public accountants selected by all of the Members. Any Member shall have the right to have a private audit of the Company books and records conducted at reasonable times and after reasonable advance notice to the Company for any purpose reasonably related to such Member's interest in the Company, but any such private audit shall be at the expense of the Member desiring it, and it shall not be paid for out of Company funds.

(b) The Company shall prepare and maintain for not less than three (3) years, or cause to be prepared and maintained for not less than three (3) years, the books of account of the Company, and the following documents shall be transmitted by MW to each Member at the times hereinafter set forth:

(i) Within three (3) months after the close of each Fiscal Year, the following financial statements, examined by and certified to by the independent certified public accountants referred to in Subsection (a) of this Section 8.1:

(A) balance sheet of the Company as of the beginning and close of such Fiscal Year;

(B) statement of Company Profits and Losses for such Fiscal Year; and

(C) statement of such Member's Capital Account as of the close of such Fiscal Year, and changes therein during such Fiscal Year.

(ii) Within three (3) months after the close of each Fiscal Year, the following documents:

(A) a statement indicating such Member's share of each item of Company income, gain, loss, deduction or credit for such Fiscal Year for income tax purposes; and

(B) a copy of each income tax return, federal or state, filed by the Company for such Fiscal Year.

Sections 8.2. **Accounting Method**. For both financial and tax reporting purposes, and for purposes of determining Profits and Losses, the books and records of the Company shall be kept on the cash method of accounting applied in a consistent manner and shall reflect all Company transactions and be appropriate and adequate for the Company's business.

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ARTICLE IX

TAX MATTERS

Section 9.1. Tax Matters Partner.

(a) The Members by shall designate a "Tax Matters Partner" of the Company for purposes of §623 (1) (a)(7) of the Code, who shall have the power to manage and control, on behalf of the Company, any administrative proceeding at the Company level with the Internal Revenue Service relating to the determination of any item of Company income, gain, loss, deduction or credit for federal income tax purposes.

(b) The Members may at any time hereafter designate a new Tax Matters Partner; provided, however, that only a Member may be designated as the Tax Matters Partner.

Section 9.2. Right to Make Section 754 Election. By the unanimous vote of all of the Members, the Members may make or revoke, on behalf of the Company, an election in accordance with § 754 of the Code. Each of the Members shall, upon request, supply the information necessary to give effect to such an election.

ARTICLE X

LIABILITY, EXCULPATION AND INDEMNIFICATION

Section 10.1. Liability.

(a) Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

(b) Except as otherwise expressly required by law, a Member, in its capacity as such, shall have no liability in excess of (i) the amount of its Capital Contributions, (ii) its share of any assets and undistributed profits of the Company, (iii) its obligation to make other payments expressly provided for in this Agreement, and (iv) the amount of any distributions wrongfully distributed to it.

Section 10.2 Exculpation.

(a) No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such

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Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits, Losses or Net Cash Flow, or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

Section 10.3. Fiduciary Duty.

(a) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(b) Unless otherwise expressly provided herein, (i) whenever a conflict of interest exists or arises between Covered Persons, or (ii) whenever this Agreement or any other agreement contemplated herein or therein provides that a Covered Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Company or any Member, the Covered Person shall resolve such conflict of interest, taking such action or providing such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Covered Person, the resolution, action or term so made, taken by or provided by the Covered Person shall not constitute a breach of this Agreement or prove or any other agreement contemplated herein or of any duty or obligation of the Covered Person at law or in equity or otherwise.

Section 10.4. Indemnification. To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of gross negligence or willful

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misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 10.4 shall be provided out of and to the extent of Company assets only, and no Covered Person shall have any personal liability on account thereof.

Section 10.5. Expenses. To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in Section 10.4 hereof.

Section 10.6. Outside Businesses. Any Member, partner, member or shareholder of a Member or Affiliate thereof may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Company, and the Company, the Members shall have no rights by virtue of this Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Company, shall not be deemed wrongful or improper. No Member, partner, member or shareholder of a Member or Affiliate thereof shall be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character that, if presented to the Company, could be taken by the Company, and any Member, partner, member or shareholder of a Member or Affiliate thereof shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment opportunity.

ARTICLE XI

ASSIGNABILITY AND SUBSTITUTE MEMBERS

Section 11.1. Assignability of Units. No Member may assign the whole or any part of its Units or other interests in the Company without the prior approval of all of the other Members. If the prior approval of all of the other Members is obtained for any such assignment, such assignment shall, nevertheless, not entitle the Assignee to become a Substitute Member or to be entitled to exercise or receive any of the rights, powers or benefits of a Member other than the right to receive distributions to which the assigning Member would be entitled, unless the assigning Member designates, in a written instrument delivered to the other Members, its Assignee to become a Substitute Member and all of the other Members, in their sole and absolute discretion, consent to the admission of such Assignee as a Member; and provided further, that such Assignee shall not become a Substitute Member without having first executed an instrument reasonably satisfactory to the other Members accepting and agreeing to the terms and conditions of this Agreement, including a counterpart signature page to this Agreement, and without having paid to the Company a fee sufficient to cover all reasonable expenses of the Company in connection with such Assignee's admission as a Substitute Member. If a Member assigns all of its interest in the Company and the Assignee of such interest is entitled to become a Substitute Member pursuant to this Section 11.1, such assignee shall be admitted to the Company effective immediately prior to the effective date of the assignment and, immediately following such

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admission, the assigning Member shall cease to be a Member of the Company. In such event, the Company shall not dissolve, if the business of the Company is continued without dissolution in accordance with Section 12.2(c) hereof.

Section 11.2. Recognition of Assignment by Company. No assignment, or any part thereof, that is in violation of this Article XI shall be valid or effective, and neither the Company nor the Members shall recognize the same for the purpose of making distributions of Net Cash Flow pursuant to Section 7.1 hereof with respect to such Company interest or part thereof. Neither the Company nor the non-assigning Members shall incur any liability as a result of refusing to make any such distributions to the assignee of any such invalid assignment.

Section 11.3. Indemnification. In the case of an assignment or attempted assignment of an interest in the Company that has not received the consents required by Section 11.1 hereof, the parties engaging or attempting to engage in such assignment shall be liable to indemnify and hold harmless the Company and the other Members from all costs, liabilities and damages that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and lawyers' fees and expenses) as a result of such assignment or attempted assignment and efforts to enforce the indemnity granted hereby.

Section 11.4. Effective Date of Assignment. Any valid assignment of a Member's interest in the Company, or part thereof, pursuant to the provisions of Section 11.1 hereof, shall be effective as of the close of business on the last day of the calendar month in which the other Members give their written consent to such assignment (or the last day of the calendar month in which such assignment occurs, if later). The Company shall, from the effective date of such assignment, thereafter pay all further distributions on account of the Company interest (or part thereof) so assigned, to the Assignee of such interest, or part thereof. As between any Member and its Assignee, Profits and Losses for the Fiscal Year of the Company in which such assignment occurs shall be apportioned for federal income tax purposes in accordance with any convention permitted under §706(d) of the Code and selected by the Treasurer.

Section 11.5. Pledging of Units. Notwithstanding any provision in this Agreement to the contrary, a Member may, with a prior written approval of all of the other Members, pledge or grant a security interest, lien or other encumbrance in or against any or all of the Member's Units or other interests in the Company. Upon the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the Units, such Member shall not cease to be a Member, or to have the power to exercise any rights or powers of a Member. Upon the forced sale of any or all of such Member's Units, pursuant to the foreclosure, or the realization upon, the pledge of, or granting of a security interest, lien or other encumbrance in or against any or all of the Units of a Member, the Assignee of such Units shall be entitled to share in Profits and Losses, to receive distribution or distributions, and to receive allocations of income, gain, loss, deduction or credit, or similar item to which the Member was entitled, to the extent of the Units assigned. The Assignee of such Member's Units may become a Member upon (a) the approval of all of the Members other than the Member assigning his Units, or (b) compliance with any other procedure provided for in this Agreement in order to become a Substitute Member. Upon the forced sale pursuant to the foreclosure, or other realization upon the pledge of or granting of a

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security interest, lien or other encumbrance in all of a Member's Units, such Member shall cease to be a Member of the Company upon the admission of the Assignee of such Units as a Substitute Member of the Company.

ARTICLE XII

DISSOLUTION, LIQUIDATION AND TERMINATION

Section 12.1. No Dissolution. The Company shall not be dissolved by the admission of Additional Members or Substitute Members in accordance with the terms of this Agreement.

Section 12.2. Events Causing Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the occurrence of any of the following events:

(a) the expiration of the term of the Company, as provided in Section 2.3 hereof;

(b) by unanimous vote of all of the Members; or

(c) the death, retirement, withdrawal, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event under the Act that terminates the continued membership of a Member in the Company unless, within ninety (90) days after the occurrence of such an event, there is the unanimous vote of the remaining Members to continue the business of the Company and to the appointment, if necessary or desired, effective as of the date of such event, of one or more Additional Members.

Section 12.3. Notice of Dissolution. Upon the dissolution of the Company, the Person or Persons approved by unanimous vote of the Members to carry out the winding up of the Company (the "**Liquidating Trustee**") shall promptly notify the Members of such dissolution.

Section 12.4. Liquidation. Upon dissolution of the Company, the Liquidating Trustee shall immediately commence to wind up the Company's affairs; provided, however, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the satisfaction of liabilities to creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation. The Members shall continue to share Profits and Losses during liquidation in the same proportions, as specified in Article VIII hereof, as before liquidation. Each Member shall be furnished with a statement prepared by the Company's certified public accountants that shall set forth the assets and liabilities of the Company as of the date of dissolution. The proceeds of liquidation shall be distributed, as realized, in the following order and priority:

(a) to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, in satisfaction of the liabilities of the Company

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(whether by payment or the making of reasonable provision for payment thereof), other than liabilities for distributions to Members; and

(b) to distribute to the Members the remaining proceeds of liquidation in accordance with their Capital Account balances, after giving effect to all contributions, distributions and allocations for all periods.

Section 12.5. Termination. The Company shall terminate when all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Members in the manner provided for in this Article XII, and the Articles shall have been canceled in the manner required by the Act.

Section 12.6. Claims of the Members. The Members and Assignees shall look solely to the Company's assets for the return of their Capital Contributions, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contributions, the Members and Assignees shall have no recourse against the Company or any other Member.

ARTICLE XIII

MISCELLANEOUS

Section 13.1. Notices. All notices provided for in this Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail as follows:

(a) if given to the Company, at the Company's mailing as address set forth on Schedule A attached hereto; or

(b) if given to any Member, at the address set forth opposite such Member's name on Schedule A attached hereto, or at such other address as such Member may hereafter designate by written notice to the Company.

All such notices shall be deemed to have been given when received. Whenever any notice is required to be given under this Agreement, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute waiver of notice of such meeting, except when the person attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of business because the meeting is not lawfully called or convened.

Section 13.2. Failure to Enforce. The failure of any Member to seek redress for violation of, or to insist upon the strict performance of, any provision of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

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Section 13.3. Cumulative Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Section 13.4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of all of the parties and, to the extent permitted by this Agreement, their successors, legal representatives and assigns.

Section 13.5. Interpretation. Throughout this Agreement, nouns, pronouns and verbs shall be construed as masculine, feminine, neuter, singular or plural, whichever shall be applicable. All references herein to "Articles," "Sections" and paragraphs shall refer to corresponding provisions of this Agreement.

Section 13.6. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Section 13.7. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

Section 13.8. Integration. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 13.9. Governing Law. This Agreement and the rights of the Members hereunder shall be interpreted in accordance with the laws of the State of Delaware, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the Members hereto have executed this Agreement as of the date first above state.

MEMBERS:

MW Partners, L.P.,
an Illinois limited partnership

By: _____
Matthew M. Walsh, Jr. its
sole general partner

_____
Daniel J. Walsh

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SCHEDULE A

COMPANY

Name	Mailing Address
Walsh Investors, L.L.C.	c/o Walsh Construction Company of Illinois 929 West Adams Street Chicago, Illinois 60607

MEMBER

Name	Mailing Address
MW Partners, L.P.	c/o Walsh Construction Company of Illinois 929 West Adams Street Chicago, Illinois 60607
Daniel J. Walsh	c/o Walsh Construction Company of Illinois 929 West Adams Street Chicago, Illinois 60607

INITIAL CAPITAL CONTRIBUTION:

MW Partners, L.P.	$1,000.00
Daniel J. Walsh	$1,000.00

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SCHEDULE B

NUMBER OF UNITS

COMPANY

Name	Mailing Address
WALSH INVESTORS, L.L.C.	c/o Walsh Construction Company of Illinois 929 West Street Chicago, Illinois 60607

MEMBER(S)

Name	Mailing Address	Number of Units
MW PARTNERS, L.P.	c/o Walsh Construction Company of Illinois 929 West Adams Street Chicago, Illinois 60607	100
DANIEL J. WALSH	c/o Walsh Construction Company of Illinois 929 West Adams Street Chicago, Illinois 60607	100

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WALSH INVESTORS, L.L.C.
ASSIGNMENT AND ASSUMPTION
OF
MEMBERSHIP UNITS

IN CONSIDERATION of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DANIEL J. WALSH ("Assignor"), does hereby grant, convey, set over and assign to DW PARTNERS, L.P., an Illinois limited partnership ("Assignee"), (i) all of the right, title and interest of the Assignor as a Member holding fifty percent (50%) of the total Member Units of WALSH INVESTORS, L.L.C., a Delaware limited liability company, (ii) all rights and interests of the Assignor in, to and under that certain Limited Liability Company Operating Agreement of Walsh Investors, L.L.C. dated January 27, 2000 ("Operating Agreement"), and (iii) all of the rights, powers, estate, benefits and privileges of the Assignor as a Member under the terms of the Operating Agreement. It is the intent of the parties that the Assignee shall hereafter be a Substitute Member succeeding fully to rights of the Assignor as a Member of WALSH INVESTORS, L.L.C.

Assignee hereby assumes and agrees to perform all of the terms, covenants, obligations and conditions of the Assignor under the terms of the Operating Agreement which are required to be performed or complied with in respect to the period from and after the date of this Assignment.

Assignor hereby agrees to indemnify and hold the Assignee harmless from and against all liabilities, damages, costs and expenses (including without limitation and intended by way of example only, reasonable attorneys' fees, disbursements and amounts paid in settlement of claims) arising out of the failure of the Assignor to perform its obligations under the terms of the Operating Agreement in respect of the period prior to the date of this Assignment.

Assignee hereby agrees to indemnify and hold the Assignor harmless from and against all liabilities, damages, costs and expenses (including without limitation and intended by way of example only, reasonable attorneys' fees, disbursements and amounts paid in settlement of claims) arising out of the failure of the Assignee, to perform its obligations under the terms of the Operating Agreement in respect of the period from, on and after the date of this Assignment.

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The provisions of this Assignment shall be binding upon and inure to the benefit of the Assignor and Assignee, and their respective successors and assigns.

This Assignment and Assumption of Membership Units may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption effective as of the first day of May, 2000.

ASSIGNOR:

DANIEL J. WALSH

ASSIGNEE:

DW PARTNERS, L.P., an Illinois limited partnership

By:
Daniel J. Walsh,
General Member

CONSENT

MW PARTNERS, L.P., an Illinois limited partnership, as the only Member of WALSH INVESTORS, L.L.C. other than DANIEL J. WALSH, does hereby, effective as of May 1, 2001, consent to the above Assignment and Assumption of Membership Units by DANIEL J. WALSH to DW PARTNERS, L.P. and accepts DW PARTNERS, L.P. as a Substitute Member of WALSH INVESTORS, L.L.C. for all purposes under the Operating Agreement.

MW PARTNERS, L.P., an Illinois limited partnership

By:
Matthew M. Walsh, Jr.
General Partner

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With regards to the East End Crossing RFP – Form A

Organizational Documents

Bilfinger Berger PI International Holding GmbH is an LLC, and is wholly owned by:

Bilfinger Berger PI Corporate Services GmbH – 100% ownership

BBPICS
Gustav-Stresemann-Ring 1
65189 Wiesbaden
Germany

GESELLSCHAFTSVERTRAG

der

Bilfinger Berger PI International Holding GmbH

§ 1

Firma und Sitz der Gesellschaft

(1) Die Gesellschaft führt die Firma:

Bilfinger Berger PI International Holding GmbH

(2) Die Gesellschaft hat ihren Sitz in Wiesbaden.

§ 2

Gegenstand und Zweck des Unternehmens

(1) Gegenstand des Unternehmens ist das Halten von Beteiligungen an Unternehmen, die ihrerseits folgenden Unternehmensgegenstand haben: Die Durchführung von privatwirtschaftlich finanzierten Betreibermodellen aller Art. Privatwirtschaftlich finanzierte Betreibermodelle sind Projekte, bei denen Bau und Finanzierung von Gebäuden und Anlagen übernommen werden, diese betrieben und gegebenenfalls zu einem späteren Zeitpunkt an den ursprünglichen Eigentümer oder Konzessionsgeber übereignet werden.

(2) Die Gesellschaft darf Unternehmungen gleicher oder ähnlicher Art gründen oder sich an solchen beteiligen. Sie ist ferner berechtigt, Zweigniederlassungen zu errichten.

(3) Die Gesellschaft ist berechtigt, alle Geschäfte vorzunehmen und alle Maßnahmen zu ergreifen, die mit dem Gegenstand des Unternehmens mittelbar oder unmittelbar im Zusammenhang stehen oder ihm zu dienen geeignet sind.

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§ 3

Stammkapital

Das Stammkapital der Gesellschaft beträgt:

Euro 25.000,-
(in Worten: Euro fünfundzwanzigtausend).

§ 4

Vertretung der Gesellschaft

Die Gesellschaft hat einen oder mehrere Geschäftsführer. Ist nur ein Geschäftsführer bestellt, so ist dieser alleine zur Vertretung der Gesellschaft berechtigt. Sind mehrere Geschäftsführer bestellt, so ist jeder Geschäftsführer gemeinsam mit einem weiteren Geschäftsführer oder gemeinsam mit einem Prokuristen zur Vertretung der Gesellschaft berechtigt. Durch Gesellschafterbeschluß kann allen oder einzelnen Geschäftsführern Befreiung von den Beschränkungen des § 181 BGB erteilt werden.

§ 5

Geschäftsführung

Die Geschäftsführer führen die Geschäfte nach dem Gesetz, dem Gesellschaftsvertrag und nach den von den Gesellschaftern gefaßten Beschlüssen. Die Gesellschafterversammlung kann durch Gesellschafterbeschluß eine Geschäftsordnung für die Geschäftsführer erlassen.

§ 6

Gesellschafterversammlung

(1) Die Versammlungen der Gesellschaft sind ordentliche und außerordentliche. Die ordentlichen Gesellschafterversammlungen finden jährlich in-

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nerhalb der ersten acht Monate des Jahres statt. In jeder ordentlichen Gesellschafterversammlung ist Beschluß zu fassen über:

1. die Feststellung des Jahresabschlusses für das vergangene Geschäftsjahr,

2. die Verwendung des Ergebnisses,

3. die Entlastung der Geschäftsführung.

(2) Außerordentliche Gesellschafterversammlungen sind einzuberufen, so oft es im Interesse der Gesellschaft erforderlich ist oder wenn ein Gesellschafter unter Angabe des Zwecks und der Gründe schriftlich eine Einberufung beantragt.

(3) Die Gesellschafterversammlung wird von einem Geschäftsführer mit einer Frist von einer Woche schriftlich einberufen.

(4) Gesellschafterversammlungen können ohne Einhaltung der in Absatz 3 genannten Vorschriften über die Form und Frist der Einberufung abgehalten werden, wenn alle Gesellschafter anwesend bzw. vertreten sind und sich mit der Abhaltung einer Versammlung einverstanden erklären. Über die Gesellschafterversammlung und die darin gefaßten Beschlüsse sind - soweit das Gesetz nicht notarielle Beurkundung vorschreibt - Protokolle aufzustellen, die von den Gesellschaftern unterzeichnet werden. Beschlüsse der Gesellschafter können auch auf schriftlichem oder fernmündlichem Wege mit nachfolgender schriftlicher Bestätigung gefaßt werden, wenn kein Gesellschafter diesem Verfahren widerspricht, und das Gesetz nicht notarielle Beurkundung vorschreibt.

§ 7

Stimmrecht

(1) Jeweils Euro 1.000,-- eines Geschäftsanteils berechtigen zur Abgabe einer Stimme.

(2) Beschlüsse werden mit einfacher Mehrheit gefaßt, soweit im Gesetz nicht zwingend etwas anderes vorgeschrieben ist.

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§ 8

Wettbewerbsklausel

Die Gesellschafter sind berechtigt, unmittelbar oder mittelbar, für eigene oder fremde Rechnung Geschäfte im Geschäftszweig der Gesellschaft zu tätigen, Konkurrenzunternehmen zu gründen, zu erwerben oder sich an einem solchen zu beteiligen oder ein solches Unternehmen auf andere Art und Weise zu unterstützen.

§ 9

Gewinnausschüttung und Gewinnverwendung

Die Gesellschafter haben Anspruch auf den Jahresüberschuß zuzüglich eines Gewinnvortrages und abzüglich eines Verlustvortrages, soweit der sich ergebende Betrag nicht nach Gesetz oder Gesellschafterbeschluß oder als zusätzlicher Aufwand aufgrund des Beschlusses über die Verwendung des Ergebnisses von der Verteilung an die Gesellschafter ausgeschlossen ist.

§ 10

Geschäftsjahr

Das Geschäftsjahr ist das Kalenderjahr.

§ 11

Veräußerung und Verpfändung von Geschäftsanteilen

Die Veräußerung oder Verpfändung eines Geschäftsanteils oder von Teilen eines Geschäftsanteils sowie die Belastung mit sonstigen Rechten Dritter bedarf der Zustimmung der Gesellschafterversammlung.

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§ 12

Bekanntmachungen der Gesellschaft

Bekanntmachungen der Gesellschaft erfolgen nur im elektronischen Bundesanzeiger für die Bundesrepublik Deutschland.

§ 13

Gründungsaufwand

Die Kosten der von der Gesellschafterversammlung vom 14.12.2004 beschlossenen Gesellschaftsvertragsänderung trägt die Gesellschaft bis zu einem Betrag von Euro 800,-.

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Notarbestätigung

Hiermit bestätige ich gemäß § 54 Abs. 1 S. 2 GmbHG, daß die geänderten Bestimmungen des Gesellschaftsvertrages mit den am 3. August 2011 gefassten Gesellschafterbeschlüssen über die Änderung des Gesellschaftsvertrages und die unveränderten Bestimmungen mit dem zuletzt zum Handelsregister eingereichten vollständigen Wortlaut des Gesellschaftsvertrages übereinstimmen.

Mannheim, den 03.08.2011

Eichhorn, Notar
Notariat V Mannheim

NOTARIAT MANNHEIM

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Bylaws for the Managing Directors of Bilfinger Berger PI International Holding GmbH, registered in Wiesbaden, Germany

As of 1st January, 2012

The Executive Management of Bilfinger Berger PI Corporate Services GmbH ("Shareholder") resolves to adopt the following Bylaws for the Managing Directors ("Management") of Bilfinger Berger PI International Holding GmbH (the "Company").

1. Principles of cooperation

The Management shall manage the business of the Company in accordance with applicable law, the respective Articles of Incorporation, their service contracts, the Responsibility Chart, these Bylaws and the Code of Conduct of Bilfinger Berger. This requires collegiality and mutual trust among the members of the Management, who are in particular obliged to inform each other on an ongoing basis of all important business transactions and events.

2. Responsibilities

(1) The Management shall prepare a Responsibility Chart in agreement with the Shareholder. Irrespective of the responsibility for the proper management of his area of responsibility each member of the Management is responsible for the entire business of the Company.

(2) The Management shall meet at least once a month, minutes on the results of the meetings are to be prepared.

(3) A Chairman of the Management can be appointed by resolution of the Shareholder.

(4) The Management decides jointly on:
   a. Matters beyond the scope of daily business, in particular matters of principle in relation to business policy and organization as well as matters of material economic effect or leading to material risks;
   b. Matters for which the Management requires the approval of the Shareholder;
   c. Matters concerning more than one area of responsibility;
   d. Risk monitoring matters;
   e. Important personnel matters;
   f. The preparation of the year-end financial statements and the quarterly management reports to the Shareholder.

(5) In case of doubt the Chairman of the Management determines which matters are to be regarded as going beyond the competence of one Managing Director; if no chairman is appointed, the Shareholder is to decide.

(6) Decisions among the Management shall be passed unanimously. If unanimity cannot be reached, the matter shall be referred to the Shareholder for decision.

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3. Reporting to the Shareholder

(1) At least one Meeting per quarter shall be held with the Shareholder. The dates of such meetings will be fixed by the Shareholder. Minutes of these meetings shall be prepared by the Management.

(2) The Management will prepare the quarterly report well in advance of the meeting and distribute it to the Shareholder.

(3) In addition to the regular reports about the business situation of the Company, the Management shall inform the Shareholder without delay of all important occurrences.

4. Business Transactions requiring approval by the Shareholder

(1) The Management shall obtain Shareholder's prior consent for the following transactions and business activities of their Company:

a. Acquisition, encumbrance or sale of real estate or equivalent rights;

b. Conclusion and termination of leases or rental agreements for real estate;

c. Incorporation of subsidiaries[1] as well as acquisition of equity in other companies, additional investment or disposal of equity in other companies, opening and closing of branch offices; new acquisition projects shall be presented to the Shareholder at least in a concise report before submitting an indicative offer or initiating Due Diligence procedures; depreciation (*Abschreibung*) and value adjustments (*Wertberichtigung*) of equity holdings;

d. Share transfers within the group, measures pursuant to the German Transformation Act (*Umwandlungsgesetz*) – merger (*Verschmelzung*), split-up (*Aufspaltung*), spin-off (*Abspaltung, Ausgliederung*), conversion of legal form (*Formwechsel*) – as well as corporate structural changes which are comparable to these measures, albeit effected under a foreign legal system and/or by way of an asset deal;

e. Change of name of subsidiaries;

f. Conclusion of control agreements and/or profit and loss transfer agreements;

g. Equity payments to joint ventures, partnerships, consortia and affiliated companies;

h. Granting of general power of attorney (*Prokura or equivalent*) or other authorization to act on behalf of the Company or direct subsidiaries; the Managing Directors are obliged to have an actual list of all authorizations granted;

i. personnel matters as follows:

- Appointment, grouping or regrouping of employees on 2nd management level (e.g. Vice Presidents et al.), as well as termination and amendment of the employment contracts of such employees;
- Adjustment of salaries and determination or alteration of the variable parts of salaries for employees on 2nd management level,
- Determination or alteration of systems and criteria for profit sharing or employee bonuses for employees below 2nd management level;

[1] This shall also apply to the incorporation of shelf companies as well as making use of shelf and dormant companies.

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- Introduction or alteration of "Wertkonten" (*flexi-time*) as well as profit sharing schemes in accordance with framework guidelines;
- Introduction and structuring of company pension schemes and any alterations thereof; Shareholders' directives are to be observed;
- Other material changes to personnel policy;

j. Assumption of any kind of sureties, guarantees and similar liabilities for third party commitments, including such transactions for the benefit of companies affiliated to Bilfinger Berger SE (this does not apply to the conclusion of joint-venture or consortium agreements in connection with offers or contracts already approved under Paragraph o);

k. Borrowing (including bills of exchange), promising or granting of loans (except for loans within the group cash pooling system); this shall also apply to such obligations entered into in connection with joint ventures, business partnerships, consortia or any other form of company;

l. Granting of donations to political parties irrespective of the amount; any other kinds of donations and assumption of sponsorship commitments in excess of €500;

m. Initiating procedures for judicial review of tenders (*Vergabenachprüfverfahren*) in any case; initiating litigation or arbitration with an amount in dispute exceeding €100,000 (in case of litigation initiated by a joint venture or consortium, the pro-rata share of the amount in dispute shall be relevant); this does not apply to debt enforcement proceedings (*Mahnverfahren*) unless they become subject to court proceedings;

n. Undertaking projects for which processing costs (calculation, advance performance) of more than €500,000 will be incurred during the development phase; provided that prior to incurring material bid costs, the project shall be presented to the Senior Management Group and having received "no objection status";

o. Assumption of contractual obligations involving project-development risks, in particular marketing risks;

p. Assumption of pre-financing (including terms of payment which are longer than usual) if this constitutes an interim financing normally undertaken by a bank for the client; this shall also apply to all joint ventures, consortia etc.;

q. Erection of new buildings and carrying out rebuilding work for the Company's own purposes;

r. Investing into equipment and machinery:
   - Determination of the annual investment budget;
   - Ordering equipment and machinery with an individual value of more than €50,000 (with submission of a profitability calculation);

s. Investments and refurbishment of existing or new office space exceeding €50,000; any planned investments have to be submitted within the yearly investment budget and approved by the Shareholder in advance;

t. Implementation of IT projects if the estimated costs exceed €50,000; any planned investments have to be submitted within the yearly investment budget and approved by the Shareholder in advance;

u. Purchase and lease of cars for the members of the Management Level 2 as well as all other fringe benefits;

v. When Managing Directors join advisory boards or a similar board of a company in which one of BB PI group companies do not hold an interest;

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w. Engagement of consultants of any kind, including obtainment of expert opinion, on behalf of the Company, which does not refer to the Company's operative business but to the relations with the Shareholder or personal interests of the Directors;

x. Transactions between the Company or its affiliates on the one hand and Managing Directors or parties related to them on the other hand;

y. Any other business transactions and activities that go beyond the scope of the business purpose according to the Company's Articles of Incorporation.

(2) Business transactions and activities for the purposes of the preceding Subsection (1) include those of the Company and its affiliated companies. Accordingly, in consultation with the Shareholder, the Management shall prepare lists of transactions requiring approval for persons with power of attorney (*Prokura*) or similar authorization (*Handlungsvollmacht*) and for the members of the executive management of the Company's subsidiaries and/or affiliated companies. In their capacity as members of the executive management or of the supervisory board of subsidiaries and/or affiliated companies, the members of the Management of the Company may only conduct transactions as described in the preceding Subsection (1) or grant their approval for such transactions with the consent of the Shareholder. This does not apply if in the preceding Subsection (1) the requirement for approval is expressly restricted to the Company or its direct subsidiaries/affiliated companies.

5. Public Relations

Any announcements to the press/radio/television or other media require the prior approval of the Shareholder.

6. Effectivity

These Bylaws shall be valid with immediate effect.

Wiesbaden, 1st January 2012

Bilfinger Berger PI Corporate Services GmbH

Dirk Söhngen *Dagmar Rehm*

Received:

Nick Dawson *Dirk Söhngen)*

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WVB EAST END PARTNERS, LLC.
Operating Agreement Term Sheet

General Terms

1. Company: This term sheet pertains to the operating agreement (the "Agreement") of WVB East End Partners, LLC (the "Company"), a limited liability company to be formed under the laws of the State of Delaware.

2. Parties: [name of VINCI C-Corp Holdco] ("VINCI")

[name of Walsh LLC Holdco] ("WALSH")

[name of Bilfinger C-Corp Holdco] ("BILFINGER")

(individually a "Party" or "Original Member", collectively, the "Parties" or "Original Members").

References to VINCI, WALSH and BILFINGER, an Original Member or the Original Members shall be deemed to include Affiliates of the Parties who will become Members of the Company at the time of its formation or following a transfer of shares in the Company (the "Shares") in accordance with the transfer provisions set out below. (For purposes of this agreement the term Affiliate shall mean a company controlled by, controlling or under common control of/by a Member. The term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting securities, by contract or otherwise.)

3. Members - Share Capital and Equity Funding of the Company The Shares shall be allocated as follows: VINCI (33 1/3 %), WALSH (33 1/3 %) and BILFINGER (33 1/3 %) (each, a "Shareholding Proportion"). All Shares shall have identical rights.

Equity and subordinated debt shall be injected by the Original Members in accordance with the Equity Contribution Agreement, which shall be in accordance with the Equity Contribution Agreement Term Sheet to which this term sheet is attached.

No Original Member shall be obliged to provide Equity to the Company other than as set out in the Equity Contribution Agreement, unless unanimously agreed to between all Original Members.

4. Purpose: The Agreement shall set out the terms governing:

(i) The relationship between the Members of the Company; and

(ii) The management of the affairs of Company.

5. Business Principles:

(i) The sole business of the Company shall be the development and operation of the ORB Project (the "Project"), as contemplated by the Members. The Company shall carry out the Company's obligations under and the PPA Documents, the DB Contract and the financing documents pertaining to bonds/loans issued/obtained in connection with the Project (the "Finance Documents") (collectively, the "Project Documents");

(ii) [redacted]

(iii) The Parties undertake to ensure compliance by the Company with the Project Documents; and

(iv) Undertakings and liability, including as to any guarantees, of each Member shall be several and proportionate to and limited by its respective Shareholding Proportion, unless unanimously agreed otherwise by the Members.

Governance

6. Board of Managers & Chairmanship:

Board of Managers

Upon formation, the Company shall have a Board of Managers (the "Board") composed of a total of 3 Managers.

Each Original Member shall appoint 1 Manager.

[redacted]

[redacted]

For each Manager a Member may appoint up to two Alternates, who may be designated to replace the Manager concerned in any board proceedings or fulfilment of other Manager activities.

Chairmanship

Rotating chairmanship among, to the extent applicable, the VINCI appointed Manager, the Walsh appointed Manager and the Bilfinger appointed Manager.

[redacted]

The Chairman will not have a casting vote by virtue of such office (*i.e.* a vote other than in his or her capacity as a Manager).

Conflicts of interest

Managers shall have a fiduciary duty to act in the best interests of the Company. For the avoidance of doubt, Managers appointed by Members Affiliates of which are involved in the design, construction or maintenance or other activities for the account of the Company shall not as such be deemed to be conflicted from participating in the decision making and voting on matters related to such Affiliates' involvement, but shall nonetheless have a duty to make all such decisions with a view solely to the best interests of the Company.

7. Board Proceedings:

Board Meetings

Until the Company is dissolved in accordance with this term sheet, the Board shall meet at least once each calendar

quarter prior to the date which is two years following Substantial Completion of the Project and at least once annually thereafter, or at such more frequent intervals as may be required from time to time for the conduct of the Company's business.

Meetings of the Board may be called by any Manager by the delivery of notice to all other Managers. Board meetings can be held by telephone or video conference. Minutes and proceedings of every meeting of the Board will be made and recorded by the Board. Board decisions can be made by (unanimous) written consent.

Quorum

Managers (and/or Alternates) nominated by Members collectively [redacted] of the Shares and the voting rights attached thereto .

Majority Requirements:

Any decision of the Board shall require an affirmative vote of Managers (and/or Alternates) nominated by Members who collectively [redacted] of the Shares, except, in each case, for certain reserved matters (the "Board Reserved Matters") which must be agreed to by Managers (and/or Alternates) appointed by Members collectively [redacted] of the Shares.

8. Reserved Board Matters :

The following acts shall be Board Reserved Matters:

(a) approval of the annual business plan, financial model, financial statements, business ethics policies and procurement policies and any amendments to these documents;

(b) approval of the management structure of the Company, the appointment of the Requisite Positions, the appointment of other officers or key personnel of the Company and the determination of their duties, responsibilities and remuneration;

(c) approval of a Project Document, the termination of a Project Document or any amendment to a Project Document;

(d) approval of proposal to enter into a related party transaction, [redacted]

(e) approval of the amounts of the development costs to be reimbursed to the Members, to the extent such amounts have not been approved previously by the Parties or are significantly different from amounts previously approved.

(f) proposal for the creation, acquisition or disposal by the Company of any subsidiary or of any shares in any subsidiary;

(g) the refinancing of the Project or extinguishing any debt, including, without limitation, the entering into such agreements and execution of such documents as are necessary in connection with such action, unless expressly contemplated in the financial model submitted as part of the Proposal in relation to the Project;

(h) the lending by the Company of any money to any person or the grant of any credit to any person (except in the normal course of business);

(i) the proposal for the redemption or purchase by the Company of any shares in its share capital or the consolidation, sub-division, conversion or other alteration of any rights attaching to any shares;

(j) the acquisition, purchase or subscription by the Company of/for any shares, debentures, mortgages or securities (or any interest therein) in any company, trust or other type of entity;

(k) the acquisition of capital assets or land not contemplated in the financial model;

(l) the giving by the Company of any guarantee or indemnity or security in respect of the obligations of any other person;

(m) any proposal for or commencement of any proceedings which would or may constitute an insolvency event;

(n) the disposal (including the lease to a third party) or acquisition by the Company in any fiscal year of a significant asset not included on the business plan;

(o) save under or in relation to the Finance Agreements or in the ordinary course of business, the incurring by the Company of any borrowing or other indebtedness or liability in the nature of borrowing;

(p) any major decisions relating to the conduct (including the settlement) of material legal proceedings to which the Company is a party;

(q) in relation to the Finance Agreements, the granting of any security of any nature whatsoever by the Company over any part of a subsidiary or company or subsidiary assets;

(r) assigning, pledging, mortgaging or otherwise encumbering property of the Company or units held by any Member for an indebtedness;

(s) implementing or making any change to any accounting period, material accounting policy or derivatives program of the Company or making or giving by the Company of any claim, disclaimer, surrender, election or consent of a material nature for tax purposes;

(t) the merger or consolidation of the Company with any other entity and/or the taking of any steps to recapitalise, re-organise, wind-up or dissolve the Company, including the adoption of another form of corporate organization;

(u) Changing the Company's legal name or purpose, or continuing the Company under the laws of any other jurisdiction;

(v) investments or the purchase of any assets or

property by the Company having an aggregate value of greater than [redacted] (indexed) to the extent that any such matter is not contemplated by the financial model or the agreed annual budget;

(w) the approval of any material contract that was not included in then current annual budget or business plan of the Company (for the avoidance of doubt, a material contract shall be any contract for a value in excess of [redacted]);

(x) making capital expenditure amounts (or a series of associated amounts) greater than [redacted] (indexed) otherwise than in accordance with the financial model or the agreed annual budget;

(y) engaging in any activity other than the Company's business;

(z) any change to the tax status of the company;

(aa) introducing any executive or employee stock option or profit sharing or bonus scheme; or

(bb) resignation of a Member, as per Clause 18;

(cc) [redacted]

9. Key Management Positions:

The Board will approve the management structure of the Company, appoint persons to the Key Management Positions of the Company and determine their duties, responsibilities and remuneration.
Attached hereto is the organisation chart of the Company as envisaged by the Parties.

[redacted]

[redacted]

[redacted]

The Board may appoint other personnel and determine their powers and responsibilities.

10. Authority of Managers and Officers:

General authority

The Board of Managers shall manage all the affairs of the Company, with the exception of those matters the authority over which was retained by the Members ("**Members Matters**"; see below). Any three Managers, each appointed by a different Original Member, shall have authority to jointly act on behalf of the Company, always in accordance with the authorisations granted by the Board of Managers.

Authority of persons holding Key Management Positions**:**

The authority of the persons holding Key Management Positions or other person or agents appointed by the Board, if such are appointed, shall be determined by the Board as Board Reserved Matters.

11. Member Matters

The Members shall decide the Members' Reserved Matters referred to in Clause 13.

12. Member Decision Making

Quorum

Members collectively holding at least [redacted] of the shares present or represented.

Majority

(a) affirmative vote of Members holding at least [redacted] of the shares.

If the event the quorum or majority requirement pertaining to are not satisfied a second meeting of the Members shall be convened having the same agenda and within one week from the date of the prior Members' meeting.

13. Members' Reserved Matters

The Members' Reserved Matters are the following:

i. The payment of any dividends to Members or any interest on any subordinate debt other than in accordance with the Agreement and or any other

contract approved in accordance with the Agreement;

ii. Appointment of Statutory Auditors;

iii. Initiation, conduct or waiving of claims of the Company against its Managers or Officers;

iv. Amendments to the Operating Agreement .

v. Dissolution of the Company

vi. Merger of the Company

vii. Sale of substantially all assets of the Company

14. Resolution of Deadlocked Matters:

If no decision can be taken by Managers or Members on certain matters in accordance with the procedures provided herein, these matters shall be considered a deadlocked matter (the "Deadlocked Matters").

Deadlocked Matters shall be referred for resolution to a specified senior executive of each Party not previously involved in the daily management of the Company.

If a Deadlocked Matter cannot be settled by the specified senior executives within 30 calendar days of referral, the matter shall be settled as follows:

(a) The matter is submitted to mediation in accordance with the dispute resolution procedure, if requested by any Party;

(b) If the matter cannot be settled by mediation or if mediation is not requested by any party:

(c) To the extent the matter pertains to a legal dispute, it may be submitted to arbitration in accordance with the dispute resolution agreement;

(d) To the extent the matter is commercial in nature, it shall not proceed, without prejudice to the following paragraphs.

Following the occurrence of a Deadlocked Matter, all decisions which do not relate to the Deadlocked Matter will

continue to be made by the Board, the Member or the person holding the relevant Key Management Position, as the case may be, in accordance with the Agreement.

If no agreement is reached within [redacted] following the referral of the Deadlocked Matter to the CEOs of the Members, with respect to urgent matters, the CEO of the Company shall be entitled to undertake any conservatory measure (a "Conservatory Measure") that he or she reasonably deems necessary or prudent, provided that, within a reasonable time prior of undertaking these Conservatory Measure, the CEO provides the Members and the Board with a written notice of intention to undertake Conservatory Measures, which notice shall lay out a reasonable justification for undertaking such measures.

If provision of prior notice is not possible or unduly cumbersome under the circumstances, as soon as reasonably possible, the CEO shall provide a notice that conservatory measures have been carried out, which notice shall state a reasonable justification for undertaking such measures.

Provided that the CEO has complied with the above requirements, the Board and the Members shall be bound by the Conservatory Measures undertaken by the CEO.

For purposes of this provision, Conservatory Measures shall mean all such measures that, due to the urgent nature of the circumstances in question, are necessary to secure and protect the vital rights or interests of the Company or to avoid substantial harm to such rights or interest.

In the event of a Deadlocked Matter at Members' level, no Member, as applicable, shall be entitled to stop, hinder or delay work on the East End Crossing.

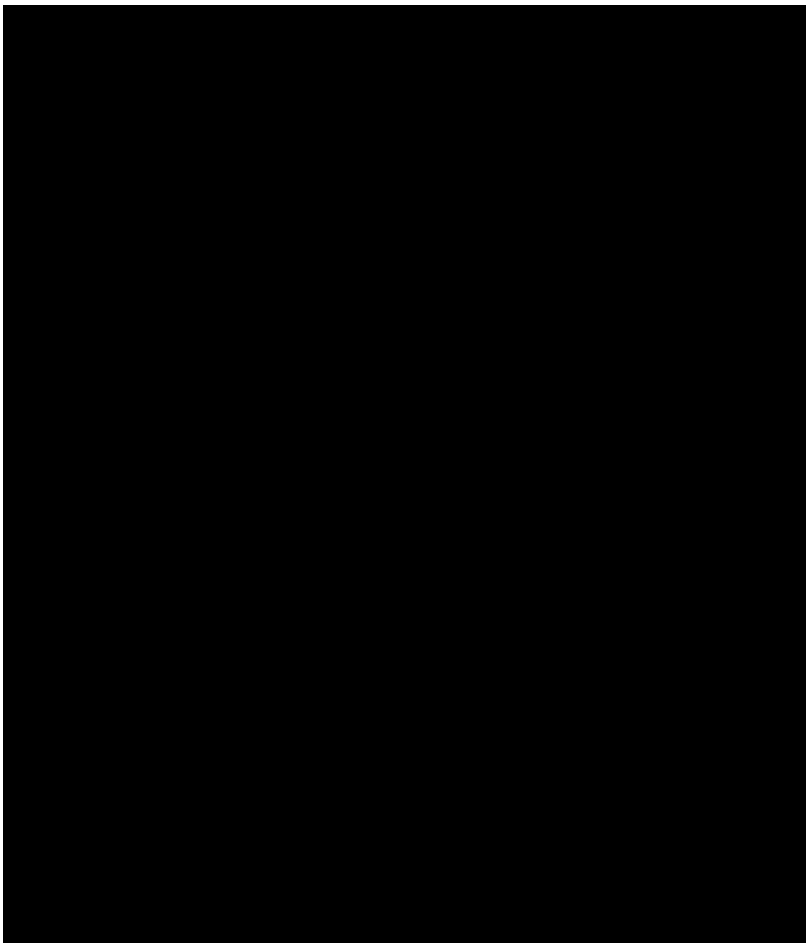
Transfer restrictions

15. Transfer of Shares:

Restrictions in PPA Documents and/or Finance Documents

Any transfer is subject to the restrictions contained in the PPA Documents and/or the Finance Documents.

[redacted]



If following intra-group transfers the transferee would at any time no longer be an affiliate of the transferor, the transferor shall have the obligation to repurchase the Shares sold to the transferee.

16. Pledge of Shares (Security Package): The Members may only pledge the Shares for purposes of establishing a security package necessary for obtaining financing for the Project, if and to the extent such pledge is required by the Financing Documents.

17. Change of Control Without prejudice to any requirements under the PPA Documents or the Finance Agreements, a Change of Control of a Member will be subject to notification to the other Members.

18. Resignation No Member shall resign from the Company, except with the approval of the Board of Managers. No distribution shall be paid to a Member upon its resignation.

19. Default For the purposes of the Operating Agreement, Default shall be defined as:

(a) Material breach of the Equity Contribution Agreement which is not cured in accordance with the terms thereof;

(b) Bankruptcy or insolvency;

(c) Transfer of shares contrary to the provisions of the Operating Agreement and not cured within [redacted] after written notification; or

(d) Material breach of any other provisions of the Operating Agreement and such breach is either incapable of being remedied or is not remedied within [redacted] after written notification.

Consequences of Default

(a) The Non-Defaulting Members shall be entitled to exercise a call option upon the Event of Default by another Member, [redacted] The allocation of shares among the non-defaulting Members shall be pro rata or as they otherwise agreed. The principles and procedures pertaining to the call option as well as to the determination of the fair market value of the Shares are to be further detailed in the Operating Agreement.

(b) Suspension of voting rights of Defaulting Member and Managers appointed by it.

(c) Indemnity.

Miscellaneous

20. Representations and warranties

Standard representations and warranties to be provided by the Parties, to be included in the Operating Agreement.

21. Procurement Policy

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

22. Dividends:

The Company shall distribute, from time to time, all amounts of Company net income to the Members, subject to the Board reserving appropriate amounts for the Company to fulfil its obligations, including as regards operation and maintenance of the Project. [redacted]

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23. Books & Records and Financial Reporting:

Each Member shall, upon reasonable notice, be entitled to inspect the books and records of the Company.

The Company will prepare and distribute to Members management reports and unaudited financial statement on a quarterly basis.

Audited financial statements shall be prepared in accordance with US GAAP.

24. Confidentiality: As per the confidentiality provisions set out in the Teaming Agreement.

25. Termination: Upon termination of the PPA Documents, the Members shall take all necessary steps to dissolve the Company and liquidate its assets pursuant to applicable law.

The Agreement shall terminate upon liquidation or dissolution of the Company.

[Provisions on distributions in case of liquidation/dissolution to be included in the final Operating Agreement]

Members may not resign or withdraw without permission of the Board of Managers and shall not be entitled to any distribution or other amount in respect of their Shares upon any withdrawal or resignation unless otherwise determined by the Board of Managers. The Company shall continue notwithstanding any withdrawal, resignation, bankruptcy or insolvency of any Member.

26. Liability and Indemnification of Members, Managers and Officers

The Operating Agreement will include suitable provisions according to which:

- Members shall have no fiduciary duty towards each other;
- Members, Managers and officers of the Company shall have no liability to the Company for actions taken in good faith in the course of conducting the affairs of the company, except in the event of bad faith, fraud or illegal conduct;
- The Company shall indemnify and defend its Members, Managers and officers against all claims stemming from the affairs of the Company, except in the event of bad faith, fraud or illegal conduct.

- The Company will purchase an Officers and Managers liability insurance policy, if such insurance policy is obtainable at a commercially reasonable rate. The insurance policy will provide a level of coverage adequate to protect the interests of the Company, the Members, the Managers and the officers of the Company.

27. Execution Date:	The Operating Agreement shall be executed prior to the execution of the PPA Documents and the Finance Documents.
28. Limitation on Liability	To the maximum extent permitted by law, no Party shall be liable to the other Parties for any consequential, indirect, special or punitive damages, or for loss of business, profit or opportunity arising from a Party's acts or omissions in carrying out its obligation under the Agreement.
29. Governing Law:	Law of the State of Delaware.
30. Dispute Resolution:	1° "Escalation mechanism": dispute submitted to designated senior executives of Members' or their parent companies for amicable settlement; 2° Mediation mechanism; 3° ICC Arbitration – in English – seat in Indianapolis, IN

Proposer Teaming Agreement

TEAMING AGREEMENT

THIS Teaming Agreement (the "**Teaming Agreement**") is made the 26th day of March 2012 (the "**Effective Date**")

BETWEEN:

(1) **VINCI Concessions S.A.S** a company incorporated under the laws of France with organisation number 410 001 952 and whose registered office is at 9, Place de l'Europe, 92851 Rueil-Malmaison, France (hereinafter "**VINCI**");

(2) **Walsh Investors, LLC** a company organised and existing under the laws of Delaware with principal offices at 929 W. Adams, Chicago, IL 60607 (hereinafter referred to as **"Walsh Investors"**);

(3) **Bilfinger Berger Project Investments Inc.** a company organised and existing under the laws of Ontario with principal offices at 675 Cochrane Drive, Markam, ON, L3R 0B8. (hereinafter referred to as "**Bilfinger**");

(The above are hereinafter collectively called the **"Parties"** and "**Party**" means either of them)

RECITALS

A. WHEREAS The Louisville-Southern Indiana Ohio River Bridges Project is a project aiming to address long-term, cross-river transportation needs in Louisville, Kentucky and Southern Indiana.

B. WHEREAS the State of Indiana ("the Authority") is expected to procure its part of the Ohio River Bridges Project under a P3 (availability based) scheme. This would cover the East End portion of the project - a new bridge near Utica, Ind., and Prospect, Ky.; a new highway linking the Lee Hamilton Expressway and Gene Snyder Freeway; and a tunnel in Eastern Jefferson County (hereinafter referred to as the **"Project"**). The procurement for the Project is expected to be launched with the publication of a request for qualifications in the first quarter of 2012.

C. WHEREAS VINCI, Walsh Investors, Bilfinger, VINCI Construction Grands Projets SAS and Walsh Construction Company intend to sign a preliminary Teaming Agreement confirming their agreement to co-operate as a team (the "**Team**") on an exclusive basis with regard to the Project, as well as setting out certain mutual obligations to protect the confidential nature of information exchanged in the context of their discussions with regard to the Project.

D. WHEREAS VINCI, Walsh Investors and Bilfinger agrees to participate in the Team as a sponsor("Sponsor");

E. WHEREAS the Parties thus agree to act jointly on an exclusive basis as Sponsors within the Team and in that capacity to jointly (i) submit a statement of qualification ("SOQ") in response to the RFQ and (ii) if shortlisted, to review the RFP for the Project and to submit, if they determine it is in their best interest to pursue this Project, develop and submit a Proposal for the Project and (iii) if awarded the Project, will combine their resources and their efforts to implement the Project.

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F. **WHEREAS** awaiting the execution of more detailed agreement(s) setting out in more detail the scope, terms and conditions of their co-operation, the Parties wish to record in this Teaming Agreement their agreement to cooperate exclusively together with regard to the Project, as well as to set out certain out certain basic terms of such co-operation.

NOW THEREFORE, the Parties have agreed as follows:

1. **DEFINITIONS**

In this Teaming Agreement the following definitions will apply:

"**Affiliate**" means, a company that is directly or indirectly controlled by, controlling or under common control with a Party.

"Blended Equity" means any combination of cash equity, subordinated debt and shareholder loans provided by the Sponsors.

"**Client**" is Indiana DOT.

"**Confidential Information**" means, all oral, written, printed, photographically recorded or electronically recorded information relating to any ideas, concepts, drawings, specifications, financial projections, documents, data, graphs, spreadsheets or copies, notes or extracts thereof or any other information relating to a Party or to the Project which is disclosed to a Party by or on behalf of another Party whether prior to, on or after the Effective Date.

"Contracts" means the Construction Contracts, the O&M Contract, the Interface Contract and any ancillary contracts.

"**Construction Contract**" means a contract to be entered into between the Project Company and the Construction Joint Venture (as defined in Clause 4.1) for undertaking the design and construction of the works for the Project.

"Construction Joint Venture" or "CJV" has the meaning given to it in Clause 4.1.

"Construction Offer" means a proposal submitted by the Construction Joint Venture (as defined in Clause 4.1) to the Sponsors for the purpose of the Proposal and which includes prices for the design and construction of the works for the Project on principal terms shown herein and in the Term Sheet for the Construction Contract.

"Contractors" means VINCI Construction Grands Projects and Walsh Construction Company, acting together and **"Contractor"** means either of them.

"**Interface Contract**" means a contract to be entered into between the Project Company, the O&M Company and the CJV regulating interfaces between the O&M Company and the CJV in the performance of their respective obligations under the Contracts.

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"O&M Contract" means a contract to be entered into, as the case may be, between the Project Company and the O&M Company for undertaking the operation and maintenance works required on the Project.

"O&M Company" means the special purpose company that could be set up by the Operators if the Project Company decides to award the Operators the O&M Contract.

"O&M Offer" means a proposal submitted by the Operators to the Team for the operation and maintenance required on the Project on the principal terms shown herein and in the Term Sheet for the O&M Contract.

"Offers" means the Construction Offer and the O&M Offer.

"Operators" means VINCI and VINCI Affiliates acting together and **"Operator"** means either of them.

"Project" has the meaning set out in Recital B.

"Project Agreement" means the main contract to be entered into between the Client and the Project Company with regard to the Project.

"Project Company" has the meaning set out in Clause 3.

"Proportions" means the respective percentage of each Sponsor showed in Clause 3.2.

"Proposal" means a proposal to be submitted to the Client in accordance with the Tender Documents.

"Sponsors" means VINCI, Walsh Investors and Bilfinger and, as the case may be any additional Sponsors in accordance with Clause 3.2. and Sponsor means any one of them.

"Tender Documents" means the documents governing the tender procedure for the Project, as issued from time to time by the Client.

"Term Sheet" means a document agreed and signed prior to submission of the Proposal containing the principal terms of the contract/agreement it is intended to apply for.

2. GENERAL OBLIGATIONS

2.1 The Parties agree to co-operate, on an exclusive basis, in the preparation and submission of a response to the Request for Qualifications, and if the Team is shortlisted, in the preparation and submission of Proposal(s) with respect to the Project, subject to the terms herein.

2.2 The Proposal shall be based on the Offers and be in such form and shall contain such terms and conditions, as all the Sponsors shall mutually agree or as decided in accordance with clauses 6.1 to 6.7. After its submission none of the Sponsors shall vary or seek to vary the terms of the Proposal without the previous written consent of the other Sponsors. The Parties shall exchange such information as is reasonably necessary to prepare the Proposal.

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2.3 The Sponsors, jointly and under the leadership of VINCI, shall conduct discussions and negotiations with the Client in connection with the Proposal. The authorized representative of the Team shall at all times be a person nominated upon VINCI's proposal. The Contractors shall participate in such discussions and negotiations if and when invited by the Sponsors. The Sponsors will do their best efforts to defend the interests of the Contractors and Operators in negotiations with the Client and shall keep the Contractors and Operators timely informed of issues that are being discussed.

2.4 The Sponsors shall develop the financing and asset management framework including the long term risk allocation model in consultation with the Contractors and the Operators.

2.5 The Sponsors shall develop the financing strategy with a view to arranging all required project funding.

2.7. The Team name is "WVB East End Partners".

3. PROJECT COMPANY

3.1 If the Project is awarded to the Team, the Sponsors will incorporate a special purpose entity (**"Project Company"**) and shall require that the Project Company enters into the Project Agreement.

3.2 The Sponsors' participation in the share capital of the Project Company shall be divided between the Sponsors as follows (the "**Proportions**"):

Walsh Investors and/or Walsh Investors affiliates	33 1/3%
VINCI and/or VINCI Affiliates	33 1/3%
Bilfinger and/or Bilfinger Affiliates	33 1/3%

3.3 The Sponsors may unanimously decide to invite additional partners to become shareholders in the Project Company on terms and conditions to be agreed between the Sponsors, it being understood that such additional partner would be required to accept the terms of this Agreement and any other existing agreement entered into by the Sponsors for the purposes of the Project at the time. In case of the entry of such additional partner, the Sponsors shall reduce their shareholding proportionally or as mutually agreed.

3.4 The Sponsors undertake to fulfil their equity obligations (including provision of guarantees, letters-of-credit and sub-debts, to the extent required and agreed to) necessary for the performance of the Project Agreement, in proportion with their respective Proportions

3.5 Prior to the submission of the Proposal, the Sponsors shall agree on a Term Sheet of a shareholders' agreement (or similar arrangement) setting out the main principles of the equity financing and governance of the Project Company. Such Term Sheet shall include among others the following principles:

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3.5.1 Each Sponsor shall be entitled to nominate a number of members in the board of directors (or similar governing body) of the Project Company, in proportion to its shareholding;

3.5.2 All decisions of the board of directors (or equivalent body) shall be taken by affirmative vote of nominee directors of the Parties who are together entitled to participate [redacted] of equity share capital of the Project Company except for a number of reserved matters, which shall be detailed as necessary to protect the interest of the shareholder with the lowest participation percentage in the Project Company, to be detailed in the shareholders agreement and constitutional documents of the Project Company, for which an affirmative vote of nominee directors [redacted] of the equity share capital in the Project Company, will be required;

3.5.3 All decisions of the shareholders, if required their consent, shall require an affirmative vote of the shareholders [redacted] of the shares and voting rights attached thereto in the Project Company, except for a number of reserved matters, which shall be detailed as necessary to protect the interest of the shareholder with the lowest participation percentage in the Project Company, to be further detailed in the shareholders' agreement and in the constitutional documents of the company, which shall require an affirmative vote of the shareholders [redacted] of the shares and voting rights attached thereto in the Project Company;

3.5.4 The Chairman of the board of directors (or equivalent body) shall be appointed on a rotating basis among the members of the board. During the construction period, the Chairman shall be a director nominated by VINCI after consultation with the other Sponsors. The Chairman shall not have a casting vote.

3.5.5 From financial close up to at least one year after the start of the operation phase, at least the following officers will be appointed:

(a) [redacted]

(b)

(c)

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4. DESIGN AND CONSTRUCTION

4.1 The Parties agree and acknowledge that it is the intention that:

4.1.1 Contractors shall form a joint venture (the "Construction Joint Venture" or "CJV") for bidding for, signing and performing the Construction Contract.

4.1.2 The Sponsors and the Contractors shall agree and sign a detailed Term Sheet for the Construction Contract in all material respects on a back-to-back basis with the Project Agreement before the submission of the relevant Proposal to the Client. The Sponsors agree that they shall not require additional security obligations from the CJV, the Contractors or their Affiliates than as reasonably requested by the senior debt providers or required by the Authority.

5. OPERATION AND MAINTENANCE

5.1 VINCI shall have the lead in O&M matters for the Project and will notably propose the Operators Bid Manager

5.2 The Operators shall set up the O&M Company for the performance of the required operation and maintenance works and services, with the following Share Proportions:

[redacted]

5.3 As soon as possible after the release of the final RFP documents, the Sponsors will be entitled to request the self-performance of the operations and maintenance works if the pricing of the O&M Company would manifestly be out-of-market taking into account the risks, the references and specialized know-how required for the execution of the required operation and maintenance works and services. In case of self-performance, the Sponsors will have to mutually agree that the corresponding pricing is lower and that the Project Company has the necessary references and know-how for the execution of the required operation and maintenance works and services.

5.4 The O&M Offer and the O&M Contract shall in all material respects be on a back-to-back basis with the Project Agreement, it being understood that the life cycle maintenance will the responsibility of the Sponsors and that the O&M Company's liability under the O&M Contract shall be capped at an adequate level in view of the risks involved. The Sponsors and the Operators shall agree and sign a detailed Term Sheet for the O&M Contract before the submission of the relevant Proposal to the Client. The Sponsors agree that they shall not require additional security obligations from the O&M Company and/or the Operators than as reasonably requested by the senior debt providers or required by the Client.

5.5 Under the guidance of the Sponsors, the Operators shall review those parts of the design and specification of the construction works that have an impact on the operation and maintenance of the works, as they are prepared by the Contractors. Operators shall, reasonably in advance before the deadline for submission of the Construction Offer, identify

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and inform the Contractors of those areas of design that may have a material impact on cost and performance of the operation and maintenance services over the life time of the Project.

5.6 The Sponsors, the Contractors and the Operators shall agree and sign a Term Sheet for an Interface Contract before the submission of the relevant Proposal to the Client.

6. BID MANAGEMENT

6.1 The Sponsors will manage the Proposal process by means of a committee composed of executives from each company (the **"Steering Committee"**).

6.2 Each Sponsor shall each appoint one (1) representative (the **"Representative(s)"**) and one alternate (the **"Alternate(s)"**) in the Steering Committee. The appointment of the Representatives and the Alternates shall be made in writing.

6.3 The Steering Committee will make decisions on commercial and financial strategy for the Proposal and subsequent negotiations and the financing of the Project. Such issues include but are not limited to:

a) Agreement of and any adjustments to the Budget and the allocation, funding or reimbursement of Costs in accordance with Clause 7 of this Teaming Agreement and

b) Approval of the Proposal prior to submission, approval of any change to the Proposal once submitted and recording the approval of the Parties to any accepted Proposal;

c) Approve the appointment (including the terms of engagement) of all consultants, auditors and any third party advisors to the Sponsors, and

d) Approve the terms of all documents, including in connection with the formation or execution of the Project Company, the shareholders' agreement, the Proposal or the Project Agreements, any procurement, service or installation contract and any other contractual arrangements including any funding agreement for the Project.

e) Appoint a bid director (the **"Bid Director"**), nominated by VINCI after consultation with the other Sponsors, who shall be the representative of the Team.

6.4 The Steering Committee will establish a series of specialist working groups with representatives from each of the Sponsors to manage external advisors, to report to the Bid Director and the Steering Committee on matters relevant to their specialism and to work together in a coordinated and interdisciplinary fashion for the overall benefit of the participation in the tender process The Bid Director shall not be a Representative or Alternate and he shall be invited to attend all meetings of the Steering Committee. The Bid Director will be responsible for overseeing the preparation of any submission and of detailed responses to the Client's queries. He will also be responsible for the tactical decisions needed as the Proposal progresses. He will brief the Steering Committee on progress and the

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background to strategic decisions that are needed and make recommendations to the Steering Committee.

6.5 All decisions of the Steering Committee shall be taken unanimously.

6.6 Representatives of the Contractors and Operators shall be invited to participate, with no voting rights, in meetings of the Steering Committee when necessary or beneficial for the preparation or negotiation of the Proposal or when any of the Representatives or Alternates so requests.

6.7 The Sponsors shall endeavour to agree with the Contractors and the Operators, if applicable, on the establishment of another steering committee (the **"Joint Steering Committee"**), on the following basis:

(a) It will be composed of one representative (senior management level) of each Sponsors and each Contractor and the Operators;

(b) It will be in charge of the overall coordination between the Sponsors and the Contractors and issues which require a common decision of each of the Sponsors and the Contractors and the Operators;

6.8 Decisions of the Joint Steering Committee shall be taken on an unanimous basis, it being understood that only the representatives of the Sponsors shall have the competence, with exclusion of the other representatives to deal with issues which in particular and solely relate to the Project Company and only the representatives of the Contractors and/or Operators shall have the competence, with exclusion of the other representatives to deal with issues which in particular and solely relate to the CJV and /or the O&M Company.

7. COSTS

7.1 Save as provided herein, each Party shall bear separately and solely all its own management and production costs and expenses, including without limitation its own third party advisors' costs, in connection with the preparation, submission and negotiation of the Proposal and development of the Project.

8. WITHDRAWAL

8.1 A Party in material breach of this Teaming Agreement will have 30 days to rectify the breach, following receipt of a written notice signed by the other Parties delivered to its registered office informing it of such breach. If the breach is not capable of rectification, or is not so remedied within 30 days, or if a Party, according to the Tender Documents or the law is prohibited from participating in the tender procedure, or has become insolvent, put under administration or stopped its payments, then the other Parties may by serving a written notice at the defaulting Party's registered office, expel the defaulting Party from participating in this Agreement.

8.2 Each Party may prior to the Proposal Due Date withdraw from this Teaming Agreement upon prior written notice (the '**Written Notice**") to the other Parties. The Written Notice, to

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be valid, (i) must be sent no later than 60 days before the Proposal Due Date or (ii) must be sent no later than 20 days before the Proposal Due Date, provided the Written Notice contains an explicit statement of reasons why the withdrawing Party considers that there is fundamental disagreement between the parties on the terms and conditions of the Proposals which cannot be settled prior to the Proposal Due Date. Notwithstanding clause 4.1 or 5.4, a disagreement between the Parties on the required security obligations from the Contractors and/or the Operators shall be considered as such a fundamental disagreement for the purpose of clause 9.2 (ii).

8.3 Upon notice of withdrawal or expulsion, the withdrawing Party shall have no further obligations under this Agreement, except that:

(a) a withdrawing Party shall use reasonable efforts to reduce its participation in such a way that it does not expose the remaining Parties to exclusion in the procurement process, does not prevent the remaining Parties to go forward with the process and stay in compliance with the applicable requirements. The shares of the withdrawing Party will then first be offered to the other Parties, respecting the initial proportionality of their participations. The remaining Party/Parties shall be entitled to unconditionally pursue the award of the Project. The withdrawing Party will do its best efforts to support the remaining Party/Parties to continue to pursue the award of the Project. To that extent, the remaining Parties shall release and indemnify the withdrawing Party from all obligations, liabilities and costs it may incur by reason of them pursuing the Project after its withdrawal. In such case, the remaining Sponsors undertake to do their best efforts to obtain the Client's approval as soon as practicable to submit the Proposal without the withdrawing Party or with another person, as agreed.

(b) a withdrawing Party shall continue to be bound by the provisions of Clause 7 (Costs) up to the date of withdrawal or expulsion, Clause 11 (Confidentiality), Clause 12 (Exclusivity) for a period of three (3) years after its withdrawal or expulsion and Clause 15 (Governing Law and Disputes).

(c) A withdrawing Party shall provide the remaining Parties free of charge, with all studies, documents, analyses, calculations, drawings, estimates, reports and any other information which it had prepared or obtained exclusively in connection with the Project. The license granted by the withdrawing Party in accordance with Clause 14.1 to the remaining Parties shall remain in place after its withdrawal or expulsion. The license granted by the other Parties to the withdrawing Party in accordance with Clause 14.1 shall expire upon the withdrawal or expulsion becoming effective.

9.4. The Parties expressly agree and acknowledge that in case of withdrawal and/or expulsion of a Party or several of the Parties, in particular of a Sponsor and its Affiliates, the Teaming Agreement shall not terminate unless the remaining Parties decide otherwise.

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9. ASSIGNMENT

9.1 This Teaming Agreement is non-assignable except as agreed between the Parties.

10. CONFIDENTIALITY

10.1 In consideration of the disclosure and divulgence of the Confidential Information, each Party shall maintain another Party's Confidential Information as secret and confidential, using the same level of diligence as if it were protecting its own Confidential Information except however, such Party shall at a minimum employ such means that a company of similar nature to that of the owner of such Confidential Information would employ in order to reasonably protect such Confidential Information.

10.2 Except for those directors, employees or agents of the Parties (or their affiliates) who have a need to know, no Party shall disclose or divulge the Confidential Information of another Party to any third party without the prior written approval of the Party that is the owner of the Confidential Information. Each Party shall inform all persons to which it divulged or disclosed Confidential Information of another Party of the confidentiality obligations under this Teaming Agreement and shall ensure that such persons comply with those obligations.

10.3 No Party shall use Confidential Information it received for any purpose without the prior written approval of the disclosing Party other than for purposes that are directly in connection with the Parties' cooperation in relation to the Project. Each Party expressly agrees that, without such prior approval, no Party shall use any of the Confidential Information it received, in connection with the performance of work for itself, or any other third party.

10.4 No Party shall make any copies, excerpt, or in any way reproduce another Party's Confidential Information (hereinafter referred to as "Reproduction") except as may specifically be required in furtherance of the performance of such work for the Project without the prior written approval of the owner of such Confidential Information. Where Reproductions are permitted in accordance with this section, each Reproduction shall be appropriately marked to show that it contains Confidential Information of the applicable disclosing Party.

10.5 Each Party shall retain all rights, title, and interest in and to its own Confidential Information.

10.6 Upon the written request of a Party, the other Party shall immediately either return the Confidential Information or destroy it (as indicated in the request).

10.7 Nothing in this Teaming Agreement shall be construed as granting or implying any right under any letters, patent or to use any Confidential Information covered thereby, or as permitting either Party to unfairly obtain the right to use any of the Confidential Information which may become publicly known through its improper act or omission. No license to another Party, under any trademark, patent, or copyright is either granted or implied by the conveying of information to that Party. None of the information which may be submitted or

exchanged by the respective parties shall constitute any representation, warranty, assurance, guarantee, or inducement by any Party to another with respect to the infringement of trademarks, patents, copyrights, or any right of privacy or other rights of third persons.

10.8 Nothing in this Teaming Agreement shall be construed as granting or implying any right under any copyrights to publish or use any Confidential Information covered thereby.

10.9 Nothing in this Teaming Agreement shall affect a Party's right to use and/or disclose to others any or all of another Party's Confidential Information or any part or parts thereof which:

(a) Is or may hereafter be in the public domain through no breach by the receiving Party of the obligations hereunder;

(b) Is known to the receiving Party without restriction on its disclosure prior to its disclosure by the disclosing Party;

(c) After disclosure by the disclosing Party to the receiving Party, is disclosed to the receiving Party by a third party who, to the best of the receiving Party's knowledge, has the legal right to make such disclosure; or

(d) Is required to be disclosed to comply with applicable law, regulation, or court order, in which case the Party requested to comply with such law, regulation, or order shall notify the other Party (if it is such other Party's Confidential Information that is being requested) upon receipt by the Party requested to disclose all or part of such other Party's Confidential Information.

10.10 The Parties acknowledge and agree that the Confidential Information already disclosed prior to the execution of this Teaming Agreement or to be disclosed by a Party as contemplated in this Teaming Agreement is, by its nature, valuable proprietary information, the misuse or unauthorized disclosure of which is likely to cause the owner of such Confidential Information considerable damage for which monetary compensation is likely to be inadequate and accordingly, the Parties agree that, without prejudice to other rights and remedies of the owner of such Confidential Information, such owner shall be entitled to relief by way of injunction including interim injunction and/or other equitable relief for any threatened or actual breach of the terms of this Teaming Agreement.

10.11 Nothing in this Teaming Agreement shall be construed or implied to obligate either Party to furnish any specific type of Confidential Information to the other Party.

10.12 Each Party understands and acknowledges that by furnishing materials to each other no Party makes any representation or warranty as to the accuracy or completeness of Confidential Information disclosed by it.

10.13 In addition, no announcement or disclosure shall be made or disclosed by any Party with regard to the Parties' cooperation in relation to the Project without the prior written consent of an authorized person of the other Parties:

a. as to the making or terms of this Teaming Agreement;

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b. of the fact that Confidential Information has been or is being or will be made available to or obtained by any Party; or

c. that discussions or negotiations are taking or have taken place concerning the Project, except to the extent disclosure is required by law or by the rules of any applicable regulatory organization.

Any announcement or disclosure required shall then only be made after all reasonable and practical steps have been taken in the circumstances to consult with the other Party as to the contents of such disclosure or announcement.

10.14 The obligations regarding confidentiality and use set out herein will survive the termination or expiry of this Teaming Agreement for a period of three (3) years.

10.15 In addition to any obligations under this Clause, the Parties agree that they shall at all times adhere to any obligations regarding confidentiality and use of information as set out in the Proposal Documents.

11. EXCLUSIVITY

11.1 Save as otherwise stated herein, each Party undertakes that during the validity of this Teaming Agreement that it shall not directly or indirectly participate in or provide support or advice in relation to the Project, other than in relation to its cooperation with the other Parties.

11.2 In case of withdrawal or expulsion pursuant to Clause 8, the withdrawing or diluted Party shall comply with the above exclusivity obligation for a period of three (3) years after the date of such withdrawal.

12. TERM

12.1 This Teaming Agreement is effective as of the Effective Date and will terminate upon the earlier of: (i) the date of execution of a more detailed agreement as referred to in Clause 1.3 or (ii) 30 September 2012 if the Project is not advertised by that date or (iii) another date agreed by all the Parties.

12.2 For the avoidance of doubt, termination of this Teaming Agreement as per Clause 13.1. shall be without prejudice to the fulfilment of all Parties' pre-existing obligations as between themselves and towards the Client and third parties under the Proposal and this Teaming Agreement.

12.3 Clauses 11 (Confidentiality), and 15 (Governing Law and Disputes) shall survive termination pursuant to Clause 13.1.

13. INTELLECTUAL PROPERTY

13.1 Each Party hereby grants to the other Parties a non-exclusive royalty-free licence to use, solely for the purposes of the Proposal, such intellectual property rights as are owned by it and are required for the Proposal an each Party shall use all reasonable endeavours to procure that relevant intellectual property belonging to third parties is procured for the purposes of the Proposal(s). The license granted under this Clause 14 shall end on

termination of this Teaming Agreement save in the circumstances otherwise expressly provided.

13.2 Intellectual property which is created in connection with the Project prior to termination of this Teaming Agreement shall be owned jointly by the Parties.

14. GOVERNING LAW AND DISPUTES

14.1 This Teaming Agreement is governed by and shall be construed in accordance with the laws of Indiana, with the exception of the rules on conflict of laws.

14.2 If a dispute arises out of or in connection with this Teaming Agreement, the Parties will use all reasonable endeavours for a period of 30 days from the date on which the dispute was raised (or such longer period as may be agreed in writing between the relevant Parties) to resolve the dispute by amicable negotiation.

14.3 If a dispute is not resolved in accordance with Clause 15.2, it will be referred to the chief executive officer or equivalent of the Parties, to resolve the dispute by amicable negotiations, for a period of 15 days from the expiry of the period prescribed in Clause 15.2 (or such longer period as may be agreed in writing between the relevant Parties).

14.4 If the dispute cannot be settled in accordance with Clause 15.2 or 15.3, it shall be resolved by final and binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce.

14.5 The venue of arbitration shall be Indianapolis, Indiana and the language of arbitration shall be English.

15. REPRESENTATIONS AND WARRANTIES

15.1 Each Party hereby represents and warrants that, at the time of signing this Teaming Agreement and thereafter:

15.1.1 This Teaming Agreement has been duly authorised by all necessary actions for signature by its representatives, and

15.1.2 The signature hereof does not contravene any applicable law or regulation, and

15.1.3 This Teaming Agreement does not contravene, or result in any breach of, or does not constitute any default under, any agreement to which such Party is a party, and

15.1.4 It complies and shall comply with all applicable laws and regulations in force.

15.2 Each Party represents and warrants (in respect of itself) to each other Party that it (including its directors, employees and agents under its direct control and supervision) has not and shall not offer or give any undue payment or anything of value, directly or indirectly, to any person, entity or government official, political party or candidate for political office for the purpose of inducing it to act contrary to its prescribed duties in order for the Parties to obtain the Project or other benefit in connection with the Project.

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16. LIABILITIES

16.1 The Parties acknowledge that, their obligations towards the Client and third parties in connection with the Project and the performance of this Agreement may be on a joint and several basis. However, as far as possible the Parties shall make their best efforts to negotiate that all obligations are several. Accordingly, the Parties agree to limit among themselves their liability in connection with the Proposal and the performance of this Agreement in proportion to the Proportions set forth in Clause 3.2.

16.2 Each Party agrees in proportion to its Proportion, as set forth in Clause 3.2, to indemnify, defend and hold any other Party harmless against any liability, damage or loss exceeding the latter Party's respective Proportion by reason of any joint liability, damage or loss incurred arising out of or in connection with the Proposal and the performance of this Agreement.

16.3 Notwithstanding any other provisions in this Teaming Agreement, no Party shall be liable to any other Party, including in case of withdrawal or expulsion, for failure of the Parties to submit a Proposal or to obtain a contract (including the Project Agreement), for loss of contract or business opportunity, loss of profit, loss of revenue, loss of goodwill, or for any indirect or consequential loss and/or damage resulting from the performance or non-performance of any obligations by the Parties under this Agreement.

17. GUARANTEES AND BONDS

17.1 Any bond or guarantee required by the Client to be provided by the Sponsors at the tender stage shall be issued by an appropriate institution jointly selected by the Sponsors. They shall be counter-guaranteed or otherwise backed by or on behalf of each Sponsor in proportion to their Proportions and on a several basis and the fees and other costs charged in this respect shall be separately borne by each Sponsor. The Sponsors acknowledge and agree that if the Client requires security to be provided with the Proposal ("**Bid Bond**"), such Bid Bond shall be issued by the Sponsors, and the costs thereof shall be exclusively borne by the Sponsors.

18. THIRD PARTIES' RIGHTS

This Teaming Agreement is solely for the benefit of the Parties and their respective successors at law, and this Teaming Agreement shall not otherwise be deemed to confer upon or give to any other third party any remedy, claim, reimbursement, cause of action or other right.

19. INVALIDITY

Should any provision, concept or structure of this Teaming Agreement be wholly or partly invalid or unenforceable, this will not affect the validity or enforceability of the remaining provisions, concept or structure. The Parties shall, as far as is reasonably possible, cause the invalid or unenforceable provision, concept or structure to be substituted by a valid or enforceable provision, concept or structure, which in its essential purpose comes as close as

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possible to the invalid or unenforceable provision, concept or structure. The same applies mutatis mutandis to any gaps in this Agreement.

20. ENTIRE AGREEMENT

20.1 This Teaming Agreement represents the entire agreement and consents of the Parties hereto. All previous agreements, memoranda, understandings and communications related to the Project of this Agreement, whether written or verbal, made or exchanged between the Parties or some of the Parties are hereby declared null and void.

21. NO PARTNERSHIP

Nothing contained herein is intended to create a partnership nor any separate legal or corporate entity between the Parties nor place them in the relationship of fiduciaries or agents. No Party has the right to represent the other Parties or to enter into any commitment or on behalf of the other Parties without such Parties' prior written consent.

22. NOTICES

Any communication to be given under this Teaming Agreement shall be given, in writing, and shall be sent by mail, registered mail, facsimile or messenger service, as follows:

If to **VINCI Concessions**, to:

VINCI Concessions SAS

9 Place de l'Europe

92581 Rueil-Malmaison CEDEX

FRANCE
Attn. Mr. Fadi Selwan

Director Business Development

Fax nr. : +33 1 47 16 36 36

and if to **Walsh Investors** to:

Walsh Investors, LLC

929 W. Adams

Chicago, IL 60607

Attn: Greg Ciambrone

Manager

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and if to **Bilfinger,** to:

Bilfinger Berger Project Investments Inc.

675 Cochrane Drive

West Tower, Suite 630

Markham, ON, l4B 2T9

Attn: Damian Joy

President & CEO

The date of receipt of any such notice or communication shall be (i) the date of receipt, if delivered by hand, courier, fax; or (ii) five (5) Days after mailing, if delivered by mail.

(EXECUTION PAGE TO FOLLOW)

Signed for and on behalf of VINCI Concessions SAS

By:

Name: _____

Title: Manager Business Development
VINCI Concessions NA

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Signed for and on behalf of Walsh Investors, LLC

By: 

Name: Matthew Walsh

Title: Manager

Signed for and on behalf of Bilfinger Berger Project Investments Inc.

By: Thl. PJ

Name: THILO TECKLENBURG

Title: VP, DEVELOPMENT

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SPV/CJV Design-Build Contract

Commitment Letter

To: Bilfinger Berger PI International Holdings GmbH
Walsh Investors, LLC; and
VINCI Concessions SAS

Ladies and Gentlemen:

Re: Request for Proposals ("RFP") to Develop, Design, Construct, Finance, Operate and Maintain the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) issued July 31, 2012 (subject to Addenda 1 to 7) issued by the Indiana Finance Authority ("IFA")

This letter (the "Commitment Letter") sets forth the commitments of Vinci Construction Grands Projets and Walsh Construction Company

(each a "Design Build Contractor Partner" and together the "Design Build Contractor Partners"),

in favor of

Bilfinger Berger PI International Holdings GmbH, Walsh Investors, LLC and VINCI Concessions SAS (collectively the "Equity Sponsors")

in regard to the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) (the "Project"), if WVB East End Partners, an unincorporated bidding consortium formed by the Equity Sponsors, the Design Build Contractor Partners and other parties, is selected as Preferred Proponent (as such term is defined in the RFP) by the IFA, in which case the Equity Sponsors will establish a special purpose entity ("Developer") to design, build, finance, operate and maintain the Project.

1. Acknowledgement and Agreement.

(i) Each Design Build Contractor Partner hereby irrevocably and unconditionally acknowledges, represents and agrees that:

a. it has formed an unincorporated joint venture (the "Design Build Contractor") and will, upon selection of WVB East End Partners as Preferred Proponent, enter into the design build contract with Developer;

b. in preparing the offer for the purposes of the Equity Sponsors' response to the RFP in respect of the Project (such response, the "Proposal"), it has carefully and thoroughly reviewed and considered the RFP and the Reference Information Documents (as such term is defined in the RFP).

c. it has reviewed:

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(i) the draft Public Private Agreement ("PPA") (version Addendum 7), to be entered into between Developer and the IFA, if WVB East End Partners selected as Preferred Proponent;

(ii) the draft design build contract, to be entered into between Developer and Design Build Contractor if WVB East End Partners is selected as the Preferred Proponent, in the form attached as Annex A (which, together with the Contract Price set out in Annex B and the Schedule of Payments in Annex C, constitute the "Design Build Contract");

(iii) the documents which are listed on Annex D to be submitted by Design Build Contractor to Developer prior to the date of the execution of the PPA ("Commercial Close") (such documents referred to as the "Commercial Close Design Build Contractor Documents"); and

(iv) the documents which are listed on Annex E to be submitted by Design Build Contractor to Developer on or about Financial Close (as such term is defined in the PPA) (such documents referred to as the "Financial Close Design Build Contractor Documents")

d. it and where applicable, its respective Parent, has received all necessary internal approvals to enter into and/or provide the Commercial Close Design Build Contractor Documents and the Financial Close Design Build Contractor Documents (in each case to which it is to be a party or which it is to provide) to the extent these have been developed to date and on the terms and conditions described therein;

e. if WVB East End Partners is selected as the Preferred Proponent, it will:

(i) document, execute or cause to be executed, and deliver the Commercial Close Design Build Contractor Documents (in each case to which it is to be a party or which it is to provide) on or prior to the date of Commercial Close, including, without limitation, procuring the delivery by its respective Parent of its Parent Company Guaranty;

(ii) execute, or cause to be executed, and deliver all further instruments and documents, and take all further action that may be necessary or that any party may reasonably request, in order to achieve Commercial Close on the basis contemplated in the RFP.

f. the commitments set forth in this Commitment Letter will be valid until the earlier of (i) the expiration of the 180 calendar day period from the Submission Deadline (as that term is defined in the RFP), which may be extended upon mutual agreement of the Parties; or (ii) Commercial Close (as that term is defined in the RFP) (iii) execution of the Design Build Contract.

g. it will co-operate with the bond underwriters as necessary to create, market and issue the offering of the senior bonds, including, without limitation, by making members of senior management of the Design Build Contractor Partners reasonably available for meetings or presentations with prospective bondholders to discuss the Project and the offering and assisting the bond

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underwriters in preparing materials for prospective bondholders; and

h. the Proposal Security Indemnity Agreement is executed in the form attached as Annex F.

(ii) Each of the Equity Sponsors hereby irrevocably and unconditionally acknowledges, represents and agrees that if WVB East End Partners is selected as the Preferred Proponent, it will cause Developer to:

a. document, execute or cause to be executed, and deliver the Design Build Contract and the Commercial Close Design Build Contractor Documents (in each case to which it is to be a party or which it is to provide) on or prior to Commercial Close; and

b. execute, or cause to be executed, and deliver all further instruments and documents, and take all further action that may be necessary or that any party may reasonably request, in order to achieve Commercial Close on the basis contemplated in the RFP. and

each of such Equity Sponsors will enter into the Financial Close Security and Design Costs Indemnity Agreement in the form attached as Annex G.

2. Assignments.

No Party may assign its rights and obligations under this letter to any third party without the prior written consent of each other Party.

3. No Third Party Beneficiary.

The terms and provisions of this letter are intended solely for the benefit of each Party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

4. Amendments.

This letter may only be amended in writing signed by all Parties.

5. Governing Law.

This letter shall be governed by, and shall be enforced, construed and interpreted in accordance with, the laws of the State of Indiana.

6. Dispute Resolution.

Any and all disputes that arise for items contemplated under this Indemnity Agreement shall

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be resolved in accordance with the following procedures:

i. Firstly, the dispute shall be referred to senior management of each of the disputing Parties, who shall endeavor to reach an amicable resolution of the dispute within twenty (20) business days of the referral to them, and then immediately implement any such resolution.

ii. Secondly, if senior management is unable to resolve the dispute within the twenty (20) business day period, either party may refer the dispute to arbitration, in which case the dispute shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce (the "'Rules") by three appointed arbitrators in accordance to the above mentioned rules. The venue of arbitration shall be Indianapolis, Indiana and the language of the arbitration shall be English.

iii. All disputes shall be dealt with in a timely manner and as expeditiously as possible.

7. Counterparts.

This letter may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same document.

8. Joint and Several Liability.

Each of Vinci Construction Grands Projets and Walsh Construction Company agrees with the Equity Sponsors that it is jointly and severally liable for the performance of the Design Build Contractor Partners' liabilities and obligations under this letter; and that such joint and several liability shall not in any way be reduced, diminished or released by any change to the constitution of the Design Build Contractor.

Nothing herein shall be construed as making the Equity Sponsors jointly and severally liable with one another and any liability of the Equity Sponsors shall be on a several basis in proportion to their respective proposed ownership interests in the Developer, being one-third each.

If the foregoing accurately sets forth the basic business terms of our agreement, kindly acknowledge the same by executing and returning the enclosed duplicate copy of this letter.

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Sincerely,

WALSH CONSTRUCTION COMPANY

By: Daniel J. Walsh

Name: Daniel J. Walsh

Title: President

VINCI CONSTRUCTION GRANDS PROJETS

By: [signature]

Name: Martin JULIA - SAN CHEF

Title: Bid Manager

Acknowledged and Agreed:

BILFINGER BERGER PI INTERNATIONAL HOLDING GmbH

By: _____

Name: _____

Title: _____

VINCI CONCESSIONS S.A.S.

By: Van Loon Kristof

Name: KRISTOF VAN LOON

Title: PROJECT DIRECTOR NORTH AMERICA

WALSH INVESTORS, LLC

By: Gregory A. Ciambrone

Name: Gregory A. Ciambrone

Title: Authorized Representative

Sincerely,

WALSH CONSTRUCTION COMPANY

By: _____

Name: _____

Title: _____

VINCI CONSTRUCTION GRANDS PROJETS

By: _____

Name: _____

Title: _____

Acknowledged and Agreed:

BILFINGER BERGER PI INTERNATIONAL HOLDING GmbH

By: D. Söhngen _____

Name: DIRK SÖHNGEN NICK DAWSON

Title: MANAGING DIRECTOR MANAGING DIRECTOR

VINCI CONCESSIONS S.A.S.

By: _____

Name: _____

Title: _____

WALSH INVESTORS, LLC

By: _____

Name: _____

Title: _____

ANNEX A – DB CONTRACT

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ANNEX B – CONTRACT PRICE

The following amount is the 'Contract Price' for the purposes of Attachment M of the Design Build Contract: (Deleted pursuant to ITP, Exhibit B, Section 3.0) .

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ANNEX C – Construction Payment Items and Schedule

The following is the 'Construction Payment Items and Schedule' for the purposes of Exhibit 29 of the Design Build Contract:

EXHIBIT 29

CONSTRUCTION PAYMENT ITEMS AND SCHEDULE

[*To be updated at Financial Close*]

1. Milestone Schedule

Milestone	Achievement Date	Amount
Complete Main Span Pier Foundations		(Deleted pursuant to ITP, Exhibit B, Section 3.0)
Complete KY 841		
Complete Main Span Towers		
Complete Indiana East End Road		
Complete Main Span Superstructure Erection		
Complete Final Tunnel Liner		
Complete Tunnel Excavation & Initial Liner		

2. Construction Payment Schedule

Invoice Period	Construction Payment Amount	Maximum Aggregate Amount of Construction Payments
Financial Close		(Deleted pursuant to ITP, Exhibit B, Section 3.0)
April-13		
May-13		
June-13		
July-13		
August-13		
September-13		
October-13		
November-13		

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Invoice Period	Construction Payment Amount	Maximum Aggregate Amount of Construction Payments
December-13		
January-14		
February-14		
March-14		
April-14		
May-14		
June-14		
July-14		
August-14		
September-14		
October-14		
November-14		
December-14		
January-15		
February-15		
March-15		
April-15		
May-15		
June-15		
July-15		
August-15		
September-15		
October-15		
November-15		
December-15		
January-16		
February-16		
March-16		
April-16		
May-16		
June-16		
July-16		
August-16		
September-16		
October-16		
November-16		
December-16		
January-17		

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Invoice Period	Construction Payment Amount	Maximum Aggregate Amount of Construction Payments
February-17		
March-17		
April-17		
May-17		
June-17		
July-17		
August-17		
September-17		
October-17		
November-17		
December-17		
January-18		
February-18		

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ANNEX D – CERTAIN COMMERICAL CLOSE DESIGN BUILD CONTRACTOR DOCUMENTS

D-1 Design-Build Contract
D-2 Parent Company Guarantees from each of The Walsh Group and Vinci Construction, the forms of which are contained in Exhibit 25 of the Design-Build Contract;

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Annex E –CERTAIN FINANCIAL CLOSE DESIGN BUILD CONTRACTOR DOCUMENTS

E-1 Lenders Direct Agreement between Design Build Contractor, Developer and the Collateral Agent, the form of which is contained in Exhibit 21 of the Design-Build Contract

E-2 The Performance Bond and Payment Bond, the forms of which are contained in Exhibit 20 to the PPA, and otherwise complying with the requirements of Article 17 of the PPA

E-3 The letter of credit, the form of which is contained in Exhibit 26 the DB Contract, otherwise complying with the requirements of Article 17 of the Design-Build Contract, and

E-4 Financial Close Security and Design Costs Indemnity Agreement, in the form attached as Annex G.

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Annex F – PROPOSAL SECURITY INDEMNITY AGREEMENT

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Annex G - **FINANCIAL CLOSE SECURITY AND DESIGN COSTS INDEMNITY AGREEMENT**

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DESIGN-BUILD CONTRACT

For

THE EAST END CROSSING

(LOUISVILLE-SOUTHERN INDIANA

OHIO RIVER BRIDGES PROJECT)

Between

WVB EAST END PARTNERS, LLC

And

WALSH CONSTRUCTION COMPANY / VINCI CONSTRUCTION GRANDS PROJETS JV

Dated [●], 2012

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DESIGN-BUILD CONTRACT

THE EAST END CROSSING

(LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT)

This Design-Build Contract (this "**Agreement**") is entered into and effective as of [●], 2012, by and between WVB East End Partners, LLC, a limited liability company organized under the laws of the State of Delaware ("**Developer**"), and Walsh Construction Company / VINCI Construction Grands Projets JV, an unincorporated joint venture ("**Design-Build Contractor**") comprising Walsh Construction Company, a corporation organized under the laws of the State of Illinois, having its principal office at 929 West Adams Street, Chicago, Illinois 60607 ("**WCC**"), and VINCI Construction Grands Projets, a limited company organized under the laws of France, having its principal office at 5 Cours Ferdinand-de-Lesseps, 92500 Rueil-Malmaison, France ("**VCGP**," and together with WCC, the "**DBC JV Members**").

RECITALS

The Indiana Finance Authority ("**IFA**") wishes to design, construct, finance, operate and maintain the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) (the "**Project**") through a public-private agreement.

By a Public-Private Agreement dated [●], 2012, between Developer and IFA ("**Public-Private Agreement**" or "**PPA**"), Developer is authorized and has agreed to undertake to design, construct, finance, operate and maintain the Project.

Developer desires to hire Design-Build Contractor to provide, and Design-Build Contractor desires to perform, the D&C Work for the Project.

NOW, THEREFORE, in consideration of the sums to be paid by Developer to Design-Build Contractor, the D&C Work to be performed by Design-Build Contractor and the covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS; PPA DOCUMENTS; ORDER OF PRECEDENCE; OTHER DOCUMENTS

1.1 Definitions. Definitions for the terms used in this Agreement and other DBC Documents are contained in Exhibit 1 (Abbreviations and Definitions).

1.2 DBC Documents; Rules to Reconcile Conflicting Provisions.

1.2.1 The term "**DBC Documents**" shall mean this Agreement and the documents listed in this Section 1.2 to the extent such documents relate to this Agreement or the D&C Work. Each of the DBC Documents is an essential part of the agreement between the Parties. The DBC Documents are intended to be complementary and to be read together as a complete agreement.

1.2.2 Subject to Sections 1.2.3 and 1.2.4, in the event of any irreconcilable conflict, ambiguity or inconsistency among the DBC Documents, the order of precedence, from highest to lowest, shall be as follows:

1.2.2.1 Change Orders and Agreement amendments and supplements, and all exhibits, appendices and attachments to such amendments and supplements;

1.2.2.2 This Agreement, including all Exhibits other than Exhibit 2 (Developer's Schematic Design of Project and Proposal Commitments) which has a lower order of precedence, and the executed originals of Exhibits that are contracts;

1.2.2.2A The PPA, including all Exhibits other than Exhibit 2 (Developer's Schematic Design of Project and Proposal Commitments) which has a lower order of precedence;

1.2.2.3 Technical Provisions amendments, including all exhibits and attachments to such amendments;

1.2.2.4 The Technical Provisions, including all exhibits and attachments to the Technical Provisions, except that Attachment 16-1 to the Technical Provisions has a lower order of precedence as noted below;

1.2.2.5 Attachment 16-1 to the Technical Provisions;

1.2.2.6 Supplements and amendments to Exhibit 2 (Developer's Schematic Design of East End Crossing and Proposal Commitments); and

1.2.2.7 Developer's Proposal commitments set forth in Exhibit 2 (Developer's Schematic Design of East End Crossing and Proposal Commitments), including Developer's Schematic Design.

1.2.3 In the event of any irreconcilable conflict, ambiguity or inconsistency among the DBC Documents or provisions within a DBC Document, the following rules of interpretation shall apply.

1.2.3.1 Notwithstanding the order of precedence among DBC Documents set forth in this Section 1.2, if Exhibit 2 (Developer's Schematic Design of East End Crossing and Proposal Commitments) includes statements, offers, terms, concepts or designs prepared by or with the consent of Design-Build Contractor that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the other DBC Documents or to perform services or meet standards in

addition to or better than those otherwise required, or otherwise contain terms or designs which are more advantageous to IFA or Developer than the requirements of the other DBC Documents, as reasonably determined by IFA under Section 1.2.3.1 of the PPA with respect to the corresponding provisions of the PPA Documents (or if IFA has not made such determination, by Developer hereunder), then Design-Build Contractor's obligations hereunder shall include compliance with all such statements, offer, terms, concepts and designs, which shall have the priority of Agreement amendments and Technical Provisions amendments, as applicable.

1.2.3.2 Notwithstanding the order of precedence among DBC Documents set forth in this Section 1.2, if the DBC Documents contain differing provisions on the same subject matter, the provisions that establish the higher quality, manner or method of performing the D&C Work, establish higher or better Good Industry Practice, or use more stringent standards will prevail.

1.2.3.3 Additional details in a lower priority DBC Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority DBC Document.

1.2.3.4 If the DBC Documents contain differing provisions on the same subject matter that cannot be reconciled by applying the foregoing rules, then the provisions (whether setting forth performance or prescriptive requirements) contained in the document of higher order of precedence shall prevail over the provisions (whether setting forth performance or prescriptive requirements) contained in the document of lower order of precedence unless IFA, in its sole discretion under Section 1.2.3.4 of the PPA, approves otherwise in writing with respect to the corresponding provisions of the PPA Documents.

1.2.3.5 In the event of an irreconcilable conflict between or among provisions in DBC Documents having the same order of precedence, the provisions that establish the higher quality, manner or method of performing the D&C Work, exceed Good Industry Practice, or use more stringent standards will prevail.

1.2.3.6 In the event of an irreconcilable conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the East End Crossing established by reference to a described manual or publication within a DBC Document or set of DBC Documents with the same order of priority (including within documents referenced therein), the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless IFA, in its sole discretion under Section 1.2.3.6 of the PPA, approves or directs otherwise in writing with respect to the corresponding provisions of the PPA Documents.

1.2.3.7 In the event of an irreconcilable conflict between the standards, criteria, requirements, conditions, procedures, specifications or other provisions of the Technical Provisions and those established by reference to a

described manual or publication within a DBC Document, the Technical Provisions shall prevail.

1.2.4 If either Party becomes aware of any such conflict, it shall promptly notify the other Party of the conflict, which shall be resolved by mutual agreement of the Parties or otherwise in accordance with the Dispute Resolution Procedures; provided, however, that, notwithstanding anything in this Agreement to the contrary, any resolution of a conflict concerning corresponding provisions of the PPA Documents pursuant to the terms of the PPA shall be conclusive and binding on the parties with respect to the corresponding provisions of the DBC Documents for purposes of this Agreement.

1.2.5 Erroneous provisions shall not be treated as inconsistent or conflicting provisions of the DBC Documents under this Section 1.2, but instead shall be reconciled under Section 5.2.5.

1.2.5A The Technical Provisions and all Exhibits to the PPA that are referenced herein and to the extent they are related to the D&C Work are an integral part of this Agreement. If and to the extent that Design-Build Contractor is required to comply with the Technical Provisions or an Exhibit to the PPA pursuant to or for the purposes of this Agreement, all references to and obligations of Developer in such Technical Provisions or Exhibit to the PPA shall be construed as if they are instead references to Design-Build Contractor and Developer shall use commercially reasonable efforts to request IFA to perform its obligations in such Technical Provisions or Exhibit to the PPA.

1.3 Order of Precedence of Project Management Plan.

1.3.1 In the event of any irreconcilable conflict, ambiguity or inconsistency between the Project Management Plan and any of the PPA Documents, the latter shall take precedence and control and Design-Build Contractor, on behalf of Developer in accordance with Section 1.3 of the PPA, shall promptly modify the Project Management Plan to cure the conflict, ambiguity or inconsistency, unless IFA, in its sole discretion pursuant to Section 1.3 of the PPA, approves otherwise in writing.

1.3.2 In the event of any irreconcilable conflict, ambiguity or inconsistency between the Project Management Plan and any of the DBC Documents, (a) to the extent that the relevant provisions of the DBC Documents correspond to provisions of the PPA Documents, the conflict, ambiguity or inconsistency shall be resolved in the same manner as such conflict, ambiguity or inconsistency between the Project Management Plan and such corresponding provisions of the PPA Documents would be resolved, and (b) except as provided by the foregoing, the Project Management Plan (as modified in accordance with Section 1.3.1) shall take precedence and control notwithstanding the order of precedence set forth in Section 1.2.2.

1.4 Reference Information Documents.

1.4.1 IFA has provided and disclosed to Design-Build Contractor, through Developer, the Reference Information Documents. Except as set forth in the next two sentences of this Section 1.4.1, the Reference Information Documents are provided only for the purposes of disclosure and, in the case of general industry and general governmental manuals and publications, of guidance regarding Good Industry Practice. Portions of the Reference Information Documents are referenced in the PPA Documents for the purpose of defining requirements of the PPA Documents. Design-Build Contractor acknowledges that, pursuant to Section 1.4.1 of the PPA, to the extent that such portions are so expressly referenced, such portions of the referenced Reference Information Documents are deemed incorporated in the PPA Documents with the referenced portions having the same order of priority pursuant to Section 1.2 of the PPA of as the PPA Document in which the reference occurs.

1.4.2 Neither Developer nor IFA shall be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any DBC-Related Entity by reason of any use of information, opinions or recommendations contained in, any conclusions Design-Build Contractor may draw from, or any action or forbearance in reliance on, the Reference Information Documents, (a) except to the extent that information in Reference Information Documents is expressly made (i) the basis for any schedule or monetary relief available hereunder in the case of clauses (m), (o), (p), (q), (r) or (u) of the definition of "Relief Event" or (ii) a contractual requirement as part of the Technical Provisions and (b) except for the use of information in Reference Information Documents for determining Known or Suspected Hazardous Materials; provided that, without prejudice to Design-Build Contractor's rights and remedies provided by this Agreement with respect to Developer Acts, Design-Build Contractor's sole and exclusive remedy for any Losses whatsoever suffered by reason of any inaccuracy in any of the information described in the foregoing clauses (a) and (b) shall be a Pass Through Claim to be asserted against IFA in accordance with Section 15 of the PPA and Section 19A of this Agreement.

1.4.3 Developer shall provide to Design-Build Contractor the Reference Information Documents received from IFA, which Design-Build Contractor acknowledges. Developer has not verified and does not represent, warrant or guarantee the accuracy, completeness or fitness of the Reference Information Documents.

1.4.4 The Parties acknowledge that general industry or general government manuals and publications that are part of the Reference Information Documents may be revised, changed, added to or replaced from time to time by the agencies or organizations that issue such manuals and publications. All such revisions, changes, additions or replacements shall, when issued, automatically become part of the Reference Information Documents.

1.4.5 Where the Technical Provisions expressly require compliance with specified general industry or general government manuals and publications or portions thereof, then the manual, publication or portion thereof to be complied with is not

considered a Reference Information Document and instead is considered to be part of, and at the same level of priority as, the Technical Provisions.

1.4.6 Nothing contained in this Section 1.4 is intended to diminish or derogate from the rights of Design-Build Contractor for compensation or time relief on an Equivalent Project Relief basis in connection with Relief Events or pursuant to Article 16.

ARTICLE 1A

OTHER GENERAL PROVISIONS

1A.1 Fundamental Obligations.

1A.1.1 Design-Build Contractor:

1A.1.1.1 shall assume and perform as part of its obligations under this Agreement all the obligations, liabilities and risks relating to the D&C Work imposed upon the Developer under the PPA Documents, except at explicitly provided otherwise in this Agreement;

1A.1.1.2 must perform the D&C Work in accordance with this Agreement;

1A.1.1.3 acknowledges that it has reviewed a copy of the PPA and it is aware of Developer's obligations to IFA under the PPA;

1A.1.1.4 unless expressly provided otherwise under this Agreement, must carry out its obligations under this Agreement at all times so as to:

(a) ensure that Developer can satisfy its corresponding obligations under the PPA in connection with the D&C Work; and

(b) as it relates to the D&C Work, enable IFA, Developer and the Other Developer Key Contractors to perform their respective obligations under the Principal Developer Documents (as applicable), and so as not to cause or contribute to any breach or default of, so as to mitigate the consequences of any such breach or default, and generally so as to have regard for such obligations;

1A.1.1.5 unless expressly permitted under this Agreement, must not do, or omit to do, anything which causes Developer to be in breach, without regard to cure periods available to Developer, of its obligations under the PPA so far as they relate to the D&C Work; and

1A.1.1.6 must accommodate IFA's rights under the PPA including, but not limited to, IFA's rights of oversight, inspection, testing and auditing in regards to the D&C Work.

1A.1.2 Developer shall comply with all of its obligations under the PPA (excluding those obligations of Developer that Developer has subcontracted to Design-Build Contractor under this Agreement) to the extent that any failure to do so would adversely affect the Design-Build Contractor's rights, or the performance of Design-Build Contractor's obligations, under this Agreement, and shall at all times have regard to and take account the obligations of the Design-Build Contractor under this Agreement in the carrying out of its obligations and the exercise of its rights under such documents.

1A.1.3 Without limiting the other provisions of this Agreement, to the extent that a default by Design-Build Contractor under this Agreement causes Developer to default under any Principal Developer Document, Design-Build Contractor must do all things necessary to enable Developer to remedy that default within the cure period for such default under the applicable Principal Developer Document, including without limitation by preparing any necessary plan to remedy that default or providing evidence that Design-Build Contractor is diligently pursuing the cure of that default.

1A.2 Amendments to Principal Developer Documents.

1A.2.1 Subject to Section 1A.2.2, Developer may amend any provision of any Principal Developer Document in accordance with the amendment requirements applicable thereto; provided that where Design-Build Contractor is not a party to such Principal Developer Document and the effect of such amendment would be to adversely affect Design-Build Contractor's rights or liabilities, or ability or capacity to undertake (or the cost or time of undertaking) its obligations, under this Agreement, Developer must obtain Design-Build Contractor's prior written consent (which consent must not be unreasonably withheld) before agreeing to such amendment.

1A.2.2 If Developer proposes to amend any Principal Developer Document where the effect of any such amendment would be to adversely affect Design-Build Contractor's rights or liabilities, or ability or capacity to undertake (or the cost or time of undertaking) its obligations, under this Agreement, Developer shall submit a copy of the proposed amendment to Design-Build Contractor at least fifteen (15) Business Days prior to the date of the proposed amendment (or by such other date as the Parties may agree). Design-Build Contractor may review and provide reasonable comments on such proposed amendment. Any disputes under this Section 1A.2 shall be resolved according to the Dispute Resolution Procedures.

1A.2.3 This Section 1A.2 does not apply to any Change Order or other change subject to Article 16.

1A.3 Notices and Communication.

1A.3.1 Except where otherwise provided for in this Agreement, Developer shall provide to Design-Build Contractor a copy of any document (i) received from IFA, the Department, KYTC, and Governmental Entities that relates to or may affect this Agreement or the rights and benefits of Design-Build Contractor, including documents related to construction, operations, and maintenance during construction and the

Warranty Period, and that may be lawfully disclosed by Developer to Design-Build Contractor and (ii) which Developer sends to IFA, at substantially the same time that Developer sends such document to IFA, or which Developer receives from IFA, as soon as reasonably practicable after receipt of such document.

1A.3.2 Except as otherwise provided in this Agreement, Developer shall promptly provide to IFA any notice or document received from Design-Build Contractor that is intended to be provided to IFA (as soon as reasonably practicable after receipt of such notice or document from Design-Build Contractor but after allowing for any review, comment or approval to which Developer is entitled pursuant to this Agreement).

1A.3.3 Where the PPA or Principal Developer Documents require that notice be given to or consent be received from IFA or any other third party (or other similar procedure to be followed with respect to the rights of IFA or any other third party) before the commencement or continuation of D&C Work (or a portion thereof), Design-Build Contractor shall not proceed with such D&C Work until the required notice or consent has been given or received (or other similar procedure completed) or Developer is otherwise entitled to proceed in accordance with the PPA and Principal Developer Documents. Any document (including any Design Documents or Submittals) or proposed course of action in respect of D&C Work that is required by this Agreement to be submitted to IFA in the name of or on behalf of Developer shall be submitted to IFA and performed by Design-Build Contractor on behalf of Developer in accordance with Article 3.

1A.3.4 Where Design-Build Contractor is required by this Agreement or any other Principal Developer Document to consult with, or obtain the consent or agreement of, Developer, each party shall, in respect of such consultation or request for consent or agreement, act in a timely manner and so as to ensure that the other party has a reasonable amount of time in which to consider the outcome of the consultation or the request for consent or agreement and to respond before any relevant deadline in this Agreement or any other relevant Principal Developer Document.

1A.3.5 To the extent that any notice, information, consent, claim, request, response, submission or other communication is required or permitted to be given or made by Design-Build Contractor directly to IFA or any other third party under this Agreement, subject to Section 3.1A or other provisions requiring prior notice as may be applicable, Design-Build Contractor shall provide a copy of such communication to Developer at the same time as giving or making such communication to IFA or other third party.

1A.3.6 Subject to Section 1A.3.4 and except as otherwise provided in this Agreement, to the extent that a notice, information, consent, claim, request, response, submission or other communication that is required or permitted by this Agreement to be given by Design-Build Contractor to Developer relates to a related communication that is required or permitted by the PPA or other Principal Developer Documents to be given by Developer to IFA or other third party, Design-Build Contractor shall provide such communication to Developer at least three Business Days before the date by

which Developer is required to give the related communication to IFA or other third party (or by such other later date as Developer may agree in writing).

1A.3.7 Developer, acting reasonably, will provide to Design-Build Contractor all information in Developer's possession relating in any way to the performance of Design-Build Contractor's obligations under this Agreement or resolving a dispute in respect of those obligations (which dispute arises out of or in connection with the events or circumstances under the PPA). This obligation will not extend to information for which IFA or Developer has claimed privilege.

1A.4 Consent or Approval. Developer will not be in breach of this Agreement for failure to give its consent or approval to the extent that:

1A.4.1 IFA's consent to or approval of the same matter is required, or IFA is required to exercise its discretion in relation to the same matter under the PPA; and

1A.4.2 IFA has not granted its consent or approval in respect of such matter or has not exercised its discretion in respect of such matter in accordance with the PPA.

ARTICLE 2

ACCESS; TERM

2.1 Access.

2.1.1 [Not Used]

2.1.2 Design-Build Contractor is an "authorized Design-Related Entity" under Section 2.1.2 of the PPA and, as such, shall have the right and license to enter onto Project Right of Way, and other lands, owned by or in the possession and control of IFA or subject to a right of entry or access in favor of IFA for the purpose of carrying out Design-Build Contractor's obligations under this Agreement (the "**Project Right of Entry**"), subject to and in accordance with this Agreement, the DBC Documents and the PPA Documents. Prior to issuance of NTP2, the Project Right of Entry shall be limited solely to the activities and D&C Work authorized under, and subject to the conditions set forth in, Section 5.3. The Project Right of Entry also is subject to conditions to commencement of Construction Work and Utility Adjustments as set forth in Section 5.5, and may be subject to interim limits on activities as set forth in the Technical Provisions, including Section 21.1 thereof. The Project Right of Entry shall automatically terminate at the end of the DBC Term.

2.1.3 Design-Build Contractor has no fee title, leasehold estate, possessory interest, permit, easement or other real property interest of any kind in or to the East End Crossing or the Project Right of Way by virtue of this Agreement, any of the other DBC Documents, PPA Documents or otherwise.

2.1.4 Design-Build Contractor's property interests under this Agreement are limited to contract rights (and not real estate interests). Design-Build Contractor's property interests under this Agreement are solely those of an independent contracting party, and Design-Build Contractor is not in a relationship with either Developer or IFA of co-venturers, partners, lessor-lessee or principal-agent (except to the extent the DBC Documents expressly appoint Design-Build Contractor as Developer's agent for specified purposes).

2.1.5 Design-Build Contractor's rights granted in this Section 2.1 are limited by and subject to the terms and conditions of the DBC Documents, including the following:

2.1.5.1 Receipt of all Governmental Approvals necessary for the D&C Work to be performed and satisfaction of any requirements applicable under the Governmental Approvals (including the NEPA Approval) for the D&C Work to be performed;

2.1.5.2 IFA's ownership, as joint tenant with KPTIA of fee simple title to or other property interest or right in the East End Crossing and Project Right of Way and all improvements constructed thereon;

2.1.5.2A Effectiveness of the PPA and validity of Developer's rights thereunder;

2.1.5.3 IFA's rights and remedies under the PPA Documents; and

2.1.5.3A Developer's rights and remedies under the DBC Documents.

2.1.6 Design-Build Contractor's rights granted in this Section 2.1 are limited by and subject to, and Design-Build Contractor shall be responsible for compliance with, the provisions of all agreements, easements, rights of entry, Governmental Approvals, and other instruments under which IFA has received or will receive title, rights of entry or rights of access on and to lands owned by public entities, including the State of Indiana, the Commonwealth of Kentucky, including paying all applicable charges and related fees and obtaining all consents or approvals for access by any Developer-Related Entity, Design-Build Contractor, and any DBC-Related Entity to the Project Right of Way to perform any D&C Work required under this Agreement, as such matters are described in the Technical Provisions or Reference Information Documents. The Parties acknowledges that, pursuant to Section 2.1.6 of the PPA, IFA has agreed to provide reasonable assistance in accordance with Section 3.2.3 of the PPA in obtaining any consents or approvals required from such public entities to access such lands.

2.1.7 This Agreement shall take effect on the Effective Date and shall remain in effect until all Parties' obligations hereunder have been fulfilled unless earlier terminated pursuant to the terms of this Agreement.

ARTICLE 3

MANAGEMENT SYSTEMS AND OVERSIGHT

3.1 Submittal, Review and Approval Terms and Procedures

3.1.1 General. Design-Build Contractor acknowledges the provisions of Section 3.1 of the PPA, which set forth uniform terms and procedures that govern all Submittals to IFA pursuant to the PPA Documents or Project Management Plan and component plans thereunder. Design-Build Contractor further acknowledges that, in the event of any irreconcilable conflict between the provisions of Section 3.1 of the PPA and any other provisions of the DBC Documents (including Section 3.1 of this Agreement), PPA Documents or Project Management Plan and component plans thereunder concerning submission, review and approval procedures, Section 3.1 of the PPA shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes Section 3.1 of the PPA.

3.1.2 Time Periods.

3.1.2.1 Design-Build Contractor acknowledges that, except as otherwise provided in Section 3.1.2 of the PPA, whenever IFA is entitled to review, comment on, review and comment on, or to affirmatively approve or accept, a Submittal, IFA has a period of twenty-eight (28) days to act after the date it receives an accurate and complete Submittal in conformity with the PPA Documents, together with a completed transmittal form in form to be mutually agreed between IFA and Developer pursuant to Section 3.1.2 of the PPA and all necessary or requested information and documentation concerning the subject matter.

3.1.2.2 Design-Build Contractor acknowledges that, notwithstanding the provisions of Section 3.1.2.1 of the PPA, and except as otherwise mutually agreed by Developer and IFA at the Design Workshop in accordance with Section 3.1.2.1 of the PPA, whenever IFA is entitled to review, comment on, review and comment on, or to affirmatively approve or accept, a Submittal consisting of Design Documents or Construction Documents, IFA has a period of fifteen (15) days to act after the date it receives an accurate and complete Submittal or re-submittal in conformity with the PPA Documents, together with a completed transmittal form in form to be mutually agreed between IFA and Developer pursuant to Section 3.1.2 of the PPA (and with respect to such form, Developer shall consult with and obtain agreement of Design-Build Contractor, which shall not be unreasonably withheld) and all necessary or requested information and documentation concerning the subject matter. If IFA determines that a Submittal of Design Documents or Construction Documents is not complete, IFA has agreed to notify Developer of such determination within such fifteen (15)-day period. Developer shall promptly notify Design-Build Contractor of such determination. The Parties acknowledges that Section 3.1.2.2 of the PPA requires Developer and IFA to agree in good faith upon any necessary extensions of the review-comment-and-approval period to accommodate particularly complex or comprehensive Submittals; Developer shall consult with and obtain agreement of Design-Build

Contractor, which agreement shall not be unreasonably withheld or delayed, as to the appropriate extension before making any such agreement with IFA.

3.1.2.3 Design-Build Contractor acknowledges that, if any other provision of the PPA Documents expressly provides a longer or shorter period for IFA to act, such period shall control over the time periods set forth in Sections 3.1.2.1 and 3.1.2.2. If the time period for IFA to act should end on a day when IFA is closed, the time period shall automatically be extended to the next day when IFA is open.

3.1.2.4 Design-Build Contractor acknowledges that, if at any given time IFA is in receipt of more than (a) ten (10) concurrent Submittals in the aggregate (or other number of aggregate concurrent Submittals mutually agreed in writing by IFA and Developer) that are subject to IFA's review and comment or approval, except Submittals of parts or components of the Project Management Plan prior to issuance of NTP2, or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the PPA Documents, IFA is permitted by Section 3.1.2.4 of the PPA to extend the applicable period for it to act to that period in which IFA can reasonably accommodate the Submittals under the circumstances, or such other period of extension set forth in any other provision of the PPA Documents, and no such extension shall constitute an IFA-Caused Delay, IFA Change, Developer Act, Developer Change, Relief Event or other basis for any Claim. However, if at any time IFA is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether IFA may extend the applicable period. Submittals are deemed to be concurrent to the extent the review time periods available to IFA under Section 3.1.2 of the PPA regarding such Submittals entirely or partially overlap. The Parties acknowledge that, whenever IFA is in receipt of excess concurrent Submittals, Developer is permitted by Section 3.1.2.4 of the PPA to establish by written notice to IFA an order of priority for processing such Submittals, and that IFA has agreed to comply with such order of priority; for such purpose, Design-Build Contract may advise Developer of such an order of priority, in which case Developer shall establish such order of priority by written notice to IFA.

3.1.2.5 Design-Build Contractor acknowledges that all time periods for IFA to act shall be extended in accordance with Section 3.1.2.5 of the PPA.

3.1.2.5A All time periods for Developer to act hereunder shall be extended by the same period by which the time periods for IFA to act are extended in accordance with Section 3.1.2.5 of the PPA, except to the extent the circumstance giving rise to the extension of time for IFA is caused by Developer and not by Design-Build Contractor.

3.1.2.6 Design-Build Contractor acknowledges that, during any time that IFA is entitled under Section 3.4.2 of the PPA to increase the level of its Oversight of Developer's compliance with its obligations under the PPA Documents, the applicable period for IFA to act on any Submittals received during such time and not

related to curing the Developer Default(s) that instigated the Section 3.4.2 action shall automatically be extended by fourteen (14) days.

3.1.2.7 Design-Build Contractor acknowledges that, pursuant to Section 3.1.2.7 of the PPA, IFA has agreed to endeavor to reasonably accommodate a written request from Developer for expedited action on a specific Submittal, within the practical limitations on availability of IFA personnel appropriate for acting on the types of Submittal in question; provided Developer sets forth in its request specific, abnormal circumstances, not caused by a "Developer-Related Entity" as defined under the PPA, demonstrating the need for expedited action. Subject to the right of Developer to review and approve any such request in accordance with Section 3.1A, Design-Build Contractor may submit such a request to IFA on behalf of Developer. This provision shall not apply, however, during any time described in Section 3.1.2.5 or 3.1.2.6.

3.1.3 IFA Discretionary Approvals. Design-Build Contractor acknowledges that, pursuant to Section 3.1.3 of the PPA, if the Submittal or other approval, consent, determination, acceptance, decision or other action or matter is one where the PPA Documents indicate approval, consent, determination, acceptance, decision or other action is required from IFA in its sole discretion or good faith discretion, then IFA's lack of approval, consent, determination, acceptance, decision or other action within the applicable time period under Section 3.1.2 of the PPA will be deemed disapproval. Design-Build Contractor further acknowledges that if the approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) is subject to the sole discretion of IFA, then IFA's approval, consent, determination, decision or other action will be final, binding and not subject to dispute resolution, and such approval, consent, determination, acceptance, decision or other action will not constitute an IFA-Caused Delay, IFA Change, Developer Act, Developer Change, Relief Event or other basis for any Claim. If the approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) is subject to the good faith discretion of IFA, then IFA's approval, consent, determination, acceptance, decision or other action will be binding for purposes of this Agreement in accordance with Section 3.1.3 of the PPA, unless it is finally determined through the Dispute Resolution Procedures under the PPA by clear and convincing evidence that such approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) or matter was arbitrary or capricious, and if determined to be arbitrary and capricious through such Dispute Resolution Procedures under the PPA and causes delay, it will constitute and be treated as an IFA-Cause Delay under the PPA.

3.1.4 Other IFA Approvals.

3.1.4.1 Design-Build Contractor acknowledges that, whenever the PPA Documents indicate that a Submittal or other matter is subject to IFA's approval or consent but the approval or consent is one not governed by Section 3.1.3 concerning discretionary approvals or the Submittal or other matter is subject to IFA's reasonable discretion, then the standard shall be reasonableness.

3.1.4.2 Design-Build Contractor acknowledges that, if the reasonableness standard applies and IFA delivers no approval, consent, determination, decision or other action within the applicable time period under Section 3.1.2 of the PPA, then Developer, in accordance with Section 3.1.4.2 of the PPA, may deliver, and upon written request of Design-Build Contract shall deliver, to IFA a written notice stating the date within which IFA was to have decided or acted and that if IFA does not decide or act within five (5) Business Days after receipt of the notice, delay from and after lapse of the applicable time period under Section 3.1.2 may constitute IFA-Caused Delay for which Developer may be entitled to issue a Relief Event Notice under Section 15.1 of the PPA and for which Design Build Contractor may be entitled to Equivalent Project Relief.

3.1.5 IFA and Developer Review and Comment.

3.1.5.1 Whenever the PPA Documents indicate that a Submittal or other matter is subject to IFA's review, comment, review and comment, disapproval or similar action not entailing a prior approval and IFA delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.1.2 of the PPA, then, after notifying and consulting Developer, Design-Build Contractor may proceed thereafter at its election and risk, without prejudice to IFA's rights to later object or disapprove in accordance with Section 3.1.7.1 of the PPA. No such failure or delay by IFA in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.1.2 of the PPA shall constitute an IFA-Caused Delay, IFA Change, Relief Event or other basis for any Claim.

3.1.5.2 [Not Used]

3.1.5.3 When used in the DBC Documents or PPA Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) IFA or Developer, as applicable, has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) the applicable time period has passed without IFA or Developer, as applicable, providing any comments, exceptions, objections, rejections or disapprovals.

3.1.6 Submittals Not Subject to Prior Review, Comment or Approval. Design-Build Contractor acknowledges that, whenever the PPA Documents indicate that Developer is to deliver a Submittal to IFA but express no requirement for IFA review, comment, disapproval, prior approval or other IFA action, then neither Developer nor Design-Build Contractor is under any obligation to provide IFA any period of time to review the Submittal or obtain approval of it before proceeding with further D&C Work, and IFA has the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with Section 3.1.7.1 of the PPA. No failure or delay by IFA in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute an IFA-Caused Delay, IFA Change, Developer Act, Developer Change, Relief Event or other basis for any Claim.

3.1.7 Resolution of IFA Comments and Objections.

3.1.7.1 Design-Build Contractor acknowledges that, in accordance with Section 3.1.7.1 of the PPA, if the Submittal is one not governed by Section 3.1.3, IFA's exception, objection, rejection or disapproval shall be deemed reasonable, valid and binding if based on any of the following grounds or other grounds set forth elsewhere in the PPA Documents:

(a) The Submittal or subject provision thereof fails to comply, or is inconsistent, with any applicable covenant, condition, requirement, standard (including Safety Standards), term or provision of the PPA Documents or Project Management Plan and component plans thereunder;

(b) The Submittal or subject provision thereof is not to a standard equal to or better than Good Industry Practice;

(c) Developer (or Design-Build Contractor on behalf of Developer) has not provided all content or information required or reasonably requested in respect of the Submittal or subject provisions thereof, provided that (i) neither IFA nor Developer assumes any duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, and (ii) Developer (or Design-Build Contractor on behalf of Developer) shall have the subsequent opportunity to resubmit the Submittal with the required content or information;

(d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval; or

(e) In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are (i) inconsistent with the PPA Documents, the Project Management Plan (and component plans thereunder), applicable Law, the requirements of Good Industry Practice, or the Department policy (except for policies that are incompatible with the East End Crossing's public-private contracting methodology) or (ii) not usual and customary arrangements that the Department offers or accepts for addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the East End Crossing's public-private contracting methodology).

3.1.7.2 In accordance with Section 3.1.7.2 of the PPA and subject to Section 3.1A, Design-Build Contractor, on behalf of Developer, shall respond in writing to all of IFA's comments, exceptions, disapprovals and objections to a

Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments, exceptions, disapprovals and objections, in accordance with the review processes set forth in Section 3.1 of the PPA. Design-Build Contractor acknowledges that IFA is permitted to provide comments, exceptions, disapprovals and objections which reflect concerns regarding interpretation or preferences of the commenter or which otherwise do not directly relate to grounds set forth in Section 3.1.7.1 of the PPA. Design-Build Contractor agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments, exceptions, disapprovals or objections through the review processes described in Section 3.1 of the PPA. However, if the Submittal is not governed by Section 3.1.3 of the PPA, the foregoing shall in no way be deemed to obligate Design-Build Contractor to incorporate any comments or resolve exceptions, disapprovals or objections that (a) are not on any of the grounds set forth in Section 3.1.7.1 of the PPA (and not on any other grounds set forth elsewhere in the PPA Documents), (b) are otherwise not reasonable with respect to subject matter or length, and (c) would result in a delay to a Critical Path on the Project Schedule, in Extra Work Costs or in Delay Costs, except pursuant to an IFA Change. If, however, any comment, exception, disapproval or objection is not accommodated or otherwise resolved, Design-Build Contractor, on behalf of Developer in accordance with Section 3.1.7.2 of the PPA and subject to Section 3.1A, shall deliver to IFA within a reasonable time period, not to exceed thirty (30) days after receipt of IFA's comments, exceptions, disapprovals or objections, a written explanation why modifications based on such comment, exception, disapproval or objection are not required. The explanation shall include the facts, analyses and reasons that support the conclusion.

3.1.7.3 The foregoing shall in no way be deemed to obligate Design-Build Contractor to incorporate any comments or resolve exceptions, disapprovals and objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to an IFA Change.

3.1.7.4 Design-Build Contractor acknowledges the right of IFA to deliver written Notice stating the date by which Developer (or Design-Build Contractor on behalf of Developer) was to have addressed IFA's comments. Design-Build Contractor also acknowledges that if those comments are not addressed within five (5) Business Days after receipt of such Notice, then that failure shall constitute agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to an IFA-Caused Delay, Change Order, Relief Event or other Claim, including any Claim that IFA assumes design or other liability.

3.1.7.5 Design-Build Contractor acknowledges that, after IFA receives explanation from Developer or Design-Build Contractor as to why the modifications are not required as provided in Sections 3.1.7.2, 3.1.7.3 and 3.1.7.4 of the PPA, if IFA is not satisfied with such explanation IFA and Developer have agreed to attempt in good faith to resolve the dispute under the PPA (and for the avoidance of doubt, as provided in and subject to Article 19A, Design-Build Contractor may participate in the resolution of such dispute); provided that if IFA elects to issue a

Directive Letter pursuant to Section 16.3 of the PPA with respect to such matter, Developer and Design-Build Contractor shall proceed in accordance with IFA's Directive Letter while retaining any Claim as to such matter.

3.1.8 Limitations on Right to Rely.

3.1.8.1 Design-Build Contractor acknowledges that no review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification (including certificates of Substantial Completion and Final Acceptance), or Oversight by or on behalf of IFA or Developer, including review and approval of the Project Management Plan, or lack thereof by IFA or Developer, shall constitute acceptance by IFA or Developer, respectively, of materials or Work or waiver of any legal or equitable right under the DBC Documents, PPA Documents, at Law, or in equity. Each of IFA and Developer shall be entitled to remedies for unapproved Deviations, Nonconforming Work and Design-Build Contractor Defaults and to identify additional D&C Work which must be done to bring the D&C Work and East End Crossing into compliance with requirements of the DBC Documents, PPA Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification, or Oversight was conducted or given by IFA or Developer, as applicable. Regardless of any such activity or failure to conduct any such activity by IFA or Developer, Design-Build Contractor at all times shall have an independent duty and obligation to fulfill the requirements of the DBC Documents. Design-Build Contractor agrees and acknowledges that any such activity or failure to conduct any such activity by IFA or Developer:

(a) Is solely for the benefit and protection of IFA or Developer, as applicable;

(b) Does not relieve Design-Build Contractor of its responsibility for the selection and the competent performance of all DBC-Related Entities;

(c) Does not create or impose upon IFA or Developer any duty or obligation toward Design-Build Contractor to cause it to fulfill the requirements of the DBC Documents;

(d) Shall not be deemed or construed as any kind of warranty, express or implied, by IFA or Developer;

(e) May not be relied upon by Design-Build Contractor or used as evidence in determining whether Design-Build Contractor has fulfilled the requirements of the DBC Documents;

(f) Shall not be deemed or construed as any assumption of risk by IFA or Developer as to design, construction, operations, maintenance, performance or quality of D&C Work or materials; and

(g) May not be asserted against IFA or Developer as a defense, legal or equitable, to, or as a waiver of or relief from, Design-Build Contractor's obligation to fulfill the requirements of the DBC Documents.

3.1.8.2 Design-Build Contractor shall not be relieved or entitled to reduction of its obligations to perform the D&C Work in accordance with the DBC Documents or PPA Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 3.1.8.1 or failure to conduct any such activity by IFA or Developer. Such activity by IFA or Developer shall not relieve Design-Build Contractor from liability for, and responsibility to cure and correct, any unapproved Deviations, Nonconforming Work or Design-Build Contractor Defaults.

3.1.8.3 To the maximum extent permitted by Law, Design-Build Contractor hereby releases and discharges Developer and IFA from any and all duty and obligation to cause Design-Build Contractor's D&C Work or the East End Crossing to satisfy the standards and requirements of the DBC Documents and PPA Documents.

3.1.8.4 Notwithstanding the provisions of Sections 3.1.8.1 and 3.1.8.2:

(a) Design-Build Contractor shall be entitled to rely on written approvals and acceptances from IFA or Developer (i) for the limited purpose of establishing that the approval or acceptance occurred or (ii) that are within its sole or absolute discretion, but only to the extent that Design-Build Contractor is prejudiced by a subsequent decision of IFA or Developer, respectively, to rescind such approval or acceptance;

(b) Design-Build Contractor shall be entitled to rely on specific written Deviations IFA approves under Section 5.2.4 or 6.1.2.7 of the PPA;

(c) [Not Used]

(d) Neither IFA nor Developer, respectively, is relieved from any liability arising out of a knowing and intentional material misrepresentation under any written statement IFA or Developer, respectively, delivers to Design-Build Contractor; and

(e) Neither IFA nor Developer, respectively, is relieved from performance of its express responsibilities under the PPA Documents or DBC Documents, as applicable, in accordance with all standards applicable thereto.

3.1A Submittal Procedures as Between Developer and Design-Build Contractor

3.1A.1 Key Submittals. Where Developer is required or permitted to deliver to IFA a Key Submittal under the PPA in relation to the D&C Work, Design-Build Contractor shall deliver a copy of the Key Submittal to Developer for Developer's review

and approval at least five Business Days prior to the date on which Design-Build Contractor delivers the Key Submittal to IFA. Design-Build Contractor may deliver the Key Submittal to IFA (by the applicable deadline set forth in the PPA) whether or not approved by Developer; provided that, if Developer expressly disapproves the Key Submittal prior to its submission to IFA by Design-Build Contractor, Design-Build Contractor shall be responsible for any Losses suffered by Developer caused by the submission or resubmission of the Key Submittal.

3.1A.2 Submittals in Connection with a Pass Through Claim or Change Request. Where Developer is required or permitted to deliver to IFA a Submittal in connection with a Pass Through Claim or a Change Request under the PPA in relation to the D&C Work, Design-Build Contractor shall deliver the draft Submittal or Change Request to Developer at least five Business Days prior to the date on which Developer is required to deliver the Submittal or Change Request to IFA. Developer shall then deliver such Submittal or Change Request to IFA on the date required, or if there is no requirement, within six Business Days after receipt thereof from Design-Build Contractor (or by such later date as Design-Build Contractor may approve). Notwithstanding the foregoing, in accordance with Article 16, any Change Request initiated by Design-Build Contractor or by Developer shall only be required to be submitted by Developer to IFA provided Developer and Design-Build Contractor mutually agree, in advance of such submission to IFA, on the terms and content of such Change Request.

3.1A.3 Other Submittals, Relief Event Notices and Relief Requests.

3.1A.3.1 Except as provided elsewhere in this Agreement, where Developer is required or permitted to deliver to IFA a Submittal under the PPA in relation to the D&C Work, Design-Build Contractor shall deliver the Submittal directly to IFA (on behalf of Developer, and with a copy to Developer) on or prior to the date required by the PPA to be delivered to IFA. Developer shall provide Design-Build Contractor with comments upon any such Submittal, if any, within ten (10) Business Days of receipt thereof or such other time period as provided under the communicational protocol established pursuant to Section 3.8.

3.1A.3.2 Design-Build Contractor shall be responsible for determining whether, under the PPA Documents, IFA review, comment, disapproval, prior approval or other IFA action is required before proceeding with further D&C Work.

3.1A.4 IFA Meetings and Review. Design-Build Contractor may participate in all meetings with IFA, and receive copies of and comment upon all communications by and between IFA and Developer (except those communications considered to be confidential between IFA and Developer), related to the Submittals.

3.1A.5 Responses to IFA; Resubmittals. Subject to Sections 3.1A.1, 3.1A.2 and 3.1A.3, Design-Build Contractor shall (i) prepare and submit responses to IFA's comments, exceptions, disapprovals and objections to a Submittal, (ii) make modifications to the Submittal as necessary in accordance with the review processes

set forth in Section 3.1 of the PPA and (iii) if any comment, exception, disapproval or objection of IFA is not accommodated, prepare a written explanation why modifications based on such comment, exception, disapproval or objection are not required, including the facts, analyses and reasons that support the conclusion.

3.2 Project Management Plan.

3.2.1 Design-Build Contractor is responsible for all quality assurance and quality control activities necessary to manage the D&C Work, including the Utility Adjustment Work. Design-Build Contractor shall undertake all aspects of quality assurance and quality control for the East End Crossing and D&C Work in accordance with the approved Project Management Plan, Good Industry Practice and applicable Law.

3.2.2 Design-Build Contractor shall develop portions of the Project Management Plan related to D&C Work and their respective component parts, plans and other documentation in accordance with the requirements set forth in Section 1.5.2.5 of the Technical Provisions and Good Industry Practice. The Project Management Plan shall include all the parts, Management Plans and other documentation identified in Section 25 and Attachment 01-1 of the Technical Provisions.

3.2.3 Design-Build Contractor shall ensure that such portions of the Project Management Plan meet all requirements of Good Industry Practice, including those for quality assurance and quality control, and all FHWA oversight requirements.

3.2.4 Pursuant to Section 3.2.4 of the PPA, Developer is required to submit to IFA for approval in its good faith discretion, in accordance with Section 3.2 of the PPA and the procedures described in Section 3.1 of the PPA and the time line set forth in Attachment 01-1 of the Technical Provisions, each component part, plan and other documentation of the Project Management Plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation. Design-Build Contractor acknowledges that, under Section 3.2.4 of the PPA, it is deemed good faith for IFA to disapprove and/or require changes to comply with Good Industry Practice, applicable provisions of the PPA Documents, FHWA oversight requirements or applicable Law.

3.2.5 Design-Build Contractor shall not commence or permit the commencement of any aspect of the design, construction, operation or maintenance before the relevant component parts, plans and other documentation of the Project Management Plan applicable to such D&C Work have been submitted to and approved by IFA in accordance with the procedures described in Section 3.1 of the PPA and the time line set forth in Attachment 01-1 of the Technical Provisions. The schedule for submission of each component part, plan and other documentation of the Project Management Plan or any proposed changes or additions thereto is included in Section 1.5.2.5 and Attachment 01-1 of the Technical Provisions.

3.2.6 If any part, plan or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document, then all such referenced or incorporated materials shall be submitted to IFA for approval at the time that the relevant part, plan or other documentation of the Project Management Plan or change, addition or revision to the Project Management Plan is submitted to IFA.

3.2.7 Design-Build Contractor shall carry out internal audits of the Project Management Plan at the times prescribed in the Project Management Plan.

3.2.8 Design-Build Contractor shall cause each of its Contractors at every level to comply with the applicable requirements of the approved Project Management Plan.

3.2.9 Design-Build Contractor acknowledges that, pursuant to Section 3.2.9 of the PPA, the Quality Manager will, irrespective of his or her other responsibilities, have defined authority for ensuring the establishment and maintenance of the Project Management Plan and reporting to IFA on the performance of the Project Management Plan. The Quality Manager will have authority independent of the Project Manager and at least equivalent in level of authority to that of the Project Manager. The Quality Manager will have direct reporting obligations to superiors that are above the level of the Project Manager. The Project Management Plan, including the Design QA/QC Plan and Construction QA/QC Plan, will be consistent with this Section. Refer to Sections 2.1 and 3.1 of the Technical Provisions for additional terms and conditions applicable to the Quality Manager and quality assurance staff.

3.3 Traffic Management.

3.3.1 Design-Build Contractor shall be responsible for the management of traffic on the East End Crossing from the NTP2 until commencement of the Operating Period. Design-Build Contractor shall manage traffic so as to preserve and protect safety of traffic on the East End Crossing and Related Transportation Facilities and, to the maximum extent practicable, to avoid disruption, interruption or other adverse effects on traffic flow, throughput or level of service on the East End Crossing and Related Transportation Facilities. Design-Build Contractor shall conduct traffic management in accordance with all applicable Technical Provisions, Laws and Governmental Approvals, and in accordance with the Transportation Management Plan and Temporary Traffic Control Plans. If the commencement of the Operating Period is delayed beyond the DB Substantial Completion Date and such delay is not due to any fault of Design-Build Contractor, then Developer shall reimburse Design-Build Contractor for the actual, reasonable cost of traffic management services provided hereunder from and after the date of DB Substantial Completion.

3.3.2 For inclusion in the Transportation Management Plan to be submitted by Developer to IFA pursuant to Section 3.3.2 of the PPA, Design-Build Contractor shall provide Developer with a plan for addressing orderly and safe movement and diversion of traffic on Related Transportation Facilities during the period

until the commencement of the Operating Period. Such plan shall be prepared in accordance with Section 12.3 of the Technical Provisions and shall comply with the Technical Provisions concerning traffic management and traffic operations. Throughout the DBC Term, Design-Build Contractor shall carry out all construction and repair activities, including Incident and Emergency response, in accordance with the approved Transportation Management Plan.

3.3.3 Design-Build Contractor shall prepare and implement Temporary Traffic Control Plans in accordance with Section 12.3.1 of the Technical Provisions and the approved Transportation Management Plan to promote safe and efficient operation of the East End Crossing and Related Transportation Facilities at all times during the course of any construction of the East End Crossing by Design-Build Contractor and during the Utility Adjustment Work.

3.3.4 Design-Build Contractor acknowledges that IFA has at all times, without obligation or liability to Design-Build Contractor, the right (in accordance with Section 3.3.4 of the PPA) to:

3.3.4.1 Issue Directive Letters to Developer regarding traffic management and control (with which Design-Build Contractor shall promptly and reasonably comply), or directly assume or enable the Department to directly assume traffic management and control, of the East End Crossing or any portion thereof during any period IFA or the Department designates the East End Crossing or a portion thereof for immediate use as an emergency evacuation route or route to respond to a disaster proclaimed by the Governor of Indiana or his/her designee, including reversing the direction of traffic flow during such period.

3.3.4.2 [Not Used]

3.4 Oversight, Inspection and Testing.

3.4.1 Oversight by IFA, FHWA, the Department and Developer; Assistance with Federal Financial Plan Requirement.

3.4.1.1 IFA (in accordance with Section 3.4 of the PPA, which Design-Build Contractor acknowledges) and Developer each shall have the right at all times to conduct Oversight, to the extent necessary or advisable, including as provided in the Technical Provisions, (a) to comply with FHWA, U.S. Army Corps of Engineers, U.S. Coast Guard or other applicable federal agency requirements, (b) to verify Design-Build Contractor's compliance with the DBC Documents, PPA Documents and Project Management Plan and (c) otherwise to comply with other applicable Law. IFA and Developer each may designate any Person or Persons to carry out any Oversight on its behalf. IFA and Developer shall conduct Oversight in accordance with Design-Build Contractor's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance activity.

3.4.1.2 Without limiting Section 3.4.1.1, the Oversight rights of IFA and Developer shall include the following:

(a) Monitoring and auditing Design-Build Contractor and its Books and Records to determine compliance with requirements of the DBC Documents, PPA Documents and the approved Project Management Plan, including (i) audit review of compliance with quality procedures and processes under the Design QA/QC Plan and Construction QA/QC Plan, (ii) audit review of Design Documents, Plans, Construction Documents, field work plans, land surveys, mapping, other data collection tasks, other Submittals and other Books and Records, and (iii) audit of performance of the activities set forth in the Public Involvement Plan, as provided in Section 6 of the Technical Provisions;

(b) Conducting audits of all design and pre-design activities for the East End Crossing as needed to ascertain and evaluate Design-Build Contractor's design quality and safety control processes, including (i) review of engineering calculations, engineering reports, and findings, (ii) review of the work of Design-Build Contractor's Environmental Compliance Manager (set forth in Section 7.3 of the Technical Provisions) for compliance with the Environmental Compliance and Mitigation Plan, and (iii) review of certifications that Design-Build Contractor's quality control checks of final Construction Documents have been performed and documented, and that the Construction Documents conform to the requirements of the DBC Documents and PPA Documents;

(c) Conducting audits of all construction-related activities for the East End Crossing as needed to audit Design-Build Contractor's construction quality and safety control processes, including (i) auditing the services of Design-Build Contractor's accredited laboratories and associated testing devices and equipment, (ii) reviewing Design-Build Contractor's construction quality procedures, including conducting limited field monitoring and inspections as needed for audit purposes of construction activities, materials, and system components, as indicated in the DBC Documents and PPA Documents, (iii) auditing Design-Build Contractor's records of all materials, materials tests, materials certifications, and performance tests for East End Crossing systems, (iv) reviewing and investigating East End Crossing progress, East End Crossing quality, Deviations, Defects, and rectification of Nonconforming Work, and (v) conducting field monitoring and inspections in connection with IFA's certifications of Substantial Completion and Final Acceptance;

(d) Conducting monthly reviews of East End Crossing documentation and files as set forth in Section 1.5.2.6 of the Technical Provisions;

(e) Conducting material tests, according to the Department's test methods, to verify Design-Build Contractor's compliance with all testing frequencies and requirements, including performance and acceptance testing, set forth in the DBC Documents, PPA Documents and the approved Project Management Plan, the accuracy of the tests, inspections and audits performed by or on behalf of Design-Build Contractor pursuant to the approved Design QA/QC Plan and approved Construction

QA/QC Plan, and compliance of materials incorporated into the East End Crossing with the applicable requirements, conditions and standards of the DBC Documents, PPA Documents, Governmental Approvals, the Project Management Plan and Law;

(f) Reviewing and commenting on Submittals;

(g) Reviewing, commenting on and giving recommendations, objections or exceptions regarding the Rehabilitation Work Schedule and revisions thereto, as provided in Section 6.8.5;

(h) Participating in meetings to discuss design progress, construction progress, Design-Build Contractor's quality control processes, audit activities, and other PMP issues;

(i) [Not Used]

(j) Attending and witnessing Design-Build Contractor's other tests and inspections, including system start-up and acceptance tests and inspections;

(k) Reviewing Design-Build Contractor's certification of Record Drawings and surveys;

(l) Auditing the Books and Records of Key Contractors to confirm compliance with this Agreement and applicable Law;

(m) Investigating, analyzing and reporting on Safety Compliance and performance of Safety Compliance Orders; and

(n) Monitoring and auditing Design-Build Contractor's detection, reporting, response times and time to achieve rectification of breaches and failures for which Noncompliance Points may be assessed pursuant to Section 11.3 of the PPA and deductions or withholdings may be made from the Availability Payments for Unavailability Events and Noncompliance Events in accordance with Exhibit 10 (Payment Mechanism) to the PPA.

3.4.1.3 Design-Build Contractor acknowledges IFA's rights to audit Developer and its Contractors, including Design-Build Contractor, in accordance with Section 23.2 of the PPA.

3.4.1.4 IFA and Developer each will have the right, but not the obligation, to conduct, formal prior reviews of every Design Document and Construction Document, except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements. IFA and Developer each shall have the right, but not the obligation, to conduct "over-the-shoulder" reviews of Design Documents and other Submittals.

3.4.1.5 Nothing in the DBC Documents shall preclude, and Design-Build Contractor shall not interfere with, any review, inspection or oversight of

Submittals or of Work that FHWA, the Department or any regulatory agency with jurisdiction may desire to conduct pursuant to their agreements with IFA and applicable Law.

3.4.1.6 Design-Build Contractor acknowledges that FHWA is involved with the East End Crossing in a funding and oversight role of the East End Crossing. By virtue of the Project being an FHWA "Major Project," IFA has certain reporting and coordination requirements with FHWA. Design-Build Contractor also acknowledges the obligations of Developer under Section 3.4.1.6 of the PPA to provide IFA with certain information by July 31 of each year, including information that necessarily comes from Design-Build Contractor. Therefore, to assist IFA in the preparation of its financial plan in respect of IFA's obligations to FHWA, and to assist Developer in the discharge of its obligations under Section 3.4.1.6 of the PPA, Design-Build Contractor shall provide to Developer, which Developer may provide to IFA in accordance with Section 3.4.1.6 of the PPA, such information as is necessary to fulfill Developer's obligations under Section 3.4.1.6 of the PPA.

3.4.2 Increased Oversight, Testing and Inspection by IFA.

3.4.2.1 Design-Build Contractor acknowledges the right of IFA to change the type and/or increase the level of its Oversight of the East End Crossing in such manner and to such level as IFA sees fit, in accordance with Section 3.4.2 of the PPA, if at any time:

(a) The number of Uncured Noncompliance Points assessed against Developer by IFA under the PPA equals or exceeds (i) seventy (70), for any date occurring prior to three (3) months after the Substantial Completion Date or (ii) fifty (50), for any date occurring on or after three (3) months after the Substantial Completion Date;

(b) There exists a "Persistent Developer Default" under the PPA; or

(c) Developer receives one or more "Warning Notices" under the PPA or Notices of "Developer Default" under the PPA that may become a "Default Termination Event" as set forth in Section 20.3.1 of the PPA.

3.4.2.2 Design-Build Contractor acknowledges that, if IFA changes the type or increases the level of its Oversight pursuant to Section 3.4.2.1, then Developer is required under the Section 3.4.2 of the PPA to pay and reimburse IFA within thirty (30) days after receipt of written demand and reasonable supporting documentation all reasonable increased costs and fees IFA incurs in connection with such action, including IFA's Recoverable Costs. Such obligation to pay and reimburse applies to all changes in the type or increases in the level of IFA's Oversight occurring until Developer has:

(a) Reduced the number of Uncured Noncompliance Points below the threshold triggering such heightened scrutiny;

(b) Reduced by fifty percent (50%) the number of Uncured Noncompliance Points outstanding on the date IFA delivers the written notice under the PPA invoking such heightened scrutiny;

(c) Fully and completely cured the breaches and failures that are the basis for a potential "Default Termination Event" under the PPA and any other then-existing "Developer Defaults" under the PPA; and

(d) Completed delivery to IFA and performance of an approved remedial plan, if at any time during which IFA is so entitled IFA changes the type and/or increases the level of Oversight and IFA also requires Developer to prepare and implement a remedial plan pursuant to Section 19.2.6.

3.4.2.2A To the extent that IFA increases its Oversight in accordance with Section 3.4.2.1 of the PPA, Design-Build Contractor shall be responsible for paying on behalf of Developer any payment or reimbursement to be made by Developer to IFA resulting from such increased Oversight in accordance with Section 3.4.2.2 of the PPA; provided that Design-Build Contractor shall be responsible for only the percentage of increased Oversight payment equal to the percentage of Uncured Noncompliance Points giving rise to the increased Oversight attributable to Design-Build Contractor.

3.4.2.3 The foregoing does not preclude IFA, at its sole discretion and expense, from increasing its level of monitoring, inspection, sampling, measuring, testing, auditing and other Oversight at other times in accordance with Section 3.4.2.3 of the PPA.

3.4.2A Increased Oversight, Testing and Inspection by Developer.

3.4.2A.1 Developer has the right to change the type and/or increase the level of its Oversight of the East End Crossing in such manner and to such level as Developer sees fit at any time. For the avoidance of doubt, the cost-payment provisions of Section 3.4.2A.2 do not preclude Developer, at its sole discretion and expense, from increasing its level of monitoring, inspection, sampling, measuring, testing, auditing and other Oversight at any time.

3.4.2A.2 Design-Build Contractor shall pay and reimburse Developer, within 30 days after receipt of written demand and reasonable supporting documentation, for all reasonable increased costs and fees Developer reasonably incurs in connection with a change or increase in its Oversight, including Developer's Recoverable Costs, if:

(a) There occurs or exists any of the events described in Section 3.4.2.1 that are the fault of or are caused by Design-Build Contractor;

(b) The number of Uncured Noncompliance Points assessed against Developer by IFA under the PPA for events that are the fault of or are caused by Design-Build Contractor equals or exceeds (i) sixty (60), for any date occurring prior

to three (3) months after the Substantial Completion Date or (ii) forty (40), for any date occurring on or after three (3) months after the Substantial Completion Date;

(c) There exists a Persistent Design-Build Contractor Default;

(d) Design-Build Contractor receives one or more Warning Notices or Notices of Design-Build Contractor Default that may become a Default Termination Event as set forth in Section 20.3.1;

(e) At any time prior to the Baseline Substantial Completion Date, Developer or the Lenders' Technical Advisor, acting reasonably, determines that there is no reasonable possibility that the DB Substantial Completion can be achieved by a date which is not later than the three (3) months after the Baseline Substantial Completion Date (after giving effect to any extensions to such date under the PPA as a result of Relief Events), unless the delay in achieving DB Substantial Completion by the Baseline Substantial Completion Date is caused by a Developer Default; or

(f) At any time prior to the Substantial Completion Date, the Lenders' Technical Advisor determines that Substantial Completion will not occur on or before the Bondholder Long Stop Date (after giving effect to any extensions to such date under the PPA as a result of Relief Events), unless the delay in achieving Substantial Completion by the Bondholder Long Stop Date is caused by a Developer Default.

3.4.2A.3 Remedial Plans.

(a) Without prejudice to Section 5.7.6A, if at any time prior to the Baseline Substantial Completion Date, Developer or the Lenders' Technical Advisor is of the opinion that there is no reasonable possibility that DB Substantial Completion can be achieved by a date which is not later than the three (3) months after the Baseline Substantial Completion Date, then Developer shall require Design-Build Contractor to prepare a remedial plan that demonstrates how Design-Build Contractor will accelerate the remaining D&C Work in the manner necessary to achieve DB Substantial Completion by the Baseline Substantial Completion Date or, if not reasonably possible, at such soonest later date as is reasonably possible, which in any event shall not be later than nine (9) months after the Baseline Substantial Completion Date. Design-Build Contractor shall submit a draft remedial plan to Developer no later than fourteen (14) days after Developer's notice requiring preparation thereof or such longer period as may be reasonably requested by the Design-Build Contractor.

(b) Within ten (10) days following receipt of the draft remedial plan under Section 3.4.2A.3(a), Developer shall either:

(i) approve the remedial plan prepared by Design-Build Contractor, in which case Design-Build Contractor shall perform its obligations pursuant to this Agreement in accordance with the terms set out in the remedial plan, and any failure to do so shall be subject to Section 19.2.6.4 (except to the extent that

the delay in achieving DB Substantial Completion giving rise to the need for a remedial plan is caused by a Developer Default); or

(ii) if Developer has reasonable doubts (taking into account the performance of Design-Build Contractor to date) that Design-Build Contractor will be able to perform its obligations in accordance with the terms of this Agreement and the remedial plan, or that the remedial plan includes sufficient measures to achieve its objective, give Notice to Design-Build Contractor of its concerns, in which case Design-Build Contractor shall amend the remedial plan within seven (7) days from the receipt of such Notice from Developer. If the revised draft remedial plan does not remove the reasonable doubts aforementioned, this shall constitute grounds for termination for Design-Build Contractor Default under Section 20.3 (except to the extent that the delay in achieving DB Substantial Completion giving rise to the need for a remedial plan is caused by a Developer Default).

(c) Developer may exercise its rights under clauses (a) and (b) of this Section 3.4.2A.3 on multiple occasions; provided that, following the approval by Developer of a remedial plan under Section 3.4.2A.3(b), rights to require a further remedial plan may only be triggered based on Developer or the Lenders' Technical Advisor subsequently being of the opinion that there is no reasonable possibility that DB Substantial Completion can be achieved by a date which is not later than that projected in the previously approved remedial plan.

(d) Without prejudice to Section 5.7.6A, if the Lenders' Technical Advisor determines that Substantial Completion will not occur on or before the Bondholder Long Stop Date, then Developer shall require Design-Build Contractor to prepare a remedial plan that demonstrates how Design-Build Contractor will accelerate the remaining D&C Work in the manner necessary to achieve Substantial Completion by the Long Stop Date; provided, however, this Section 3.4.2A.3(d) shall not apply where the projected failure to achieve Substantial Completion by the Bondholder Long Stop Date relates only to delays in the satisfaction of conditions to achieving Substantial Completion under the PPA that are not made obligations of Design-Build Contractor by the DBC Documents, such as certain O&M Conditions Precedent not delegated to Design-Build Contractor. Design-Build Contractor shall submit a draft remedial plan to Developer no later than fourteen (14) days after Developer's notice requiring preparation thereof.

(e) Within ten (10) days following receipt of the draft remedial plan under Section 3.4.2A.3(d), Developer shall either (i) approve the remedial plan and submit the remedial plan to the Lenders' Technical Advisor or (ii) require Design-Build Contractor to amend the remedial plan so as to cause the remedial plan, in Developer's judgment, to be satisfactory to the Lenders' Technical Advisor, in which case Design-Build Contractor shall amend the remedial plan within seven (7) days from the receipt of Notice from Developer of such required amendments. The Parties acknowledge that, upon a determination by the Lenders' Technical Advisor described under Section 3.4.2A.3(d), draws on the Construction Account under the Indenture of Trust are not allowed unless the Lenders' Technical Advisor is satisfied with the

remedial plan, which satisfaction must be evidenced by certification thereof by the Lenders' Technical Advisor. The failure to produce to the Lenders' Technical Advisor a satisfactory remedial plan and to obtain such certification by the Lenders' Technical Advisor within thirty (30) days of the determination by the Lenders' Technical Advisor described under Section 3.4.2A.3(d) constitutes grounds for termination for Design-Build Contractor Default under Section 20.3 (except to the extent that the delay in achieving Substantial Completion giving rise to the need for a remedial plan is caused by a Developer Default). Design-Build Contractor shall perform its obligations pursuant to this Agreement in accordance with the terms set out in the remedial plan found to be satisfactory by the Lenders' Technical Advisor, and any failure to do so shall be subject to Section 19.2.6.4 (except to the extent that the delay in achieving Substantial Completion giving rise to the need for a remedial plan is caused by a Developer Default).

3.4.2A.4 Design-Build Contractor's obligation to pay and reimburse Developer under Section 3.4.2A.2 applies to all changes in the type or increases in the level of Developer's Oversight occurring until Design-Build Contractor has:

(a) Reduced the number of Uncured Noncompliance Points below the threshold triggering such heightened scrutiny;

(b) Reduced by fifty percent (50%) the number of Uncured Noncompliance Points outstanding on the date Developer delivers the written Notice invoking such heightened scrutiny;

(c) Fully and completely cured the breaches and failures that are the basis for a potential Design-Build Contractor Termination Event and any other then-existing Design-Build Contractor Defaults;

(d) Completed delivery to Developer and performance of an approved remedial plan, if at any time during which Developer is so entitled Developer changes the type and/or increases the level of Oversight and Developer also requires Design-Build Contractor to prepare and implement a remedial plan pursuant to Section 19.2.6; and

(e) Design-Build Contractor submits a recovery schedule pursuant to Section 5.7.6A.

3.5 Rights of Cooperation and Access.

3.5.1 Design-Build Contractor at all times shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with IFA and its Authorized Representative, Developer and its Authorized Representative and the Department to facilitate IFA's, Developer's and the Department's Oversight activities. Design-Build Contractor shall cause its representatives to be available at all reasonable times for consultation with IFA or its designee. Design-Build Contractor at all times shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with

(i) IFA's and the Department's contractors performing work on or around the Project Right of Way relating to the portion of Project Section 6 that is not included in the East End Crossing scope of Work as described in the Technical Provisions, (ii) the Tolling Systems Integrator in connection with its activities relating to the installation and testing of the TCS and the Tolling Equipment, and (iii) Developer's other "Contractors" (as defined under the PPA).

3.5.2 Without limiting the foregoing, IFA and its Authorized Representative, Developer and its Authorized Representative and the Department shall have the right to, and Design-Build Contractor shall afford each of them, (a) safe and unrestricted access to the East End Crossing at all times (to the extent Design-Build Contractor controls such access), (b) [not used], (c) safe access during normal business hours to the Project Specific Locations, and (d) unrestricted access to data respecting the D&C Work. While IFA, Developer, the Department, and their respective Authorized Representatives and contractors are present on the East End Crossing, they have agreed to abide by Design-Build Contractor's reasonable, non-discriminatory safety policies and practices.

3.5.3 Without limiting the provisions of the foregoing Sections 3.5.1 and 3.5.2, Design-Build Contractor shall deliver to IFA, upon request, accurate and complete Books and Records, data and other information regarding D&C Work, the East End Crossing and the Utility Adjustment Work, in the format required by the Technical Provisions. The following provisions apply to the materials and information described in the preceding sentence:

3.5.3.1 Design-Build Contractor shall have the right to designate conspicuously any documents that it believes contain confidential financial information, trade secret, proprietary information or other information exempted from disclosure in response to a public records request by placing "CONFIDENTIAL" in the header or footer of such page or record affected. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for IFA to treat the entire document or record as public information. Nothing contained in this Section 3.5.3.1 shall modify or amend requirements and obligations imposed on IFA by the Public Records Act or other applicable Law. The provisions of the Public Records Act or other laws shall control in the event of a conflict between the procedures described above and the applicable Law.

3.5.3.2 If a request is made for disclosure of Books and Records that have been designated as "CONFIDENTIAL", IFA has agreed under Section 3.5.3.2 of the PPA to notify Developer of such request and submit a request for advice from IFA's general counsel prior to disclosing any such documents in accordance with the Public Records Act and other applicable Law. Developer shall promptly notify Design-Build Contractor (if IFA has not already done so) of any such request for Books and Records submitted by Design-Build Contractor. In accordance with Developer's rights under Section 3.5.3.2 of the PPA, Design-Build Contractor shall then have the opportunity, acting through Developer, to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under the Public Records Act or other

applicable Law to IFA's general counsel within the time period specified in the notice issued by IFA (if any) and prior to the deadlines for release set forth in the Public Records Act and other applicable Law. However, it is the responsibility of Design-Build Contractor to monitor such proceedings and make timely filings. IFA and Developer may, but are not obligated to, make filings of their own concerning possible disclosure; however, neither IFA nor Developer is under any obligation to support the positions of the Design-Build Contractor. By entering this Agreement, Design-Build Contractor consents to, and expressly waives any right to contest, the provision by IFA or Developer to IFA's general counsel of all, or representative samples of, the Books and Records in accordance with the Public Records Act. Neither IFA nor Developer shall have no responsibility or obligation for a failure of IFA's general counsel to respond or to respond timely to any IFA request for advice and IFA is not required to wait therefor if it is required to disclose or otherwise take action under the Public Records Act or other applicable Law. Under no circumstances will IFA or Developer be responsible or liable to Design-Build Contractor or any other party as a result of IFA's disclosing any such materials, including materials marked "CONFIDENTIAL," whether the disclosure is deemed required by Law or by an order of court or IFA's general counsel or occurs through inadvertence, mistake or negligence on the part of IFA or its officers, employees, contractors or consultants.

3.5.3.3 Design-Build Contractor acknowledges that IFA is not required to advise a submitting party, Developer or Design-Build Contractor, and that Developer is not required to advise Design-Build Contractor, as to the nature or content of documents entitled to protection from disclosure under the Public Records Act or other applicable Laws, as to the interpretation of such Laws, or as to definition of trade secret. Design-Build Contractor shall be solely responsible for all determinations made by it under applicable Laws and for clearly and prominently marking each and every page or sheet of materials with "CONFIDENTIAL" as it determines to be appropriate. Design-Build Contractor is advised to contact its own legal counsel concerning the effect of applicable Laws to Design-Build Contractor's Books and Records.

3.5.3.4 In the event of any proceeding or litigation concerning the disclosure of any Books and Records to third parties, Design-Build Contractor shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that IFA and Developer each reserve the right, in their respective sole discretion, to intervene or participate in the litigation in such manner as each deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by IFA or Developer in connection with any litigation, proceeding or request for disclosure of Books and Records shall be reimbursed and paid by Design-Build Contractor.

3.6 Testing and Test Results. Each of IFA, Developer and the Department shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and applicable Management Plans. Design-Build Contractor shall provide to IFA and Developer all test results and reports (which shall be provided in electronic format in accordance with the Technical Provisions) within ten (10) days after Design-Build Contractor or its Contractor receives them.

3.7 Interpretive Engineering Decisions.

3.7.1 In accordance with Section 3.7 of the PPA, Developer may apply in writing to IFA for approvals of an interpretive engineering decision concerning the meaning, scope, interpretation and application of the Technical Provisions (an "**Interpretive Engineering Decision**"). Design-Build Contractor may prepare a proposed Interpretative Engineering Decision, which Developer shall submit to IFA subject to Developer's reasonable review and approval thereof. In accordance with Section 3.7 of the PPA, IFA may issue a written approval of Developer's proposed Interpretive Engineering Decision (if any), may issue its own Interpretive Engineering Decision or may disapprove any Interpretive Engineering Decision that Developer proposes.

3.7.2 Within fourteen (14) days after Developer applies for an Interpretive Engineering Decision, or such other time period as IFA and Developer may agree to at the time of such application in accordance with Section 3.7.2 of the PPA, IFA has agreed to provide its written determination including explanation of any disapproval of such application or any differing interpretation; provided that no presumption of approval or disapproval shall arise by reason of IFA's delay in issuing its written determination. If Developer disputes IFA's disposition of the application, such dispute is subject to resolution in accordance with the Dispute Resolution Procedures of the PPA. In accordance with and subject to Article 19A, Developer shall include Design-Build Contractor in any such dispute proceeding.

3.7.3 Design-Build Contractor acknowledges that Accepted Interpretive Engineering Decisions shall constitute provisions of the Technical Provisions and shall not constitute an IFA Change or entitle Design-Build Contractor to any additional compensation, time or deadline extension or other Claim or relief. Subsequent IFA orders and directives that are contrary to the Interpretive Engineering Decision constitute an IFA Change under the PPA.

3.8 Meetings.

3.8.1 Pursuant to Section 3.8.1 of the PPA, Developer is required to conduct, and Developer and Design-Build Contractor shall each be present at, regular progress meetings with IFA at least once a month during the course of design and construction, including any design and construction occurring during the Operating Period.

3.8.2 [Not Used]

3.8.3 [Not Used]

3.8.4 Developer and Design-Build Contractor shall hold any other meetings with IFA related to design and construction, at such times, frequency and locations, as applicable, as set forth in the Technical Provisions. Developer or Design-Build Contractor (whichever Party schedules the meeting) shall notify the other Party of,

and both Parties may attend and participate in (or shall attend and participate in, as may be required by the PPA Documents or this Agreement), all such meetings with IFA.

3.8.5 Pursuant to Section 3.8.5 of the PPA, IFA and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Design Work, Construction Work or the East End Crossing. Design-Build Contractor shall attend any such meetings as requested by Developer prior to Final Acceptance or relating to Design-Build Contractor's obligations under the DBC Documents.

3.8.6 [Not Used]

3.8.7 Design-Build Contractor acknowledges that Developer is required by Section 3.8.7 of the PPA to schedule all progress and periodic meetings with Design-Build Contractor at a date, time and place reasonably convenient for IFA to attend and, except in the case of urgency, to provide IFA with written notice and an agenda for such meetings at least five (5) Business Days in advance of each meeting. IFA is authorized to attend all such meetings and is permitted to raise any questions, concerns or opinions without restriction.

3.8A Communication with IFA and Other Governmental Entities.

3.8A.1 Design-Build Contractor shall not initiate or maintain any contact or communication directly with IFA, except where such direct contact or communication is provided for under the PPA Documents or DBC Documents or with the express authorization of Developer (not to be unreasonably withheld or delayed). Developer and Design-Build Contractor shall agree a communication protocol including general authorizations to Design-Build Contractor to communicate on behalf of Developer directly with IFA, to the extent reasonably necessary for efficiency reasons. In any event, Design-Build Contractor shall keep Developer informed of any direct communications with the IFA.

3.8A.2 Design-Build Contractor shall provide all reasonable cooperation to IFA and all Governmental Entities concerning matters pertaining to Design-Build Contractor and the D&C Work.

3.8A.3 Developer shall use all reasonable efforts to:

3.8A.3.1 Keep Design-Build Contractor informed of developments in relation to the Project, including communications with IFA or other Governmental Entities, insofar as these may reasonably have an impact on Design-Build Contractor, the D&C Work, the coordination of the D&C Work with other Contractors or the performance of the Parties' obligations under this Agreement;

3.8A.3.2 Without undue delay, consult with Design-Build Contractor on any matter relating to the D&C Work; and

3.8A.3.3 Involve Design-Build Contractor in discussions and/or negotiation between Developer and IFA or any other Governmental Entity, insofar as pertaining to Design-Build Contractor, the D&C Work or the coordination of the D&C Work with other Contractors.

3.8A.4 Design-Build Contractor's participation in meetings with IFA shall be further regulated by the aforementioned communication protocol.

3.8B Design-Build Contractor Additional Reporting. Without duplication of Design-Build Contractor's other reporting obligations under the DBC Documents, Design-Build Contractor shall provide in a timely manner to Developer:

3.8B.1 A monthly and quarterly progress report on the progress of the D&C Work within ten (10) Business Days of the end of each calendar month, including a report of any material events, developments or circumstances arising in relation to the D&C Work since the last report, all in a form and format prescribed or approved from time to time by Developer, acting reasonably;

3.8B.2 Copies of Design-Build Contractor's and each DBC Parent Guarantor's audited annual financial statements (prepared in accordance with applicable Laws, GAAP or equivalent auditing principles, and which shall be kept confidential in accordance with the requirements of Section 23.6A) within the earlier of (i) thirty (30) days after the availability of such statements and (ii) one hundred twenty (120) days after the end of the calendar year;

3.8B.3 Any communication received by it from any regulatory body, court or governmental authority prohibiting, suspending, varying or requiring the halting of all or any material part of any activity or process carried out by the Design-Build Contractor or DBC Parent Guarantor in respect of the D&C Work; and

3.8B.4 Details of any claims or circumstances that are likely to give rise to a claim in relation to the insurances required to be maintained by the Design-Build Contractor under this Agreement, as applicable, in excess of [redacted] and of anything of which the Design-Build Contractor is aware that has been done or omitted to be done whereby the renewal of any such required insurances is likely to be affected or the premiums due in respect of such required insurances are likely to be increased by an amount in excess of [redacted] in aggregate (each of the foregoing amounts shall be adjusted annually at the beginning of each Fiscal Year after the Effective Date by a percentage equal to the percentage adjustment in the CPI between the CPI most recently published for the second immediately preceding Fiscal Year and the CPI most recently published for the immediately preceding Fiscal Year); and

3.8B.5 Such other periodic reporting and information as reasonably requested by Developer or the Lenders, including any information requested in connection with any financial plan or budget that Developer is required to submit to the Lenders.

ARTICLE 4

EAST END CROSSING PLANNING, CONDITIONS AND APPROVALS; ENVIRONMENTAL COMPLIANCE; PUBLIC INFORMATION

4.1 Preliminary Planning and Engineering Activities. Design-Build Contractor, through the appropriately qualified and licensed design professionals identified in the Project Management Plan, shall perform or cause to be performed all engineering activities appropriate for development of the East End Crossing and the Utility Adjustments included in the Design Work and/or the Construction Work in accordance with the PPA Documents and Good Industry Practice, including (a) technical studies and analyses; (b) geotechnical, seismic, flooding and biological investigations; (c) right-of-way mapping, surveying and appraisals; (d) Utility subsurface investigations and mapping; (e) Hazardous Materials investigations; and (f) design and construction surveys.

4.2 Site Conditions.

4.2.1 Subject to the specific relief available to Design-Build Contractor under Article 15 for Relief Events under clauses (m), (n), (o), (p), (q), (u) and (v) of the definition of "Relief Event" under the PPA, Design-Build Contractor shall bear the risk of any incorrect or incomplete review, examination and investigation by it of the Site and surrounding locations (even if Design-Build Contractor conducted a Reasonable Investigation), and of any incorrect or incomplete information resulting from preliminary engineering activities conducted by Design-Build Contractor, Developer, IFA or any other Person. Neither Developer nor IFA makes any warranties or representations as to any surveys, data, reports or other information provided by Developer, IFA or other Persons concerning surface conditions and subsurface conditions, including information relating to Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological, cultural and historic resources, flooding conditions, seismic conditions, and Threatened or Endangered Species, affecting the D&C Work, the Site or surrounding locations. Except for (i) the Utility Information for purposes of the Relief Event under clause (u) of the definition of "Relief Event" under the PPA, (ii) the Geotechnical Baseline Report for purposes of the Relief Event under clause (p)(i) of the definition of "Relief Event" under the PPA and (iii) the geotechnical data report included among the Reference Information Documents for the purposes of the Relief Event under clause (p)(ii) of the definition of "Relief Event" under the PPA (in each case, only with respect to the specific relief available under Article 15 for Relief Events, but without prejudice to Design-Build Contractor's rights and remedies provided by this Agreement with respect to Developer Acts), Design-Build Contractor acknowledges that such information is for Design-Build Contractor's reference only and has not been verified.

4.2.2 Subject to the specific relief available to Design-Build Contractor under Article 15 for Relief Events under clauses (m), (n), (o), (p), (q), (u) and (v) of the definition of "Relief Event" under the PPA, Design-Build Contractor shall bear the risk of all conditions occurring on, under or at the Site, including (a) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area, (b)

changes in surface topography, (c) variations in subsurface moisture content, (d) variations in speeds and ranges; (e) Utility facilities, (f) the presence or discovery of Hazardous Materials, including contaminated groundwater, (g) the discovery at, under or on the Project Right of Way of any archeological, paleontological, cultural or historical resources, and (h) the discovery at, near or on the Project Right of Way of any Threatened or Endangered Species.

4.3 Governmental Approvals.

4.3.1 The Parties acknowledge that, pursuant to Section 4.3.1 of the PPA, IFA has represented that it has obtained or is in the process of obtaining the IFA-Provided Approvals for the East End Crossing, based on the Reference Design contained in the Reference Information Documents. IFA has further represented that it has applied for, but has not obtained as of the Effective Date, the IFA-Initiated Approvals, based on the Reference Design. Design-Build Contractor acknowledges that it has received and is familiar with the applications and supporting documentation for the Environmental Approvals as contained in the Reference Information Documents.

4.3.2 Design-Build Contractor hereby assumes responsibility for continuing application and processing for the Environmental Approvals other than the IFA-Provided Approvals but including IFA-Initiated Approvals, and shall obtain all other Governmental Approvals required in connection with (i) the D&C Work and (ii) the East End Crossing or the Project Right of Way through the date of Final Acceptance other than those that relate solely to the O&M Work. In addition, Design-Build Contractor hereby assumes responsibility for, and shall obtain, any modifications, renewals and extensions of the IFA-Provided Approvals required in connection with (a) Developer's Schematic Design or Final Design or (b) a Relief Event. Design-Build Contractor shall deliver to Developer and IFA true and complete copies of all new or amended Governmental Approvals.

4.3.3 Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), Design-Build Contractor shall submit the same, together with any supporting environmental studies, analyses and data, to Developer and IFA (a) for approval or (b) for review and comment, as specified in the Technical Provisions, including as specified in Section 7.4 of the Technical Provisions.

4.3.4 Design-Build Contractor shall perform all necessary actions, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of (a) any differences between Design-Build Contractor's design for any portion of the East End Crossing and the Reference Design or Developer's Schematic Design, including differences due to any alternative technical concepts approved by IFA and included in Developer's Schematic Design, but excluding any differences due to an IFA Change or Developer Change, or (b) differences between the construction means and methods (including temporary works) Design-Build Contractor chooses for any portion of the East End Crossing and those set forth, referred to or contemplated in any IFA-Provided Approval or applications and submissions made by IFA for IFA-Initiated Approvals,

excluding any differences due to an IFA Change, a Discriminatory O&M Change, a Non-Discriminatory O&M Change, a Change in law or Change in Adjustment Standards or a Developer Change or Developer Act. Such actions and risks shall include:

4.3.4.1 Any associated with change in the East End Crossing location;

4.3.4.2 Conducting all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws;

4.3.4.3 Obtaining and complying with all necessary new Governmental Approvals or amendments to existing Governmental Approvals;

4.3.4.4 Obtaining and complying with all necessary modifications, renewals and extensions of the existing IFA-Provided Approvals, other existing Governmental Approvals or of pending applications for IFA-Provided Approvals or other Governmental Approvals; and

4.3.4.5 All risk and cost of litigation.

For clarity, without prejudice to any other rights of Design-Build Contractor under other provisions of this Agreement, nothing in this Section 4.3.4 in and of itself authorizes or permits, or shall be construed as authorizing or permitting, Design-Build Contractor to cause any of the differences contemplated by clauses (a) and (b) of the first paragraph of this Section 4.3.4.

4.3.5 If Design-Build Contractor is unable to obtain any of the items described in this Section 4.3.4.3 or 4.3.4.4, then Design-Build Contractor shall design and build the East End Crossing according to the requirements of the Technical Provisions and the construction means and methods (including temporary works) set forth, referred to or contemplated in any IFA-Provided Approval or applications and submissions made by IFA for IFA-Initiated Approvals, or such other design, means and methods for which Design-Build Contractor is able to obtain necessary Governmental Approvals that comply with the PPA Documents and that have been approved by Developer; and no such circumstance shall (a) constitute an IFA-Caused Delay, IFA Change, Developer Act, Developer Change, Relief Event or other basis for any Claim, or (b) be, or be deemed to be, a representation or warranty by IFA or Developer as to the feasibility, accuracy or completeness of, or absence of errors in, the Reference Design.

4.3.6 If Design-Build Contractor pursues Additional Properties outside the Project Right of Way, or any other modification of or Deviation from any Governmental Approvals, including IFA-Provided Approvals, Design-Build Contractor shall first (a) comply with, and obtain any consent or waiver required pursuant to, then-existing agreements between IFA and other Governmental Entities and (b) obtain Developer's consent.

4.3.7 At Design-Build Contractor's request and subject to Sections 4.3.8, 4.3.9 and 4.3.10 of the PPA, Developer shall request IFA (in accordance with Section 4.3.7 of the PPA) to reasonably assist and cooperate with Design-Build Contractor in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by Design-Build Contractor. Such assistance and cooperation shall include:

4.3.7.1 Joining in conferences and meetings with such Governmental Entities;

4.3.7.2 Sharing data, information and documents available to IFA relevant to the application for the Governmental Approvals;

4.3.7.3 Coordinating and working with elected and other public officials as necessary and appropriate;

4.3.7.4 Assisting with evaluation and definition of solutions;

4.3.7.5 If necessary, acting as the lead agency and directly coordinating with such Governmental Entities; and

4.3.7.6 Otherwise partnering to facilitate issuance of such Governmental Approvals.

4.3.8 Except as set forth in Section 4.3.10, Design-Build Contractor acknowledges that, in accordance with Section 4.3.8 of the PPA, IFA and Developer have agreed to work jointly to establish a scope of work and budget for IFA's Recoverable Costs related to the assistance and cooperation IFA will provide for Governmental Approvals. Except as set forth in Section 4.3.10, subject to any agreed scope of work and budget and to any rights of Developer in the case of a Relief Event, Developer is required by Section 4.3.8 of the PPA to fully reimburse IFA for all costs and expenses, including IFA's Recoverable Costs, it incurs in providing such cooperation and assistance, including those incurred to conduct further or supplemental environmental studies. Design-Build Contractor shall be responsible, and promptly reimburse Developer, for any payment or reimbursement made by Developer to IFA in accordance with the foregoing insofar as such costs and expenses are incurred by IFA in providing cooperation and assistance with respect to Government Approvals that are necessary to perform the D&C Work or are obtained or modified by Design-Build Contractor. Developer shall consult with Design-Build Contractor and provide Design-Build Contractor a reasonable opportunity to review and comment on such scope of work and budget.

4.3.9 [Not Used]

4.3.10 Litigation or other legal challenge in response to the denial of any IFA-Initiated Approval, and any administrative proceeding, litigation or other legal action brought by a third party challenging the issuance of an Environmental Approval for the

Project and/or the East End Crossing, shall be subject to Section 4.3.10 of the PPA. Design-Build Contractor shall be entitled to participate in any such proceeding, litigation or other legal action, with or on behalf of Developer as Developer may elect. The Parties shall actively assist and cooperate with one another and with IFA, each at Design-Build Contractor's expense, to defend their interests and the subject Environmental Approval; provided that (a) Developer shall not unnecessarily duplicate such expenses, (b) Developer shall be responsible for paying the expense of separate or additional legal counsel (if Developer elects to have separate or additional counsel from Design-Build Contractor), and (c) it is understood that the foregoing does not obligate Design-Build Contractor to pay IFA's expenses to the extent IFA bears its own costs under the PPA. At the request of either Party, both Parties shall enter into, or cause their respective legal counsel to enter into, a joint defense agreement setting forth terms for their joint cooperation and defense. The Parties also may mutually choose, but are not obligated, to be jointly represented by legal counsel in such administrative proceeding, litigation or other legal action.

4.3.11 Certain Governmental Entities may require that Governmental Approvals from them be applied for or issued in IFA's or the Department's name and/or that IFA or the Department directly coordinates with such Governmental Entities in connection with obtaining Governmental Approvals. In such event, subject to Sections 4.3.8 and 4.3.9 of the PPA and in accordance with Section 4.3.11 of the PPA, Design-Build Contractor at its expense shall provide all necessary support and efforts to apply for and obtain the Governmental Approval insofar as the Government Approval is necessary to perform the D&C Work or is obtained or modified by Design-Build Contractor. Such support shall include conducting necessary field investigations, preparing mitigation analyses and studies and plans, preparing surveys, and preparing any required reports, applications and other documents in form approved by IFA. Such support also may include joint coordination and joint discussions and attendance at meetings with the applicable Governmental Entity. Refer to Section 7.4 of the Technical Provisions for more specific provisions on applications in IFA's name for Environmental Approvals.

4.3.12 Design-Build Contractor shall be solely responsible for compliance with all applicable Laws in relation to Project Specific Locations and for obtaining any Environmental Approval or other Governmental Approval required in connection with Project Specific Locations.

4.4 Major Environmental Approvals.

4.4.1 Attachment 7-1 of the Technical Provisions identifies those Governmental Approvals that are classified under the PPA Documents as Major Environmental Approvals to be obtained by Developer under the PPA (which shall be obtained by Design-Build Contractor on behalf of Developer in accordance with this Agreement). If an environmental Governmental Approval is not listed as a Major Environmental Approval in Attachment 7-1 of the Technical Provisions, then it shall not constitute a Major Environmental Approval for purposes of the PPA Documents or DBC

Documents, regardless of the subject matter, scope, necessity or requirements of the Governmental Approval.

4.4.2 Attachment 7-1 of the Technical Provisions also identifies the Major Environmental Approval Deadline for each Major Environmental Approval. If a Major Environmental Approval Deadline is tied to submission to the Governmental Entity of a completed application that must be submitted by IFA pursuant to Section 4.3.11 of the PPA, then, subject to Sections 4.3.8 and 4.3.9 of the PPA, IFA has agreed (in accordance with Section 4.4.2 of the PPA) to submit it to the Governmental Entity within five (5) days after IFA receives the completed application from Developer (or Design-Build Contractor on behalf of Developer, as may be applicable).

4.5 Environmental Compliance.

4.5.1 Subject to Section 4.5.2, Design-Build Contractor shall be responsible for all IFA obligations, commitments and responsibilities under all Environmental Approvals (including, without limitation, the NEPA Documents) that are delegated by IFA to Developer in accordance with Section 4.5.1 of the PPA. Throughout the DBC Term and the course of D&C Work, Design-Build Contractor shall:

4.5.1.1 Comply with all Environmental Laws;

4.5.1.2 Comply with all conditions, and requirements imposed by all Environmental Approvals (including the NEPA Documents) to be obtained by Design-Build Contractor hereunder;

4.5.1.3 Comply with the conditions and requirements of the Environmental Approvals to be obtained by IFA as part of the IFA-Provided Approvals, to the extent identified in the Technical Provisions;

4.5.1.4 Perform all commitments and mitigation measures set forth in all Environmental Approvals which are expressly identified in the Technical Provisions as delegated to Developer (which are delegated to Design-Build Contractor hereunder);

4.5.1.5 Undertake all actions required by, or necessary to maintain in full force and effect, all Environmental Approvals to be obtained by Developer under the PPA (which obligation is delegated to Design-Build Contractor hereunder); and

4.5.1.6 Undertake all actions required by, or necessary to maintain in full force and effect, those Environmental Approvals to be obtained by IFA as part of the IFA-Provided Approvals, to the extent identified in the Technical Provisions and to the extent such actions are within the reasonable control of Design-Build Contactor.

4.5.2 The Parties acknowledge that, pursuant to Section 4.5.2 of the PPA, IFA has agreed to retain sole responsibility for payment and performance of the

environmental obligations, commitments and responsibilities expressly identified as not delegated to Developer in the Technical Provisions.

4.5.3 Design-Build Contractor shall perform or cause to be performed all environmental mitigation measures required under the PPA Documents (a) through and until the date of DB Substantial Completion and (b) after the date of DB Substantial Completion in respect of Design-Build Contractor's obligations under the DBC Documents.

4.5.4 Design-Build Contractor shall comply with the provisions, requirements and obligations regarding environmental compliance set forth at Section 7.3 of the Technical Provisions.

4.6 Third-party Agreements. Design-Build Contractor shall not enter into any agreement with any Governmental Entity, Utility, property owner or other third party having regulatory jurisdiction over any aspect of the East End Crossing or D&C Work or having any property interest affected by the East End Crossing or the D&C Work that in any way purports to obligate IFA or Developer, or states or implies that IFA or Developer has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity, unless IFA or Developer, as applicable, otherwise approves in writing in its sole discretion. Design-Build Contractor has no power or authority to enter into any agreement with a third party in the name or on behalf of IFA or Developer.

4.7 Community Outreach and Public Information. Design-Build Contractor shall prepare and provide to Developer the portion of the Public Involvement Plan concerning the design and construction of the East End Crossing pursuant to Section 6 of the Technical Provisions.

ARTICLE 5

DESIGN AND CONSTRUCTION

5.1 General Obligations of Developer; Scope of Initial Design and Construction.

5.1.1 Design-Build Contractor, in addition to performing all other requirements of the DBC Documents, shall:

5.1.1.1 Furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the DBC Documents expressly specify will be undertaken by Developer, IFA or other Persons) to construct the East End Crossing and maintain it prior to the Substantial Completion Date, so as to achieve Substantial Completion and Final Acceptance by the applicable Project Schedule Deadlines;

5.1.1.2 [Not Used]

5.1.1.3 Comply with, and require that all Contractors comply with, all requirements of all applicable Laws applicable to the D&C Work;

5.1.1.4 Cooperate with IFA and Governmental Entities with jurisdiction in all matters relating to the D&C Work, including their review, inspection and oversight of D&C Work;

5.1.1.5 Use commercially reasonable efforts to mitigate delay to design and construction of the East End Crossing and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating or redeploying Design-Build Contractor's and its Contractors' forces to other work, as appropriate; and

5.1.2 The scope of the initial D&C Work shall consist of (a) all Work necessary to complete the East End Crossing as set forth in Section 1 of the Technical Provisions and (b) all Work necessary to complete the maintenance facilities as set forth in Exhibit 31.

5.1.2A Design-Build Contractor shall provide Developer with a separate 10-foot by 40-foot trailer at the Project Site for Developer's office space, as well as adjacent secure parking spaces for Developer's employees. Such trailer shall include furniture and shelving. Design-Build Contractor shall provide all utilities to the trailer (including heating, air-condition, electricity, telephone and high speed Internet) and periodic janitorial service and trash removal. Design-Build Contractor is not obligated to provide computers, copiers, kitchen equipment or other similar improvements. Design-Build Contractor shall also provide Developer, upon timely request by Developer, with access to a meeting or conference room at Design-Build Contractor's Project Site office.

5.2 Performance, Design and Construction Standards; Deviations; Warranties.

5.2.1 Design-Build Contractor shall furnish all aspects of the Design Work and all Design Documents, and shall construct the East End Crossing and/or Utility Adjustments included in the Construction Work as designed, free from Defects, and in accordance with:

5.2.1.1 Good Industry Practice;

5.2.1.2 The requirements, terms and conditions set forth in the DBC Documents and PPA Documents;

5.2.1.3 The Project Schedule;

5.2.1.4 All Laws;

5.2.1.5 The requirements, terms and conditions set forth in all Governmental Approvals; and

5.2.1.6 The approved Project Management Plan and all component plans prepared or to be prepared thereunder.

5.2.2 Design-Build Contractor also shall construct the East End Crossing and/or Utility Adjustments included in the Construction Work in accordance with (a) the Final Design Documents, and (b) the Construction Documents, in each case taking into account the Project Right of Way limits and other constraints affecting the East End Crossing.

5.2.3 The East End Crossing design and construction shall be subject to certification pursuant to the procedures contained in the approved Design QA/QC Plan and approved Construction QA/QC Plan.

5.2.4 Design-Build Contractor, on behalf of Developer, may apply for IFA approval of Deviations from applicable Technical Provisions regarding design or construction in accordance with Section 5.2.4 of the PPA; provided that, before submitting any such application to IFA, Design-Build Contractor shall provide a copy of the proposed application to Developer for its review and comment; and provided further that Design-Build Contractor may not submit such application IFA unless and until approved by Developer. Pursuant to Section 5.2.4 of the PPA, the Deviation approval process is as follows:

5.2.4.1 All applications to IFA shall be in writing. Where Design-Build Contractor applies for a Deviation as part of the Submittal of a component plan of the Project Management Plan, Design-Build Contractor shall specifically identify and label the proposed Deviation.

5.2.4.2 Pursuant to Section 5.2.4.2 of the PPA, IFA has agreed to consider in its sole discretion, but has no obligation to approve, any such application. Design-Build Contractor shall bear the burden of persuading IFA that the Deviation sought constitutes sound and safe design, engineering and or construction practices consistent with Good Industry Practice and achieves IFA's applicable Safety Standards and criteria and does not jeopardize the quality, integrity, life-cycle performance, service performance or extreme event performance of the East End Crossing.

5.2.4.3 No Deviation shall be deemed approved or be effective unless and until stated in writing signed by IFA's Authorized Representative. Pursuant to Section 5.2.4.3 of the PPA, IFA's affirmative written approval of a component plan of the Project Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless IFA takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein.

5.2.4.4 Pursuant to Section 5.2.4.4 of the PPA, IFA's lack of issuance of a written approval of a Deviation within fourteen (14) days after Design-

Build Contractor applies therefor in writing shall be deemed a disapproval of such application.

5.2.4.5 Pursuant to Section 5.2.4.5 of the PPA IFA's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures under the PPA.

5.2.4.6 Pursuant to Section 5.2.4.6 of the PPA, IFA may elect to process the application as a Change Request under Section 16.2 of the PPA rather than as an application for a Deviation.

5.2.5 Design-Build Contractor shall use reasonable care to identify any provisions of the Technical Provisions that are erroneous, create a potentially unsafe condition (including with respect to extreme event performance of the East End Crossing), or are or become inconsistent with the PPA Documents, DBC Documents, Good Industry Practice or applicable Law. Whenever Design-Build Contractor knows or, in the exercise of reasonable care, should have known that a provision of the Technical Provisions is erroneous, creates a potentially unsafe condition or is or becomes inconsistent with the PPA Documents, DBC Documents, Good Industry Practice or applicable Law, Design-Build Contractor shall have the duty to provide Notice to Developer and IFA of such fact and of the changes to the provision that Design-Build Contractor believes are the minimum necessary to render it correct, safe and consistent with the PPA Documents, DBC Documents, Good Industry Practice and applicable Law. Design-Build Contractor acknowledges that, in accordance with Section 5.2.5 of the PPA, if it is reasonable or necessary to adopt changes to rectify the Technical Provisions after the Effective Date, such changes are not grounds for a Relief Event or other Claim, unless (a) Developer (including for this purpose, Design-Build Contractor) neither knew nor, with the exercise of reasonable diligence and care, should have known of the need for the changes prior to commencing or continuing any D&C Work affected by the problematic provision, or (b) Developer (including for this purpose, Design Build Contractor) knew of and reported to IFA the problematic provision prior to commencing or continuing any D&C Work affected by the problematic provision and IFA did not adopt reasonable and necessary changes. If Design-Build Contractor commences or continues any D&C Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, Design-Build Contractor shall bear any additional costs and time associated with redoing the D&C Work already performed. Inconsistent or conflicting provisions of the DBC Documents shall not be treated as erroneous provisions under this Section 5.2.5, but instead shall be reconciled under Section 1.2.

5.2.6 References in the Technical Provisions to manuals or other publications relating to the Design Work or Construction Work prior to the Substantial Completion Date shall mean the most recent editions in effect as of the Setting Date, unless expressly provided otherwise. Any changes to the Technical Provisions, including Safety Standards, respecting Design Work or Construction Work prior to the Substantial Completion Date shall be subject to the Change Order process for an IFA

Change in accordance with Article 15. Safety Compliance changes shall be in accordance with Section 9.2.

5.2.7 The Parties anticipate that from time to time after the Setting Date IFA will adopt, including through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to D&C Work of general application to the Department transportation facilities. Design-Build Contractor acknowledges that, pursuant to Section 16.1 of the PPA and subject to Sections 9.2 and 5.2.6 of the PPA, IFA has the right in its sole discretion to add such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, to the Technical Provisions in accordance with the PPA. IFA has agreed to identify superseded provisions in its notice to Developer, which Developer shall share with Design-Build Contractor. For any D&C Work undertaken after the Substantial Completion Date, Design-Build Contractor shall comply with the changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including changed, added or replacement Safety Standards, and the same constitutes an IFA Change or other Relief Event under the PPA.

5.2.8 Design-Build Contractor shall implement Safety Compliance prior to Substantial Completion, at such time as is more fully set forth in Section 9.2.

5.2.9 The Tolling Systems Integrator shall be responsible for installing and testing all Tolling Equipment for the East End Crossing. Design-Build Contractor shall coordinate the scheduling and performance of the D&C Work with IFA and the Tolling Systems Integrator in accordance with the PPA Documents and to minimize impacts and delays to the East End Crossing.

5.2.10 Design-Build Contractor shall not be entitled to submit a claim for Extra Work Costs, Delay Costs, time extensions or other relief that could have been avoided through proper sequencing, scheduling and coordination of the Work in accordance with the DBC Documents and PPA Documents.

5.2A Defective Work; Warranties.

5.2A.1 Defective Work and Design-Build Contractor's Warranties.

5.2A.1.1 Without limitation to its obligations under this Section 5.2A.1, Design-Build Contractor warrants, subject to Section 5.2A.3.1, that (i) materials and equipment furnished under this Agreement shall be free of Defects and of good quality and new and (ii) the D&C Work shall meet all of the requirements of this Agreement; provided, however, that the foregoing warranties do not extend to damage caused by abuse, neglect, modifications, or improper use or maintenance by Developer or IFA or from normal wear and tear.

5.2A.1.2 At any time prior to the expiration of the Warranty Period or Latent Defect Period, as applicable, Developer shall give Design-Build Contractor prompt notice upon discovery of any Defect. At least three (3) months prior to the expiration of the Warranty Period, Developer and Design-Build Contractor, each acting reasonably, shall agree a date or series of dates to occur no earlier than during the last two (2) months prior to the expiration of the Warranty Period and no later than the expiration of the Warranty Period on which Developer (and representatives of IFA) and Design-Build Contractor shall conduct a joint inspection of the D&C Work (the "**Warranty Inspection**").

5.2A.1.3 If the Design-Build Contractor gains Design-Build Contractor Knowledge of a Defect after Substantial Completion, Design-Build Contractor shall inform Developer of such Defect as soon as reasonably practicable.

5.2A.1.4 Design-Build Contractor shall enforce any and all warranties obtained from its Contractors on behalf of Developer, IFA, Utility Owners and any third parties for whom D&C Work is being performed.

5.2A.2 Correction of Defects and Latent Defects.

5.2A.2.1 Within seven (7) days of receipt by Design-Build Contractor of notice from Developer during the Warranty Period specifying a Defect, Design-Build Contractor and Developer shall agree when and how Design-Build Contractor shall remedy such Defect in such manner and at such times as to minimize disruption (to the extent commercially reasonable) to the operation of the Project; provided, however, that in case of an emergency requiring immediate corrective action, Developer shall have the right to perform or have performed by third parties the necessary Corrective Work (after providing Design-Build Contractor, if practicable under the circumstances, notice of such emergency and an opportunity to perform the necessary Corrective Work), and the reasonable costs thereof shall be borne by Design-Build Contractor subject to Section 19.6. If Design-Build Contractor does not promptly and diligently carry out the Corrective Work within the agreed time, or should the Parties fail to reach such an agreement within such seven (7)-day period, Developer, after notice to Design-Build Contractor, shall have the right to perform or have performed by third parties the necessary Corrective Work, and the reasonable costs thereof shall be borne by Design-Build Contractor subject to Section 19.6.

5.2A.2.2 Within seven (7) days of receipt by Design-Build Contractor of notice from Developer specifying a Latent Defect, Design-Build Contractor and Developer shall agree when and how such Latent Defect shall be remedied in such manner and at such times as to minimize disruption (to the extent commercially reasonable) to the operation of the Project. In respect of Latent Defects, Design-Build Contractor shall not be required to carry out the Corrective Work but (a) shall be given a reasonable opportunity to carry out, or cause to be carried out, the Corrective Work first (before Developer carries out, or causes to be carried out, the Corrective Work in accordance with the provisions below of this Section 5.2A.2.2) and (b) shall remain liable for the cost of any Corrective Work incurred by Developer if Design-Build

Contractor does not carry out, or cause to be carried out, the Corrective Work. If (i) Design-Build Contractor agrees to carry out the Corrective Work and does not promptly and diligently do so within the agreed time, (ii) the Parties agree that a person other than Design-Build Contractor shall carry out the Corrective Work or (iii) the Parties fail to reach such an agreement within such seven (7)-day period, Developer, after notice to Design-Build Contractor, shall have the right to perform, or have performed by third parties, the necessary Corrective Work, and the reasonable costs thereof shall be borne by Design-Build Contractor subject to Section 19.6 (in which case, such payment shall be made upon a determination in accordance with Section 19.6 that such payment is due).

5.2A.2.3 Design-Build Contractor shall bear all costs in connection with Corrective Work required to be performed pursuant to this Section 5.2A.2 (including additional testing and inspections, the costs of any required Government Approvals, and the cost of removing from the Site any Defect or Latent Defect neither corrected by (or on behalf of) Design-Build Contractor nor accepted by Developer) and shall reimburse or pay IFA's and Developer's expenses made necessary thereby within ten (10) days after Developer's demand unless the demand is challenged pursuant to Section 19.6.

5.2A.2.4 Without limiting Design-Build Contractor's obligations under this Agreement, and without prejudice to any of Developer's rights against Design-Build Contractor, Developer shall use commercially reasonable efforts to obtain from any third party performing Corrective Work pursuant to this Section 5.2A.2 warranties of the Corrective Work performed by such third party and pursue remedies against such third party in connection with a breach of such third party's warranties or other contractual obligations. The foregoing notwithstanding, Design-Build Contractor shall remain liable for the cost of all Corrective Work incurred by Developer, including the cost of any work required to correct any Defect in the Corrective Work performed by a third party, until the Defect is satisfactorily corrected.

5.2A.3 Liability Periods for Defects and Latent Defects.

5.2A.3.1 Design-Build Contractor shall be liable for the correction or remedy of Defects that are notified to Design-Build Contractor or that Design-Build Contractor otherwise gains Design-Build Contractor Knowledge of within the Warranty Period. Subject to Sections 5.2A.3.2 and 5.2A.3.3, Design-Build Contractor shall have no liability for correction to Developer for Defects that are notified to Design-Build Contractor or that Design-Build Contractor otherwise gains Design-Build Contractor Knowledge of after the expiration of the Warranty Period.

5.2A.3.2 Design-Build Contractor shall be liable for the correction or remedy of Latent Defects that are notified to Design-Build Contractor within the Latent Defect Period. Subject to Section 5.2A.3.3, Design-Build Contractor shall be released from all liability with respect to Latent Defects notified to Design-Build Contractor after the expiration of the Latent Defect Period.

5.2A.3.3 If the Design-Build Contractor is obliged to carry out work to remedy any Defect of which it was notified within the period of six (6) months prior to the end of the Warranty Period, then, in respect of such applicable remedial work only, the relevant Warranty Period shall be extended for a further period of six (6) months from the date such remedial work is completed to the satisfaction of Developer (acting reasonably).

5.2A.4 Damages for Defects and Latent Defects.

5.2A.4.1 Subject to Section 19.2.12 and Section 19.2.13A, Design-Build Contractor's liability to Developer for damages (which Developer shall reasonably mitigate) in respect of any Defect notified to Design-Build Contractor or that Design-Build Contractor otherwise gains Design-Build Contractor Knowledge of within the Warranty Period or any Latent Defect notified to Design-Build Contractor within the Latent Defect Period, shall be limited to the sum of:

(a) all costs and Losses incurred by Developer caused by or resulting from such a Defect or Latent Defect, including reasonable costs incurred in completing or correcting the D&C Work or having the D&C Work completed or corrected by a third party and cost of oversight and supervision of any Corrective Work; provided that Design-Build Contractor has first been given the opportunity to correct such Defect or Latent Defect as applicable pursuant to Section 5.2A.2; plus

(b) any amounts owing pursuant to Section 17.5.1.14; plus

(c) compensation for any delay or reduction in the Availability Payments or Milestone Payments received by Developer under the PPA caused by or resulting from the Defect or Latent Defect and/or resulting from the performance of Corrective Work by Design-Build Contractor, by Developer or by third parties.

5.2A.4.2 None of the representations, warranties, guarantees and obligations of Design-Build Contractor contained in this Section 5.2A.4 shall be negated, diminished, reduced or altered by inspections, tests, audits and approvals by Developer, IFA or Utility Owner.

5.3 Conditions to Issuance of NTP1 and Commencement of Design; Design Implementation and Submittals.

5.3.1 Conditions to Issuance of NTP1.

5.3.1.1 Design-Build Contractor shall be authorized to proceed with D&C Work by IFA's issuance of a Notice to Proceed in accordance with Section 5.3 of the PPA. IFA has represented that it anticipates issuing NTP1 concurrently with the execution and delivery of the PPA.

5.3.1.2 Pursuant to the terms of the PPA, issuance of NTP1 entitles Design-Build Contractor, as delegate of Developer, to commence performance

of the D&C Work, excluding all Design Work, Construction Work, and Work for which achievement of Substantial Completion is required as a condition precedent. Work authorized by NTP1 shall include customary construction engineering activities, field staking, conduct of surveys and geotechnical investigations, so long as Design-Build Contractor notifies IFA and Developer prior to commencement of such portions of the Work, describing Design-Build Contractor's intended activities and the dates, time and locations of such activities. Design-Build Contractor acknowledges that as a condition to IFA issuing NTP1, the Parties (in accordance with their respective obligations under Article 17 and Exhibit 19) shall have obtained and delivered to IFA written binding verifications of coverage from the relevant issuers of all Insurance Policies required at or prior to issuance of NTP1 under Section 17.1 (excluding Professional Liability Insurance Policies with respect to Design Work) and Section 15 of Exhibit 19, and such Insurance Policies are then in full force and effect.

5.3.2 Conditions to Commencement of Design Work. Except to the extent expressly permitted in writing by IFA, Design-Build Contractor shall not commence or permit or suffer commencement of Design Work until the conditions included in Section 5.3.2 of the PPA have been satisfied. The following such conditions are hereby made the responsibility of Design-Build Contractor, which Design-Build Contractor agrees to timely satisfy:

5.3.2.1 IFA has received and approved all the component parts, plans and documentation of the Project Management Plan that are labeled "A" in the column titled "Required By" in Attachment 01-1 to the Technical Provisions; provided that Design-Build Contractor shall be responsible for preparation of the portions of such plan pertaining to D&C Work, and Developer shall be responsible for preparation of the balance of such plan;

5.3.2.2 Professional Liability Insurance Policies with respect to Design Work then required at or prior to commencement of Design Work under Section 17.1 have been obtained and are in full force and effect, and Design-Build Contractor has delivered to IFA written binding verifications of coverage from the relevant issuers of such Insurance Policies;

5.3.2.3 IFA has received and approved any required revisions to Developer's Workforce Diversity and Small Business Performance Plan; provided that Design-Build Contractor shall be responsible for preparation of the portions of such plan pertaining to D&C Work, and Developer shall be responsible for preparation of the balance of such plan;

5.3.2.4 IFA has received, commented on and approved the design Submittal portion of the Project Baseline Schedule;

5.3.2.5 Design-Build Contractor has made all deposits to the Intellectual Property Escrow(s) pursuant to Sections 23.5;

5.3.2.6 Design-Build Contractor has certified that Design-Build Contractor's relevant personnel, or Design-Build Contractor's Contractors' relevant personnel, hold all necessary or required registrations, permits or approvals and valid licenses to practice as are necessary for performance of relevant portions of the D&C Work and as are otherwise necessary to comply with the Technical Provisions;

5.3.2.7 Design-Build Contractor has satisfied any other requirements or conditions for commencing Design Work set forth in the Technical Provisions, including participation in an environmental orientation workshop and training as is obligated under the Environmental Compliance and Mitigation Training Program as set forth in Section 7.3 of the Technical Provisions;

5.3.2.8 IFA has approved the proposed final DBE Performance Plan pursuant to Section 7.10.3.1 of the PPA; and

5.3.2.9 IFA has delivered NTP1 to Developer or Design-Build Contractor.

5.3.2A Conditions to Commencement of Design – Developer Obligations. Developer shall satisfy the following conditions required by Section 5.3.2 of the PPA for the issuance of NTP1 by [Project Schedule date for the issuance of NTP1]:

5.3.2A.1 Developer has provided to Design-Build Contractor the portions of the Project Management Plan that are the responsibility of Developer to prepare, as provided in Section 5.3.2.1, for submission to IFA;

5.3.2A.2 Developer has provided to Design-Build Contractor the portions of the Developer's Workforce Diversity and Small Business Performance Plan that are the responsibility of Developer to prepare, as provided in Section 5.3.2.3, for submission to IFA;

5.3.2A.3 Developer has made all deposits (other than those deposits to be made by Design-Build Contractor pursuant to Section 5.3.2.5) to the Intellectual Property Escrow(s) and Financial Escrow required pursuant to Sections 23.5 and 23.6 of the PPA; and

5.3.2A.4 Developer has certified that, other than personnel who are subject to the certifications under Section 5.3.2.6, Developer's relevant personnel, or Developer's Contractors' relevant personnel, if any, hold all necessary or required registrations, permits or approvals and valid licenses to practice as are necessary for performance of relevant portions of the D&C Work and as are otherwise necessary to comply with the Technical Provisions.

5.3.3 Design Implementation. Design-Build Contractor, through the appropriately qualified and Registered Professional Engineers identified in the Project Management Plan in accordance with Section 3.2.5 of the Technical Provisions, shall furnish designs, plans and specifications in accordance with the PPA Documents and

DBC Documents. Design-Build Contractor shall cause the engineer of record for the East End Crossing to sign and seal all Final Design Documents.

5.3.4 Design Submittals. Design-Build Contractor shall deliver to IFA accurate and complete duplicates of all interim, revised and final Design Documents (including Final Design Documents), Plans and Construction Documents within seven (7) days after Design-Build Contractor completes preparation thereof, in form as provided in the Technical Provisions.

5.4 Project Right of Way Acquisition.

5.4.1 All Project Right of Way, including Additional Properties other than temporary interests in property for Project Specific Locations, shall be held or acquired, as applicable, in the name of IFA, as joint tenant with KPTIA.

5.4.2 IFA or KPTIA, as applicable, has completed, or has agreed to undertake and complete at its own cost and expense, in accordance with Section 21 of the PPA and Attachment 21-1 of the Technical Provisions, the acquisition of Project Right of Way, except that (a) acquisition of Additional Properties, except those required solely due to an IFA Change and subject to Section 16.2A as may be applicable, shall be solely at Design-Build Contractor's expense as more particularly provided in Section 5.4.5 and (b) Design-Build Contractor shall be solely responsible for acquisition of rights in Project Specific Locations, as more particularly provided in Section 5.4.9.

5.4.3 If Design-Build Contractor identifies Additional Properties as permanently needed to construct or maintain the East End Crossing, Design-Build Contractor shall (a) first submit the proposed request to acquire the Additional Properties to Developer for review and approval (which approval shall not be unreasonably withheld) and (b) if approved by Developer, submit to IFA in writing the request to acquire the Additional Properties on behalf of Developer in accordance with Section 5.4.3 of the PPA. The request shall include a drawing of the limits necessary for each parcel of Additional Property and the information required under Section 21.1 of the Technical Provisions. The request, drawing and information are subject to IFA's approval. Pursuant to Section 5.4.3 of the PPA, IFA has agreed to undertake and complete acquisition of Additional Properties, including undertaking eminent domain proceedings, if necessary, after IFA approves the written request, drawing and information for the requested Additional Properties.

5.4.4 Design-Build Contractor acknowledges that IFA is not obligated to approve a request for acquisition of any other Additional Property where, in IFA's good faith judgment, (a) to do so would materially adversely affect political, community or public relations, or (b) successful timely completion of the acquisition is not likely. Within fourteen (14) days after receipt of a written request from Design-Build Contractor on behalf of Developer identifying an Additional Property for acquisition, IFA has agreed to state in writing whether IFA regards acquisition (whether by negotiation or condemnation) of the Additional Property as potentially materially adversely affecting political, community or public relations, or regards successful timely acquisition as not

likely. No such statement, or lack thereof, precludes IFA from later changing its determination based on changed political, community or public relations events or circumstances.

5.4.5 Design-Build Contractor shall be responsible for all costs and expenses associated with IFA's acquisition of Additional Properties, except those costs and expenses actually and properly incurred solely due to an IFA Change (as confirmed in writing by IFA or Developer) or a Developer Change and subject to Section 16.2A as may be applicable. In paying all such costs and expenses, Design-Build Contractor is not acquiring, and shall not be deemed to be acquiring, any interest in real property for Design-Build Contractor or Developer. Such costs and expenses include:

5.4.5.1 The cost of acquisition services and document preparation;

5.4.5.2 The cost of negotiations;

5.4.5.3 The cost of condemnation proceedings handled by the Attorney General of the State of Indiana or KYTC, as applicable, through master proceedings, jury trials and appeals, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production;

5.4.5.4 The purchase prices, master awards, settlements, offers of judgment, court awards or judgments, including pre-judgment and post-judgment interest, costs, and attorney's fees, or other consideration for interests in real property for all parcels required for the East End Crossing or the Work, whether within or outside of the Project Right of Way;

5.4.5.5 The cost of permanent or temporary acquisition of leases, easements, rights of entry, licenses and other interests in real property, including for drainage, temporary work space, Project Specific Locations, and any other convenience of Design-Build Contractor;

5.4.5.6 The cost of permitting;

5.4.5.7 Closing costs associated with parcel acquisitions in accordance with the Uniform Act, IC 32-24-1 *et seq*. and IFA policies; and

5.4.5.8 Relocation assistance payments and costs, in accordance with the Uniform Act and IC 8-23-17-1 *et seq*.

5.4.6 If IFA incurs any such reasonable costs and expenses on Developer's or Design-Build Contractor's behalf, including any related IFA Recoverable Costs, IFA may submit to Developer (in accordance with Section 5.4.6 of the PPA), not more often than monthly, invoices for such costs and expenses. Developer shall promptly deliver such invoices to Design-Build Contractor. Design-Build Contractor, on behalf of Developer, shall reimburse IFA within twenty-five (25) days of IFA's submittal

of each such invoice to Developer or Design-Build Contractor, as the case may be. Design-Build Contractor acknowledges that, in addition to any other remedy, IFA has the right in accordance with Section 5.4.6 of the PPA to curtail or suspend acquisition activities if Developer (or Design-Build Contractor on Developer's behalf) for any reason fails to pay any such invoice in full when due. IFA has agreed to resume acquisition activities promptly after delinquent amounts are paid in full with interest.

5.4.7 Except for an IFA-Caused Delay under clause (c)(ii) of the definition thereof and subject to Section 16.2A as may be applicable, Design-Build Contractor shall solely bear the risk of any time and cost impacts to the D&C Work related to IFA's acquisition of Additional Properties or any suspension of such activities by IFA pursuant to the penultimate sentence of Section 5.4.6.

5.4.8 Design-Build Contractor shall not negotiate with any owners or occupants of any property, including Additional Properties, with respect to activities under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

5.4.9 Design-Build Contractor acknowledges that neither IFA nor the Department is obligated to acquire or exercise its power of eminent domain in connection with Developer's or Design-Build Contractor's acquisition of any temporary right or interest for Project Specific Locations. Neither IFA nor the Department has any obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests; and neither Developer nor Design-Build Contractor shall have any obligation to submit acquisition packages to IFA for, or obtain IFA's approval of the acquisition of, any such temporary right or interest.

5.5 Utility Adjustments.

5.5.1 Design-Build Contractor's Responsibility. Except for Type 1 Utility Adjustments as described in Section 18.1.2 of the Technical Provisions, Design-Build Contractor is responsible for causing, in accordance with the Project Schedule, all Utility Adjustments necessary to accommodate construction of the East End Crossing as located under the Final Design. All Utility Adjustment Work performed by Design-Build Contractor shall comply with the DBC Documents and PPA Documents. Except for Type 1 Utility Adjustments, Design-Build Contractor shall coordinate, monitor and otherwise undertake the necessary efforts to cause Utility Owners performing Utility Adjustment Work to perform such work timely, in coordination with the D&C Work, and in compliance with the standards of design and construction and other applicable requirements specified in the DBC Documents and PPA Documents. However, regardless of the arrangements made with the Utility Owners and except as otherwise provided in Article 15, and except for Type 1 Utility Adjustments, Design-Build Contractor, on behalf of Developer, shall continue to be the responsible party to IFA and to Developer in accordance with Section 5.5.1 of the PPA for timely performance of all Utility Adjustment Work so that upon completion of the Construction Work, all Utilities that might impact the East End Crossing (whether located within or outside the Project Right of Way) are compatible with the East End Crossing.

5.5.2 Utility Agreements.

5.5.2.1 Prior to the Effective Date IFA entered into the IFA Utility Agreements described in Section 18 to the Technical Provisions. Each IFA Utility Agreement identifies, in concept, the portion of the Utility Adjustment Work for which Developer and the Utility Owner, respectively, will be responsible. Each IFA Utility Agreement also identifies the basis for compensation, preliminary engineering agreements, extent of design reviews, allowable Utility Adjustment Work by Developer or Design-Build Contractor (as Developer's utility Contractor), and other basic information. Design-Build Contractor is hereby delegated, and hereby accepts, the responsibilities and obligations of IFA under the IFA Utility Agreements, which were delegated to Developer by Section 5.5.2.1 of the PPA. Design-Build Contractor shall comply with, be bound by and timely perform all such responsibilities and obligations except to the extent specifically subsequently changed by a Developer Utility Agreement between Developer or Design-Build Contractor and the applicable Utility Owner, only if such Developer Utility Agreement expressly relieves IFA for default or other liability under the IFA Utility Agreement with such applicable Utility Owner with respect to the changed responsibility or obligation, and so long as Design-Build Contractor, on behalf of Developer and in accordance with Section 5.5.2.1 of the PPA, provides written notice to IFA of such change in the delegated IFA responsibilities and obligations under the IFA Utility Agreement (with an executed copy of such subsequent Developer Utility Agreement attached to such notice, certified as true and correct by such Utility Owner) no later than ten (10) days after the effective date of such Developer Utility Agreement.

5.5.2.2 Except for Type 1 Utility Adjustments, Design-Build Contractor, on behalf of Developer, is responsible for preparing, negotiating and entering into instruction-specific, construction-detailed Developer Utility Agreements with all Utility Owners, regardless of whether the Utility Owners are identified in the Reference Information Documents and regardless of whether IFA has secured an IFA Utility Agreement with that Utility Owner, in each case prior to commencement of any Utility Adjustment Work for each such Utility Owner. Design-Build Contractor will use the terms and information in each applicable IFA Utility Agreement, if any, as a basis for negotiating a Developer Utility Agreement with each Utility Owner affected by the East End Crossing. The general procedures and framework for preparing Developer Utility Agreements and processing utility issues within the East End Crossing area shall comply with Section 18 of the Technical Provisions and shall follow the standard practices of the respective Utility Owners for such Developer Utility Agreements, which in each case shall not be less than Good Industry Practice. Design-Build Contractor shall cause each Developer Utility Agreement it negotiates and executes to name IFA as an intended third party beneficiary thereof and to permit assignment of Design-Build Contractor's right, title and interest thereunder to IFA without necessity for Utility Owner consent.

5.5.2.3 Each Developer Utility Agreement shall clearly specify and distinguish the scope of Utility Adjustment Work Design-Build Contractor is to perform, and the scope the Utility Owner is to perform. Each Developer Utility

Agreement shall contain provisions for payments, payment terms, controlling specifications, and work description. Each Developer Utility Agreement shall also include specific procedures for resolving scheduling, design, construction and payment issues arising due to errors or omissions in information the Utility Owner provides to Design-Build Contractor.

5.5.2.4 Pursuant to Section 5.5.2.4 of the PPA, IFA has agreed to cooperate as reasonably requested by Developer in pursuing Developer Utility Agreements, including attendance at negotiation sessions and review of Developer Utility Agreements. Design-Build Contractor may make such requests directly to IFA on behalf of Developer. Design-Build Contractor shall keep Developer and IFA informed of the status of any such negotiations. Design-Build Contractor shall submit each such Developer Utility Agreement and supplements and amendments thereto first to Developer for approval in its reasonable discretion and then to IFA for approval in its reasonable discretion, in accordance with the procedures described in Section 3.1. Design-Build Contractor shall deliver to each of Developer IFA, within ten (10) days after execution, a true and complete copy of each such Developer Utility Agreement entered into by Design-Build Contractor. IFA will not be a party to Developer Utility Agreements, and Design-Build Contractor shall cause each Developer Utility Agreement to expressly provide that IFA shall have no liability under the Developer Utility Agreement unless and until IFA receives a written assignment of the Design-Build Contractor's interests in the Developer Utility Agreement and assumes in writing Design-Build Contractor's obligations thereunder. Design-Build Contractor shall not enter into any agreement with a Utility Owner that purports to bind IFA in any way, unless IFA has executed such agreement as a party thereto (IFA's signature indicating approval or review of an agreement between Design-Build Contractor and a Utility Owner, or its status as a third-party beneficiary, shall not satisfy this requirement). Developer will not be a party to Developer Utility Agreements except with its prior written consent; it being understood, however, that even with respect to those Developer Utility Agreements to which Developer is made a party, Design-Build Contractor shall perform all obligations of Developer thereunder.

5.5.2.5 Design-Build Contractor is solely responsible for the terms and conditions of all Developer Utility Agreements into which it enters (subject to the requirements of the PPA Documents, including Section 18 of the Technical Provisions). Design-Build Contractor is responsible for proper completion of the Utility Adjustment Work required for the East End Crossing, in accordance with the DBC Documents and PPA Documents, regardless of the nature or provisions of the Developer Utility Agreements and regardless of whether Design-Build Contractor or its Contractors, or the Utility Owner or its contractors, is performing the Utility Adjustment Work; provided, however, that notwithstanding anything in the PPA Documents or DBC Documents to the contrary, Design-Build Contractor has no such responsibility with respect to Type 1 Utility Adjustments.

5.5.2.6 If a conflict occurs between the terms of an agreement between Design-Build Contractor and a Utility Owner and those of the DBC Documents or PPA Documents, the terms that establish the higher quality, manner or method of

performing Utility Adjustment Work, establish better Good Industry Practice, or use more stringent standards shall prevail between Design-Build Contractor and Developer and, in accordance with Section 5.5.2.6, between Developer and IFA; if the foregoing criteria are not relevant to the terms at issue, then the PPA Documents shall prevail, unless expressly provided otherwise in the PPA Documents.

5.5.2.7 Design-Build Contractor shall comply with and timely perform all obligations imposed on Design-Build Contractor or Developer by any Developer Utility Agreement.

5.5.3 Requirements. Each Utility Adjustment (whether performed by Design-Build Contractor or by the Utility Owner) shall comply with the Adjustment Standards in effect as to each Utility as of the Setting Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law, or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable IFA Utility Agreements or Developer Utility Agreement(s). Design-Build Contractor is solely responsible for negotiating any terms and conditions of Developer Utility Agreements that might limit a Utility Owner's amendments and additions to its Adjustment Standards after the Proposal Due Date. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable IFA Utility Agreement(s) and Developer Utility Agreements, and all other requirements specified in Section 18 of the Technical Provisions.

5.5.4 Utility Adjustment Costs.

5.5.4.1 Subject to Section 5.5.4.2 and except for (a) costs under Type 1 Utility Adjustments, (b) costs for acquisition of any other real property interests shown on the ROW Maps (for which IFA is responsible to acquire) and (c) as otherwise provided in Section 18.1 of the Technical Provisions, Design-Build Contractor is responsible for all costs of the Utility Adjustment Work, including costs of acquiring Replacement Utility Property Interests and costs with respect to relinquishment or acquisition of Existing Utility Property Interests, but excluding costs attributable to Betterment and any other costs for which the Utility Owner is responsible under applicable Law. Design-Build Contractor shall fulfill this responsibility either by performing at its own cost the Utility Adjustment Work itself if permitted by the Utility Owner (except that any assistance provided by any DBC-Related Entity to the Utility Owner in acquiring Replacement Utility Property Interests shall be provided outside of the Work), or by reimbursing the Utility Owner for its Utility Adjustment Work (however, Design-Build Contractor has no obligation to reimburse Utility Adjustment costs for any Service Line Adjustment for which the affected property owner has been compensated in connection with Project Right of Way acquisition). Design-Build Contractor is solely responsible for collecting directly from the Utility Owner any reimbursement due to Design-Build Contractor for Betterment costs or other costs incurred by Design-Build Contractor for which the Utility Owner is responsible under applicable Law.

5.5.4.2 For each Utility Adjustment under Developer Utility Agreements, the eligibility of Utility Owner costs (both indirect and direct) for

reimbursement by Design-Build Contractor, as well as the determination of any Betterment or other costs due to Design-Build Contractor, shall be established in accordance with applicable Law and the applicable IFA Utility Agreement(s) and Developer Utility Agreement(s).

5.5.4.3 Except for (a) costs under Type 1 Utility Adjustments, (b) costs for acquisition of any other real property interests shown on the ROW Maps (for which IFA is responsible to acquire) and (c) as otherwise provided in Section 18.1 of the Technical Provisions, Design-Build Contractor shall pay any compensation due to the Utility Owner and all costs and expenses associated therewith, and shall reimburse IFA for any such compensation and costs IFA pays to Utility Owners.

5.5.4.4 If for any reason Design-Build Contractor is unable to collect any amounts due to Design-Build Contractor from any Utility Owner, then (a) neither IFA nor Developer shall have any liability for such amounts, (b) Design-Build Contractor shall have no right to collect such amounts from IFA or Developer or to offset such amounts against amounts otherwise owing from Design-Build Contractor to IFA or Developer, and (c) Design-Build Contractor shall have no right to stop D&C Work or to exercise any other remedies against IFA or Developer on account of such failure to pay.

5.5.4.5 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, Design-Build Contractor shall coordinate with IFA and such local Governmental Entity regarding accounting for and approval of those costs.

5.5.4.6 Design-Build Contractor shall maintain a complete set of records for the costs of each Utility Adjustment under each Developer Utility Agreement (whether incurred by Design-Build Contractor or by the Utility Owner), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. For both Utility Owner costs and Design-Build Contractor costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. Design-Build Contractor also shall indicate in these records the source of funds used for each such Utility Adjustment under each Developer Utility Agreement. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the DBC Documents and PPA Documents.

5.5.5 FHWA Utility Requirements. Unless IFA advises otherwise, the East End Crossing will be subject to, and Design-Build Contractor shall comply with, 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies. Developer Utility Agreements for Utilities in the East End Crossing shall incorporate by reference 23 CFR Part 645 Subparts A and B, and assign the obligations arising pertaining thereto. Design-Build Contractor shall comply (and shall require the Utility Owners to comply) with 23 CFR Part 645 Subparts A and B as necessary for any Utility Adjustment costs to be eligible for reimbursement from the Federal-Aid Amount (or from any other federal financing or funding). Design-Build

Contractor acknowledges based on the provisions of Section 5.5.5 of the PPA, however, that without regard to whether such compliance is required, (a) Design-Build Contractor will not be eligible for FHWA reimbursement of any Utility Adjustment outlays other than from the Federal-Aid Amount and/or TIFIA financing, if any, and (b) Design-Build Contractor will not have any share in any reimbursement from FHWA or other federal financing or funding that IFA may receive on account of Utility Adjustments (other than the Federal-Aid Amount).

5.5.6 Utility Enhancements. Design-Build Contractor shall be responsible for addressing any requests by Utility Owners that Developer design and/or construct a Betterment or Utility Owner Project (collectively, "**Utility Enhancement**"). Any Betterment performed as part of a Utility Adjustment, whether by Design-Build Contractor or by the Utility Owner, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Developer Utility Agreement. Design-Build Contractor shall perform any work on a Utility Owner Project only by separate contract outside of the D&C Work, and such work shall be subject to Section 5.5.8. Under no circumstances shall Design-Build Contractor proceed with any Utility Enhancement that (a) has not been approved by Developer, (b) is incompatible with the East End Crossing or (c) is not in compliance with applicable Law, the Governmental Approvals, the DBC Documents or the PPA Documents, including the Project Schedule Deadlines. Under no circumstances will Design-Build Contractor be entitled to any additional compensation or time extension hereunder as the result of any Utility Enhancement, whether performed by Design-Build Contractor or by the Utility Owner. Design-Build Contractor may, but is not obligated to, design and construct Utility Enhancements.

5.5.7 Failure of Utility Owners to Cooperate.

5.5.7.1 Design-Build Contractor shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for Utility Adjustments to be performed pursuant to a Developer Utility Agreement. Design-Build Contractor shall notify Developer and IFA immediately if (a) Design-Build Contractor is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Owner on a necessary Developer Utility Agreement within a reasonable time, (b) Design-Build Contractor reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the East End Crossing or in accordance with Law, the Governmental Approvals, the DBC Documents or the PPA Documents, (c) Design-Build Contractor becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or (d) any other dispute arises between Design-Build Contractor and a Utility Owner with respect to the East End Crossing, despite Design-Build Contractor's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such Notice may include a request that IFA assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. Design-Build Contractor shall provide IFA with such information as IFA requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to IFA any Notice or request for

assistance, Design-Build Contractor shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

5.5.7.2 If Design-Build Contractor requests IFA's assistance pursuant to Section 5.5.7.1, then, subject to Section 5.5.7.3, the following provisions shall apply:

(a) Design-Build Contractor shall provide evidence reasonably satisfactory to IFA that (i) the subject Utility Adjustment is necessary, (ii) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, (iii) Design-Build Contractor has made diligent efforts to obtain the Utility Owner's cooperation, and (iv) the Utility Owner is not cooperating (the foregoing clauses (a)(i) through (iv) are referred to herein as the "conditions to assistance").

(b) Following IFA's receipt of satisfactory evidence, IFA has agreed (pursuant to Section 5.5.7.2(b) of the PPA) to take such reasonable steps as Design-Build Contractor may request to obtain the cooperation of the Utility Owner or resolve the dispute; however, IFA has no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless IFA elects to do so in its sole discretion.

(c) If IFA holds contractual rights that might be used to enforce the Utility Owner's obligation to cooperate and IFA elects in its sole discretion not to exercise those rights, then IFA has agreed (pursuant to Section 5.5.7.2(c) of the PPA) to assign those rights to Developer, and Developer shall assign those rights to Design-Build Contractor, upon Design-Build Contractor's request, provided, that if such rights are not assignable IFA's decision not to exercise those rights shall be in its good faith discretion; however, such assignment shall be without any representation or warranty as to either the assignability or the enforceability of such rights.

(d) In accordance with Section 5.5.7.2(d) of the PPA, IFA and Developer have agreed to work jointly to establish a scope of work and budget for IFA's Recoverable Costs in connection with providing such assistance to Developer and Design-Build Contractor; provided, that IFA is not entitled to receive any of IFA's Recoverable Costs incurred in connection with such assistance if Developer has established that the action or inaction on the part of the Utility constitutes a Relief Event under clause (l) of the definition of "Relief Event" under the PPA. Developer shall consult with Design-Build Contractor and provide Design-Build Contractor with an opportunity. Developer shall consult with and obtain agreement of Design-Build Contractor, which agreement shall not be unreasonably withheld or delayed, as to such scope of work and budget. Subject to any agreed scope of work and budget, Design-Build Contractor shall reimburse IFA for IFA's Recoverable Costs in connection with providing such assistance (including all reasonable costs of litigation if IFA agrees to pursue litigation against a Utility Owner).

(e) Any assistance IFA or Developer provides shall not relieve Design-Build Contractor of its sole responsibility for satisfactory compliance with its obligations and timely completion of all Utility Adjustment Work, except as otherwise expressly set forth herein.

5.5.7.3 If IFA objects in writing to a request for assistance pursuant to Section 5.5.7.1 of the PPA based on Design-Build Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 5.5.7.2(a)(i) and (ii), then Design-Build Contractor shall take such action as is appropriate to satisfy the condition(s) and shall then have the right to submit another request for assistance on the same subject matter. If IFA objects in writing to a request for assistance pursuant to Section 5.5.7.1 of the PPA based on Design-Build Contractor's failure to satisfy one or both of the conditions to assistance described in Sections 5.5.7.2(a)(iii) and (iv), then Design-Build Contractor shall take such action as Design-Build Contractor deems advisable during the next ten (10) days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all IFA objections have been addressed in accordance with the preceding two sentences. This process shall be followed until Design-Build Contractor succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until IFA determines, based on evidence Design-Build Contractor presents, that the conditions to assistance have been satisfied. The question of the reasonableness of IFA's determination may be submitted for resolution according to the Dispute Resolution Procedures under the PPA.

5.5.7.4 [Not Used]

5.5.8 Applications for Utility Permits.

5.5.8.1 It is anticipated that during the design and construction phases of the D&C Work, from time to time Utility Owners may apply to IFA for utility permits to install new Utilities that would cross or longitudinally occupy the Project Right of Way, or to modify, upgrade, relocate or expand existing Utilities within the Project Right of Way for reasons other than accommodation of the East End Crossing. The provisions of Sections 5.5.8.2 through 5.5.8.4 shall apply to all such permit applications, except as otherwise provided in Section 5.5.8.5. Except as otherwise provided in Section 5.5.8.4(b) or in Article 15 with respect to a Relief Event under clause (h) of the definition of "Relief Event" under the PPA (development or operation of a Business Opportunity), no accommodation of new Utilities or of modifications, upgrades, relocations or expansions of existing Utilities pursuant hereto shall entitle Design-Build Contractor to additional compensation, time extension or other Claim hereunder.

5.5.8.2 For all such utility permit applications pending as of or submitted after the Effective Date, Design-Build Contractor shall furnish the most recent East End Crossing design information and/or as-built plans, as applicable, to the applicants, and shall assist each applicant with information regarding the location of

other proposed and existing Utilities. Design-Build Contractor shall keep records of its costs related to new Utilities separate from other costs.

5.5.8.3 Design-Build Contractor, at its cost and on behalf of Developer in accordance with Section 5.5.8.3 of the PPA, shall assist IFA in deciding whether to approve a permit described in Section 5.5.8.2. Within fourteen (14) days after receiving an application for a utility permit, Design-Build Contractor shall analyze the application and provide to IFA a recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. Design-Build Contractor shall limit the grounds for its recommendation to the grounds (as IFA communicates to Design-Build Contractor from time to time) on which IFA is legally entitled to approve or deny the application or to impose conditions on its approval. Design-Build Contractor shall consult Developer as to any permits or conditions that are reasonably expected to have an impact on Developer's obligations under the PPA during the Operating Period.

5.5.8.4 If Design-Build Contractor and IFA disagree on the response to a permit application described in Section 5.5.8.2, such disagreement shall be resolved according to the Dispute Resolution Procedures under the PPA; provided that if Design-Build Contractor recommends against issuance of the permit and IFA determines issuance is appropriate or required, then:

(a) IFA's determination shall control unless it is arbitrary and capricious;

(b) IFA may elect to issue the utility permit in advance of resolution of the dispute, but if it is finally determined that issuance of the permit was arbitrary and capricious, its issuance shall be deemed an IFA Change (and therefore a potential Relief Event); and

(c) If IFA elects to delay issuance of a utility permit pending final resolution of the dispute, Design-Build Contractor's indemnity under Sections 17.5.1.10 shall be deemed to apply with respect to any applicant claim of wrongful delay or denial.

5.5.8.5 Where IFA is pursuing a Business Opportunity involving a Utility in the Project Right of Way, (a) IFA has the right (pursuant to Section 5.5.8.5 of the PPA) to issue utility permits in its sole discretion, (b) any decision by IFA to issue utility permits shall be final, binding and not subject to the Dispute Resolution Procedures under the PPA, (c) Sections 5.5.8.2 through 5.5.8.4 shall not apply, and (d) instead, Section 8.2 shall apply.

5.5.9 Security for Utility Adjustment Costs; Insurance.

5.5.9.1 Design-Build Contractor shall satisfy all requirements in IFA Utility Agreements and Developer Utility Agreements to provide security for reimbursement of Utility Adjustment costs to which the Utility Owner is entitled and that

are the responsibility of Design-Build Contractor hereunder, in form, type and amount and on terms provided by the IFA Utility Agreements and Developer Utility Agreements.

5.5.9.2 Design-Build Contractor shall satisfy all requirements in IFA Utility Agreements and Developer Utility Agreements for all Type 2 Utility Adjustments to provide liability insurance for the protection of the Utility Owner.

5.5.10 Utility-Related Claims. Design-Build Contractor shall have no Claim to a Relief Event or Change Order on account of:

5.5.10.1 Any difference in the cost or time to complete Utility Adjustment Work from that anticipated by Design-Build Contractor, except to the extent set forth in Article 15 with respect to a Utility Owner delay under clause (l) of the definition of "Relief Event" under the PPA;

5.5.10.2 Any inaccuracies in the Utility Information (including information as to the existence or nature of any rights or interests relating to the occupancy of any real property by any Utility), in any other Reference Information Documents or in public and private records with respect to any Utilities, whether the inaccuracies are as to the existence, location (horizontal or vertical), length, activity or inactivity, ownership, type, and/or any other characteristic of Utilities, except for a Pass Through Claim to the extent set forth in Article 15 with respect to clause (u) of the definition of "Relief Event" under the PPA;

5.5.10.3 Any change in the proposed type or method of Utility Adjustment or any other change in the Utility Adjustment work from that described in the Utility Information or otherwise anticipated by Design-Build Contractor;

5.5.10.4 Any inaccuracy in any information included in the Reference Information Documents as to the existence or nature of any rights or interests relating to the occupancy of any real property by any Utility; and

5.5.10.5 Costs incurred or paid by Design-Build Contractor for the Adjustment of any Service Line or any Utility on or above the surface of the ground.

5.6 Conditions to Issuance of NTP2 and Commencement of Construction.

5.6.1 Construction Work Generally. Design-Build Contractor shall be authorized to proceed with D&C Work excluded from the scope of D&C Work in respect of NTP1 by IFA's issuance of a second Notice to Proceed. Issuance of NTP2 and, in respect of Construction Work, satisfaction of conditions precedent set forth in Section 5.6.1.2, shall entitle Design-Build Contractor to commence performance of such remaining D&C Work.

5.6.1.1 Conditions Precedent to Issuance of NTP2. IFA will issue NTP2 upon satisfaction of the conditions set forth in Section 5.6.1.1 of the PPA. The following such conditions are hereby made the responsibility of Design-Build Contractor, which Design-Build Contractor agrees to timely satisfy:

(a) [Not Used]

(b) Each Payment Bond and instrument of Performance Security, in form and from a Surety or issuer approved by IFA, required under Section 17.2.1 has been obtained, meets the prescriptions under Section 17.2.1 and is in full force and effect, and Design-Build Contractor has delivered to IFA either the originals of each Payment Bond and instrument of Performance Security or, if the originals are to be held by the Collateral Agent for the Initial Senior Project Debt, certified and conformed copies of the originals;

(c) Except as provided in Section 5.6.1A.6 (with respect to Insurance Policies to be procured by Developer), Insurance Policies then required under Section 17.1 have been obtained and are in full force and effect, and Design-Build Contractor has delivered to IFA written binding verifications of coverage, as prescribed thereunder, from the relevant issuers of such Insurance Policies;

(d) All representations and warranties of Design-Build Contractor set forth in Section 18.1 shall be and remain true and correct in all material respects, and Design-Build Contractor has delivered to Developer a certificate certifying to the same;

(e) The guarantees in favor of IFA, if any, required under Section 17.4 have been executed, obtained and delivered to, and received by, IFA and are in full force and effect;

(f) There exists no uncured Design-Build Contractor Default for which Design-Build Contractor has received Notice from Developer, unless, with respect to a non-monetary default, Design-Build Contractor has a right to cure and is diligently pursuing cure within the applicable cure period; and

(g) IFA has approved the proposed-final Workforce Diversity and Small Business Performance Plan pursuant to Section 7.11.1 of the PPA.

5.6.1.2 Conditions Precedent to Commencement of Construction Work. Except to the extent authorized under Section 2.1.2 or otherwise expressly permitted in writing by IFA, Design-Build Contractor shall not commence or permit or suffer commencement of Construction Work for the East End Crossing until IFA issues NTP2 in accordance with Section 5.6.1 of the PPA and the conditions to commencement of Construction Work set forth in Section 5.6.1.2 are satisfied, of which the following are hereby made the responsibility of Design-Build Contractor, which Design-Build Contractor agrees to timely satisfy:

(a) All Governmental Approvals necessary to begin Construction Work in the applicable portion of the East End Crossing have been obtained, and Design-Build Contractor has furnished to IFA fully executed copies of any such Governmental Approval that Developer is responsible for obtaining pursuant to Section 4.3 of the PPA (and which, for clarity, Design-Build Contractor is responsible for obtaining pursuant to the terms of this Agreement);

(b) All rights of access acceptable to IFA in its good faith discretion for such portion of the Project Right of Way necessary for commencement of construction of the applicable portion of the East End Crossing shall have been identified, conveyed, and recorded to IFA, IFA has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement therefor on terms acceptable to IFA;

(c) Design-Build Contractor has satisfied, for the applicable portion of the East End Crossing, all applicable pre-construction requirements contained in the NEPA Approval and other Governmental Approvals;

(d) Design-Build Contractor has caused to be developed and delivered to IFA and IFA has approved, in accordance with Section 10.1 of the PPA and Section 1.5.2.5 of the Technical Provisions, the component parts, plans and documentation of the Project Management Plan that are labeled "B" in the column titled "Required By" in Attachment 01-1 to the Technical Provisions and that are the responsibility of Design-Build Contractor under Section 3.2.2;

(e) Design-Build Contractor has developed and delivered to IFA, and IFA has approved, a Temporary Traffic Control Plan for the applicable portion of the East End Crossing, as required under Section 12.3 of the Technical Provisions, and the Submittal review period for such Temporary Traffic Control Plan set forth in Section 12.1 of the Technical Provisions has run without comment from IFA or with all comments addressed in accordance with Section 3.1.7;

(f) Design-Build Contractor has delivered to IFA, and IFA has accepted and approved, as applicable, all other Submittals relating to the Construction Work required by the Project Management Plan and PPA Documents, in the form and content required by the Project Management Plan or PPA Documents;

(g) Design-Build Contractor has satisfied any other requirements or conditions for commencing Construction Work set forth in the Technical Provisions, including in Section 7.4 of the Technical Provisions; and

(h) Design-Build Contractor has adopted written policies, approved by IFA, establishing ethical standards of conduct for all DBC-Related Entities, including Design-Build Contractor's supervisory and management personnel in dealing with (i) IFA and the Department and (ii) employment relations, in accordance with Section 7.8.1.

5.6.1A Conditions to Commencement of Construction. Developer shall satisfy the following conditions required by Section 5.6.1 of the PPA for the issuance of NTP2 and the commencement of Construction Work by [Project Schedule date for the issuance of NTP2]:

5.6.1A.1 Developer has achieved Financial Close in accordance with Section 13.7.5 of the PPA;

5.6.1A.2 All representations and warranties of Developer set forth in Section 18.1 of the PPA shall be and remain true and correct in all material respects, and Developer has delivered to IFA a certificate certifying to the same;

5.6.1A.3 There exists no uncured "Developer Default" under the PPA (which is not a Design-Build Contractor Default under this Agreement) for which Developer has received notice from IFA, unless (a) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the MP Disputed Amounts Fund, in accordance with the Project Trust Agreement regarding the amount in dispute, or (b) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period;

5.6.1A.4 Developer has caused to be developed and delivered to IFA and IFA has approved, in accordance with Section 10.1 of the PPA and Section 1.5.2.5 of the Technical Provisions, the component parts, plans and documentation of the Project Management Plan that are labeled "B" in the column titled "Required By" in Attachment 01-1 to the Technical Provisions and that are not the responsibility of Design-Build Contractor under Section 3.2.2;

5.6.1A.5 Developer has adopted written policies, approved by IFA, establishing ethical standards of conduct for all Developer-Related Entities (other than Design-Build Contractor and DBC-Related Entities), including Developer's supervisory and management personnel in dealing with (i) IFA and the Department and (ii) employment relations, in accordance with Section 7.8.1; and

5.6.1A.6 Insurance Policies then required under Section 17.1, which Developer is required to procure under Exhibit 19, have been obtained and are in full force and effect, and Developer has delivered to IFA written binding verifications of coverage, as prescribed thereunder, from the relevant issuers of such Insurance Policies.

5.6.2 Utility Adjustments.

5.6.2.1 Design-Build Contractor shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until IFA issues NTP2, all of the conditions set forth in Section 5.6.1 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the following additional requirements have been satisfied:

5.6.2.2 The Utility Adjustment is covered by an executed Developer Utility Agreement;

5.6.2.3 All rights of access acceptable to IFA in its good faith discretion for such Utility Adjustment have been obtained; and

5.6.2.4 Design-Build Contractor has obtained any IFA review and approval of a Utility Adjustment Plan or other matters respecting the Utility Adjustment that are required under any applicable federal requirements.

5.7 Schedule, Project Schedule Deadlines and Notices to Proceed.

5.7.1 As a material consideration for entering into this Agreement, Design-Build Contractor hereby commits, and Developer is relying upon Design-Build Contractor's commitment, to develop the East End Crossing in accordance with the Project Schedule Deadlines and time periods set forth in this Agreement, Section 1.5.2 of the Technical Provisions, subject only to delays caused by events constituting "Relief Events" under the PPA. Except where this Agreement expressly provides for extension of time due to a Relief Event or allows delay subject to remedies in favor of Developer other than termination of this Agreement, the time limitations set forth in the DBC Documents, including the dates by which Project Schedule Deadlines are to be achieved as set forth in the Project Schedule, for Design-Build Contractor's performance of its covenants, conditions and obligations are of the essence.

5.7.2 Subject to Section 5.3.2, authorization allowing Design-Build Contractor to proceed with certain portions of the D&C Work hereunder shall be provided through IFA's issuance of NTP1 and NTP2, as applicable, in accordance with the Section 5.7 of the PPA.

5.7.2.1 Design-Build Contractor shall satisfy all conditions to issuance of NTP1 by the NTP1 Conditions Deadline. Issuance of NTP1 authorizes:

(a) Design-Build Contractor to perform (or continue performance of) the portion of the D&C Work necessary to obtain IFA's approval of the component parts, plans and documentation of the Project Management Plan that are labeled "A" in the column titled "Required By" in Attachment 01-1 to the Technical Provisions;

(b) Design-Build Contractor to make any required revisions to the DBE Performance Plan;

(c) Design-Build Contractor to enter the Project Right of Way IFA owns or holds a valid right of entry in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, and to engage in the other activities referenced in the Technical Provisions as permitted following issuance of NTP1;

(d) Design-Build Contractor to prepare and submit first to Developer and then to IFA, each for their respective review, comment and approval, the Project Baseline Schedule, as provided in Section 5.7.5 and Section 1.5.2.1 of the Technical Provisions;

(e) Design-Build Contractor to identify and acquire Project Specific Locations, but not the set up, mobilization or opening of any pit, borrow area, laydown area, equipment location or fabrication yard or plant;

(f) Design-Build Contractor to commence equipment purchase or rental, and to place orders for the purchase of materials and components with long lead times for fabrication and delivery, subject to IFA's prior written approval in its good faith discretion;

(g) Subject to Section 5.3.2, Design-Build Contractor to negotiate Developer Utility Agreements; and

(h) Design-Build Contractor to carry out mobilization and management reasonably necessary for the foregoing activities, and, subject to IFA's prior written approval in its good faith discretion, to carry out other mobilization for the D&C Work.

5.7.3 Design-Build Contractor shall commence bona fide and continuous Construction Work within thirty (30) days following issuance of NTP2 and satisfaction of the conditions precedent to commencement of Construction Work set forth at Section 5.6.1.2 of the PPA. Issuance of NTP2 authorizes Design-Build Contractor to perform all other D&C Work and activities pertaining to the East End Crossing, subject to satisfaction of conditions precedent to commencement of the Construction Work set forth in the DBC Documents.

5.7.4 Design-Build Contractor shall achieve Substantial Completion and Final Acceptance in accordance with the procedures, requirements and conditions set forth in Section 5.8, and shall achieve Substantial Completion by the Baseline Substantial Completion Date and Final Acceptance by the DB Final Acceptance Deadline.

5.7.5 Design-Build Contractor hereby represents and warrants that the Preliminary Project Baseline Schedule attached to this Agreement as Exhibit 2-B (Preliminary Project Baseline Schedule) (i) is in the form described in the Technical Provisions, (ii) as of the Proposal Due Date and the Effective Date represents a practical schedule for Design-Build Contractor to complete performance of the D&C Work through Final Acceptance (absent Relief Events that delay performance), and (iii) is consistent with the Project Schedule Deadlines. Design-Build Contractor shall use the Preliminary Project Baseline Schedule as a foundation to prepare a Project Baseline Schedule for each of Developer's and IFA's respective review, comment and approval prior to issuance of NTP2, as set forth in Section 1.5.2.1 of the Technical Provisions. Design-Build Contractor, Developer and IFA shall use the Project Baseline Schedule for planning and monitoring the progress of the Design Work and Construction Work. The Project Baseline Schedule shall include the Baseline Substantial Completion Date set forth in the Preliminary Project Baseline Schedule.

5.7.6 Design-Build Contractor acknowledges that, pursuant to Section 5.7.6 of the PPA, Total Float is considered as a jointly owned, expiring resource available to the East End Crossing and shall not be considered as time for the exclusive use or benefit of IFA or Design-Build Contractor. All Total Float contained in the Project Schedule, as shown in the initial Project Baseline Schedule or as generated thereafter, shall be considered a shared, jointly owned, resource among IFA and Design-Build Contractor available to any or all such parties as needed to absorb delay caused by Relief Events or other events, achieve interim completion dates and achieve Project Schedule Deadlines, except that Float is not available to IFA to absorb delays caused by the Relief Events set forth in clauses (a) and (h) of the definition of "Relief Event" under the PPA. As between Developer and Design-Build Contractor hereunder, Developer shall not be entitled to use Total Float. All Total Float and the Controlling Work Item shall be shown as such in the Project Schedule on each affected schedule path. Developer shall have the right to examine the identification of (or failure to identify) Total Float and Controlling Work Items on the Project Schedule in determining whether to approve the Project Schedule; Design-Build Contractor acknowledges the same right of IFA under Section 5.7.6 of the PPA. Once identified, Design-Build Contractor shall monitor, account for and maintain Total Float in accordance with critical path methodology.

5.7.6A If at any time Design-Build Contractor is required to prepare a recovery schedule in accordance with Section 1.5.2.4 of the Technical Provisions, Design-Build Contractor shall submit a draft recovery schedule to Developer no later than five (5) days prior to the submission of the Project Status Schedule (including the recovery schedule) to IFA. Developer shall be entitled to make comments on the recovery schedule, and Design-Build Contractor shall take into account the reasonable comments of Developer. Following approval by IFA of the Project Status Schedule (including the recovery schedule) ,Design-Build Contractor shall perform its obligations pursuant to this Agreement in accordance with the terms set out in the recovery schedule, and Design-Build Contractor shall organize meetings (to occur at least bi-weekly) with Developer to report about the progress under the recovery schedule.

5.8 Substantial Completion, Punch List, Final Acceptance.

5.8.1 Substantial Completion. Pursuant to Section 5.8.1 of the PPA, IFA has agreed to issue a written certificate of Substantial Completion on the date that all conditions to DB Substantial Completion have been met as provided in Section 5.8.2 of the PPA and that all O&M Conditions Precedent have been met as provided in Section 5.8.4 of the PPA.

5.8.2 Conditions to IFA Issuing Certificate Evidencing DB Substantial Completion.

5.8.2.1 Pursuant to Section 5.8.2.1 of the PPA, IFA has agreed to issue a written certificate of DB Substantial Completion upon satisfaction of all the conditions listed in Section 5.8.2.1 of the PPA for all Project Sections, of which the following such conditions shall be the responsibility of Design-Build Contractor:

(a) Design-Build Contractor has completed the design and construction of all Project Sections in accordance with the DBC Documents and PPA Documents, including all traffic ramps, entry and exit points, noise/sound walls (if any), lanes, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, fire safety systems, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections, crash attenuators, illumination, signals and other major safety features, and including all East End Crossing equipment (including the electronic vehicle detection required under Section 19 of the Technical Provisions), such that all of the Project Sections are in a condition that can be opened for normal and safe vehicular travel in all lanes and at all points of entry and exit, as determined in IFA's reasonable discretion under Section 5.8.2.1(a) of the PPA, subject only to Punch List items;

(b) The need for temporary traffic controls or for Closures at any time, including due to the existence of or need to complete Punch List items, has ceased (except for any then required for Planned Maintenance), and otherwise set forth in Section 5.8.2.2 of the PPA;

(c) The systems and equipment installed by Design-Build Contractor comply, in all respects, with applicable Laws, are operational and functional, and have passed the fire marshal and any other inspections and tests required under the DBC Documents and PPA Documents, and Design-Build Contractor has delivered to IFA all reports, data and documentation relating to such tests;

(d) Design-Build Contractor, Developer and IFA have completed preparation of the Punch Lists for the entire East End Crossing (other than resolution of items included under protest);

(e) The ITS (i) is completed, (ii) complies with applicable Laws, (iii) has passed the fire marshal inspections and tests required under the DBC Documents, PPA Documents and Law, (iv) has passed all demonstration, performance and acceptance testing in accordance with the Technical Provisions and Project Management Plan, including interconnections TRIMARC, and the Traffic Operations Center (TOC) as required in the Technical Provisions, and (v) is ready for normal operation;

(f) All Submittals required by the Project Management Plan or PPA Documents to be submitted to IFA prior to Substantial Completion have been submitted to and approved by IFA, in the form and content required by the Project Management Plan or PPA Documents;

(g) Design-Build Contractor has satisfied any other requirements or conditions for Substantial Completion set forth in the Technical Provisions;

(h) Design-Build Contractor has made all deposits to the Intellectual Property Escrow(s) and the Financial Escrow required at or prior to Substantial Completion pursuant to Sections 23.5 and 23.6;

(i) There exists no uncured "Developer Default" under the PPA that is caused by any Design-Build Contractor Default under this Agreement, unless (i) Substantial Completion will effect its full and complete cure, (ii) [not used] or (iii) with respect to a non-monetary default, Developer has a right to cure such "Developer Default" under the PPA and Design-Build Contractor, on Developer's behalf, is diligently pursuing cure within the applicable cure period;

(j) Design-Build Contractor has delivered to IFA and Developer all manufacturer warranties required under, and in the form and content specified by the Technical Provisions; and

(k) The date specified under Section 5.8.2.4 of the PPA has passed.

5.8.2.2 In determining whether DB Substantial Completion has occurred, the Parties shall disregard (i) the status of Landscaping Work and non-structural aesthetic features included in the Final Design Documents in determining whether DB Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 5.8.2.1(b), which determination will be made by IFA in its reasonable discretion pursuant to Section 5.8.2.2 of the PPA, and (ii) except to the extent provided in Section 5.8.2.4, disregard whether the Tolling Systems Integrator's work has been completed and accepted by IFA.

5.8.2.3 No later than one hundred twenty (120) Days prior to the date of expected DB Substantial Completion, Design-Build Contractor shall complete all Work required to achieve Tolling Infrastructure Turnover as determined by IFA in its reasonable discretion and shall provide access to the Site for the Toll Systems Integrator to commence installation and testing of the Toll Collection System.

5.8.2.4 Notwithstanding the foregoing and the satisfaction by Design-Build Contractor of all other conditions to DB Substantial Completion, DB Substantial Completion shall not be deemed to have occurred until the earlier of (i) the passage of one hundred twenty (120) days after IFA's reasonable determination under the PPA that Developer has achieved the Tolling Infrastructure Turnover Date or (ii) the Tolling Systems Integrator's completion of its work and acceptance thereof by IFA.

5.8.2.5 Design-Build Contractor shall provide Developer with Notice in respect of the date Design-Build Contractor determines that it will satisfy all of the conditions in Sections 5.8.2.1 and the Parties shall undertake such actions, as follows:

(a) Design-Build Contractor shall provide Developer with two hundred seventy-five (275), one hundred eighty-five (185), one hundred twenty-five

(125) and twenty-five (25) Days' advanced Notice of the date of expected DB Substantial Completion, in each case to afford the Toll Systems Integrator the opportunity to plan, mobilize and test the Toll Collection System.

(b) During the twenty (20)-day period following receipt of the twenty (20) days' Notice provided by Developer to IFA pursuant to Section 5.8.2.5(b) of the PPA, Design-Build Contractor shall attend meetings with Developer and IFA at Developer's request and shall cooperate with Developer and IFA in completing the exchange of information, inspection of the entire East End Crossing and its components, review of the Final Design Documents and Construction Documents and such other investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the conditions to DB Substantial Completion have been satisfied.

(c) Design-Build Contractor shall provide Developer a final Notice when Design-Build Contractor determines it has achieved DB Substantial Completion. The Notice shall include a written certification, in form reasonably acceptable to Developer, that Design-Build Contractor has met all the conditions set forth in Sections 5.8.2.1.

5.8.2.6 Within five (5) days after receipt of the Notice and certification given by Developer to IFA pursuant to Section 5.8.2.5(c) of the PPA, IFA is required by Section 5.8.3 of the PPA to either (a) issue a certificate authorizing DB Substantial Completion and setting forth the date of DB Substantial Completion or (b) provide Notice to Developer setting forth, as applicable, why the conditions to Substantial Completion have not been satisfied. If IFA provides Notice under Section 5.8.3(b), and Developer does not dispute IFA's assessment under the terms of the PPA, then the processes set forth in Sections 5.8.2.5(b), (c) and Section 5.8.2.6 of the PPA shall be repeated until (i) IFA issues a certificate authorizing Substantial Completion or (ii) IFA and Developer refer their disagreement either as to whether one or more criteria for DB Substantial Completion have been met or the date of DB Substantial Completion is referred to, and resolved according to, the Dispute Resolution Procedures under the PPA. Participation of Design-Build Contractor in such dispute (including under circumstances where Design-Build Contractor is designated by agreement of the Parties, in accordance with Section 19A.4.1, to conduct the dispute proceedings on behalf of Developer) shall be in accordance with and subject to Article 19A. Resolution of such dispute under the PPA shall be conclusive and binding on Developer and Design-Build Contractor for purposes of this Agreement.

5.8.3 Punch List.

5.8.3.1 The Project Management Plan shall establish procedures and schedules for preparing a Punch List, for each of (a) Project Section 4, (b) Project Section 5, and (c) Project Section 6, and for completing Punch List work. Such procedures and schedules shall conform to the following provisions.

5.8.3.2 The schedule for preparation of the Punch List shall be consistent and coordinated with the inspections regarding DB Substantial Completion.

5.8.3.3 Design-Build Contractor shall prepare and maintain the Punch List. Design-Build Contractor, subject to prior review and comment by Developer, shall deliver to IFA not less than five (5) days' prior written notice stating the date when Design-Build Contractor will commence Punch List field inspections and Punch List preparation. IFA may, but is not obligated to, participate in the development of the Punch List. Developer shall participate in the development of the Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If Developer (on behalf of itself or Design-Build Contractor) objects to the addition of an item by IFA, the item shall be noted as included under protest, and if the Parties and IFA thereafter are unable to resolve the protest, the dispute shall be resolved according to the Dispute Resolution Procedures under the PPA (it being understood that participation of Design-Build Contractor in such dispute shall be in accordance with and subject to Article 19A). Design-Build Contractor shall deliver to each of Developer and IFA a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

5.8.3.4 Design-Build Contractor shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the DBC Documents, PPA Documents, the Final Design Documents and the Construction Documents within the time period to be set forth in the Project Management Plan and in any case by the DB Final Acceptance Deadline.

5.8.4 Conditions to issuance by IFA of Certificate Evidencing Satisfaction of O&M Conditions Precedent. In connection with Developer's obligations under Section 5.8.4 of the PPA to satisfy the O&M Conditions Precedent set forth therein, Design-Build Contractor shall provide whatever assistance is reasonably requested by Developer to:

5.8.4.1 Complete the training of operations and maintenance personnel, including by providing appropriate certificates or other documentation;

5.8.4.2 Complete the Maintenance Plan pursuant to Section 22.4 of the Technical Provisions and the Operations and Maintenance Plan pursuant to Section 22.1 of the Technical Provisions; and

5.8.4.3 Fulfill the requirements of Section 5.8.4.1(g) of the PPA.

5.8.5 Final Acceptance.

5.8.5.1 Promptly after achieving Substantial Completion for all Project Sections, Design-Build Contractor shall perform all remaining Construction Work, including completion of all Punch List items, all Landscaping Work, and non-structural aesthetic features. Design-Build Contractor shall prepare and adhere to a timetable for planting and establishing the landscaping for the East End Crossing, if any,

taking into account weather conditions necessary for successful planting and growth, which timetable shall in any event provide for landscaping to be planted and established by twelve (12) months after Substantial Completion for the applicable Project Section(s).

5.8.5.2 IFA has agreed to issue a written certificate of Final Acceptance for all Project Sections at such time as all of the criteria specified in Section 5.8.4.2 of the PPA have been satisfied. The following criteria shall be the responsibility of Design-Build Contractor:

(a) The Substantial Completion Date has occurred; all requirements for Substantial Completion remain satisfied and IFA has issued a certificate of Substantial Completion encompassing all Project Sections;

(b) All Punch List items have been completed and delivered to the reasonable satisfaction of IFA;

(c) All Landscaping Work and non-structural aesthetic features have been completed in accordance with Section 5 of the Technical Provisions and the plans and designs prepared in accordance therewith;

(d) Design-Build Contractor demonstrates to IFA's reasonable satisfaction that Design-Build Contractor has acquired and properly stored, or arranged for immediate availability, a reasonable inventory of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for operation and maintenance of the East End Crossing during the Operating Period as identified on Exhibit 31;

(e) IFA has received a complete set of the Record Drawings in form and content required by Section 3.12.2.2 of the Technical Provisions;

(f) IFA has received as-built survey sheets for the East End Crossing;

(g) If any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the East End Crossing or any portion thereof, including any certifications from the engineer of record and architect of record for the East End Crossing, Design-Build Contractor has caused such certificates to be executed and delivered and has concurrently issued identical certificates to IFA;

(h) All Utility Adjustment Work and other work that Design-Build Contractor is obligated to perform for or on behalf of third parties has been accepted by such third parties, and Design-Build Contractor has paid for all work by third parties that Design-Build Contractor is obligated to pay for, other than disputed amounts;

(i) Design-Build Contractor has made all deposits to the Intellectual Property Escrow(s) at or prior to Final Acceptance pursuant to Section 23.5;

(j) IFA has received the final certifications regarding suspension or debarment as set forth in Section 7.16;

(k) There exist no uncured Design-Build Contractor Defaults that are the subject of a Notice, or with the giving of Notice or passage of time, or both, could become the subject of a Warning Notice (except any Design-Build Contractor Default for which Final Acceptance will affect its full and complete cure); and

(l) Design-Build Contractor has submitted to IFA (i) documentation of DBE utilization and (ii) if the DBE Goal is not met, documentation supporting good faith efforts, as required under Exhibit 7 (DBE Special Provisions) of the PPA.

5.8.5.2A Developer shall satisfy all conditions required by Section 5.8.5.2 of the PPA for the issuance of the written certificate of Final Acceptance that are not delegated by this Agreement to Design-Build Contractor by the [Design-Build Contractor's scheduled date for the issuance of the written certificate of Final Acceptance].

5.8.5.3 Design-Build Contractor shall provide Developer with Notice of the date Design-Build Contractor determines that it will satisfy all of the conditions in Section 5.8.5.2. During the twenty (20)-day period following receipt of the Notice provided by Developer to IFA pursuant to Section 5.8.2.3 of the PPA, Design-Build Contractor shall attend meetings with Developer and IFA at Developer's request and shall cooperate with Developer and IFA in completing the inspection of the Punch List items and the East End Crossing, review of the Record Drawings, and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied.

5.8.5.4 Pursuant to Section 5.8.5.4 of the PPA, Developer has agreed to provide IFA a second written notice when Developer determines it has achieved Final Acceptance for all Project Sections. Design-Build Contractor shall provide Developer a final Notice when Design-Build Contractor determines it has achieved Final Acceptance. Such Notice shall include a written certification, in form reasonably acceptable to Developer, that Design-Build Contractor has met all the conditions set forth in Sections 5.8.5.2. Within five (5) days after expiration of the period specified in Section 5.8.5.3 of the PPA and IFA's receipt of the second notice and Developer certification under Section 5.8.5.4 of the PPA, and provided the condition precedent set forth in Section 5.8.5.2(a) of the PPA is satisfied, IFA is required by Section 5.8.5.4 of the PPA to either (a) issue a certificate of Final Acceptance for all Project Sections or (b) provide notice to Developer setting forth, as applicable, why Final Acceptance has not been achieved. If IFA and Developer cannot agree as to the date of Final Acceptance, such dispute shall be resolved according to the Dispute Resolution Procedures under the PPA. Participation of Design-Build Contractor in such dispute shall be in accordance with and subject to Article 19A. Resolution of such dispute under the PPA shall be conclusive and binding on Developer and Design-Build Contractor for purposes of this Agreement. The Notice of Final Acceptance will indicate

the actual date on which Developer and Design-Build Contractor achieved Final Acceptance.

5.9 Hazardous Materials Management.

5.9.1 Without limiting IFA's role or responsibilities set forth in Section 5.9.6 of the PPA and Exhibit 5, and except as provided otherwise below, Design-Build Contractor shall undertake Hazardous Materials Management of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the DBC Documents and PPA Documents.

5.9.2 Design-Build Contractor shall have the following duties to avoid or mitigate adverse financial and schedule impacts of Hazardous Materials and Recognized Environmental Conditions in respect of the East End Crossing and otherwise arising under or relating to the D&C Work.

5.9.2.1 Without cost to IFA or Developer, Design-Build Contractor shall adopt a design and construction techniques for the East End Crossing that, to the maximum extent possible using Good Industry Practice, avoid the need for Hazardous Materials Management, which practices shall be in no case less than Good Industry Practice.

5.9.2.2 If, having met its obligation under Section 5.9.2.1, Design-Build Contractor is unable to avoid Hazardous Materials or a Recognized Environmental Condition, Design-Build Contractor shall use Good Industry Practice, including design modifications and construction techniques, to minimize costs of Hazardous Materials Management, including minimization of IFA's long-term costs for Hazardous Materials Management, which practices shall be in no case less than Good Industry Practice.

5.9.2.3 Where Hazardous Materials Management is unavoidable or is required by applicable Law, Design-Build Contractor shall utilize appropriately trained Contractors or personnel to conduct the Hazardous Materials Management activities.

5.9.3 If during the course of the D&C Work, Design-Build Contractor encounters Hazardous Materials or a Recognized Environmental Condition in connection with the East End Crossing, the Site or D&C Work, in an amount, type, quality or location that would require reporting or notice to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the DBC Documents, Design-Build Contractor shall promptly provide Notice to Developer and advise Developer of any obligation to notify State or federal agencies under applicable Law. If during the DBC Term Developer discovers Hazardous Materials or a Recognized Environmental Condition in connection with the

East End Crossing, the Site or D&C Work, Developer shall promptly provide Notice to Design-Build Contractor of such fact.

5.9.4 The right of Developer to step in to carry out the Hazardous Materials Management obligations of Design-Build Contractor are as follows:

5.9.4.1 If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, taking into consideration the nature and extent of the contamination, the type and extent of action required and the potential impact upon Design-Build Contractor's schedule for use of and operations on the Project Right of Way, Design-Build Contractor has not undertaken the Hazardous Materials Management required of it under Section 5.9.1, Developer may provide Design-Build Contractor with Notice that it will undertake the Hazardous Materials Management itself if Design-Build Contractor has not corrected such failure to undertake the Hazardous Materials Management within a reasonable notice period, having regard to the foregoing factors, to be specified by the Developer in such Notice. Developer thereafter may undertake the Hazardous Materials Management actions in compliance with a remediation plan approved by applicable Governmental Entities, if applicable, and in compliance with applicable Laws. Without limiting Developer's role or responsibilities set forth in Section 5.9.6, Design-Build Contractor shall reimburse to Developer on a current basis within ten (10) days of request therefor, the reasonable costs, including Developer's Recoverable Costs, that Developer incurs in carrying out such Hazardous Materials Management actions. Developer shall have no liability or responsibility to Design-Build Contractor arising out of Developer's Hazardous Materials Management actions and such actions shall in no event constitute the basis of a Claim.

5.9.4.2 Notwithstanding the foregoing, if Design-Build Contractor notifies Developer that Design-Build Contractor desires to preserve claims against other potentially responsible parties, then Developer shall request IFA to take all commercially reasonable efforts to preserve such claims in accordance with Section 5.9.4.2 of the PPA.

5.9.4A Design-Build Contractor acknowledges the right of IFA to step in to carry out the Hazardous Management obligations of Developer (which have been delegated to Design-Build Contractor hereunder) pursuant to Section 5.9.4 of the PPA. If IFA exercises such right, Design Build Contractor shall, on behalf of Developer, reimburse to IFA on a current basis within ten days of request therefor, the reasonable costs, including IFA's Recoverable Costs, that IFA incurs in carrying out such Hazardous Materials Management actions.

5.9.5 Refer to Section 15.7.7 regarding Design-Build Contractor's rights to compensation and schedule relief with respect to Hazardous Materials.

5.9.6 The Parties acknowledges that IFA has agreed to be considered the sole generator and arranger under 40 CFR, Part 262 for the off-site disposal of Hazardous Materials in accordance with, and to the extent provided by, Section 5.9.6 of the PPA.

5.9.7 Whenever after issuance of NTP2 there occurs a Release of Hazardous Materials onto the East End Crossing or Project Right of Way by a third party (a Person other than IFA, Developer, a Developer-Related Entity, Design-Build Contractor or a DBC-Related Entity) in the course of performing D&C Work and is from a vehicle operating or located within the Project Right of Way or from such vehicle's cargo, Design-Build Contractor shall use diligent efforts to handle disposal of the Hazardous Materials in a manner that does not place IFA, Design-Build Contractor, a DBC-Related Entity, Developer or a Developer-Related Entity in the position of assuming generator or arranger liability. Measures to accomplish this objective include the following:

5.9.7.1 Obtaining from the vehicle operator a "transportation manifest" or "bill of lading" and a Material Safety Data Sheet (MSDS) and contacting the owner of the cargo, so that such owner assumes responsibility as generator and arranger for disposal of the Hazardous Materials;

5.9.7.2 If a transportation manifest or bill of lading and MSDS are incomplete and the owner of the cargo is not immediately available, causing the removal of the Hazardous Materials to protect human health and the environment and storing the Hazardous Materials in the vehicle responding to the incident pending contact with and further guidance from the owner of the cargo; and

5.9.7.3 If no third party assumes generator and arranger responsibility for the Release of Hazardous Materials, immediately reporting the Release to the Indiana Department of Environmental Management (or, in respect of Project Section 4, the Kentucky Department of Environmental Protection) and/or the local health department and having such agency handle the Release, so that the State is aware that the Release is from a fugitive disposer.

5.9.8 If despite such diligent efforts Design-Build Contractor or a DBC-Related Entity is unable to avoid generator and arranger liability for the Parties or IFA with respect to the third-party Release of Hazardous Materials onto the East End Crossing or Project Right of Way and such Release is not governed by Section 5.9.10, then IFA has agreed to undertake arranger (and, if necessary, generator) liability under 40 CFR, Part 262 for such third-party spills in accordance with Section 5.9.8 of the PPA.

5.9.9 In accordance with Section 5.9.9 of the PPA, IFA has exclusive decision-making authority regarding selection of the destination facility to which Hazardous Materials will be transported whenever it acts as generator or arranger. The foregoing shall not preclude or limit any rights or remedies that IFA may have against Design-Build Contractor, DBC-Related Entities, Developer-Related Entities (other than Developer), Governmental Entities or other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project Right of Way.

5.9.10 As between Design-Build Contractor, Developer and IFA, Design-Build Contractor shall be considered the sole generator and arranger for (a) Design-

Build Contractor Releases of Hazardous Materials and (b) Hazardous Materials that migrate into, onto or under the Project Right of Way from points of origin located outside the boundaries of such Project Right of Way where the source of such Hazardous Materials is a DBC-Related Entity in the course of performing Work. The foregoing shall not preclude or limit any rights or remedies that Design-Build Contractor may have against any Governmental Entity or any other third parties, including existing or prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project Right of Way, excluding, however, the State, IFA, the Department and their respective agents. To the extent permitted by applicable Law, Design-Build Contractor shall indemnify, save, protect and defend Developer from claims, causes of action and Losses arising out of or resulting from the off-site disposal of such Hazardous Materials for which Design-Build Contractor is considered the generator or arranger pursuant to this Section which claims, causes of action and Losses are asserted by or awarded to third parties. The foregoing indemnity shall survive the expiration or termination of this Agreement.

5.10 Landscaping.

5.10.1 Except as provided in Section 5.10.3, Design-Build Contractor shall be solely responsible for all costs, including all Extra Work Costs and Delay Costs, relating to the design and other services, procurement of all materials, equipment and labor, and performance of all services necessary or appropriate (excluding only those materials, services and efforts which the PPA Documents expressly specify will be undertaken by IFA or other Persons) relating to landscaping for the East End Crossing, including the design, procurement (including transportation and handling), construction, installation, establishment, maintenance, protection, preservation and replacement of landscaping for the East End Crossing (collectively, the "**Landscaping Work**").

5.10.2 Due to the presence of a number of historic resources and historic districts on or near the Site, the landscaping design and materials for Project Section 4 must be designed and constructed with sensitivity to aesthetic values, historic cultural landscapes, and the historic context of the setting. As part of the Work and the Rehabilitation Work, Design-Build Contractor shall implement elements of the Historic Preservation Plans and Aesthetics and Enhancement Implementation Plan, incorporate the Aesthetic Design Guidelines and continue consultations, and cooperate, with the Bi-State Historic Consultation Team (BSHCT), the Kentucky Historic Preservation Advisory Team (KY HPAT) and the public in development of the design and construction of Project Section 4, all as more fully set forth in Section 7 of the Technical Provisions.

5.10.3 The "**Landscaping Work Allowance**" is $10,000,000. Landscaping Work in respect of Project Section 4 includes Landscaping Work prescribed under this Agreement and additional Landscaping Work prescribed by, or on behalf of, the Commonwealth of Kentucky, as more specifically set forth in Section 5.1.1 of the Technical Provisions. The Landscaping Work Allowance pertains to the costs relating to such additional Landscaping Work. References to Landscaping Work in this Section 5.10.3 and in Sections 5.10.6 to 5.10.11 are to such additional Landscaping Work. In accordance with Section 5.10.3 of the PPA, Design-Build Contractor (on

behalf of Developer) and IFA, by and through the Department as IFA's designee, shall allocate, in respect of such additional Landscaping Work, and subject to Article 10 of the PPA, the remaining amounts of the Landscaping Work Allowance that are less than $10,000,000 and additional Landscaping Work costs in excess of $10,000,000 as follows:

5.10.3.1 If, at Final Acceptance, the aggregate total of actual and documented costs for the Landscaping Work is less than $10,000,000, then IFA is entitled to eighty-five percent (85%) of the positive difference between such total and $10,000,000. Pursuant to Section 5.10.3.1 of the PPA, IFA is entitled to receive such positive difference as a deduction from the Milestone Payment (subject to the Milestone Payment Adjustment Cap set forth in Exhibit 10 to the PPA);

5.10.3.2 If, at Final Acceptance, the aggregate total of actual and documented costs for the Landscaping Work is equal to or exceeds $10,000,000 but is less than or equal to $20,000,000, then IFA and Developer have agreed (pursuant to Section 5.10.3.2 of the PPA) to each bear fifty percent (50%) of any such excess costs, and IFA has agreed to pay to Developer fifty percent (50%) of any such excess costs either as a lump sum payment or as an adjustment to the Maximum Availability Payment. The Parties acknowledge that pursuant to Section 5.10.3.2 of the PPA, if IFA elects under the PPA to compensate Developer through an adjustment to the Maximum Availability Payment, then Developer has agreed to use diligent efforts to obtain (a) funding from the Lenders, or other lenders if permitted by the Funding Agreements, and/or (b) equity support from existing and potentially new Equity Members of Developer, in either case, to finance such adjustment in advance of receiving the required compensation payments from IFA. If despite such diligent efforts and the additional compensation that would be paid pursuant to Section 5.10.3.2 of the PPA Developer is unable to obtain such funding and equity support (or IFA does not accept the terms under which Developer is able to obtain additional financing), then IFA has agreed to pay the entire sum as a lump sum payment; and

5.10.3.3 If, at Final Acceptance, the aggregate total of actual and documented costs for the Landscaping Work exceeds $20,000,000, then IFA has agreed (pursuant to Section 5.10.3.3 of the PPA) to bear (a) $5,000,000 (i.e., fifty percent (50%) of the costs incurred above $10,000,000 up to $20,000,000) and (b) one hundred percent (100%) of the costs in excess of $20,000,000, and IFA has agreed to pay to Developer the entire sum either as a lump sum payment or as an adjustment to the Maximum Availability Payment. The Parties acknowledge that pursuant to Section 5.10.3.3 of the PPA, if IFA elects under the PPA to compensate Developer through an adjustment to the Maximum Availability Payment, then Developer has agreed to use diligent efforts to obtain (a) funding from the Lenders, or other lenders if permitted by the Funding Agreements, and/or (b) equity support from existing and potentially new Equity Members of Developer, in either case, to finance such adjustment in advance of receiving the required compensation payments from IFA. If despite such diligent efforts and the additional compensation that would be paid pursuant to Section 5.10.3.3 of the PPA Developer is unable to obtain such funding and equity support (or IFA does not

accept the terms under which Developer is able to obtain additional financing), then IFA has agreed to pay the entire sum as a lump sum payment.

5.10.3.4 The following examples are provided to aid in application of the provisions in the foregoing Sections 5.10.1, 5.10.2 and this Section 5.10.3:

Aggregate total of actual and documented costs for Landscaping Work	***Result***
$8,000,000	*IFA* is entitled to deduction from the Milestone Payment of: $1,700,000 (i.e., 85% of $2,000,000, which is the positive difference between the Landscaping Work Allowance and $8,000,000)
$10,000,000	*No adjustment* (i.e., no positive difference between the Landscaping Work Allowance and $10,000,000)
$15,000,000	*Developer* is entitled to payment from IFA, or adjustment to the Maximum Availability Payment, in either case equal to: $2,500,000 (i.e. 50% of $5,000,000, which is the positive difference between the Landscaping Work Allowance and $15,000,000)
$25,000,000	*Developer* is entitled to payment from IFA, or adjustment to the Maximum Availability Payment, in either case equal to: $10,000,000 (i.e. 50% of costs between $10,000,000 and $20,000,000 ($5,000,000) plus 100% of costs in excess of $20,000,000 ($5,000,000)).

5.10.3A Notwithstanding anything in Section 5.10.3 to the contrary, Design-Build Contractor shall bear and be responsible for all amounts that are the responsibility of Developer under Section 5.10.3 of the PPA (as described in Section 5.10.3 above). Developer shall promptly remit to Design-Build Contractor any amounts received from IFA in accordance with Section 5.10.3 of the PPA.

5.10.4 For the purpose of this Section 5.10, (a) the costs for Landscaping Work and (b) the assessments in respect of the Landscaping Work Allowance in Section 5.10.3 shall, in each case, be limited to only those costs that are incurred between the date of issuance of NTP1 and the Final Acceptance Date.

5.10.5 Design-Build Contractor shall competitively bid Contracts for the Landscaping Work after Design-Build Contractor both completes, and IFA accepts, final design for the Landscaping Work under competitive bidding procedures previously approved in writing by IFA, by and through the Department as IFA's designee.

5.10.6 Accounting for Landscaping Work pertaining to the Landscaping Work Allowance.

5.10.6.1 Design-Build Contractor shall submit to IFA, with a copy to Developer, a statement, in a format acceptable to IFA in its good faith discretion, meeting the requirements of Section 5.10.6.2 (each, a "**Landscaping Statement**"), setting forth amounts paid by Design-Build Contractor for eligible Landscaping Work performed, and costs actually incurred in respect of the same, since the date of the preceding statement (or, in respect of the first statement, since the commencement date of such eligible Landscaping Work).

5.10.6.2 The Landscaping Statement shall, at a minimum, itemize, and set forth the amount for each such itemized portion of, eligible Landscaping Work. The statement must be accompanied by information sufficient, in IFA's sole determination, for IFA to verify that such amounts were for costs and expenses incurred in the performance of eligible Landscaping Work. Such attached report shall include:

(a) A description of the Landscaping Work;

(b) invoices from Contractors substantiating or supporting some or all of those costs and expenses, if any;

(c) the sum of all prior amounts paid by Design-Build Contractor through the last day of the prior statement;

(d) any amounts, if any, Design-Build Contractor claims exceeds the Landscaping Work Allowance for which IFA is partially or wholly responsible to pay pursuant to Section 5.10.3; and

(e) a certification by Developer's Authorized Representative that:

(i) Developer has fully and completely cured all "Developer Defaults" under the PPA for which Developer received Notice from IFA prior to IFA's receipt of the Landscaping Statement;

(ii) the subject Landscaping Work is free and clear of all pledges, liens, hypothecations or other charges, offsets or encumbrances of any

kind, except those pledges, liens, hypothecations or other charges, offsets or encumbrances agreed to by IFA or otherwise pursuant to an approved Financing Plan and given to any Lender as security for Project Debt or Developer's obligations pertaining to Project Debt and encumbering the Developer's Interest;

(iii) Developer has met all the conditions set forth in Section 3.4.2.2, if there exist any of the circumstances described in Section 3.4.2.1 prior to IFA's receipt of the Landscaping Statement; and

(iv) the Landscaping Statement and all supporting documentation are each, and is collectively, true, correct and complete.

5.10.6.2A Before, and as a condition to, requesting Developer to provide the certification contemplated by Section 5.10.6.2(e), Design-Build Contractor shall deliver to Developer a certification by Design-Build Contractor's Authorized Representative that:

(a) Design-Build Contractor has fully and completely cured all "Developer Defaults" under the PPA relating to obligations of Design-Build Contractor under this Agreement and for which Developer received Notice from IFA prior to IFA's receipt of the Landscaping Statement;

(b) the subject Landscaping Work is free and clear of all pledges, liens, hypothecations or other charges, offsets or encumbrances of any kind, except those pledges, liens, hypothecations or other charges, offsets or encumbrances agreed to by IFA or otherwise pursuant to an approved Financing Plan and given to any Lender as security for Project Debt or Developer's obligations pertaining to Project Debt and encumbering the Developer's Interest;

(c) Design-Build Contractor has met all the conditions set forth in Section 3.4.2.2, if there exist any of the circumstances described in Section 3.4.2.1 prior to IFA's receipt of the Landscaping Statement; and

(d) the Landscaping Statement and all supporting documentation are each, and is collectively, true, correct and complete.

5.10.6.3 IFA has agreed to return to Developer, and Developer shall promptly following receipt provide to Design-Build Contractor, any Landscaping Statement that is incomplete and/or incorrect in any material respect for correction and resubmission. Design-Build Contractor shall correct or complete, as applicable, such returned Landscaping Statement, which shall include a recertification by Design-Build Contractor as to all items, up to the subsequent date of submission, listed in Section 5.10.6.2. Design-Build Contractor acknowledges that, pursuant to Section 5.10.6.3 of the PPA, IFA's obligation to fund amounts in excess of the Landscaping Work Allowance is suspended during such period.

5.10.6.4 Pursuant to Section 5.10.6.4 of the PPA, IFA is entitled to examine submitted Landscaping Statements, including through IFA's independent

oversight and auditing process, and reconcile the total amount drawn against the Landscaping Work Allowance, as detailed in such Landscaping Statements, against IFA's independent assessment of the proper amount to which Design-Build Contractor is entitled (the "**IFA Landscaping Work Accounting**"). If IFA disagrees with, or is unable to verify, the accuracy of any amount drawn by Developer's against the Landscaping Work Allowance, then IFA, in accordance with Section 5.10.6.4 of the PPA, will promptly, but in no case later than ten (10) Business Days following receipt of the subject Landscaping Statement, provide notice to Developer, and Developer shall promptly forward such notice to Design-Build Contractor, of such disagreement or inability to verify. Design-Build Contractor acknowledges that, pursuant to Section 5.10.6.4 of the PPA, IFA's obligation to fund amounts in excess of the Landscaping Work Allowance is suspended during such period.

5.10.6.5 Pursuant to Section 5.10.6.5 of the PPA, IFA has the right to dispute, in good faith, any amount specified in any Landscaping Statement, whether incurred by Design-Build Contractor, drawn by Developer against the Landscaping Work Allowance, or to be paid by IFA. If applicable, IFA has agreed to pay the amount identified in the Landscaping Statement that is not in dispute. Developer and IFA have agreed to use their reasonable efforts to resolve any such dispute within thirty (30) days after the dispute arises in accordance with the PPA. If Developer and IFA fail to resolve the dispute within that period, then the dispute shall be resolved according to the Dispute Resolution Procedures under the PPA. Participation of Design-Build Contractor in such dispute shall be in accordance with and subject to Article 19A. Resolution of such dispute under the PPA shall be conclusive and binding on Developer and Design-Build Contractor for purposes of this Agreement.

5.10.6.6 For purposes of clarity, nothing in this Section 5.10, including any review by IFA of the statement provided pursuant to Section 5.10.6.1, shall entitle Design-Build Contractor to any interest on any amount drawn, to be drawn against the Landscaping Work Allowance, to be paid by IFA or in dispute, in each case, in respect of eligible Landscaping Work.

5.10.7 Design-Build Contractor shall perform, or cause to be performed, all Landscaping Work in accordance with the DBC Documents and PPA Documents.

5.10.8 Landscape Establishment.

5.10.8.1 Design-Build Contractor acknowledges that, pursuant to Section 5.10.8.1 of the PPA, on or about May 1 following the first anniversary date of Final Acceptance, IFA has agreed to conduct an inspection of the Landscaping outside of the O&M Limits and no later than 60 days after such date to prepare or cause to be prepared a report describing what, if any, of such Landscaping has (i) died, (ii) failed to establish a root system reasonably expected for Landscaping of a similar type, nature and maturity or (iii) failed to show a growth habit reasonably expected for the Landscaping of a similar type, nature and maturity. If the report described in this Section 5.10.8.1 did not identify any of the conditions set forth in clauses (i) – (iii) herein, then IFA has agreed to pay Developer $1,000,000. If the report described in this

Section 5.10.8.1 identified any of the conditions set forth in clauses (i) – (iii) herein, within thirty (30) days of the receipt of said report by Developer (which Developer shall promptly provide to Design-Build Contractor), Design-Build Contractor shall submit a written plan to Developer setting forth the actions Developer will take to replace dead and underperforming Landscaping and to ensure that the conditions described in said report will not reoccur. Developer has agreed to submit such plan to IFA pursuant to Section 5.10.8.1 of the PPA. Design-Build Contractor shall complete such replacement plantings within the same calendar year as the inspection. Upon completion of replacement plantings, IFA has agreed to pay Developer $1,000,000. Any monies received by Developer from IFA pursuant to Section 5.10.8.1 of the PPA shall be remitted to Design-Build Contractor.

5.10.8.2 Design-Build Contractor further acknowledges that, pursuant to Section 5.10.8.2 of the PPA, on or about May 1 following the second anniversary date of Final Acceptance, IFA has agreed to again inspect the Landscaping outside of the O&M Limits and to prepare or cause to be prepared a report as described in Section 5.10.8.1 no later than 60 days after the second anniversary date of Final Acceptance. If said report did not identify any of the conditions described in clauses (i) – (iii) of Section 5.10.8.1 IFA has agreed to pay Developer $1,000,000. If said report identified any of the conditions set forth in clauses (i) – (iii) of Section 5.10.8.1 within thirty (30) days of the receipt of said report by Developer (which Developer shall promptly provide to Design-Build Contractor), Design-Build Contractor shall submit a written plan to Developer setting forth the actions Developer will take to replace dead and underperforming Landscaping and to ensure that the conditions described in said report will not reoccur. Developer has agreed to submit such plan to IFA pursuant to Section 5.10.8.1 of the PPA. Design-Build Contractor shall complete such replacement plantings within the same calendar year as the inspection. Upon completion of replacement plantings, IFA has agreed to pay Developer $1,000,000. Any monies received by Developer from IFA pursuant to Section 5.10.8.2 of the PPA shall be remitted to Design-Build Contractor.

5.11 Design and Construction Warranties.

5.11.1 Design-Build Contractor shall obtain from all Contractors representations, warranties, guarantees and obligations, in accordance with Good Industry Practice for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Contractors, which shall extend not only to Design-Build Contractor but also to Developer, IFA, KYTC, Utility Owners and any third parties for whom D&C Work is being performed, and on behalf of such parties enforce such representations, warranties, guarantees and obligations; the warranty shall be for a period of not less than one (1) year. All representations, warranties, guarantees and obligations of Contractors (a) shall be written so as to survive all Developer, IFA and Utility Owner inspections, tests and approvals, and (b) shall provide that upon expiration or any early termination of this Agreement prior to the expiration of such representations, warranties, guarantees and obligations they shall automatically be for the benefit of and enforceable by Developer and IFA and its successors and assigns.

5.11.1A To the extent not already included in this Agreement, Design-Build Contractor hereby represents, warrants, guarantees and is obligated to and for the benefit of Developer, IFA and any Utility Owners or other third parties for whom such D&C Work is being performed, that all D&C Work is performed in accordance with Good Industry Practice for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies furnished by Design-Build Contractor. Such representations, warranties, guarantees and obligations of Design-Build Contractor (a) shall survive all Developer, IFA and Utility Owner inspections, tests and approvals, and (b) upon any termination of the Agreement prior to the expiration of such representations, warranties, guarantees and obligations, shall automatically be for the benefit of and enforceable by Developer and IFA.

5.11.2 To the extent that any Contractor warranty or guaranty is voided after termination of this Agreement by reason of Design-Build Contractor's negligence or failure to comply with the requirements of the DBC Documents in incorporating material or equipment into the D&C Work, Design-Build Contractor shall be responsible for correcting any defects in the D&C Work performed by such Contractor which would otherwise have been covered by such warranty.

5.11.3 Contractor warranties are in addition to all rights and remedies available under the DBC Documents or applicable Law, and shall not limit Design-Build Contractor's liability or responsibility imposed by the DBC Documents or applicable Law with respect to the D&C Work, including liability for design defects, construction defects, strict liability, breach, negligence, willful misconduct or fraud.

5.12 Assignment of Certain Causes of Action. Design-Build Contractor agrees to assign to Developer all rights, title, and interest in and to all causes of action Design-Build Contractor may have under Section 4 of the Clayton Act (15 USC § 15) or under comparable State or Commonwealth of Kentucky Law, arising from purchases of goods, services or materials pursuant to this Agreement. This assignment shall be made and become effective automatically upon tender of the payments under Article 10A (with adjustments and deductions as permitted under this Agreement), without further acknowledgment by the Parties.

ARTICLE 6

OPERATIONS AND MAINTENANCE

6.1 General.

6.1.1 [Not Used]

6.1.2 [Not Used]

6.1.3 [Not Used]

6.1.4 [Not Used]

6.1.5 Accommodation of Third-Party Signage and Lighting.

6.1.5.1 In addition to the warning, regulatory, and guide signs within the Project ROW, Design-Build Contractor shall accommodate within the Project ROW third-party signs, including logo type signs. Design-Build Contractor shall coordinate and cooperate with any third party performing such work. Design-Build Contractor shall review with IFA all third-party requests for new signs in the Project Right of Way. Such requests are subject to IFA's approval. IFA may solicit input from Design-Build Contractor in reviewing applications for new third-party signs, but will retain sole authority for approving installation of these signs. All costs associated with fabricating and installing third-party signs shall be borne by the sign applicant. IFA may require Design-Build Contractor to fabricate and/or install any of these signs as an IFA Change.

6.1.5.2 All third-party requests for lighting within the Site shall be subject to IFA approval, and IFA retains sole authority for approving installation of such lighting.

6.2 [Not Used]

6.3 [Not Used]

6.4 [Not Used]

6.5 [Not Used]

6.6 [Not Used]

6.7 [Not Used]

6.8 [Not Used]

6.9 [Not Used]

6.10 [Not Used]

6.11 Policing, Security and Incident Response.

6.11.1 Police Services.

6.11.1.1 Design-Build Contractor acknowledges that pursuant to the requirements of IC 8-15.5-10-7 and Section 6.11.1 of the PPA, Developer and IFA have agreed to jointly enter into (an) agreement(s) with the Indiana State Police and the Kentucky State Police, which, among other things, permits, and Design-Build Contractor shall permit, without expense to Developer or IFA, the Indiana State Police, Kentucky State Police, Louisville Metro Police Department and any other public law enforcement

agency with jurisdiction to provide traffic patrol, traffic law enforcement and the other police and public safety services at the Site in accordance with applicable Laws and agreements with State and local agencies (including any agreement(s) or other arrangement(s) made pursuant to IC 8-15.5-10-7(b) between IFA and (a) the Indiana State Police, (b) the Kentucky State Police, (c) the Louisville Metro Police Department and (d) any other public law enforcement agency with jurisdiction relating to costs incurred in provided law enforcement assistance services), including permitting at least the type and level of service that the Indiana State Police, Kentucky State Police and Louisville Metro Police Department provides on Comparable Facilities owned and operated by the Department or KYTC. Design-Build Contractor shall, as a material obligation hereunder, comply with such agreement(s) and permit such law enforcement agencies to provide such law enforcement assistance services prescribed thereunder without expense to Developer or IFA. In addition, Design-Build Contractor, without expense to Developer or IFA, may engage, on mutually acceptable reasonable terms and conditions, either the Indiana State Police, Kentucky State Police, Louisville Metro Police Department or another qualified public law enforcement agency with jurisdiction to provide enhanced levels of traffic patrol, traffic law enforcement services, special traffic operations services, accident assistance and investigation, and other enhanced police and Emergency services as needed due to any DBC-Related Entity's construction, maintenance or other activities on or affecting the Site.

6.11.1.2 Design-Build Contractor shall not engage, or otherwise permit the engagement of, private security services to provide traffic patrol or traffic law enforcement services at the Site unless otherwise approved by IFA in its sole discretion.

6.11.1.3 At Design-Build Contractor's request and expense, Developer shall request IFA to assist Design-Build Contractor in securing the agreement of the Indiana State Police and the Kentucky State Police to perform enhanced services on or for the Site. Such assistance may include accompanying Design-Build Contractor to meetings with the Indiana State Police and the Kentucky State Police, requesting the involvement of the Public Finance Director and taking any other reasonable action within its powers.

6.11.1.4 Nothing in this Section 6.11.1 shall be construed as conferring upon IFA or Developer in any way responsibility for funding enhanced policing services.

6.11.1.5 Design-Build Contractor acknowledges that the Indiana State Police, Kentucky State Police and Louisville Metro Police Department are empowered to enforce all applicable Laws and to enter the Site at any and all times to carry out their law enforcement duties. Design-Build Contractor acknowledges further that, consistent with the requirements of IC 8-15.5-10-7, all law enforcement officers of the State and the Commonwealth of Kentucky, and any political subdivision, as applicable, have the same powers and jurisdiction within the limits of Project ROW (and otherwise in respect of the East End Crossing) as such law enforcement officers have in their respective areas of jurisdiction, including the roads and highways of the State and the Commonwealth of Kentucky, as applicable. No provision of this Agreement is

intended to surrender, waive or limit any police powers of the Indiana State Police, Kentucky State Police and Louisville Metro Police Department or any other Governmental Entity, and all such police powers are hereby expressly reserved. Design-Build Contractor shall ensure that such law enforcement officers have access to the East End Crossing to exercise their powers and jurisdiction.

6.11.1.6 Neither IFA nor Developer shall have any liability or obligation to Design-Build Contractor resulting from, arising out of or relating to the failure of the Indiana State Police, Kentucky State Police and Louisville Metro Police Department as applicable or any other public law enforcement agency to provide services, or any of their, or their respective agents' or employees', acts, omissions, negligence or misconduct in providing services.

6.11.2 Security and Incident Response.

6.11.2.1 Design-Build Contractor is responsible for the safety and security of the Site and the workers and public thereon during all construction activities under the control of any DBC-Related Entity.

6.11.2.2 Design-Build Contractor shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services. Without limiting the foregoing, whenever the National Terrorism Advisory System (NTAS) or successor system has issued an "elevated" or "imminent" alert or comparable level of threat or alert for any region in which the Site is located or which the East End Crossing serves, Design-Build Contractor, at its expense, shall assign management personnel with decision-making authority to be personally present at the relevant emergency operations center serving the region. Design-Build Contractor shall provide such service twenty-four (24) hours a day, seven (7) days a week, until such level or threat or alert expires pursuant to its "sunset period" or is cancelled, or until the lead agency at the operations center determines such staffing level is no longer necessary.

6.11.2.3 Design-Build Contractor shall perform and comply with the provisions of Section 22 of the Technical Provisions concerning Incident response, safety and security.

6.11.2.4 Design-Build Contractor shall implement all Incident response, safety and security procedures, protocols and requirements set forth in the Incident Management Plan and Emergency Plan (components of the Project Management Plan).

6.12 [Not Used]

6.13 [Not Used]

ARTICLE 7

CONTRACTING AND LABOR PRACTICES

7.1 Disclosure of Contracts and Contractors.

7.1.1 Design-Build Contractor acknowledges Developer's obligations pursuant to Section 7.1.1 of the PPA to provide a monthly report listing the information specified in that Section. Design Build Contractor will provide a monthly report to Developer containing all information relating to Design Build Contractor and its Contractors required to enable Developer to fulfill its obligations pursuant to Section 7.1.1 of the PPA at least 5 Business Days in advance of the date on which Developer is required to provide such monthly report to IFA. Design-Build Contractor shall allow Developer and IFA ready access to all Contracts and records regarding Contracts and shall deliver to Developer, (i) within five (5) days after execution, copies of all Key Contracts, guarantees thereof and amendments and supplements to Key Contracts and guarantees thereof to which it is a party, and (ii) within five (5) days after receipt of a request from Developer, copies of all other Contracts and amendments and supplements thereto as may be requested.

7.1.2 As soon as Design-Build Contractor identifies a potential Contractor for a potential Contract described in the first sentence of Section 7.1.1 of the PPA, but in no event later than two (2) days after Contract execution, Design-Build Contractor shall provide Notice to Developer of the name, address, phone number and authorized representative of such Contractor.

7.2 Responsibility for D&C Work, Contractors and Employees.

7.2.1 Design-Build Contractor shall retain or cause to be retained only Contractors that are qualified, experienced and capable in the performance of the portion of the D&C Work assigned. Design-Build Contractor shall ensure that each Contractor has at the time of execution of the Contract, and maintains at all times during performance of the assigned D&C Work, all licenses, bonds and insurance required by applicable Laws.

7.2.2 The retention of Contractors by Design-Build Contractor does not relieve Design-Build Contractor of its responsibilities hereunder or for the quality of the D&C Work or materials or services provided by it.

7.2.3 Each Contract shall include terms and conditions sufficient to ensure both the acknowledgement of and compliance by the Contractor with the applicable requirements of the PPA Documents and DBC Documents, and shall include those terms that are specifically required by the PPA Documents and DBC Documents to be included therein, including, to the extent applicable, those set forth in Exhibit 23 (Federal Requirements) and any other applicable federal requirements.

7.2.4 Design-Build Contractor shall require each Contractor to familiarize itself with the requirements of any and all applicable Laws, including those Laws applicable to the use of federal-aid funds, and the conditions of any required Governmental Approvals.

7.2.5 Nothing in this Agreement will create any contractual relationship between IFA or Developer and any Contractor. No Contract entered into by or under Design-Build Contractor shall impose any obligation or liability upon any Indemnified Party to any Contractor or any of its employees.

7.2.6 Design-Build Contractor shall supervise and be fully responsible for the actions, omissions, negligence, willful misconduct, fraud, bad faith or breach of applicable Law or contract by any DBC-Related Entity or by any member or employee of Design-Build Contractor or any DBC-Related Entity, as though Design-Build Contractor directly employed all such individuals.

7.3 Key Contracts; Contractor Qualifications.

7.3.1 Key Contract Approvals, Amendments and Termination; Use of and Change in Key Contractors. Any Contract to which Design-Build Contractor is a party that qualifies as a Key Contract under the PPA (a "**DBC Key Contract**") shall comply with the obligations applicable to Developer under Section 7.3 of the PPA, including with respect to its execution, amendment, termination, substitution, transfer, replacement and other terms and provisions.

7.3.2 Key Contract Provisions as Applied to this Agreement. In compliance with Section 7.3.2 of the PPA, Developer and Design-Build Contractor agree that the following provisions shall apply to this Agreement to the extent that they are not otherwise incorporated herein:

7.3.2.1 Design-Build Contractor shall carry out its scope of work in accordance with the PPA Documents, DBC Documents, the Governmental Approvals, applicable Law, and plans, systems and manuals developed and used by Developer and Design-Build Contractor pursuant to the PPA Documents and DBC Documents;

7.3.2.2 Design-Build Contractor shall maintain all licenses required by applicable Law;

7.3.2.3 Design-Build Contractor shall carry out its obligations under this Agreement and the other DBC Documents in accordance with a standard of professional responsibility or a standard for commercial practice equal to the requirements of the PPA Documents and DBC Documents and in accordance with Good Industry Practice for work of similar scope and scale;

7.3.2.4 [Not Used]

7.3.2.5 All remaining warranties and guarantees, express or implied, shall inure to the benefit of Developer and IFA and their respective successors and assigns upon expiration of the term or earlier termination of this Agreement;

7.3.2.6 Design-Build Contractor shall provide or procure the applicable Payment Bond and Performance Security (as applicable) required under Section 17.2, if any, prior to commencement of any work by or on behalf of Design-Build Contractor;

7.3.2.7 Design-Build Contractor shall have no right to suspend or demobilize unless and until it delivers to IFA and Developer Notice of the other contracting party's breach or default, in addition to satisfying any other conditions precedent to such suspension or demobilization as may be required (it being understood that this Section 7.3.2.7 does not grant an independent right to suspend or demobilize, but provides another condition precedent to suspension or demobilization);

7.3.2.8 Design-Build Contractor shall provide its personal services, which shall not be assignable by Design-Build Contractor without Developer's and IFA's prior written consent; provided that this provision shall not prohibit the subcontracting of portions of the D&C Work;

7.3.2.9 [Not Used]

7.3.2.10 Design-Build Contractor shall participate in meetings between Developer and IFA concerning matters pertaining to Design-Build Contractor, its work or the coordination of its work with other Contractors; provided that all direction to Design-Build Contractor shall be provided by Developer, and provided further that nothing in this Section shall limit the authority of IFA to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

7.3.2.11 Design-Build Contractor agrees to give evidence in any dispute resolution proceeding pursuant to Section 19.6 of the PPA, if such participation is requested by either IFA or Developer;

7.3.2.12 Without cost to Developer or IFA, and subject to the rights of the Collateral Agent set forth in Article 21 of the PPA and any Direct Agreement, Design-Build Contractor expressly permits assignment to IFA, the Collateral Agent or either of their respective successors, assignees or designees of all Developer's or other contracting party's rights under this Agreement, contingent only upon delivery of written request from IFA following termination or expiration of the PPA, allowing IFA or its successor, assign or designee to assume the benefit of Developer's or other contracting party's rights with liability only for those remaining obligations of Developer accruing after the date of assumption, such assignment to include the benefit of all Design-Build Contractor warranties, indemnities, guarantees and professional responsibility;

7.3.2.13 Assumption of this Agreement by IFA or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of this Agreement by Developer or for any amounts due and owing under this Agreement for work or services rendered prior to assumption, without prejudice, however, to any rights of Design-Build Contractor under this Agreement or applicable Law to suspend work or terminate this Agreement by reason of any such breach or failure to pay amounts due;

7.3.2.14 Design-Build Contractor shall recognize and attorn to IFA upon receipt of written notice from IFA that it has exercised step-in rights under the PPA, without necessity for consent or approval from Developer or to determine whether IFA validly exercised its step-in rights, and (b) Developer shall waive and release any claim or cause of action against Design-Build Contractor arising out of or relating to its recognition and attornment in reliance on any such written notice;

7.3.2.15 Design-Build Contractor covenants (which covenant shall survive termination of this Agreement) (a) to promptly execute and deliver to IFA or its successor, assign or designee a new contract between Design-Build Contractor and IFA or its successor, assign or designee on the same terms and conditions as this Agreement, if (i) this Agreement is rejected by Developer in bankruptcy or is wrongfully terminated by Developer and (ii) IFA delivers written request for such new contract within 60 days following termination or expiration of the PPA; and (b) if Design-Build Contractor was a party to an escrow agreement for an Intellectual Property Escrow and Developer terminates it, then Design-Build Contractor also shall execute and deliver to IFA, concurrently with such new contract, a new escrow agreement on the same terms and conditions as the terminated escrow agreement, and shall concurrently make the same deposits to the new Intellectual Property Escrow as made or provided under the terminated escrow agreement. The obligation to include the same terms and conditions is subject to the following exceptions: (i) terms and conditions of this Agreement or Intellectual Property Escrow agreement rendered moot or inapplicable solely due to change in the identity of the contracting party to IFA or its successor, assign or designee; and (ii) terms and conditions of this Agreement that must be adjusted due to schedule delay caused solely by Developer's rejection in bankruptcy or wrongful termination.

7.3.2.16 Design-Build Contractor (a) will maintain usual and customary Books and Records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider), and retain such Books and Records for the period set forth in Section 23.1.4 or other applicable period set forth in the PPA Documents and DBC Documents, (b) permit audit thereof by IFA and (c) provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish IFA under this Agreement;

7.3.2.17 The Indemnified Parties are indemnitees, with direct right of enforcement, in any indemnity given by Design-Build Contractor under this Agreement;

7.3.2.18 Design-Build Contractor acknowledges that it has no right or claim to any lien or encumbrance upon the East End Crossing or Project Right of Way for failure of Developer to pay amounts due Design-Build Contractor and waives any such right or claim that may exist at Law or in equity;

7.3.2.19 Developer may terminate this Agreement in whole or in part upon any termination of the PPA, in each case without liability of Developer or IFA for Design-Build Contractor's lost profits or business opportunity; and

7.3.2.20 [Not Used]

7.3.2.21 Any purported amendment with respect to any of the foregoing matters enumerated in Section 7.3.2 of the PPA (as they relate to IFA's rights) without the prior written consent of IFA shall be null and void.

7.3.3 Material D&C Subcontracts. In respect of all Material D&C Subcontracts, Design-Build Contractor shall:

7.3.3.1 include an assignment of Design-Build Contractor's rights under such Material D&C Subcontract to Developer (or the Lenders or their designee if the Lenders have foreclosed on the Project) upon the occurrence of a Design-Build Contractor termination under Section 20.3 and consent by the Material D&C Subcontractor to Design-Build Contractor's assignment of such rights to Developer (or the Lenders or their designee if the Lenders have foreclosed on the Project);

7.3.3.2 subject to the Lender's rights under the Direct Agreement and the direct agreement among Design-Build Contractor, Developer and the Lenders, expressly include a covenant acknowledging that, upon receipt of written notice from Developer (or the Lenders or their designee if the Lenders have foreclosed on the Project), Developer (or the Lenders or their designee if the Lenders have foreclosed on the Project) is entitled to exercise step-in rights under such Material D&C Subcontract, without necessity for a consent or approval from Design-Build Contractor or a determination as to whether Developer (or the Lenders or their designee if the Lenders have foreclosed on the Project) validly exercised its step-in rights; and

7.3.3.3 comply with Section 20.7.4 of this Agreement.

7.4 Key Personnel.

7.4.1 Design-Build Contractor shall retain, employ and utilize the individuals specifically listed in Exhibit 2-H (Equity Members, Contractors and Key Personnel Commitments) or in the Project Management Plan to fill the corresponding DBC Key Personnel positions listed therein. Design-Build Contractor shall not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by each of IFA and Developer pursuant to Section 7.4.2.

7.4.2 Design-Build Contractor shall provide Notice to Developer and IFA of any proposed replacement for any DBC Key Personnel position. IFA and Developer each shall have the right to review the qualifications and character of each individual to be appointed to a DBC Key Personnel position (including personnel employed by Contractors to fill any such position) and to approve or disapprove use of such individual in such position prior to the commencement of any D&C Work by such individual.

7.4.3 Design-Build Contractor shall cause each individual filling a DBC Key Personnel position to dedicate the full amount of time necessary for the proper prosecution and performance of the D&C Work. The following DBC Key Personnel are intended to be full-time positions: [Project Manager – full time during design/construction; Deputy Project Manager – full time during design/construction; Lead Engineer – full time during design; Construction Manager -full time during construction; Quality Manager – full time during design/construction; Safety Manager – full time during design/construction; Environmental Compliance Manager – full time during design/construction].[1] Design-Build Contractor shall commit each of these Key Personnel exclusively to the East End Crossing, and each such person shall have no other conflicting assignments during the periods indicated in this Section 7.4.3.

7.4.4 Design-Build Contractor shall provide IFA and Developer with office and cell phone numbers and email addresses for each DBC Key Personnel. IFA and Developer each shall have the ability to contact any DBC Key Personnel twenty-four (24) hours per day, seven (7) days per week.

7.5 [Not Used]

7.6 Contracts with Affiliates.

7.6.1 Design-Build Contractor shall have the right to have D&C Work and services performed by Affiliates only under the following terms and conditions:

7.6.1.1 Design Build Contractor shall execute a written Contract with the Affiliate;

7.6.1.2 The Contract shall comply with all applicable provisions of the PPA Documents and DBC Documents, including this Article 7, be consistent with Good Industry Practice, and be in form and substance substantially similar to Contracts then being used by Design-Build Contractor or Affiliates for similar D&C Work or services with unaffiliated Contractors;

7.6.1.3 The Contract shall set forth the scope of D&C Work and services and all the pricing, terms and conditions respecting the scope of D&C Work and services;

[1] Positions to be filled by Developer to be deleted.

7.6.1.4 The pricing, scheduling and other terms and conditions of the Contract shall be no less favorable to Design-Build Contractor than those that Design-Build Contractor could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor. Design-Build Contractor shall bear the burden of proving that the same are no less favorable to Design-Build Contractor; and

7.6.1.5 No Affiliate shall be engaged to perform any D&C Work or services which any PPA Documents, DBC Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any D&C Work or services which would be inconsistent with Good Industry Practice.

7.6.2 [Not Used]

7.6.3 Design-Build Contractor shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

7.7 Labor Standards.

7.7.1 In the performance of its obligations under the DBC Documents, Design-Build Contractor at all times shall comply, and require by contract that all Contractors and vendors comply, with all applicable federal and State labor, occupational safety and health Laws and federal and State orders.

7.7.2 All individuals performing the D&C Work shall have the skill and experience and any licenses or certifications required to perform the D&C Work assigned to them, and shall possess the skill and experience necessary to fulfill the standards and requirements of the PPA Documents and DBC Documents applicable to the D&C Work assigned to them, including any applicable minimum levels of skill and experience set forth in the Technical Provisions.

7.7.3 If any individual employed by Design-Build Contractor or any Contractor lacks such skill, experience, licensing and certification, or is not performing the D&C Work in a proper, safe and skillful manner, then Design-Build Contractor shall, or shall cause such Contractor to, remove such individual and such individual shall not be re-employed on the D&C Work. If, after Notice and reasonable opportunity to cure, such individual is not removed or if Design-Build Contractor fails to ensure that skilled, experienced, licensed and certified personnel are furnished for the proper performance of the D&C Work, then IFA and Developer each may suspend the affected portion of the D&C Work by delivering to Design-Build Contractor Notice of such suspension. Such suspension shall in no way relieve Design-Build Contractor of any obligation contained in the PPA Documents or entitle Design-Build Contractor to any additional compensation, time extension or other Claim.

7.8 Ethical Standards.

7.8.1 Within ninety (90) days after the Effective Date, Design-Build Contractor shall adopt written policies establishing ethical standards of conduct for all DBC-Related Entities, including Design-Build Contractor's supervisory and management personnel, in dealing with (a) IFA and the Department and (b) employment relations. Such policy shall be subject to review and comment by each of Developer and IFA prior to adoption. Such policy shall include standards of ethical conduct concerning the following:

7.8.1.1 Restrictions on gifts and contributions to, and lobbying of, IFA, the Department and any of their respective members, commissioners, directors, officers and employees, and elected State officials;

7.8.1.2 Protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

7.8.1.3 Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any DBC-Related Entity;

7.8.1.4 Restrictions on directors, members, officers or supervisory or management personnel of any DBC-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the East End Crossing or employees;

7.8.1.5 Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of Design-Build Contractor or the East End Crossing, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

7.8.1.6 Restrictions on directors, members, officers or employees of any DBC-Related Entity performing any of the Work if the performance of such services would be prohibited under IFA's conflict of interest rules and policies.

7.8.2 Design-Build Contractor shall cause its directors, members, officers and supervisory and management personnel, and require those of all other DBC-Related Entities, to adhere to and enforce the adopted policy on ethical standards of conduct. Design-Build Contractor shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

7.8.3 [Not Used]

7.9 Non-Discrimination; Equal Employment Opportunity. During the performance of this Agreement, Design-Build Contractor, for itself, its assignees and successors in interest agrees as follows:

7.9.1 Compliance with Regulations: Design-Build Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Parts 21, 24, 26 and 60 as they relate to nondiscrimination, and with Executive Order 11246 titled Equal Employment Opportunity as amended by Executive Order 11875, as they may be amended from time to time, (hereinafter collectively referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

7.9.2 Nondiscrimination: This covenant is enacted, in part, pursuant to the Indiana Age Discrimination in Employment Act, and the Americans with Disabilities Act.

Pursuant to the Indiana Civil Rights Law, specifically IC 22-9-1-10, and in keeping with the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, Design-Build Contractor shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Design-Build Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on Protected Characteristics in the provision of services

Design-Build Contractor, with regard to the D&C Work performed by it during this Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Contractors, including procurement of materials and leases of equipment. Design-Build Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when this Agreement covers a program set forth in Appendix B and C of the Regulations.

7.9.3 Solicitations for Contracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Design-Build Contractor for work to be performed under a Contract, including procurement of materials or leases of equipment, each potential Contractor or Supplier shall be notified by Design-Build Contractor of Design-Build Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

7.9.4 Information and Reports: Design-Build Contractor shall provide to IFA or its designee all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to Books and Records, accounts, other sources of information and its facilities as may be determined by IFA to be pertinent to ascertain compliance with such regulations or directives. Where any information required of Design-Build Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Design-Build Contractor shall so certify to IFA and shall set forth what efforts it has made to obtain this information.

7.9.5 Sanctions for Noncompliance: In the event of Design-Build Contractor's non-compliance with the nondiscrimination provisions of this Agreement, Developer shall impose such contract sanctions as it, IFA or the FHWA may determine to be appropriate, including:

7.9.5.1 Withholding of payments to Design-Build Contractor under this Agreement until Design-Build Contractor complies; and/or

7.9.5.2 Cancellation, termination or suspension of this Agreement in whole or in part for Design-Build Contractor Default.

7.9.6 Certification of Nonsegregated Facilities: Design-Build Contractor hereby certifies that, except as specifically prescribed pursuant to Attachment 2 to Exhibit 23 (Federal Requirements), Design-Build Contractor does not maintain or provide for Design-Build Contractor's employees any segregated facilities at any of Design-Build Contractor's establishments, and that Design-Build Contractor does not permit employees to perform their services at any location, under Design-Build Contractor's control, where segregated facilities are maintained. Design-Build Contractor certifies further that, except as specifically prescribed pursuant to Attachment 2 to Exhibit 23 (Federal Requirements), Design-Build Contractor will not maintain or provide for employees any segregated facilities at any of Design-Build Contractor's establishments, and that Design-Build Contractor will not permit Design-Build Contractor's employees to perform their services at any location, under Design-Build Contractor's control, where segregated facilities are maintained. Design-Build Contractor agrees that a breach of either of these certifications is a violation of the Equal Opportunity clause in this Agreement (Exhibit 23 (Federal Requirements), Attachment 4 to Exhibit 23). As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, or national origin, because of habit, local custom or otherwise.

7.9.7 Incorporation of Provisions: Design-Build Contractor shall include the provisions of Sections 7.9.1 through 7.9.6 in every Contract to which Design-Build Contractor is a party, including procurement of materials and leases of equipment unless exempt by the Regulations, or directives issued pursuant thereto.

Design-Build Contractor shall require that they be included in all Contracts at lower tiers, so that such provisions will be binding upon each Contractor and Supplier. Design-Build Contractor shall take such action with respect to any Contractor or procurement as IFA or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that if Design-Build Contractor becomes involved in, or is threatened with, litigation with a Contractor or Supplier as a result of such direction, then Design-Build Contractor may request IFA to enter into such litigation to protect the interests of the State, and in addition, Design-Build Contractor may request the United States to enter into such litigation to protect the interests of the United States. IFA is not obligated, however, to enter into such litigation.

7.9.8 Design-Build Contractor shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions, including those set forth in Exhibit 23 (Federal Requirements), and shall require its Contractors to comply with such provisions. Such provisions shall apply to the entire East End Crossing and all the D&C Work.

7.10 Disadvantaged Business Enterprise.

7.10.1 General.

7.10.1.1 IFA's Disadvantaged Business Enterprise (DBE) Special Provisions are set forth in Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions). The purpose of the DBE Special Provisions is to ensure that DBEs shall have an equal opportunity to participate in the performance of design and construction contracts financed in whole or in part with federal funds. Design-Build Contractor shall comply with all applicable requirements set forth in the DBE Special Provisions and the Department's Disadvantaged Business Enterprise Program Manual adopted pursuant to 49 CFR Part 26, and the provisions in the IFA-approved DBE Performance Plan. Notwithstanding the requirements of the Department's "Recurring Special Provision" 100-C-151B "Disadvantaged Business Enterprise Procedure and Good Faith Efforts (Revised 05-23-11)" and the requirements of the Department's DBE Program Manual, Design-Build Contractor is not required to list all DBE utilization to meet the DBE goal prior to the submittal of Proposals as required in subsection (e) of "Recurring Special Provision" 100-C-151B and Section IV of the DBE Program Manual. Instead, Design-Build Contractor, on behalf of Developer and in accordance with Section 7.10.1.1 of the PPA, shall submit the detailed DBE Performance Plan as set forth in Section 7.10.3 to IFA for review and comment. IFA review of the DBE Performance Plan will replace the good faith efforts review process as outlined in "Recurring Special Provision" 100-C-151B and Section IV of the DBE Program Manual. Design-Build Contractor may utilize DBEs toward the DBE goal that obtain DBE certification after submittal of Proposals.

7.10.1.2 Design-Build Contractor shall include provisions to effectuate the DBE Special Provisions in every applicable Contract to which it is a party (including purchase orders and task orders for D&C Work), and shall require that they be included in all applicable Contracts at lower tiers (including purchase orders and task

orders for D&C Work), so that such provisions will be binding upon each applicable Contractor.

7.10.2 DBE Participation Goals. Design-Build Contractor acknowledges that the DBE Goal for DBE participation in the D&C Work required under this Agreement for East End Crossing design, including professional services, and construction of the East End Crossing is nine percent (9%) of the amount set forth on the "Totals" line of Exhibit 2-I(2) (Capital Cost Table) of the PPA for the professional services and construction. For purposes of clarity, assessment as to whether Design-Build Contractor has achieved the DBE Goal will be measured against the aggregated design and construction costs, and not separately as to each of the design costs and construction costs. This DBE Goal reflects only the anticipated ability of DBE firms to participate on the East End Crossing and is to be used as a measurement of success. Design-Build Contractor shall demonstrate that it will make good faith efforts to meet the DBE Goal for the East End Crossing in accordance with 49 CFR 26, Appendix A.

7.10.3 DBE Performance Plan.

7.10.3.1 Developer has submitted to IFA as part of its Proposal the Preliminary DBE Performance Plan attached to this Agreement as Exhibit 2-L (Developer's Preliminary DBE Performance Plan). If not previously approved in writing by IFA, IFA has agreed to deliver to Developer comments of IFA and the Department's Economic Opportunity Division on the Preliminary DBE Performance Plan within thirty (30) days after the Effective Date. Design-Build Contractor, on behalf of Developer, shall prepare and submit to Developer for Developer's review, comment and approval a proposed final DBE Performance Plan within fifteen (15) days after receiving such comments from IFA. Developer shall then submit the final DBE Performance Plan to IFA within thirty (30) days after receiving such comments from IFA, in accordance with Section 7.10.3 of the PPA. The proposed final DBE Performance Plan is subject to further review and comment by IFA and the Department's Economic Opportunity Division and to IFA's approval prior to and as a condition to issuance of NTP2.

7.10.3.2 In preparing the final DBE Performance Plan, Design-Build Contractor shall include, to the extent known at the time of preparation:

(a) The names of currently-certified DBE firms to which Developer or Design-Build Contractor has made commitments, the percentage of each such entity's DBE participation and a description of the types of work each such DBE firm listed is to perform;

(b) The dates and manner in which each of the listed DBE firms were contacted for their respective interest in DBE sub-contracting opportunities for the East End Crossing;

(c) A description of each such currently-certified and listed DBE firm's respective interest in sub-contracting for the East End Crossing;

(d) An explanation of how Design-Build Contractor plans to recruit, solicit and evaluate potential DBEs to utilize on the East End Crossing;

(e) A description of demonstrated success with the DBE program on other projects;

(f) a breakdown of anticipated DBE commitments (i.e. anticipated percentages to go to design, construction, and supplies);

(g) Estimated time frames for achieving DBE participation (i.e. in what years of the project will DBE participation by realized);

(h) Strategies for monitoring DBE utilization and contract compliance, including proper DBE credit, performance of commercially useful function, and proper payment to DBEs;

(i) The name of Design-Build Contractor's "DBE Compliance Manager" and description of the DBE Compliance Manager's reporting structure and responsibilities; and

(j) Commitment to communicate with IFA and the Department on DBE participation and compliance efforts throughout the life of the Project.

7.10.3.3 The final DBE Performance Plan shall respond to the comments of IFA and the Department's Economic Opportunity Division, comply with all applicable Laws and Governmental Approvals, including 49 CFR Part 26, include all the matters described in Section 120-3.01 of Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions), and be consistent with the DBE certification set forth in Exhibit 2-M (DBE Certification).

7.10.3.4 Design-Build Contractor shall exercise good faith efforts to achieve the DBE Goal for the East End Crossing through implementation of the approved DBE Performance Plan.

7.10.3.5 Design-Build Contractor shall comply with provisions relating to 25 IAC 5 as set forth in Exhibit 7 (IFA's Disadvantaged Business Enterprise (DBE) Special Provisions).

7.10.4 Changes in the D&C Work.

7.10.4.1 If the scope of the D&C Work changes after the Effective Date such that there are additional opportunities for DBE firms to participate, Design-Build Contractor shall amend and update the DBE Performance Plan to show how it will include, or undertake good faith efforts to include, additional DBE participation in order to achieve the DBE Goal.

7.10.4.2 If the scope of the D&C Work changes after the Effective Date based on an IFA Change Order or Directive Letter, or if Design-Build Contractor encounters unknown conditions on the East End Crossing, in either case resulting in reduced DBE participation than originally proposed and committed to by Developer or Design-Build Contractor, then Design-Build Contractor will not be held responsible for the reduced DBE participation; provided that Design-Build Contractor has followed the procedures in 49 CFR § 26.53(f), IFA has approved the change in DBE utilization and IFA has verifiable evidence that these changes or unknown conditions are not a result of actions by any DBC-Related Entity.

7.10.5 [Not Used]

7.10.6 Cancellation of DBE Contracts. Design-Build Contractor shall not cancel or terminate any Contract with a DBE firm except with IFA's prior written consent and in accordance with all requirements and provisions of 49 CFR § 26.53.

7.11 Workforce Diversity and Small Business Performance Plan.

7.11.1 Developer has submitted to IFA as part of its Proposal the Preliminary Workforce Diversity and Small Business Performance Plan attached to this Agreement as Exhibit 2-N (Developer's Preliminary Workforce Diversity and Small Business Performance Plan). If not previously approved in writing by IFA, IFA has agreed to deliver to Developer (and Developer will deliver to Design-Build Contractor) comments of IFA and the Department's Economic Opportunity Division on the Preliminary Workforce Diversity and Small Business Performance Plan within thirty (30) days after the Effective Date. Design-Build Contractor, on behalf of Developer, shall prepare and submit to Developer for Developer's review, comment and approval a proposed-final Workforce Diversity and Small Business Performance Plan within fifteen (15) days after receiving such comments from IFA. Developer shall then submit to IFA, within thirty (30) days after receiving such comments from IFA, a proposed-final Workforce Diversity and Small Business Performance Plan. The proposed-final Workforce Diversity and Small Business Performance Plan is subject to further review and comment by IFA and the Department's Economic Opportunity Division and to IFA's approval.

7.11.2 The Workforce Diversity and Small Business Performance Plan shall incorporate and be consistent with Exhibit 8 (Equal Employment Opportunity Trainees Special Provisions) and shall include a commitment to participate in the Department's Equal Employment Opportunity Trainee Program. The Workforce Diversity and Small Business Performance Plan shall apply to all the original Construction Work for the East End Crossing.

7.11.3 The purpose of the Workforce Diversity and Small Business Performance Plan is to ensure that inexperienced and untrained women, disabled veterans and other minority workers, have a substantial opportunity to participate in the performance of the D&C Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Design-Build Contractor shall

perform and comply with all requirements set forth in of the Workforce Diversity and Small Business Performance Plan.

7.11.4 Design-Build Contractor shall include provisions to effectuate the Workforce Diversity and Small Business Performance Plan in every applicable Contract to which it is a party (including purchase orders and task orders for D&C Work), and shall require that such provisions be included in all applicable Contracts, except for Contracts with IFA or Governmental Entities, so that such provisions will be binding upon each Contractor performing D&C Work to which the Plan applies. The foregoing shall not apply to Contracts at any tier with IFA or Governmental Entities.

7.11.5 Design-Build Contractor shall meet the following requirements or demonstrate to IFA, in IFA's good faith discretion, that Design-Build Contractor made good faith efforts to meet the following requirements:

7.11.5.1 Ensure construction contractors included as part of the Design-Build Contractor's team comply with the requirements of the Department's "Equal Employment Opportunity Trainee Program," including meeting reporting requirements and documenting good faith efforts to meet the training goals assigned to each construction contractor, and

7.11.5.2 Provide the required hours of training for Department-approved trainees/apprentices in the proposed training program in Design-Build Contractor's final Workforce Diversity and Small Business Performance Plan.

7.11.5A Design-Build Contractor shall be responsible for, and indemnify and hold harmless Developer for, any and all damages, withheld payments or other losses assessed or charged by IFA in accordance with Section 7.11.5 of the PPA to the extent caused by or attributable to the failure of Design-Build Contractor to comply with Section 7.11.5 above.

7.12 Additional Diversity Initiatives. Design-Build Contractor is encouraged to make additional efforts to solicit and recruit minority and women-owned businesses and small businesses to participate in the East End Crossing.

7.13 Prevailing Wages.

7.13.1 Design-Build Contractor shall pay or cause to be paid to all applicable workers employed by it or its Contractors to perform the Construction Work not less than the highest prescribed prevailing rates of wages, as provided in the statutes and regulations applicable to public construction projects and public work contracts, including IC 5-16-7, KRS § 337.505 *et seq.* and, to the extent provided in Exhibit 23 (Federal Requirements), the Davis-Bacon Act and statutory common wage law(s) applicable to the Project. For purposes of clarity, (a) as between the prescriptions under the Davis-Bacon Act (if applicable) and the "Common Wage" prescribed pursuant to IC 5-16-7, the "prevailing rate of wages" shall be, in respect of each labor category, the higher value prescribed, and (b) notwithstanding any term of this Agreement to the contrary, to the extent that FHWA and the U.S. Department of

Labor approve project-specific wage rates for the Project, then Design-Build Contractor shall pay, and shall cause all Contractors to pay, such project-specific wage rates when performing or when contracting for the performance of any of Design-Build Contractor's obligations under this Agreement. Design-Build Contractor shall comply and cause its Contractors performing Construction Work to comply with all Laws pertaining to prevailing wages, including arranging for a "Common Wage" hearing pursuant to IC 5-16-7.

7.13.2 The provisions of Attachment 2 to Exhibit 23 (Federal Requirements) shall apply to the entire East End Crossing and to all covered classifications of employees (other than employees of IFA or Governmental Entities acting as Contractors) regardless of the contractual relationship between Design-Build Contractor or Contractors and laborers, mechanics or field surveyors.

7.13.3 It is Design-Build Contractor's sole responsibility to determine the wage rates required to be paid. If rates of wages and benefits change while this Agreement is in effect, then Design-Build Contractor shall bear the cost of such changes and shall have no Claim against IFA or Developer on account of such changes.

7.13.4 Design-Build Contractor shall comply and cause its Contractors performing Construction Work, other than IFA or Governmental Entities acting as Contractors, to comply with all Laws, regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.

7.13.5 If it is found that a laborer, mechanic or field surveyor employed by Design-Build Contractor or a Contractor has been or is being paid a rate of wages less than the rate of wages required by this Agreement to be paid, Developer may declare a Design-Build Contractor Default under Section 19.1.1.12, and such a Design-Build Contractor Default may be the subject of a Warning Notice pursuant to Section 19.2.9 and lead to termination of this Agreement pursuant to Section 20.3.1.3.

7.14 Prompt Payment to Contractors.

7.14.1 Design-Build Contractor shall pay each subcontractor for D&C Work satisfactorily performed within ten (10) days after receiving payment from Developer for the D&C Work satisfactorily performed by the subcontractor, and shall pay any retainage on a subcontractor's D&C Work within ten (10) days after satisfactory completion of all of the subcontractor's D&C Work after receiving payment from Developer of such retainage amount. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor. For the purpose of this Section 7.14, satisfactory completion is accomplished when:

7.14.1.1 The subcontractor has fulfilled the requirements of both this Agreement and the subcontract for the subcontracted D&C Work, including the

submittal of all information required by the specifications and Design-Build Contractor; and

7.14.1.2 The work done by the subcontractor has been inspected and approved by Developer and the final quantities of the subcontractor's work have been determined and agreed upon.

7.14.2 The foregoing payment requirements apply to all tiers of subcontractors and shall be incorporated into all subcontracts.

7.15 Retainage. Design-Build Contractor shall comply and cause its Contractors to comply with 49 CFR § 26.29 concerning prompt payment of retainage to subcontractors.

7.16 Suspension and Debarment.

7.16.1 Design-Build Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. For purposes of this Section 7.16.1, the term "principal" for purposes of this Agreement 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 Design-Build Contractor.

7.16.2 Design-Build Contractor shall deliver to Developer, not later than January 24 of each year through Final Acceptance, and upon Final Acceptance, signed certifications regarding suspension, debarment, ineligibility, voluntary exclusion, convictions and civil judgments from Design-Build Contractor, from each affiliate of Design-Build Contractor (as "affiliate" is defined in 29 CFR § 105 or successor regulation of similar import), and from each Contractor whose Contract amount equals or exceeds $100,000. The annual certification shall be substantially in the form of clauses 1.a through 1.d of Attachment 6 to Exhibit 23 (Federal Requirements).

7.17 Uniforms. Any uniforms, badges, logos and other identification worn by personnel of DBC-Related Entities shall bear colors, lettering, design or other features to ensure clear differentiation from those of IFA, the Department, KYTC and their respective employees.

ARTICLE 8

RELATED FACILITIES; RESERVED RIGHTS

8.1 Integration with Related Transportation Facilities.

8.1.1 Design-Build Contractor shall locate, configure, design, construct, operate and maintain the termini, interchanges, ramps, intersections, crossings, entrances and exits of the East End Crossing so that the East End Crossing will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe and orderly transition of traffic to and from, Related Transportation Facilities. The design for the East End Crossing shall include and provide for such compatibility, integration and transition. The design, construction, operation and maintenance of the East End Crossing shall satisfy all provisions of the PPA Documents, DBC Documents and Project Management Plan relating to compatibility, integration and transition with or at Related Transportation Facilities, including those concerning signage, signaling and communications with Users. Design-Build Contractor shall not block, hinder, change or restrict, partially or wholly, access to or from the East End Crossing from or to any Related Transportation Facility without the prior express written consent of, and on such terms and conditions as may be specified by, IFA and the applicable Governmental Entity or other party, as the case may be.

8.1.2 [Not Used]

8.1.3 Without limiting the foregoing, Design-Build Contractor shall cooperate and coordinate with IFA, Developer and any third party that owns, manages, operates or maintains a Related Transportation Facility with regard to the construction, maintenance and repair programs and schedules for the East End Crossing and the Related Transportation Facility, in order to minimize disruption to the operation of the East End Crossing and the Related Transportation Facility.

8.1.4 Design-Build Contractor acknowledges that, in accordance with Section 8.1.4 of the PPA, IFA has agreed to provide reasonable access during normal working hours to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of IFA or its contractors and consultants pertaining to Related Transportation Facilities. On behalf of Developer in accordance with Section 8.1.4 of the PPA, Design-Build Contractor, at its expense, shall have the right to make copies of the same. Design-Build Contractor, at its expense, shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to identify the Related Transportation Facilities and achieve such compatibility, integration and transition.

8.1.5 Design-Build Contractor acknowledges that, accordance with Section 8.1.5 of the PPA, at Developer's request from time to time, IFA has agreed to provide reasonable assistance in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that Design-Build Contractor may have against any such third parties. Such assistance may include IFA's participation in meetings and discussions. In no event shall IFA be required to bring any legal action or proceeding against any such third party. In accordance with Section 8.1.5 of the PPA, Developer and IFA have agreed to establish a scope of work and budget for IFA's Recoverable Costs in connection with providing such cooperation. Developer shall consult with Design-Build Contractor and provide Design-Build Contractor a reasonable

opportunity to review and comment on such scope of work and budget. Subject to any agreed scope of work and budget, Design-Build Contractor, as delegate of Developer, shall reimburse IFA for all reasonable costs, including IFA's Recoverable Costs, it incurs in connection with rendering such assistance within five (5) days after written request therefor.

8.1.6 Design-Build Contractor acknowledges that each of IFA and the Department shall have at all times, without obligation or liability to Design-Build Contractor, the right to conduct traffic management activities on its Related Transportation Facilities and all other facilities of the State transportation network in the area of the East End Crossing in accordance with its standard traffic management practices and procedures in effect from time to time.

8.2 Reserved Airspace and Business Opportunities. Design-Build Contractor acknowledges the rights reserved by IFA under Section 8.2 of the PPA and shall not interfere therewith or otherwise violate Section 8.2 of the PPA.

8.2.1 [Not Used]

8.2.2 [Not Used]

8.2.3 [Not Used]

8.2.4 If the development, use or operation of the Airspace by IFA, the Department, KYTC or anyone (other than Developer or a Developer-Related Entity) claiming under or through IFA, the Department, KYTC, the State, the Commonwealth of Kentucky, or any entity created by both the State and Commonwealth of Kentucky arising out of, or related to, the East End Crossing, or if the development or operation of a Business Opportunity in the Airspace, prevents Design-Build Contractor from performing its fundamental obligations under this Agreement or materially adversely affects its costs, such impacts will be treated as a Relief Event under Section 15.1 and the Design Build Contractor shall be entitled to Equivalent Project Relief.

8.2.5 Prior to deciding whether to pursue or implement a Business Opportunity, IFA may require Developer to provide analysis of the impacts thereof on Developer's (and Design-Build Contractor's) costs and schedule, as if it were a Request for Change Proposal, in which case the Parties shall follow the procedures under Section 16.1. Design-Build Contractor shall provide Developer with whatever information or analysis is necessary to respond to such request by IFA.

8.2.6 The Parties acknowledge the right of Developer under Section 8.2.6 of the PPA to propose Business Opportunities, including expected financial and other terms, for IFA consideration.

8.2.7 Design-Build Contractor acknowledges that, If a "Developer Default" under the PPA concerns a breach of the provisions of Section 8.2 of the PPA, then, in addition to any other remedies, IFA is entitled to Developer's disgorgement of all profits from the prohibited activity, together with interest thereon, at a floating rate

equal to the LIBOR in effect from time to time plus four hundred (400) basis points, from the date of collection until the date disgorged, and to sole title to and ownership of the prohibited assets and improvements and revenues derived therefrom. Without limiting the generality of Section 17.5, Design-Build Contractor shall indemnify and hold harmless Developer from any Loss, including such disgorgement and interest, arising from Design-Build Contractor's breach of the provisions of this Section 8.2.

8.2.8 Design-Build Contractor is prohibited from placing or permitting any outdoor advertising within the boundaries of the Project Right of Way.

ARTICLE 9

TECHNOLOGY ENHANCEMENTS; SAFETY COMPLIANCE; EMERGENCY REPAIR WORK

9.1 Technology Enhancements.

9.1.1 Design-Build Contractor shall make Technology Enhancements on the systems it provides as and when necessary (a) to correct Defects prior to the expiration of the Warranty Period or Latent Defect Period, as applicable, (b) [not used] or (c) to comply with State-wide changes in interoperability, compatibility and reciprocity standards, requirements, agreements and protocols in accordance with applicable provisions of the Technical Provisions prior to Substantial Completion.

9.1.2 Each Technology Enhancement described in Section 9.1.1(a) shall be at Design-Build Contractor's sole cost, and Design-Build Contractor acknowledges that neither Design-Build Contractor nor Developer has any right to a Relief Event, additional compensation, schedule relief or other relief on account of such Technology Enhancements under the PPA; for each Technology Enhancement described in Section 9.1.1(c), such Technology Enhancements shall be treated as a Relief Event under clause (d) of the definition of "Relief Event" (Non-Discriminatory O&M Change) and subject to provisions of Section 15.1.

9.2 Safety Compliance.

9.2.1 Design-Build Contractor acknowledges that, pursuant to Section 9.2 of the PPA, IFA is entitled from time to time to issue Safety Compliance Orders with respect to the East End Crossing to correct a specific safety condition or risk involving the East End Crossing that IFA has reasonably determined exists through investigation or analysis.

9.2.2 The Parties acknowledge that IFA has agreed to use good faith efforts to inform Developer at the earliest practicable time of any circumstance or information relating to the East End Crossing which in IFA's reasonable judgment is likely to result in a Safety Compliance Order. Developer shall promptly inform Design-Build Contractor of any such circumstance or information. Except in the case of

Emergency, IFA has agreed to consult with Developer prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Developer resources to fund the Safety Compliance work. Where practicable, Developer shall provide Design-Build Contractor with a reasonable opportunity to comment on such matters.

9.2.3 Design-Build Contractor shall implement each Safety Compliance Order as expeditiously as reasonably possible following its issuance. Design-Build Contractor shall diligently prosecute the work necessary to achieve such Safety Compliance until completion. In no event shall Design-Build Contractor be entitled to claim that any Force Majeure Event or Relief Event relieves Design-Build Contractor from compliance with any Safety Compliance Order.

9.3 Emergency Repair Work.

9.3.1 Design-Build Contractor shall be responsible for procuring and overseeing temporary and/or permanent repair work in response to an Emergency for the East End Crossing from and after issuance of NTP2 until Substantial Completion. Design-Build Contractor shall solicit competitive bids for such work if FHWA or FEMA regulations, policies or procedures require competitive bidding in order to obtain reimbursement for eligible costs. IFA has agreed pursuant to Section 9.3.1 of the PPA to provide oversight relating to such Emergency-related repair work in accordance with the PPA Documents.

9.3.2 Design-Build Contractor shall ensure that such repair work is performed in accordance with the PPA Documents and State and federal Law applicable to such Emergency-related repair work, including the requirements of the FHWA Emergency Relief Manual as most recently published by the FHWA (http://www.fhwa.dot.gov/reports/erm/). Further, Design-Build Contractor shall maintain estimates, cost records and supporting documentation in accordance with such Laws, and in a form and content to enable IFA to seek reimbursement for eligible costs from FHWA or FEMA, if applicable.

ARTICLE 10

[NOT USED]

ARTICLE 10A

PAYMENTS

10A.1 Construction Payments.

10A.1.1 During the Construction Period, Developer shall pay to Design-Build Contractor [redacted] (the "**Contract Sum**") in installments subject to the terms and conditions of this Article 10A.

10A.1.2 The Construction Payment Schedule sets out the Construction Payment Items and the amount of the Contract Sum allocated to each such Construction Payment Item (each a "**Construction Payment Amount**") by Developer. Design-Build Contractor shall be entitled to the Construction Payment Amount in respect of each Construction Payment Item completed in accordance with this Agreement. Design-Build Contractor may invoice Developer in accordance with Section 10A.2, and Developer must pay Design-Build Contractor in accordance with Section 10A.4 on a monthly basis the amount of the Construction Payment Amount in relation to Construction Payment Items (if any) completed or a proportionate amount of a Construction Payment Amount equal to the proportion (as determined, subject to Section 10A.2.2.3, by the Lenders' Technical Advisor) of the value of such Construction Payment Item completed during the immediately preceding month (each such monthly installment, a "**Construction Payment**").

10A.2 Construction Payment Application.

10A.2.1 Application for Construction Payment.

10A.2.1.1 Design-Build Contractor, by not earlier than the first Business Day of the subsequent month, shall submit a statement (a "**Statement**") to Developer and the Lenders' Technical Advisor in respect of the D&C Work completed through the end of a particular month, in the form attached hereto as Exhibit 30 showing in detail the amounts and information specified in Section 10A.2.1.2. The Statement shall be accompanied by such supporting documents as Developer may reasonably request, including the monthly progress report in accordance with the requirements of Section 3.9.

10A.2.1.2 Each Statement shall include the following items, as applicable:

(a) the value based on Exhibit 29 of Construction Payment Items (and/or any proportion thereof) which have been completed by the end of the month for which the Statement is submitted;

(b) [not used]

(c) amounts added as a result of Extra Work Costs or Delay Costs as calculated in accordance with Section 15 or other agreed adjustments to the Contract Sum in accordance with Section 7.10.4;

(d) a declaration by Design-Build Contractor that there are no construction liens (including mechanic's, materialmen's, workmen's, repairmen's, employees', warehousmens', carriers' or any like lien or right of set-off arising in the ordinary course of business or under applicable law) registered against the Project

which have not been fully satisfied, or, if any liens are registered they have been duly discharged or vacated, other than liens securing obligations incurred in connection with the Project which are not overdue by more than thirty (30) days or are adequately bonded or are being contested in good faith (provided that, with respect to such permitted liens, Design-Build Contractor has set aside adequate reserves on a consistent basis to the extent required by its accounting practices);

(e) a declaration by Design-Build Contractor whether or not there are any outstanding Design-Build Contractor Defaults or any event or circumstance which has occurred and is likely, with the passage of time or otherwise, to constitute or give rise to a Design-Build Contractor Default;

(f) a declaration by Design-Build Contractor that all Governmental Approvals necessary for carrying out the D&C Work have been obtained when required, except such Governmental Approvals which are not then required to be obtained and are obtainable in the ordinary course of business, and no such Governmental Approval nor a material part thereof has been revoked, suspended or terminated;

(g) a declaration by Design-Build Contractor, to the best of its knowledge, that (i) there have been no Releases of Hazardous Materials at, on, under or from any property that is part of the Project, (ii) Design-Build Contractor has no current liability on its part, whether contingent or otherwise, arising out of or resulting from the release or discharge on or to the Project of any Hazardous Material, that would reasonably be expected to have a material adverse effect on Design-Build Contractor, Developer or the Project, and (iii) there are no Hazardous Materials on the Project, the presence of which Hazardous Material would cause Design-Build Contractor or Developer to be in material violation of any applicable Laws;

(h) a declaration by Design-Build Contractor, to the best of its knowledge, that there are no environmental liabilities or claims against Design-Build Contractor or Developer under Environmental Laws with respect to the Project, except to the extent previously disclosed to Developer or to the extent that noncompliance with such Environmental Laws, or such environmental liabilities or claims under Environmental Laws could not reasonably be expected to give rise to a material adverse effect on the Project;

(i) a declaration by Design-Build Contractor, to the best of its knowledge, that (i) the Project is being carried out in compliance with all Environmental Laws except for such noncompliance that could not reasonably be expected to have a material adverse effect on the Project, (ii) Design-Build Contractor (1) has provided or caused to be provided to Developer copies of all material environmental due diligence reports or analyses prepared by it or on its behalf in respect of the Project and (2) has obtained all environmental permits required to be obtained by it pursuant to the PPA with respect to the Project and all such permits are in full force and effect, except, in each case, for any environmental permits (x) where the failure to obtain such environmental permits could not reasonably be expected to have a

material adverse effect on the Project, or (y) which are not required at the current state of development of the Project, (iii) there is no known impediment to issuance of any of the environmental permits referenced in the foregoing clause (y) as contemplated in the PPA Documents, except for any impediment that could not reasonably be expected to have a material adverse effect on the Project;

(j) a declaration by Design-Build Contractor of the estimated date of DB Substantial Completion;

(k) any other additions or deductions not already paid pursuant to the terms of this Agreement which may have become due under this Agreement or otherwise, including those determined in accordance with the Dispute Resolution Procedure.

10A.2.1.3 A Statement may not claim payment for a Construction Payment Item (and/or any proportion thereof) such that, following such payment, the aggregate of the Construction Payments made to Design-Build Contractor up to such time would exceed the maximum aggregate amount of Construction Payments allowed at such time in the maximum drawdown schedule contained in the Construction Payment Schedule in Exhibit 29.

10A.2.1.4 Each Statement should be accompanied by a written confirmation from Design-Build Contractor that all accounts due for payment for labor, materials and other services in connection with the D&C Work completed during the relevant month have been paid up to the date of the last payment.

10A.2.2 Statement Audit by Lenders' Technical Advisor.

10A.2.2.1 The Lenders' Technical Advisor shall, on receipt of a Statement submitted by Design-Build Contractor pursuant to Section 10A.2.1.2, audit such Statement and verify that:

(a) the completion of each Construction Payment Item or proportion of completion of each Construction Payment Item claimed by Design-Build Contractor in the Statement has been achieved as set out therein and has been achieved in accordance with this Agreement, the Governmental Approvals and applicable Law;

(b) all of the materials supplied and/or D&C Work carried out in respect of which Design-Build Contractor is claiming payment in the Statement have been supplied or completed, as applicable, in accordance this Agreement, the Governmental Approvals and applicable Law; and

(c) the amounts and information set out in the Statement are true and correct.

10A.2.2.2 If the Lenders' Technical Advisor disagrees with any amount in the Statement claimed by Design-Build Contractor, the Lenders' Technical

Advisor shall notify Developer and Design-Build Contractor of such disagreement within seven days after receiving the Statement.

10A.2.2.3 The Lenders' Technical Advisor, Design-Build Contractor and Developer shall use their respective reasonable efforts to resolve the disagreement of the Lenders' Technical Advisor as described in Section 10A.2.2.2 within five (5) Business Days after the receipt by Developer and Design-Build Contractor from the Lenders' Technical Advisor of a notice referred to in this Section 10A.2. If Developer, Design-Build Contractor and the Lenders' Technical Advisor are unable to resolve such disagreement within such time period, either Party may refer such dispute for resolution in accordance with the Dispute Resolution Procedure under Section 19.6. However, pending such resolution, the Lenders' Technical Advisor shall certify and the Developer shall pay all undisputed amounts.

10A.2.3 Issue of Payment Certificate.

10A.2.3.1 Provided that the Design-Build Contractor has timely submitted the Statement in accordance with Section 10A.2.1.1, the Lenders' Technical Advisor shall, by the tenth (10th) Business Day of a month after receiving a Statement and supporting documents pursuant to Section 10A.2.1, issue a Payment Certificate to Design-Build Contractor and Developer for that portion of the amount claimed by Design-Build Contractor in the Statement and the amount of D&C Work actually completed at the time of issuance of the Payment Certificate which is not in dispute at that time.

10A.2.3.2 If, pursuant to Section 10A.2.2.3, either Party has referred a dispute regarding any amount claimed in the Statement for resolution in accordance with the Dispute Resolution Procedure under Section 19.6, upon resolution or determination regarding such disputed amount, the Lenders' Technical Advisor will issue a revised Payment Certificate to reflect such resolution or determination.

10A.2.4 Payment.

10A.2.4.1 Developer shall, on the fifth (5th) Business Day after the issuance by the Lenders' Technical Advisor of a Payment Certificate (or a revised Payment Certificate), pay to Design-Build Contractor a Construction Payment as shown in the relevant Payment Certificate; provided, however, if Developer is unable to draw down funds under the Funding Agreements, including those described in Exhibit 28, as a result of any event or circumstance for which Design-Build Contractor is responsible, Developer shall not be liable to pay Design-Build Contractor for the Construction Payment until such time as the relevant event has been rectified to the satisfaction of the Lenders and Developer is able to draw down funds under the Funding Agreements to meet such Construction Payment.

10A.2.4.2 Design-Build Contractor shall not be, nor shall it be entitled to be, paid by Developer for the amount of any difference that may exist

between the actual cost of the work performed in respect of which the Payment Certificate is issued and the amount stated in the Payment Certificate.

10A.2.4.3 Without prejudice to Developer's rights to deduct from the Construction Payments any other amounts that may be due to Developer under the DBC Documents, the Construction Payments shall be subject to adjustment in accordance with Sections 10A.3 and 11.5.

10A.2.4.4 Subject to Section 19.6, Developer shall be entitled to withhold from any payment to be made to Design-Build Contractor under this Agreement, such reasonable amounts as are necessary for so long as is necessary to protect itself, acting in good faith, against any Losses or claims arising from the following:

(a) any Defect that Design-Build Contractor fails to correct within thirty (30) days (the amount of which shall be estimated by Lenders' Technical Advisor for purposes of the withholding, and subject to Dispute Resolution Procedures if either Party disagrees);

(b) any third-party claims for which Design-Build Contractor is responsible, but only to the extent that insurance proceeds from the insurance policies required to be maintained by Design-Build Contractor hereunder are not available;

(c) any damages to property for which Design-Build Contractor is responsible, but only to the extent that insurance proceeds from the insurance policies required to be maintained by Design-Build Contractor hereunder are not available;

(d) liens arising in connection with the D&C Work other than as a direct result of payment default by Developer and for which Design-Build Contractor does not discharge or bond over within fifteen (15) days of receiving written notice thereof;

(e) liquidated damages which are owing to Developer;

(f) any Default Termination Event; or

(g) any Quarterly Noncompliance Adjustment.

Before withholding any such amounts, Developer shall give Notice to Design-Build Contractor of the intended withholding. Developer shall not withhold any such amounts if, prior to the date of the intended withholding, Design-Build Contractor makes a separate payment to Developer in an amount equal to be amount to be withheld.

10A.3 Interest on Payments.

10A.3.1 Interest on undisputed amounts owed by either Party under this Agreement shall accrue at the Contract Interest Rate from the date such amounts become due and payable under this Agreement.

10A.3.2 Interest on amounts determined to be due in respect of Claims or Disputes pursuant to the Dispute Resolution Procedures under Section 19.6 shall accrue as follows:

10A.3.2.1 in respect of Pass Through Claims, the Design-Build Contractor is entitled to its pro-rata share of the interest received from IFA by the Developer in respect of such Pass Through Claim (determined by reference to the percentage of the proceeds of Pass Through Claim that is paid to the Design-Build Contractor); and

10A.3.2.2 in respect of Disputes or Claims that are not Pass-Through Claims, at the Contract Interest Rate from the date such amount was due until the date of payment.

10A.4 Delay Liquidated Damages; Construction Payment Adjustment and Withholding.

10A.4.1 AP Delay Liquidated Damages.

10A.4.1.1 If DB Substantial Completion does not occur on or before the Scheduled DB Substantial Completion Date, as such date may be revised pursuant to schedule relief granted by IFA under the terms of the PPA and subject to Sections 19.2.8.3 and 19.4.4.5, Design-Build Contractor shall pay to Developer liquidated damages ("**AP Delay Liquidated Damages**") equal to [redacted] per day for each day from the Scheduled DB Substantial Completion Date until the DB Substantial Completion Date. For the avoidance of doubt, the Scheduled DB Substantial Completion Date used to calculate AP Delay Liquidated Damages, solely for the purposes of calculating AP Delay Liquidated Damages, shall be adjusted in accordance with schedule relief actually granted by IFA under the PPA and in accordance with the terms of this Agreement.

10A.4.1.2 Design-Build Contractor must pay AP Delay Liquidated Damages to Developer monthly in arrears, but in any event not later than five (5) days following the date on which Developer would have been paid the missed Availability Payment by IFA under the terms of the PPA (had Substantial Completion occurred as scheduled) and receipt of a demand in writing by Developer and only to the extent that the Developer has not been paid the corresponding Availability Payment.

10A4.1.3 Notwithstanding any other provision of this Agreement, if Design-Build Contractor has paid AP Delay Liquidated Damages in respect of any period of time to Developer, and Developer subsequently receives compensation from IFA under the Section 15.2 of the PPA for all or some portion of such period of time, Developer shall reimburse Design-Build Contractor the AP Delay Liquidated Damages paid by Design-Build Contractor for that portion, if any, of such period of time covered

by the compensation received from IFA, it being understood no interest will be due by Developer to Design-Build Contractor on such reimbursed amounts.

10A.4.2 Milestone Delay Liquidated Damages.

10A.4.2.1 If any Milestone is not achieved by the applicable achievement date for such Milestone, as set forth in Exhibit 29, Design-Build Contractor shall pay to Developer liquidated damages ("**Milestone Delay Liquidated Damages**") equal to [redacted] per day for each day from the achievement date for such Milestone, as set forth in Exhibit 29, until the date such Milestone is achieved.

10A.4.2.2 Design-Build Contractor must pay Milestone Delay Liquidated Damages to Developer monthly in arrears, but in any event not later than five (5) days following the date on which Developer would have been paid the missed Milestone Payment by IFA under the terms of the PPA (had the Milestone been achieved as scheduled) and receipt of a demand in writing by Developer and only to the extent that the Developer has not been paid the corresponding Milestone Payment. If several Milestones are missed, the daily amount will not increase.

10A4.2.3 Any Milestone Liquidated Damages paid by Design-Build Contractor will be reimbursed by Developer within five (5) business days after the respective Milestone Payment is received by the Developer from IFA, it being understood no interest will be due by Developer to Design-Build Contractor on such reimbursed amounts.

10A.4.3 General Provisions in Respect of Delay Liquidated Damages.

10A.4.3.1 Developer and Design-Build Contractor agree that Delay Liquidated Damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Developer will suffer as a result of the happening of the events contemplated under Sections 10A.4.1 and 10A.4.2. Design-Build Contractor agrees that it is and shall be estopped from alleging that, and shall not allege that, Delay Liquidated Damages are a penalty and not liquidated damages, or are otherwise unenforceable for any reason. Design-Build Contractor agrees with Developer that Design-Build Contractor has taken into account such liquidated damages in its pricing of its compensation hereunder, that such liquidated damages are integral to the provisions of this Agreement, and that Developer has relied on such liquidated damages in entering into this Agreement.

10A.4.3.2 The maximum liability of Design-Build Contractor for Delay Liquidated Damages is the amount of the LD Cap.

10A.4.3.3 Subject to the other remedies of Developer for termination for a Default Termination Event and the requirement for Design-Build Contractor to carry out Corrective Work in accordance with Article 5, the payment of AP Delay Liquidated Damages and Milestone Delay Liquidated Damages shall be Developer's sole and exclusive monetary remedy for any and all damages that may be claimed by Developer as a result of a delay in the performance of the D&C Work.

10A.4.3.4 If Delay Liquidated Damages are not paid when due under the terms of this Agreement, Developer may offset such unpaid amount against any amounts due or coming due to Design-Build Contractor or draw on the Security in accordance with Section 17.3 to satisfy this payment obligation in relation to such Delay Liquidated Damages.

10A.4.3.5 For greater certainty, the subject matter of any amount payable under this Agreement as Delay Liquidated Damages shall not be considered to be an indirect loss.

10A.4.4 Construction Payment Adjustment and Withholding.

10A.4.4.1 Design-Build Contractor acknowledges that if any Milestone is not achieved by the applicable achievement date for such Milestone, as set forth in Exhibit 29, for any reason including as a result of a Relief Event, the payment of the Milestone Payment for such Milestone by IFA to Developer will be delayed in accordance with the terms of the PPA.

10A.4.4.2 If any Milestone is not achieved by the applicable achievement date for such Milestone, as set forth in Exhibit 29, for any reason including as a result of a Relief Event, and a Milestone Payment in respect of such Milestone is not paid to Developer as scheduled (had the Milestone been achieved as scheduled), Developer may deduct the amount of such Milestone Payment from the maximum aggregate amount of Construction Payments allowed at such time in the maximum drawdown schedule contained in the Construction Payment Schedule in Exhibit 29 for the purpose of the limitation applicable for the Statement referred to in Section 10A.2.1.3 and offset the applicable amount from any amounts due or coming due to Design-Build Contractor; provided that Developer shall pay to Design-Build Contractor the amount offset within five (5) Business Days after Developer receives payment of such Milestone Payment from IFA (except as such payment may be withheld or offset in accordance with other provisions of this Agreement), it being understood no interest will be due by Developer to Design-Build Contractor on such reimbursed amounts.

ARTICLE 11

NONCOMPLIANCE EVENTS AND NONCOMPLIANCE POINTS

11.1 Noncompliance Points System.

11.1.1 Design-Build Contractor acknowledges that Attachment 1 of Exhibit 12 to the PPA sets forth a table for the identification of Noncompliance Events and the "Cure Period" (if any) available to Developer for each such Noncompliance Event. Noncompliance Points are a system to measure Developer performance levels and trigger the remedies set forth or referenced in Article 11 of the PPA. The inclusion in Attachment 1 of Exhibit 12 to the PPA of a breach or failure to perform bears no implication as to whether the breach or failure is material. For purposes of this Section

11.1, "Cure Period" shall be that which is identified in the context of Noncompliance Events, as indicated in the table labeled "Assessment Categories" in such Attachment 1.

11.1.2 Design-Build Contractor acknowledges that, in accordance with Sections 11.1.2 and 11.1.3 of the PPA, Attachment 1 of Exhibit 12 to the PPA contains a representational, but not exhaustive, list of Noncompliance Events possible under the PPA Documents.

11.1.3 [Not Used]

11.1.4 [Not Used]

11.1A Design-Build Contractor's Responsibility.

11.1A.1 Design-Build Contractor shall cure Noncompliance Events within the cure periods set out in the PPA, to the extent that breaches or failures in the performance of Design-Build Contractor under the DBC Documents result in a Noncompliance Event under the PPA.

11.1A.2 Without limiting the generality of Section 1A.3, Developer shall promptly notify Design-Build Contractor of any correspondence received from IFA with respect to a Noncompliance Event or the assessment of Noncompliance Points, including any addition or change to Attachment 1 of Exhibit 12 to the PPA.

11.1A.3 Design-Build Contractor acknowledges the provisions of Exhibit 10 to the PPA, which permits IFA to adjust the amount of payments otherwise owing to Developer under the PPA on account of Noncompliance Points assessed by IFA under the PPA. The Contract Sum shall be reduced by the amount by which any payment to Developer made by IFA is reduced on account of Noncompliance Points caused by any action, omission, failure or breach of Design-Build Contractor; provided that with respect to any such Noncompliance Points assessed by IFA after full payment of the Contract Sum, Design-Build Contractor shall pay to Developer, within five Business Days of receipt of invoice therefor, an amount equal to the amount by which any payment to Developer made by IFA is reduced on account of such Noncompliance Points.

11.2 Assessment Notification and Cure Process.

11.2.1 Notification Initiated by Design-Build Contractor.

11.2.1.1 In accordance with Developer's obligations under Section 11.2.1 of the PPA, which are hereby delegated to Design-Build Contractor, and which Design-Build Contractor hereby accepts, Design-Build Contractor shall enter each Noncompliance Event into the data base established and maintained by Developer in real time upon discovery. At a minimum, as required by Section 11.2.1 of the PPA, the data base will:

(a) Include a description of each Noncompliance Event in reasonable detail, including its assessment category as set forth in Attachment 1 of Exhibit 12 to the PPA;

(b) Identify the East End Crossing location (if applicable);

(c) Identify the date and time of occurrence;

(d) Identify the applicable response time, if any;

(e) Indicate the applicable cure period, if any, as set forth in Attachment 1 of Exhibit 12 to the PPA;

(f) Indicate status; and

(g) Indicate date and time of cure.

11.2.1.2 Design-Build Contractor shall retain each Noncompliance Event entry into the database until at least four years after the date of cure.

11.2.1.3 [Not Used]

11.2.2 Notification Initiated by IFA. Design-Build Contractor acknowledges that if IFA believes there has occurred any Noncompliance Event specified in Attachment 1 of Exhibit 12 to the PPA, as it may be revised from time to time, IFA may deliver to Developer (and, subject to the last sentence, Developer shall deliver to Design Build Contractor following receipt) a Notice of Determination setting forth the Noncompliance Event, the applicable cure period (if any), IFA's determination whether the Noncompliance Event was cured during the applicable cure period (if any), and the Noncompliance Points to be assessed with respect thereto. IFA may deliver the Notice of Determination via the electronic data base, and delivery to Design Build Contractor shall be deemed given upon proper entry of the information into the electronic data base.

11.2.2A Notification Initiated by Developer. If Developer believes there has occurred any Noncompliance Event, or that there is a reasonable possibility that a Noncompliance Event will imminently occur, Developer may deliver to Design-Build Contractor a Notice with respect to such Noncompliance Event. Design-Build Contractor shall work diligently to cure or avoid such Noncompliance Event. It is understood, however, that Design-Build Contractor remains liable for the assessment of all Noncompliance Points by IFA in accordance with Section 11.1A, whether or not Developer gives Notice of the Noncompliance Event.

11.2.3 Cure Periods. Cure periods, if any, for each Noncompliance Event shall be as set forth in by Section 11.2.3 of the PPA. Design-Build Contractor shall cure each Noncompliance Event by the end of the cure period (if any) for each such Noncompliance Event set forth in Attachment 1 of Exhibit 12 to the PPA.

11.2.4 Notification of Cure.

11.2.4.1 When Design-Build Contractor determines that it has completed cure of any Noncompliance Event for which it is being assessed Noncompliance Points, Design-Build Contractor shall notify Developer of such completion, and Developer shall (or shall direct Design-Build Contractor to) enter in the electronic data base notice identifying the Noncompliance Event, stating that Design-Build Contractor has completed cure and briefly describing the cure, including any modifications to the Project Management Plan to protect against future similar Noncompliance Events.

11.2.4.2 Thereafter, IFA has the right pursuant to Section 11.2.4.2 of the PPA, but not the obligation, to inspect in order to verify completion of the cure. If satisfied that the Noncompliance Event is fully cured, IFA has agreed to deliver to Developer (and Developer shall provide a copy to Design-Build Contractor of) a certification of cure either by entry into the data base or in a separate writing within a reasonable time from the date that IFA has completed its inspection to verify completion of the cure.

11.2.4.3 Design-Build Contractor acknowledges that IFA may reject any notice of cure if IFA determines that the Noncompliance Event has not been fully cured. Upon making this determination, IFA has agreed to deliver a written notice of rejection to Developer either by entry into the data base or in a separate writing. The provisions of Section 11.2.3.1 shall be applicable to the Noncompliance Event to which the rejected notice of cure relates. Any Dispute with IFA regarding rejection of cure shall be resolved according to the Dispute Resolution Procedures under the PPA.

11.3 Assessment of Noncompliance Points. Design-Build Contractor acknowledges that IFA may assess Noncompliance Points in accordance with Section 11.3 of the PPA.

11.4 Records Regarding Assessment of Noncompliance Points. Design-Build Contractor is responsible for keeping and providing IFA and Developer with current records of the number of assessed Noncompliance Points for each Noncompliance Event, the date of each assessment, and the date when the Noncompliance Event is cured.

11.5 Quarterly Noncompliance Adjustments and Quarterly Unavailability Adjustments for Certain Noncompliance Events and Closures. Design-Build Contractor shall be responsible to Developer under this Agreement for Quarterly Noncompliance Adjustments and Quarterly Unavailability Adjustments by IFA under Article 11 of the PPA, to the extent that such adjustments resulted from actions or omissions of Design-Build Contractor under the DBC Documents. Design-Build Contractor shall pay any amounts owing under this Section 11.5 to Developer within five Business Days of receipt of an invoice from Developer. Developer may set off any amounts owing and unpaid pursuant to this Section 11.5 against Construction Payments payable under Section 10A.2.4.1.

11.6 Special Provisions for Certain Noncompliance Events. The Parties acknowledge the provisions of Section 11.6 of the PPA with respect to a Noncompliance Event that has an assessment category of A or B as set forth in Attachment 1 to Exhibit 12 to the PPA and is directly attributable to a Relief Event or an unexpected loss, disruption, break, explosion, leak or other damage of a Utility serving or in the vicinity of the East End Crossing but not within the maintenance responsibility of Developer. Design-Build Contractor is entitled to the benefits thereunder, including any cure period extension.

11.7 [Not Used]

11.8 Provisions Regarding Dispute Resolution. Design-Build Contractor acknowledges that Developer may object to the assessment of Noncompliance Points or the starting point for the cure period respecting any Noncompliance Event by delivering to IFA written Notice of such objection not later than five (5) days after IFA delivers its written Notice of Determination in accordance with Section 11.8 of the PPA. Design-Build Contractor may prepare and submit to IFA any such proposed Notice in accordance with Section 11.8 of the PPA. Design-Build Contractor acknowledges that if for any reason Design-Build Contractor fails to deliver its written Notice of objection within the applicable time period, Developer and Design-Build Contractor are conclusively deemed to have accepted the matters set forth in the applicable IFA Notice, and are forever barred from challenging them. Developer shall not be liable to Design-Build Contractor for any such failure.

ARTICLE 12

[NOT USED]

ARTICLE 13

DEVELOPER FINANCING

13.1 [Not Used]

13.2 [Not Used]

13.3 [Not Used]

13.4 [Not Used]

13.5 [Not Used]

13.6 [Not Used]

13.7 Financial Close. Design-Build Contractor shall cooperate fully with Developer and IFA in connection with any of the events contemplated by Section 13.7

of the PPA, including any competition among eligible Lenders, and provide whatever assistance, support, information or participation is reasonably requested by Developer to successfully achieve Financial Close under the PPA, including delivering such certificates, opinions and other closing documents as are customarily required from a party in the role of Design-Build Contractor in similar transactions on Financial Close.

ARTICLE 14

[NOT USED]

ARTICLE 15

RELIEF EVENTS

This Article 15 sets forth the requirements for obtaining schedule and monetary relief under the DBC Documents due to Relief Events.

Design-Build Contractor hereby acknowledges and agrees that payment of the Contract Sum provides for full compensation for performance of all the D&C Work, and the Project Schedule Deadlines provide reasonable and adequate time to perform the D&C Work required within the Project Schedule Deadlines, subject only to those exceptions specified in this Article 15.

Without prejudice to Design-Build Contractor's rights and remedies provided by this Agreement with respect to Developer Acts, the compensation amounts, deadline extensions and performance relief specified in this Article 15 shall represent the sole and exclusive right against Developer and its successors, assigns, agencies, divisions, officers, directors, agents, representatives, consultants and employees to compensation, damages, deadline extension and performance relief for the adverse financial and schedule effects of any Relief Event affecting the D&C Work, the East End Crossing or Design-Build Contractor. No award of compensation or damages shall be duplicative. Design-Build Contractor unconditionally and irrevocably waives the right to any claim against Developer for any monetary compensation, schedule relief or other relief with respect to Relief Events, except to the extent specifically provided in this Article 15 or otherwise as specifically provided in this Agreement. The foregoing waiver is limited solely to the occurrence of Relief Events and encompasses all theories of liability, whether in contract, tort (including negligence), strict liability, equity, *quantum meruit* or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual or unilateral mistake and frustration of purpose. Notwithstanding anything to the contrary herein, no liability of Design-Build Contractor that arose before the occurrence of the Relief Event giving rise to a claim under this Article 15 shall be excused as a result of the occurrence.

Nothing in the Technical Provisions shall have the intent or effect or shall be construed to create any right of Design-Build Contractor to any claim for additional

monetary compensation, schedule relief or other relief, any provision in the Technical Provisions to the contrary notwithstanding, in each case with respect to Relief Events.

The provisions of this paragraph shall not affect Design-Build Contractor's express remedies against Developer under the DBC Documents in the event of a Developer Default or upon termination of this Agreement by Developer prior to the stated expiration of the DBC Term.

15.1 Relief Event Claim Process. Design-Build Contractor acknowledges that Section 15.1 of the PPA applies to all Relief Events, except Relief Events that are an IFA Change. The process for IFA Changes shall be through a Change Order or Directive Letter pursuant to Sections 16.1 and 16.3, respectively, of the PPA.

Design-Build Contractor acknowledges that, pursuant to Section 15.1 of the PPA, if (i) a Relief Event occurs that would be covered by any insurance policy required to be in place pursuant to Exhibit 19 of the PPA, (ii) Developer (or Design-Build Contractor or another delegate of Developer) is responsible for obtaining and maintaining in effect such insurance policy pursuant to Exhibit 19 of the PPA and (iii) such Insurance Policy is not in full force and effect (with premiums paid) at the time that such Relief Event occurs, then IFA owes, and is deemed to owe, no compensation to Developer, and the applicable sections of Article 15 of the PPA shall not apply in respect of assessment of the value of any loss arising out of or relating to such Relief Event to the extent that Developer recovers under any such insurance policy. The deductible and limits of the applicable insurance policy(ies) under Article 15 of the PPA and Exhibit 19 to the PPA shall apply, and Developer has agreed to be responsible to pay or absorb the policy deductible(s) pursuant to the terms of the PPA. If the proceeds of the insurance required under the PPA (including Exhibit 19 to the PPA) provide Developer with less compensation for a loss arising out of or relating to such Relief Event than the amount of compensation which would have been paid under Article 15 of the PPA, then after applicable deductibles under Article 15 of the PPA have been applied, if any, Developer (or Design-Build Contractor on Developer's behalf, as may be provided in this Agreement) may make a claim under Article 15 of the PPA, but then only for the difference (i.e., the value of the loss net of the insurance amount paid to Developer and other applicable deductions under the PPA). In no event will IFA compensate, or be deemed to be obligated to compensate, Developer for amounts relating to a Relief Event that, when combined with insurance, would exceed the total amount of compensation that would be paid under any part of Article 15 of the PPA.

IFA has acknowledged that Developer may enter into Contracts pursuant to which additional costs directly attributable to the occurrence of a Relief Event or its impact on schedule or performance of Work may be borne by a Contractor subject to the right to claim relief from Developer to the extent Developer obtains relief from IFA under the PPA. For purposes of evaluating the merits of any Relief Event Notice, Relief Request or Claim against IFA for such Relief Event, such costs or impact on schedule or performance of Work will be deemed to be directly incurred by Developer.

15.1.1 Relief Event Notice.

15.1.1.1 If at any time Design-Build Contractor determines that a Relief Event has occurred or is imminent, Design-Build Contractor shall submit a proposed written Relief Event Notice to Developer for Developer's review and comment. Developer shall submit the same to IFA in accordance with Section 15.1.1.1 of the PPA.

15.1.1.2 The Relief Event Notice shall include, to the maximum extent of the information then-available:

(a) A description of the Relief Event and its date of occurrence or inception in reasonable detail;

(b) Design-Build Contractor's preliminary good faith estimate of the anticipated adverse and beneficial effects of the Relief Event and the basis for such estimate;

(c) Design-Build Contractor's preliminary good faith estimate of the Critical Path impact directly attributable to the Relief Event and the basis for such estimate;

(d) [Not Used]

(e) Design-Build Contractor's initial analysis of any adverse effect of the Relief Event on its ability to perform its obligations under this Agreement;

(f) The actions Design-Build Contractor has taken prior to the Relief Event Notice to prevent, and proposes to take thereafter to mitigate, the cost, delay and other consequences of the Relief Event; and

(g) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.

15.1.1.3 The nature and scope of the potential claim stated in the Relief Event Notice shall remain consistent (except for reductions) for the remainder of the claim process and, if applicable, during any subsequent Dispute Resolution Procedures under the PPA, except with respect to consequences of a Relief Event that (a) are of a different nature or scope, (b) first arise or occur after the Relief Event Notice is delivered, and (c) could not have been anticipated through the exercise of reasonable diligence and Good Industry Practice prior to delivering the Relief Event Notice. If any such new consequences arise or occur prior to submission of the Relief Request, Design-Build Contractor shall prepare and provide to Developer a supplemental Relief Event Notice for submission to IFA in accordance with Section 15.1.1.3 of the PPA.

15.1.1.4 Design-Build Contractor shall prepare the Relief Event Notice on a standardized form approved by IFA.

15.1.1.5 Design-Build Contractor shall assign an exclusive identification number for each Relief Event Notice, determined by chronological sequencing. The exclusive identification number shall be used on each of the following

corresponding documents: (i) Relief Request; (ii) supplemental Notices and submissions pertaining to the Relief Event Notice; and (iii) full and final documentation of the claim.

15.1.1.6 If a single Relief Event is a continuing cause of delay, only one Relief Event Notice shall be necessary.

15.1.2 Relief Request.

15.1.2.1 Design-Build Contractor shall prepare and submit to Developer within thirty (30) days after Developer submits the Relief Event Notice to IFA complete reasoning for additional compensation, Project Schedule Deadline adjustments and other requested relief relating to the Relief Event for Developer's review and comment. Developer shall submit the same to IFA in accordance with Section 15.1.2.1 of the PPA. The Relief Request shall include the following information, to the maximum extent then-available:

(a) Full details of the Relief Event, including its nature, the date of its occurrence, its duration (to the extent that the Relief Event and the effects thereof have ceased or estimated duration to the extent that the Relief Event and the effects thereof have not ceased), affected locations, and items of D&C Work affected.

(b) Identification of all pertinent documents and the substance of any oral communications, if any, relating to the Relief Event and the name of the person or persons making such material oral communications.

(c) Identification of the particular provisions of the PPA Documents that are claimed to entitle Developer to the relief sought, and a statement that sets forth the reasons why such provisions entitle Developer to such relief. If Design-Build Contractor seeks relief for IFA's alleged breach of the PPA Documents, then Design-Build Contractor shall identify the provisions of the PPA Documents which allegedly have been breached and the actions constituting such breach.

(d) Where a request for a Project Schedule Deadline adjustment is made, a Critical Path time impact analysis of the Project Schedule that (i) identifies Controlling Work Items and Critical Path (with activity durations, predecessor and successor activities and resources, including Total Float), and illustrates the effect of schedule changes or disruptions on the Project Schedule Deadlines and (ii) complies with the requirements of Section 1.5.2.3 of the Technical Provisions.

(e) A detailed, itemized estimate of all amounts claimed under Sections 15.2, 15.3 and 15.4 to the extent such amounts are eligible for compensation under the terms of the PPA Documents for the Relief Event in question. All such amounts shall be broken down in terms of the eligible direct costs for labor (including burden), Materials, supplies, Equipment, indirect costs, including expenses and profit, and any other cost category or categories IFA reasonably specifies. The Parties acknowledge that Developer shall provide, to the extent applicable, the Extra Work Costs for future O&M Work in accordance with Section 15.1.2.1(e) of the PPA.

(f) The effect of the Relief Event on the ability of Design-Build Contractor to perform any of the obligations under the PPA that have been delegated to Design-Build Contractor, including details of the relevant obligations, the effect on each such obligation, and the likely duration of that effect.

(g) If applicable, the cause of any claimed Permitted Closure and the actual and projected duration and impacts thereof.

(h) An explanation of the measures that Design-Build Contractor has previously taken to prevent, and proposes to undertake to mitigate, the costs, delay and other consequences of the Relief Event.

(i) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.

15.1.2.2 Design-Build Contractor shall prepare the Relief Request on a standardized form approved by IFA.

15.1.2.3 If, following issuance of any Relief Request, Design-Build Contractor receives or becomes aware of any further information or estimates relating to the Relief Event and/or its impact on cost, schedule, Closures or performance of D&C Work, including information on new consequences as described in Section 15.1.1.3, it shall submit such further information to Developer, and Developer shall submit the same to IFA, as soon as possible. Design-Build Contractor acknowledges that IFA may request from Developer any further information that IFA may reasonably require, and Design-Build Contractor shall promptly supply the same to Developer, and Developer shall supply the same to IFA.

15.1.2.4 Design-Build Contractor acknowledges that neither the fact that Developer submits to IFA a Relief Request, nor the fact that IFA keeps account of the costs of labor, Materials, or Equipment, or time, shall in any way be construed as establishing the validity of the Relief Request or the Claims therein or method of computing any compensation or extension of Project Schedule Deadlines.

15.1.3 IFA Evaluation and Response to Relief Request; Negotiations.

15.1.3.1 Pursuant to Section 15.1.3 of the PPA, IFA has agreed to evaluate the information presented in the Relief Request and provide a written response to Developer (and Developer will provide a copy thereof of Design-Build Contractor) within forty-five (45) days after its receipt. Design-Build Contractor acknowledges that, pursuant to Section 15.1.3 of the PPA, if Developer complies with the Notice and information requirements in Sections 15.1.1 and 15.1.2 of the PPA, but IFA does not provide Developer a written response within such forty-five (45)-day period, then, except as provided otherwise in Section 15.1.6 of the PPA, Developer has the right to assert a claim against IFA for the relevant Relief Event and have such claim determined according to the Dispute Resolution Procedures under the PPA. Design-Build Contractor's rights with respect to such claim are as prescribed pursuant to Article 19A.

15.1.3.2 Design-Build Contractor acknowledges that if Developer timely complies with the notice and information requirements in Sections 15.1.1 and 15.1.2 of the PPA and IFA provides a written response within such forty-five (45)-day period indicating that there are any matters in dispute regarding the Relief Request, then Developer and IFA may mutually elect to commence good faith negotiations to determine the matters in dispute, or Developer may elect to assert a claim against IFA for the matters in dispute and have such claim determined according to the Dispute Resolution Procedures under the PPA. Developer shall consult Design-Build Contractor in connection with, and where practicable provide an opportunity for Design-Build Contractor to participate in, the resolution of any such dispute. Design-Build Contractor's rights with respect to such claim are as prescribed pursuant to Article 19A.

15.1.3.3 Design-Build Contractor acknowledges that if IFA or Developer determines after engaging in good faith negotiations that continuation of such negotiations is not likely to resolve the matters in dispute, then, except as provided otherwise in Sections 15.1.6 of the PPA, Developer may initiate the Dispute Resolution Procedures under the PPA. Design-Build Contractor's rights with respect to such claim are as prescribed pursuant to Article 19A.

15.1.4 Final Documentation of Relief Event Claim.

15.1.4.1 Within fifteen (15) days of the completion of work related to a Relief Event that is the subject of a Relief Request, Design-Build Contractor shall prepare and submit to Developer for review and comment the full and final documentation of the claim. Developer shall submit the same to IFA in accordance with Section 15.1.4.1 of the PPA. Pertinent information, references, arguments, and data to support the claim shall be included in the full and final documentation, including updated analyses, descriptions, actual amounts and impacts, specific dates for Project Schedule Deadline adjustments, and other documentation covering the same scope of information as required for the Relief Request.

15.1.4.2 Without limiting the foregoing, if the claim includes compensation under Sections 15.2, 15.3 or 15.4 of the PPA, and except to the extent that the same are the subject of a previous written agreement by IFA and Developer to be paid as a negotiated fixed price, Design-Build Contractor shall provide to Developer an itemized accounting of the actual direct costs broken down in terms of labor (including burden), Materials, supplies, Equipment, indirect costs, including expenses and profit, and any other cost category reasonably requested by IFA. The Parties acknowledge that Developer shall provide, to the extent applicable, information relating to the Extra Work Costs for future O&M Work in accordance with Section 15.1.4.1 of the PPA. The labor, Materials, and Equipment cost categories shall account for the following items:

(a) **Labor.** A listing of individuals, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information related to the requested payment of labor costs.

(b) **Materials.** Invoices, purchase orders, location of materials either stored or incorporated into the East End Crossing, dates materials were transported to the Site or incorporated into the East End Crossing, and other pertinent information related to the requested payment of material costs.

(c) **Equipment.** Listing of detailed description (make, model, and serial number), hours of use, dates of use and equipment rates. Equipment rates shall be determined pursuant to Section 1.2.3.1 of Exhibit 17 to the PPA as of the first date when the affected work related to the claim was performed.

15.1.4.3 Design-Build Contractor shall prepare the full and final documentation of the claim on a standardized form approved by IFA, and shall certify the claim to be accurate, truthful and complete. Design-Build Contractor acknowledges that, pursuant to Section 15.1.4.3 of the PPA, information submitted subsequent to the full and final documentation submittal will not be considered. Design-Build Contractor further acknowledges that no full and final documentation of claim will be considered that does not have the same nature, scope (except for reductions) and circumstances, and basis of claim, as those specified in the Relief Event Notice and any supplements submitted in accordance with Section 15.1.1.3 and in the Relief Request.

15.1.5 IFA Response to Final Documentation. Design-Build Contractor acknowledges that, in accordance with Section 15.1.5 of the PPA, IFA's failure to respond to a full and final documentation of a claim arising out of a Relief Event within forty-five (45) days after receipt constitutes IFA's rejection of the Claim which shall be subject to the Dispute Resolution Procedures under the PPA. If IFA finds the claim or any part thereof to be valid, or as a result of completion of the Dispute Resolution Procedure under the PPA with respect to such Claim, the Claim or any part thereof is deemed to be valid, IFA has agreed to:

15.1.5.1 Deliver to Developer written nNotice of Determination authorizing such partial or whole claim;

15.1.5.2 Pay such claim to the extent deemed valid (as to Extra Work Costs and Delay Costs, by one of the methods set forth in Section 15.4.5); and

15.1.5.3 Grant a commensurate Project Schedule Deadline adjustment, if applicable, as provided in the PPA Documents.

15.1.6 Waiver. Design-Build Contractor acknowledges that time is of the essence in Developer's delivery of its written Relief Event Notice, supplemental Relief Event Notice and Relief Request, and in Design-Build Contractor's delivery of the same to Developer. Accordingly, pursuant to Section 15.1.6 of the PPA, Design-Build Contractor acknowledges that:

15.1.6.1 If for any reason Developer fails to deliver such written Relief Event Notice or supplement thereto in substantial compliance with all applicable requirements:

(a) Within forty-five (45) days following the date (for purposes of this Section 15.1.6, the "starting date") on which Developer first became aware (or should have been aware, using all reasonable due diligence) of the Relief Event (or, in the case of a supplement, the new consequences described in Section 15.1.1.3), Developer will be deemed to have irrevocably and forever waived and released the portion of any claim or right to relief for adverse effect attributable to the Relief Event accruing after such forty-five (45)-day deadline and until the date Developer submits the Relief Event Notice or supplement thereto; and

(b) Within ninety (90) days following the starting date, Developer will be deemed to have irrevocably and forever waived and released any and all claim or right to relief for any adverse effect attributable to such Relief Event.

15.1.6.2 If for any reason Developer fails to deliver such written Relief Request in substantial compliance with all applicable requirements in Section 15.1.2 of the PPA within forty-five (45) days after the date of the Relief Event Notice, Developer will be deemed to have irrevocably and forever waived and released any and all claim or right to relief (including extension of the Term) for any adverse effect attributable to such Relief Event.

15.1.6B Unless otherwise provided in this Section 15.1, Design-Build Contractor shall submit any documentation contemplated by this Section 15.1 to Developer at least 10 days sooner than the date by which Developer is required to provide the same to IFA under the PPA. If Design-Build Contractor does not timely provide such documentation to Developer in according with the foregoing, Developer is obligated only to use its best efforts under the circumstances to complete and submit the same to IFA within the time period required under the PPA.

15.1.6C Developer shall not be liable to Design-Build Contractor for the waiver of any claim under Section 15.1.6 of the PPA, including the failure to obtain relief from IFA, unless (a) Design-Build Contractor timely provided all required information to Developer, (b) Design-Build Contractor was not otherwise in breach of its obligations with respect to the preparation and delivery of Relief Event Notice, supplemental Relief Event Notice or Relief Request, as applicable, and (c) the waiver was caused directly by the action or inaction of Developer.

15.1.7 Open Book Basis. Design-Build Contractor shall share with IFA and Developer all data, documents and information, and shall conduct all discussions and negotiations, pertaining to a claimed Relief Event on an Open Book Basis.

15.2 Compensation to Developer due to Missed Availability Payment as a Result of Relief Event Delay of Substantial Completion. The Parties acknowledge that Developer bears the cost of, and will not seek to recover from Design-Build Contractor, any "deductibles" under Section 15.2 of the PPA, including the sixty (60)-day deductible under Section 15.2.3 of the PPA.

15.3 Delayed Milestone Payments Due to Relief Event Delays. The Parties acknowledge that Developer bears the cost of, and will not seek to recover from Design-Build Contractor, any "deductibles" under Section 15.2 of the PPA, including the sixty (60)-day deductible under Section 15.3.4 of the PPA.

15.4 [Not Used]

15.4A Payment for Extra Work Costs and Delay Costs.

15.4A.1 Any monetary or schedule relief provided by IFA with respect to the occurrence of a Relief Event shall be granted to Design-Build Contractor as relief or compensation under this Agreement, in the same manner and at the same time as provided by IFA to Developer under the PPA and conditioned upon and limited to the monetary payment or number of days of extension that IFA grants to Developer for such Relief Event under the PPA.

15.4A.2 Without prejudice to Design-Build Contractor's rights and remedies provided by this Agreement with respect to Developer Acts, Developer shall not be liable to Design-Build Contractor for any cost, delay or other impact of a Relief Event or failure or refusal of IFA to provide monetary or schedule relief under the PPA. Design-Build Contractor acknowledges that, under the provisions of the PPA, monetary or schedule relief is not available for all, or to the full extent of, Relief Events. Without limiting the generality of the foregoing, Developer shall not be liable to Design-Build Contractor for any deductible or other amount setoff against or deducted from any monetary or schedule relief with respect to any Relief Event, including the Claim Deductible and the amount to be borne by Developer for Flood Events under Section 15.7.4.1 of the PPA. Any claim made in connection with a Relief Event constitutes a Pass Through Claim and, therefore, is subject to the provisions of Article 19A, as may be applicable.

15.4A.3 Design-Build Contractor shall be obligated to carry out all of Developer's obligations under Section 15.15 of the PPA, including the obligations to take all steps reasonably necessary to mitigate the consequences of any Relief Event and to work with IFA on any re-scheduling, re-working and other work-around measures.

15.5 [Not Used]

15.6 Relief Events Allowance Account; Relief Events Allowance Amount; Claim Deductible.

15.6.1 Relief Events Allowance Account, Relief Events Allowance Amount.

15.6.1.1 Pursuant to Section 15.6.1.1 of the PPA, on or before the date of Financial Close, Developer has agreed to establish and fund an escrow account (the "**Relief Events Allowance Account**") exclusively available for the uses set forth in Section 15.6.1 of the PPA. Developer has agreed to provide to IFA the details

regarding the account, including the name, address and contact information for the depository institution and the account number. IFA has a first priority perfected security interest in the Relief Events Allowance Account, and the right to receive directly from the depository institution monthly account statements. IFA has covenanted and agreed to deposit $45,000,000 (the "**Relief Events Allowance Amount**") in the Relief Events Allowance Account by making deposits in such amounts and on such dates so that the cumulative amount deposited by IFA in the Relief Evens Allowance Account will be at least equal to the cumulative deposit amounts specified in the table below no later than the corresponding dates specified below:

No Later than	Cumulative Amount Deposited by IFA
Earlier of the date of Financial Close or June 30, 2013	$9,000,000
August 1, 2013	$18,000,000
August 1, 2014	$27,000,000
August 1, 2015	$36,000,000
August 1, 2016	$45,000,000

15.6.1.2 Design-Build Contractor acknowledges that amounts on deposit in the Relief Events Allowance Account shall be available and used as the first source of funds to pay undisputed Extra Work Costs and Delay Costs due to Developer (after taking into consideration the Claim Deductible) for occurrence prior to the Substantial Completion Date of Relief Events under clauses (j) (other than a Seismic Event), (m), (o), (p), (q), (u) and (v) of the definition of "Relief Events" under the PPA, and for no other purpose.

15.6.1.3 Design-Build Contractor acknowledges that, pursuant to Section 15.6.1.3 of the PPA, if concurrent Relief Events occur that cause or contribute to the same Extra Work Costs or Delay Costs and one of such Relief Events is payable from amounts in the Relief Events Allowance Account, then such Extra Work Costs or Delay Costs will be payable from the Relief Events Allowance Account.

15.6.1.4 [Not Used]

15.6.1.5 Design-Build Contractor acknowledges that, pursuant to Section 15.6.1.5 of the PPA, at the earlier of (a) any earlier termination of the PPA for any reason, including termination due to "IFA Default" thereunder or (b) the Substantial Completion Date, an both (i) all undisputed Extra Work Costs and Delay Costs claimed by Developer for Relief Events referred to in Section 15.6.1.2 that occurred prior to the Substantial Completion Date have been paid in full, and (ii) there are no Extra Work Costs or Delay Costs claimed by Developer for Relief Events referred to in Section 15.6.1.2 that occurred prior to the Substantial Completion Date that are in dispute, IFA has agreed that fifty percent (50%) of the difference between the Relief Events Allowance Amount and the aggregate amount of all Claims payable from the Relief

Events Allowance Account will be transferred to each of IFA and Developer, subject to the following sentence. IFA's portion will automatically become the sole property of IFA, free and clear of all liens, pledges, encumbrances, offsets and deductions, and Developer's portion will become the sole property of Developer upon delivery to IFA, and acceptance by IFA, of an executed written waiver and release of all known and unknown, suspected and unsuspected, Claims payable from the Relief Events Allowance Account. Developer has agreed to thereafter deliver such transfers, assignments and other documents, and take such other actions, as IFA requires to confirm transfer to IFA of its portion of the funds in the Relief Events Allowance Account, free and clear of all liens, pledges, encumbrances, offsets and deductions.

15.6.1.5A If any portion of the Relief Events Allowance Account balance is to be transferred to Developer pursuant to Section 15.6.1.5 of the PPA, (a) Design-Build Contractor shall deliver to Developer an executed written waiver and release of all known and unknown, suspected and unsuspected, Claims payable from the Relief Events Allowance Account, and (b) Developer shall remit to Design-Build Contractor, from and not to exceed the funds actually received from IFA pursuant to Section 15.6.1.5 of the PPA, within 30 days after receipt thereof, an amount equal to Design-Build Contractor's "REAA share." For purposes of this Section 15.6.1.5 only, Design-Build Contractor's "REAA share" shall be determined as follows:

(a) Developer and Design-Build Contractor shall each determine and submit to the other their respective actual costs and expenses incurred with respect to Relief Events and unrecovered from IFA, including the costs of Claim Deductibles and other similar deductibles under the PPA, the sixty (60)-day deductibles under Section 15.2 and 15.3 of the PPA with respect to Deductible Relief Events, and other administrative and monitoring costs.

(b) If the total amount of costs and expenses under Section 15.6.1.5A is equal to or less than the funds actually received from IFA pursuant to Section 15.6.1.5 of the PPA, then Design-Build Contractor's "REAA share" shall equal (i) the amount of its costs and expenses under Section 15.6.1.5A plus (ii) the balance, if any, in excess of the total amount of Developer's and Design-Build Contractor's costs and expenses under Section 15.6.1.5A.

(c) If the total amount of costs and expenses under Section 15.6.1.5A exceeds the funds actually received from IFA pursuant to Section 15.6.1.5 of the PPA, then Design-Build Contractor's "REAA share" shall equal (i) the amount of its costs and expenses under Section 15.6.1.5A multiplied by (ii) the percentage equal to (1) the amount of Design-Build Contractor's costs and expenses under Section 15.6.1.5A divided by (2) the total amount of Developer's and Design-Build Contractor's costs and expenses under Section 15.6.1.5A.

15.6.1.6 IFA has agreed under Section 15.6.1.6 of the PPA that the amount on deposit in the Relief Events Allowance Account is not in and of itself a limitation on IFA's liability for Extra Work Costs and Delay Costs directly attributable to

the Relief Events payable from the Relief Events Allowance Account which limitations are set forth elsewhere in Article 15 of the PPA.

15.6.2 Claim Deductible.

15.6.2.1 Design-Build Contractor acknowledges that, except as provided in Section 15.6.2 of the PPA, each separate occurrence of a Relief Event for which a claim is made seeking the recovery of Extra Work Costs and Delay Costs, as applicable, shall be subject to the Claim Deductible. The Claim Deductible reflects the agreement with IFA that: (a) Developer (and by delegation hereunder, Design-Build Contractor) shall bear the financial risks for Extra Work Costs and Delay Costs, as applicable, for each separate occurrence of a Relief Event, up to the Claim Deductible; and (b) except as otherwise provided in this Article 15 of the PPA, IFA has agreed to compensate Developer (and Developer will pass through such compensation to Design-Build Contractor in accordance with this Article 15) for Extra Work Costs and Delay Costs, as applicable, in excess of the Claim Deductible, provided that each claim complies with Section 15.1 of the PPA.

15.6.2.2 The Claim Deductible shall not apply to a claim seeking recovery for the following:

(a) IFA Change (other than a Non-Discriminatory O&M Change);

(b) An Relief Event set forth in clause (a), (e), (f), (g) (but only as to performance or failure to perform work by IFA), (h), (i), (m) (but only as to IFA Releases of Hazardous Materials), (n) (but only as to IFA Releases of Hazardous Materials) or (s) of the definition of "Relief Event" under the PPA;

(c) Extra Work Costs and Delay Costs directly attributable to a Flood Event;

(d) Extra Work Costs and Delay Costs directly attributable to a Seismic Event, which are subject to the deductible set forth in Section 15.7.11 of the PPA; and

(e) Compensation under Sections 15.2 and 15.3 of the PPA;

(f) Compensation under Sections 2.6 and 2.7 of Exhibit 17 to the PPA; and

(g) Any claim that is not a Pass Through Claim.

15.6.2.3 Design-Build Contractor acknowledges that, pursuant to Section 15.6.2.3 of the PPA, the amount of the Claim Deductible will be adjusted annually at the beginning of each Fiscal Year after the Effective Date by a percentage equal to the percentage adjustment in the CPI between the CPI most recently published

for the second immediately preceding Fiscal Year and the CPI most recently published for the immediately preceding Fiscal Year.

15.7 Other Deductibles; Special Provisions. Design-Build Contractor acknowledges that Developer's rights and remedies respecting certain Relief Events and Losses are subject to the provisions of Section 15.7 of the PPA, which supersede any contrary provisions of the PPA.

15.7.1 [Not Used]

15.7.2 Project Right of Way Acquisition. Respecting the Relief Event under clause (f) of the definition of "Relief Event" under the PPA (concerning IFA-Caused Delay) where the IFA-Caused Delay is under clause (c)(ii) of such definition (concerning a time period to make available to Developer Additional Property being acquired), Design-Build Contractor acknowledges that Developer has no claim to a Relief Event or Change Order, and Design-Build Contractor shall have no Pass Through Claim, on account of, and Design-Build Contractor shall have the sole risk arising out of:

15.7.2.1 The refusal of any Governmental Entity that owns or controls an Additional Property to grant necessary rights of access, entry and use to IFA after IFA makes diligent efforts to negotiate acquisition of such Additional Property; or

15.7.2.2 The holding by the court in any condemnation action for the taking of an Additional Property to the effect that (a) IFA's power of eminent domain does not extend to such Additional Property or (b) the proposed condemnation does not satisfy legal requirements for necessity of the taking.

15.7.3 Use of Airspace for Business Opportunity. Prior to deciding whether to pursue or implement a Business Opportunity, at IFA's request Design-Build Contractor, on behalf of Developer pursuant to Section 15.7.3 of the PPA, shall promptly provide analysis of the impacts thereof on costs and schedule.

15.7.4 Flood Event.

15.7.4.1 For each Flood Event prior to Substantial Completion, Design-Build Contractor shall bear (a) the amount of its deductible or self-insured retention under its then applicable Insurance Policy for the Flood Event, plus (b) all cost impacts other than the Extra Work Costs and Delay Costs to repair or replace tangible property damage to the East End Crossing caused by the Flood Events. If Design-Build Contractor is excused from insuring the Flood Event pursuant to Section 17.1.8, then Design-Build Contractor shall be deemed to have self-insured the Flood Event risk in the amount of the deductible under the most recent Insurance Policy Developer carried for such risk, inflated annually by the increase, if any, in the CPI between the CPI most recently published before January 1 of the last year covered by such Insurance Policy and the CPI most recently published before January 1 of the applicable year.

15.7.4.2 Design-Build Contractor acknowledges that if the East End Crossing fails to meet flooding or other design requirements under the Technical

Provisions, then IFA has no liability for any Extra Work Costs or Delay Costs arising out of the Flood Event that would not have been suffered had Design-Build Contractor (on behalf of Developer) met such flooding or other design requirements. (Refer to Section 15.9 of the PPA regarding reduction of IFA's liability for Extra Work Costs and Delay Costs by insurance or deemed self-insurance).

15.7.4.3 Unless specified otherwise by IFA, from and after issuance of NTP2 and until DB Substantial Completion, Design-Build Contractor shall comply with the requirements for performance of emergency repair work and maintenance of documents as set forth in Section 9.3 of the PPA and other provisions of the PPA Documents.

15.7.5 Major Environmental Approval Delay. Design-Build Contractor shall not be entitled to any Pass-Through Claim for Extra Work Costs relating to a Relief Event under clause (k) of the definition of "Relief Event" under the PPA (concerning Major Environmental Approvals).

15.7.6 Utility Owner Delay. Design-Build Contractor shall not be entitled to any claim for Extra Work Costs relating to a Utility Owner delay set forth in clause (l) of the definition of Relief "Event" under the PPA (concerning Utility Owner delay).

15.7.7 Hazardous Materials.

15.7.7.1 Design-Build Contractor's rights to compensation and schedule relief with respect to Hazardous Materials under clauses (m) and (n) of the definition of "Relief Event" under the PPA (concerning certain Hazardous Materials) are limited to those set forth in Exhibit 5 (Hazardous Materials Risk Allocation Terms).

15.7.7.2 The terms and provisions of Exhibit 5 (Hazardous Materials Risk Allocation Terms) shall exclusively govern Design-Build Contractor's rights in the case of any presence, existence or Release of Hazardous Materials. Without limiting the foregoing, Section 15.7.7 of the PPA supersedes any Relief Event other than that under clauses (m) and (n) of the definition of "Relief Event" under the PPA that might otherwise be triggered by the presence, existence or Release of Hazardous Materials.

15.7.8 Change in Law.

15.7.8.1 New or revised statutes adopted after the Setting Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards and Project Standards, relating to the D&C Work, as well as revisions to the Technical Provisions to conform to such new or revised statutes, shall be treated as a Change in Law (clause (r) of the definition of "Relief Event" under the PPA) rather than an IFA Change to Technical Provisions; however, changes in Adjustment Standards caused by new or revised statutes shall constitute neither a Change in Law nor an IFA Change.

15.7.8.2 [Not Used]

15.7.8.3 [Not Used]

15.7.8.4 [Not Used]

15.7.9 Damage and Destruction to Specified Property. Design-Build Contractor shall bear all costs, including Extra Work Costs and Delay Costs, to repair or replace, and shall not be entitled to any compensation for delay due to, any loss, damage or destruction caused by a Relief Event or other event prior to Substantial Completion (except IFA's gross negligence, recklessness or willful misconduct, as determined in accordance with Section 15.7.9 of the PPA) to:

15.7.9.1 Any equipment, materials, inventory, supplies and other property at locations outside the Project Right of Way; or

15.7.9.2 Any equipment, materials, inventory, supplies and other property while in transit to the Site.

15.7.10 [Not Used]

15.7.11 Seismic Event.

15.7.11.1 Design-Build Contractor shall promptly repair or replace any damage to the East End Crossing arising out of, relating or otherwise attributable to any Seismic Event prior to Substantial Completion, and Design-Build Contractor shall bear all costs and expenses associated with such repair or replacement work, including design and engineering costs necessary for the repair and replacement work, in each case except as set forth in this Section 15.7.11. In respect of Seismic Events, Developer shall bear the first [redacted] of Extra Work and Delay Costs (which shall be inclusive of any deductible under an Insurance Policy) resulting therefrom in the aggregate for all Seismic Events for reconstruction of the East End Crossing and temporary works associated therewith (the amount of the Contract Sum shall be increased by any such costs actually and when incurred by Design-Build Contractor), and IFA has agreed pursuant to Section 15.7.11 of the PPA to pay Extra Work and Delay Costs for such reconstruction and temporary works in excess thereof up to the point at which insurance, if any, attaches. Design-Build Contractor shall, within five (5) days of such occurrence, submit to IFA (with copy to Developer) written notice thereof. Design-Build Contractor shall thereafter follow the procedures for notification set forth in Section 15.1, or such shorter or extended periods of time for notification and claim submission as the Parties and IFA agree is reasonable under the circumstances, Design-Build Contractor shall submit complete written and photographic documentation supporting its claim, and provide detailed quantification of the damages caused thereby. Such written documentation shall include detailed identification of the property damage, the scope of necessary repair work, the proposed approach to performing the necessary repair work, and the projected costs of repair together with a supporting cost-loaded repair schedule. According to the time periods set forth in Section 15.1 of the PPA, or such shorter or extended period of time as the Parties and IFA agree is reasonable under the circumstances, IFA has agreed to evaluate the documentation

supplied by Design-Build Contractor and provide IFA's provisional determination of the cost to repair the property damage to the East End Crossing, which determination is subject to the Dispute Resolution Procedures under the PPA. Design-Build Contractor shall comply with any IFA request for explanation, elaboration or additional information reasonably necessary to facilitate IFA's analysis.

15.7.11.2 In accordance with Section 15.7.11.2 of the PPA, IFA is not responsible for, or obligated or deemed to be obligated to pay, any Extra Work Costs, Delay Costs, or other compensation for:

(a) Seismic Events for which Developer (or by delegation hereunder, Design-Build Contractor) is to bear all costs and expense, pursuant to Section 15.7.11 of the PPA;

(b) Damage or destruction caused by any Seismic Event to any property or items of any kind except as described in Section 15.7.11.1; and

(c) Damage or destruction caused by any Seismic Event occurring after Substantial Completion that would not have been suffered had Design-Build Contractor met the Design Requirements, including specifically seismic or other design requirements under the Technical Provisions, if the East End Crossing fails to meet such Design Requirements. Design-Build Contractor bears the burden of proof in establishing that the affected portions of the East End Crossing met the Design Requirements at the occurrence of the Seismic Event.

15.7.12 Inaccurate Utility Information. For the Relief Event set forth in clause (u) of the definition of "Relief Event" under the PPA (concerning Utility Information that is not Reasonably Accurate):

15.7.12.1 Compensation for Extra Work Costs shall be limited to the aggregate Extra Work Costs of the Utility Work (including reimbursements payable to Utility Owners) that would not have been incurred had the Utility been identified; and

15.7.12.2 Design-Build Contractor shall be entitled to any Pass Through Claim for Delay Costs only if the Utility, other than a Service Line, is encountered where the Utility information incorrectly indicates that the subject Utility does not exist anywhere within the boundary lines of the Project Right of Way. For purposes of clarify, Design-Build Contractor shall no be entitled to any Pass Through Claim for Delay Costs where a Utility, other than a Service Line, is encountered where the Utility was not otherwise identified with Reasonable Accuracy.

15.8 Accounting for Relief Event Work pertaining to the Relief Events Allowance Account.

15.8.1 Design-Build Contractor acknowledges the obligations of Developer under Section 15.8 of the PPA to submit to IFA statements in a format acceptable to IFA in its good faith discretion (each, an "**REAA Statement**") and other substantiating

documentation for Extra Work Costs and Delay Costs paid to Developer from the Relief Events Allowance Account in respect of Relief Events.

15.8.2 Design-Build Contractor shall provide any information and substantiating documentation required by Developer to fulfill its obligations under Section 15.8 of the PPA, including by promptly providing upon demand:

15.8.2.1 citation to claims that are subject to draws on the Relief Events Allowance Account since the preceding REAA Statement;

15.8.2.2 to the extent not fully captured in such citation, a description of the basis for Extra Work Costs and Delay Costs paid to Design-Build Contractor (after taking into consideration the Claim Deductible) in respect of Relief Events;

15.8.2.3 invoices from Contractors substantiating or supporting some or all of those costs and expenses, if any;

15.8.2.4 the sum of all prior amounts paid by Design-Build Contractor through the last day of the prior statement; and

15.8.2.5 a certification by Design-Build Contractor's Authorized Representative that:

(a) Design-Build Contractor has fully and completely cured all Design Build Contractor Defaults that have given rise to "Developer Defaults" under the PPA for which Design Build Contractor;

(b) Design-Build Contractor has met all the conditions set forth in Section 3.4.2.2, if there exist at such time any of the circumstances described in Section 3.4.2.1; and

(c) all information and supporting documentation provided by Design-Build Contractor are each, and is collectively, true, correct and complete.

15.8.3 Design-Build Contractor acknowledges that IFA is permitted by Section 15.8.3 of the PPA to return to Developer any REAA Statement that is incomplete and/or incorrect in any material respect for correction and resubmission. Developer has agreed to correct or complete, as applicable, such returned REAA Statement, which will include a recertification by Developer as to all items, up to the subsequent date of submission, listed in Section 15.8.2 of the PPA. Design-Build Contractor shall cooperate with and provide any information and substantiating documentation required by Developer to fulfill such obligations, including the certification required by Section 15.8.2.5. Design-Build Contractor acknowledges that IFA's obligation to fund Extra Work Costs or Delay Costs in excess of the Relief Events Allowance Amount will also be suspended during such period.

15.8.4 Design-Build Contractor acknowledges that IFA is entitled to examine submitted REAA Statements, including through IFA's independent oversight and auditing process, and reconcile the total amount drawn against the Relief Events Allowance Amount, as detailed in such REAA Statements, against IFA's independent assessment of the amount to which Developer is entitled, if any, pursuant to Sections 15.1.3 and 15.1.5 of the PPA (the "**IFA REAA Accounting**"). If IFA disagrees with, or is unable to verify, the accuracy of any amount drawn by Developer against the Relief Events Allowance Amount, then, pursuant to Section 15.8.4 of the PPA, IFA has agreed to promptly, but in no case later than ten (10) Business Days following receipt of the subject REAA Statement, provide notice to Developer of such disagreement or inability. Subject to the provisions of Section 15.8.5 of the PPA, any draw by Developer upon the Relief Events Allowance Amount during the period commencing upon receipt by Developer of such notice until receipt by Developer of a subsequent notice from IFA sating that IFA is able, in its good faith determination, to agree with Developer's statement, is a "Developer Default" under the PPA. Design-Build Contractor acknowledges that IFA's obligation to fund Extra Work Costs or Delay Costs in excess of the Relief Events Allowance Amount will also be suspended during such period.

15.8.5 Design-Build Contractor acknowledges that IFA has the right pursuant to Section 15.8.5 of the PPA to dispute, in good faith, any amount specified in any REAA Statement, whether incurred by Developer, drawn by Developer against the Relief Events Allowance Amount, or to be paid by IFA. During the period of any dispute relating to the amount to be drawn by Developer against the Relief Events Allowance Account (and not whether Developer may draw any amount against the Relief Events Allowance Account), Developer is permitted to draw (with IFA's prior written permission for such draw and only for the amount to be drawn) against the Relief Events Allowance Account or, if applicable, IFA has agreed to pay the amount identified in the REAA Statement that is not in dispute pursuant to Article 15 of the PPA. Developer and IFA have agreed to use their reasonable efforts to resolve any such dispute within thirty (30) days after the dispute arises. If Developer and IFA fail to resolve the dispute within that period, then the dispute will be resolved according to the Dispute Resolution Procedures under the PPA. IFA has agreed that any amount determined to be due pursuant to the Dispute Resolution Procedures under the PPA will be paid within twenty (20) days following resolution of the dispute. Design-Build Contractor's rights in respect of any such dispute are as prescribed pursuant to Article 19A.

15.8.6 Design-Build Contractor acknowledges that, as provided by Section 15.8.6 of the PPA, nothing in Section 15.8 of the PPA, including any review by IFA of the statement provided pursuant to Section 15.8.1 of the PPA, entitles Developer to any interest on any amount drawn, to be drawn against the Relief Events Allowance Amount, to be paid by IFA or in dispute, in each case, in respect of eligible Extra Work Costs or Delay Costs in excess of the Relief Events Allowance Amount.

15.9 Insurance Deductible; Insurance Proceeds

15.9.1 Design-Build Contractor acknowledges that, pursuant to Section 15.9.1 of the PPA, each claim seeking the recovery of compensation for Extra Work

Costs and Delay Costs, as applicable, will be net of all insurance available to Developer, or deemed to be self-insured by Developer under Section 17.1.4.4 of the PPA, with respect to the Relief Event giving rise to the Extra Work Costs or Delay Costs. The amount of such insurance or deemed self-insurance will be netted out before determining the amount of Extra Work Costs and Delay Costs to be charged against the Relief Events Allowance Account.

15.9.2 Design-Build Contractor acknowledges that each claim seeking the recovery of compensation under Sections 15.2 and 15.3 of the PPA, as applicable, will be net of all delayed opening or business interruption insurance available to Developer (if any). Proceeds from delayed opening or business interruption insurance payable to IFA will not reduce the amount of compensation due Developer under Sections 15.2 and 15.3 of the PPA.

15.9.2A Insurance proceeds received in respect of any Extra Work Costs and Delay Costs shall be divided between Developer and Design-Build Contractor in accordance with Section 19A.2.4.1 in the same manner applicable to the division of amounts received from IFA.

15.10 [Not Used]

15.11 [Not Used]

15.12 Effect of Relief Events on Project Schedule Deadlines, Performance, Developer Default, Noncompliance Points and Deductions.

15.12.1 In accordance with Developer's rights under Section 15.12.1 of the PPA, Design-Build Contractor shall be entitled, but only to the extent that Developer is entitled under Section 15.12.1 of the PPA, and subject to Section 15.4A.1, to extension of applicable Project Schedule Deadlines by the period that the end of the Critical Path extends beyond the original Project Schedule Deadline due to any Relief Event Delay that Design-Build Contractor cannot reasonably avoid through mitigation as required under Section 15.15, subject to satisfaction of any conditions or requirements set forth in the PPA Documents, including in Section 15.7 of the PPA. In the event of a Relief Event Delay resulting from concurrent IFA-Caused Delay(s) and delays for which Developer is responsible under the PPA Documents, subject to Design-Build Contractor's continuing obligation to reasonably avoid and/or mitigate such delay(s) and other conditions or requirements herein, Design-Build Contractor shall be entitled, but only to the extent that Developer is entitled under Section 15.12.1 of the PPA, to extension of applicable Project Schedule Deadlines by the period that the end of the Critical Path extends beyond the original Project Schedule Deadline following conclusion of the concurrent IFA-Caused Delay.

15.12.2 Design-Build Contractor shall not be excused from timely payment of monetary obligations under this Agreement due to the occurrence of a Relief Event. Design-Build Contractor shall not be excused from compliance with the DBC

Documents, PPA Documents or applicable Laws due to the occurrence of a Relief Event, except temporary inability to comply due solely and directly to the Relief Event.

15.12.3 Design-Build Contractor shall be entitled to rely upon the occurrence of a Relief Event as a defense against a Design-Build Contractor Default where the occurrence of the Relief Event causes such Design-Build Contractor Default.

15.12.4 Refer to Section 11.6 regarding the effect of a Relief Event on the accrual of Noncompliance Events and Noncompliance Points and assessment of monetary deductions for Noncompliance Events.

15.13 Interest on Late Payments. Design-Build Contractor acknowledges the provisions of Section 15.13 of the PPA, which provides for and limits interest on late payments by IFA. In accordance with Equivalent Project Relief, interest owed to Design-Build Contractor in respect of any Pass Through Claim for which compensation from IFA for the Corresponding PPA Claim is late, if any, shall be calculated in accordance with Section 15.13 of the PPA and shall not exceed the interest actually paid by IFA.

15.14 Exclusive Relief; Release of Claim. Design-Build Contractor acknowledges that the relief provided through agreement or pursuant to Dispute Resolution Procedures under the PPA for a Relief Event shall represent the sole right to compensation, damages and other relief from the adverse effects of a Relief Event. As a condition precedent to IFA's obligation to pay any Compensation Amount or grant or abide by such relief, Developer is required to execute, and Developer may require Design-Build Contractor to execute, a full, unconditional, irrevocable waiver and release, in form reasonably acceptable to IFA, of any other Claims, Losses or rights to relief associated with such Relief Event that is not the subject of a dispute.

15.15 Mitigation.

15.15.1 Design-Build Contractor shall take all steps reasonably necessary to mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice. Without limiting the foregoing, Design-Build Contractor shall not be entitled to submit a claim for Compensation Amounts, time or Project Schedule Deadline extensions, or other relief for impacts that could have been avoided through re-sequencing and re-scheduling of the D&C Work and/or other work-around measures whose cost is justified by equal or greater savings in Extra Work Costs, Delay Costs and additional interest costs. Design-Build Contractor shall not be entitled to submit a claim for Compensation Amounts, time or Project Schedule Deadline extension or other relief if the Relief Event occurred as a result of any negligence, recklessness, willful misconduct, fault, breach of contract, or breach by any of the DBC-Related Entities of the requirements of the DBC Documents, PPA Documents (including Safety Standards), or violation of Law or a Governmental Approval of or by any of the DBC-Related Entities.

15.15.2 Whenever a Relief Event occurs and Developer submits a Relief Event Notice or Relief Request for a Compensation Amount, Design-Build Contractor shall concurrently prepare and submit to Developer, and Developer shall submit to IFA after review and comment, an analysis of potential re-sequencing, re-scheduling and other work-around measures and a comparison of the estimated costs thereof to the estimated savings in the Compensation Amount that would result. Design-Build Contractor and Developer shall cooperate with IFA thereafter to identify the re-sequencing, re-scheduling and other work-around measures that will maximize mitigation of costs to IFA taking into account the cost of potential re-sequencing, re-scheduling and other work-around measures. Pursuant to Section 15.15.2, IFA has agreed to compensate Developer for the reasonable costs of re-sequencing, re-scheduling and other work-around measures authorized in writing by IFA pursuant to this provision, in the same manner it compensates for Extra Work Costs and Delay Costs under Sections 15.4 and 15.5, and Design Build Contractor shall be entitled to Equivalent Project Relief.

15.15.3 For further mitigation obligations of Design-Build Contractor respecting Hazardous Materials and Recognized Environmental Conditions, refer to Section 5.9.2.

15.16 Claims Against Third Parties. In coordination with Developer and without prejudice to Developer's right to pursue such claims, Design-Build Contractor will be entitled to exercise all rights and remedies available at Law or in equity to claim for and recover casualty and other damages to the East End Crossing from third parties, including without limitation, the amount of any deductibles under casualty or property insurance policies.

ARTICLE 16

IFA CHANGES; DESIGN-BUILD CONTRACTOR CHANGES; DIRECTIVE LETTERS

This Article 16 sets forth the exclusive requirements, terms and conditions for obtaining Change Orders under this Agreement.

16.1 IFA Changes. Design-Build Contractor acknowledges that IFA is entitled pursuant to Section 16.1 of the PPA to make alterations or changes in the D&C Work. If IFA exercises such right, and to the extent such alterations or changes relate to the D&C Work, Design-Build Contractor agrees that the scope of the D&C Work is deemed to be altered or changed accordingly. Without limiting the generality of the foregoing, Design-Build Contractor acknowledges the following:

16.1.1 IFA Right to Issue Change Order.

16.1.1.1 IFA may, at any time and from time to time, without Notice to any Lender or Surety, authorize and/or require, pursuant to a Change Order, changes in the Work (including reductions in the scope of the D&C Work) or in terms

and conditions of the Technical Provisions (including changes in the standards applicable to the Work), except IFA has no right to require any change that:

(a) Is not in compliance with applicable Laws;

(b) Would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval;

(c) Would cause a material insured risk to become uninsurable, unless IFA, in issuing the Change Order, agrees to self-insure the risk; or

(d) Is not technically feasible to design or construct.

16.1.1.2 Under Section 16.1.1.2 of the PPA, Developer has no obligation to perform any work within any such exception unless on terms mutually acceptable to IFA and Developer. Design-Build Contractor shall have no obligation to perform any such work unless on terms mutually acceptable to Developer and Design-Build Contractor.

16.1.2 Request for Change Proposal.

16.1.2.1 Design-Build Contractor acknowledges that if IFA desires to initiate or evaluate whether to initiate a Change Order, then IFA may, at its discretion, issue a Request for Change Proposal. The Request for Change Proposal will set forth the nature, extent and details of the proposed IFA Change.

16.1.2.2 Within five (5) Business Days after Developer receives a Request for Change Proposal, or such longer period to which Developer and IFA may mutually agree in accordance with Section 16.1.2.2 of the PPA, IFA and Developer have agreed to consult to define the proposed scope of the change. Within five (5) days after the initial consultation, or such longer period to which IFA and Developer may mutually agree, IFA and Developer have agreed to consult concerning the estimated financial, schedule and other impacts. Developer shall include Design-Build Contractor in all such discussions.

16.1.3 Response to Request for Change Proposal. As soon as possible through the exercise of diligent efforts, and in any event within forty-five (45) days, following IFA's delivery to Developer of the Request for Change Proposal (which Developer shall promptly provide to Design-Build Contractor), Design-Build Contractor shall provide to Developer for review and comment a written response as to whether, in Design-Build Contractor's opinion, the IFA Change constitutes a Relief Event, and if so, a detailed assessment of the cost, schedule and other impacts of the proposed IFA Change, including the following:

16.1.3.1 Design-Build Contractor's detailed estimate of the impacts on costs of carrying out the proposed IFA Change;

16.1.3.2 If the Change Notice is issued prior to the Final Acceptance Date, the effect of the proposed IFA Change on the Project Schedule, including achievement of the Project Schedule Deadlines, taking into consideration Design-Build Contractor's duty to mitigate any delay;

16.1.3.3 The effect (if any) of the proposed IFA Change on Performance Requirements, the Rehabilitation Work Schedule and Handback Requirements; and

16.1.3.4 Any other relevant information related to carrying out the proposed IFA Change.

16.1.4 Negotiation and Directed Changes.

16.1.4.1 Design-Build Contractor acknowledges that following IFA's receipt of the detailed assessment described in Section 16.1.3 (which Developer shall submit to IFA in accordance with Section 16.1.3 of the PPA), IFA and Developer, giving due consideration to such assessments, have agreed to exercise good faith efforts to negotiate a mutually acceptable Change Order, including (a) adjustment of the Project Schedule and Project Schedule Deadlines, and either (b) if applicable, any Compensation Amount to which Developer is entitled, and the timing and method for payment of any Compensation Amount (in accordance with Section 15.4.5 of the PPA with respect to Extra Work Costs and Delay Costs, if any) or (c) if applicable, any net cost savings and schedule savings to which IFA is entitled under Section 16.1.6 of the PPA and the timing and method for realizing such cost savings. Developer shall consult with Design-Build Contractor and, to the extent such Change Order impacts the rights or obligations of Design-Build Contractor, obtain agreement of Design-Build Contractor as to such Change Order, which agreement shall not be unreasonably withheld or delayed.

16.1.4.2 Design-Build Contractor acknowledges that if IFA and Developer are unable to reach agreement on a Change Order, IFA may, in its sole discretion, resolve the dispute according to the Dispute Resolution Procedures under the PPA without issuing a Directive Letter, or deliver to Developer a Directive Letter pursuant to Section 16.3.1 of the PPA directing Developer (and Design-Build Contractor) to proceed with the performance of the D&C Work in question notwithstanding such disagreement. Upon receipt of such Directive Letter, pending final resolution of the relevant Change Order according to the Dispute Resolution Procedures, (a) Design-Build Contractor shall implement and perform the D&C Work in question as directed by IFA and (b) IFA has agreed to make interim payment(s) to Developer on a monthly progress payment basis for the reasonable documented Extra Work Costs and Delay Costs in question, subject to subsequent adjustment through the Dispute Resolution Procedures under the PPA. Developer shall remit to Design-Build Contractor the portion of any such payments received from IFA and attributable to D&C Work by Design-Build Contractor or its Contractors.

16.1.5 Payment and Schedule Adjustment. IFA has agreed to be responsible for payment of the Compensation Amount agreed upon or determined

through the Dispute Resolution Procedures under the PPA (and with respect to Extra Work Costs and Delay Costs through one of the payment mechanisms set forth in Section 15.4.5 of the PPA), and the Project Schedule shall be adjusted as agreed upon or determined through the Dispute Resolution Procedures under the PPA, and in accordance with Section 15.11 of the PPA, to reflect the effects of the Change Order.

16.1.6 Reductive IFA Changes.

16.1.6.1 Pursuant to Section 16.1.6 of the PPA, IFA reserves the right to make alterations or changes in the D&C Work that reduce the scope of the D&C Work up to a cap of ten percent (10%) of the Total Project Capital Cost. Design-Build Contractor acknowledges that within sixty (60) days following IFA's delivery to Developer of the Request for Change Proposal, IFA has agreed to deliver to Developer a written analysis as to whether, in IFA's opinion, the IFA Change will reduce Developer costs, or save time, and if so, a detailed assessment of the advantageous cost and schedule impacts of the proposed IFA Change, including the following:

(a) IFA's detailed estimate of the advantageous impacts on costs of carrying out the proposed IFA Change;

(b) If the Change Notice is issued prior to the Final Acceptance Date, the effect of the proposed IFA Change on shortening the Project Schedule and Project Schedule Deadlines;

(c) The effect (if any) of the proposed IFA Change upon traffic flow and traffic volume on the East End Crossing during the Operating Period;

(d) The effect (if any) of the proposed IFA Change on Performance Requirements, the Rehabilitation Work Schedule and Handback Requirements; and

(e) Any other relevant information related to carrying out the proposed IFA Change.

16.1.6.2 Design-Build Contractor acknowledges, pursuant to Section 16.1.6.2 of the PPA, that (a) within thirty (30) days following IFA's submission of such information, Developer has agreed to prepare and submit to IFA a written analysis with respect to the proposed reductive IFA Change; (b) promptly thereafter, but in no event later than ten (10) Business Days following receipt by IFA of Developer's analysis submission, Developer and IFA have agreed to meet and engage in good faith discussions in an effort to agree as to the final value of the net cost savings attributable to such reductive IFA Change pursuant to the prescriptions of Section 16.1.6.3 of the PPA; and (c) if Developer and IFA fail to reach agreement, then, without derogating IFA's rights under Section 16.3 of the PPA, either IFA or Developer may submit the matter for resolution pursuant to the Dispute Resolution Procedures under the PPA.

16.1.6.2A Design-Build Contractor shall prepare and submit to Developer the written analysis contemplated by Section 16.1.6.2(a), or such portion

thereof as Developer requests, within ten (10) days of the date by which Developer is required to submit the written analysis to IFA pursuant to Section 16.1.6.2 of the PPA. Design-Build Contractor shall attend any meeting with IFA held between IFA and Developer pursuant to Section 16.1.6.2 of the PPA.

16.1.6.3 Design-Build Contractor acknowledges that, pursuant to Section 16.1.6.3 of the PPA, IFA is entitled to seventy-five percent (75%) of the net cost savings, if any, attributable to any reductive IFA Change, as determined pursuant to Sections 16.1.6.2 and 16.1.6.3 of the PPA. Determination of such net cost savings include consideration of both (i) the net reduction, if any, in labor, material, equipment and overhead costs associated with the IFA Change and (ii) actual, direct and documented increases in Developer's costs arising out of such reductive IFA Change, and one hundred percent (100%) of the savings in financing costs associated with any savings in capital costs, which Developer has agreed to pay to IFA (a) as periodic payments over the Term, (b) as an adjustment to the MAP over the Term, or (c) through any combination of the above, as selected by IFA, in its sole discretion. IFA also may take such net reduction as a credit against IFA's liability for Extra Work Costs and Delay Costs during the Term. Developer has agreed, pursuant to Section 16.1.6.3 of the PPA, to include specifically in its response to IFA's Request for Change Proposal delivered under Section 16.1.6 of the PPA a summary narrative and documentation substantiating, in IFA's good faith determination, any actual, direct and documented increases in Developer's costs under the PPA (inclusive of Design-Build Contractor's costs hereunder) arising out of such reductive IFA Change as may affect the determination of net cost savings under Section 16.1.6 of the PPA; Design-Build Contractor shall prepare such summary narrative and documentation as they pertain to any actual, direct and documented increases in Design-Build Contractor's costs arising our of such reductive IFA Change. If IFA selects periodic payments over the Term, such payments will be due and owing to IFA quarterly on the last day of each calendar quarter. If Developer does not make any such payment when due, Developer has agreed that such payment will thereafter bear interest, at a floating rate equal to the LIBOR in effect from time to time plus four hundred (400) basis points, until the date the amount due is paid. The Contract Sum shall be reduced by the amount of net cost savings in labor, material, equipment and overhead of Design-Build Contractor and its Contractors to which IFA is entitled pursuant to Section 16.1.6.2 of the PPA.

16.1.6.4 Design-Build Contractor acknowledges that, pursuant to Section 16.1.6.3 of the PPA, IFA is entitled to one hundred percent (100%) of the effect, if any, of the proposed IFA Change on shortening the Project Schedule and Project Schedule Deadlines.

16.2 Design-Build Contractor Initiated Changes.

16.2.1 If Design-Build Contractor desires that a Change Request be submitted to IFA (including without limitation for approval of proposed (a) modifications to the Technical Provisions, (b) modifications to Developer's proposal commitments as set forth in Exhibit 2 (Developer's Schematic Design of East End Crossing and Proposal Commitments), or (c) adjustments to the Project Right of Way not already indicated in

Developer's Schematic Design), Design-Build Contract shall prepare the Change Request and appropriate supporting documentation, including a detailed estimate of net impacts (positive and negative) on costs and schedule attributable to the requested change, and submit the same to Developer for review and approval. Following its approval, Developer shall submit the Change Request to IFA for approval in accordance with Section 16.2 of the PPA.

16.2.2 Design-Build Contractor acknowledges that, pursuant to Section 16.2.2 of the PPA, IFA, in its sole discretion (and, if it so elects in its good faith discretion, after receiving a comprehensive report, at no cost to IFA, from an independent engineer and IFA's traffic and revenue consultant regarding the proposed Change Request), may accept or reject any Change Request proposed by Developer. If IFA accepts such Change Request, Developer and Design-Build Contractor will execute a Change Order and Design-Build Contractor shall implement such change in accordance with the Change Order, applicable Technical Provisions, the Project Management Plan, Good Industry Practice, and all applicable Laws.

16.2.3 Design-Build Contractor shall be solely responsible for all costs associated with a Change Request initiated by Design-Build Contractor, including (a) costs associated with review of the Change Request by an independent engineer and traffic and revenue consultant (as contemplated by Section 16.2.2 of the PPA), (b) payment of any increased costs, for any Toll Revenue losses and for any Project Schedule delays or other impacts resulting from a Change Request accepted by IFA (as contemplated by Section 16.2.3 of the PPA) and (c) any incremental increase in IFA's overhead, administrative and out-of-pocket costs resulting from a Change Request accepted by IFA (as contemplated by Section 16.2.4 of the PPA). The Contract Sum shall be reduced by any such payments made by Developer to IFA, or any reduction in payments otherwise payable by IFA to Developer, in accordance with the foregoing.

16.2.4 [Not Used; See Section 16.2.3]

16.2.5 Design-Build Contractor acknowledges that IFA is entitled pursuant to Section 16.2.5 of the PPA to savings resulting from Change Requests. The Contract Sum shall be reduced by any payments made by Developer to IFA, or any reduction in payments otherwise payable by IFA to Developer, in accordance with Section 16.2.5 of the PPA.

16.2.6 Design-Build Contractor may implement and permit a Utility Owner to implement, without a Change Request or Change Order, changes to a Utility Adjustment design that do not vary from the Technical Provisions.

16.2.7 No Change Request shall be required to implement any change to the Work that is not a Deviation and is not specifically regulated or addressed by the PPA Documents, DBC Documents or applicable Law.

16.2.8 Certain minor changes without significant cost savings or revenue benefits may be approved in writing by IFA as Deviations, as described in Sections

5.2.4 and 6.1.2.7 of the PPA, and in such event shall not require a Change Order. Any other change in the requirements of the PPA Documents or DBC Documents shall require a Change Order.

16.2A Developer Initiated Changes.

16.2A.1 If Developer desires that a Change Request be submitted to IFA (including without limitation for approval of proposed (a) modifications to the Technical Provisions, (b) modifications to Developer's proposal commitments as set forth in Exhibit 2 (Developer's Schematic Design of East End Crossing and Proposal Commitments), or (c) adjustments to the Project Right of Way not already indicated in Developer's Schematic Design), Developer may direct Design-Build Contractor to prepare the Change Request and appropriate supporting documentation, including a detailed estimate of net impacts (positive and negative) on costs and schedule attributable to the requested change, and submit the same to Developer for review and comment. Provided Developer and Design-Build Contractor agree on the terms and content of the Change Request, including any changes to the schedule, Developer may submit the Change Request to IFA for approval in accordance with Section 16.2 of the PPA.

16.2A.2 Unless the Parties otherwise agree:

16.2A.2.1 Developer shall be solely responsible for all costs associated with a Change Request initiated by Developer, including (a) costs associated with review of the Change Request by an independent engineer and traffic and revenue consultant (as contemplated by Section 16.2.2 of the PPA), (b) payment of any increased costs, for any Toll Revenue losses and for any Project Schedule delays or other impacts resulting from a Change Request accepted by IFA (as contemplated by Section 16.2.3 of the PPA) and (c) any incremental increase in IFA's overhead, administrative and out-of-pocket costs resulting from a Change Request accepted by IFA (as contemplated by Section 16.2.4 of the PPA).

16.2A.2.2 The Contract Sum shall be increased by any additional cost incurred by Design-Build Contractor in connection with the Change Request or any change in the D&C Work resulting therefrom. If the Change Request would result in savings subject to Section 16.2.5 of the PPA, the Contract Sum shall be reduced only by agreement of Developer and Design-Build Contractor.

16.3 Directive Letters. Design-Build Contractor acknowledges that IFA may issue Directive Letters in accordance with Section 16.3 of the PPA. Design-Build Contractor shall proceed immediately as directed in any Directive Letter and shall be entitled to any compensation paid by IFA in connection with such Directive Letter and attributable to D&C Work by Design-Build Contractor or its Contractors.

ARTICLE 17

INSURANCE; PAYMENT AND PERFORMANCE SECURITY; INDEMNITY

17.1 Insurance.

17.1.1 Insurance Policies and Coverage.

17.1.1.1 Developer shall procure, at minimum, at its own cost and keep in effect, or cause to be procured and kept in effect, the Insurance Policies required to be procured by Developer pursuant to Exhibit 19 and, for each such Insurance Policy, satisfy the requirements therefor set forth in this Section 17.1, Section 17.1 of the PPA, Exhibit 19 and the terms of any Funding Agreement or Security Document to which Developer is obligated, each as may be adjusted from time to time in accordance with the Section 17.1 of the PPA.

17.1.1.2 Design-Build Contractor shall procure, at minimum, at its own cost and keep in effect, or cause to be procured and kept in effect, the Insurance Policies required to be procured by Design-Build Contractor pursuant to Exhibit 19 and, for each such Insurance Policy, satisfy the requirements therefor set forth in this Section 17.1, Section 17.1 of the PPA, Exhibit 19 and the terms of any Funding Agreement or Security Document to which Developer is obligated, each as may be adjusted from time to time in accordance with the Section 17.1 of the PPA. With respect to any such Insurance Policies, Design-Build Contractor shall produce certificates of insurance and written evidence of insurance as Developer may require in order to satisfy its obligations under the PPA.

17.1.1.3 Notwithstanding anything to the contrary in Sections 8 and 9 of Exhibit 19 or elsewhere in this Agreement, Design-Build Contractor shall be responsible for managing and administering the workers' compensation insurance and employer's liability insurance to be procured by Developer pursuant to Sections 8 and 9, respectively. Until the Substantial Completion Date, (a) Developer shall remit to Design-Build Contractor an amount equal to any savings in the cost incurred by Developer for such insurance, and (b) Design-Build Contractor shall be liable and reimburse Developer for any increase in the cost incurred by Developer for such insurance.

17.1.1A Contractors' Insurance Policies and Coverage. Design-Build Contractor shall procure at its own cost and keep in effect, or cause to be procured and kept in effect, the Contractors' insurance coverages as required in Section 17.1.2.5 of the PPA and Exhibit 19 (Insurance Coverage Requirements).

17.1.1B Waivers of Subrogation. Design-Build Contractor waives all rights against the Indemnified Parties, for any claims to the extent covered and paid by insurance obtained pursuant to this Section 17.1, except such rights as they may have to the proceeds of such insurance. If Design-Build Contractor is deemed to self-insure a claim or loss, then Design-Build Contractor's waiver shall apply as if it carried the

required insurance. Design-Build Contractor shall require all Contractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each Insurance Policy, including workers' compensation if permitted under the applicable worker's compensation insurance Laws, shall include a waiver of any right of subrogation against the Indemnified Parties or a consent to the insured's waiver of recovery in advance of loss.

17.1.1C No Recourse. There shall be no recourse against Developer for payment of premiums or other amounts with respect to the Insurance Policies.

17.1.1D Contesting Denial of Coverage. If any insurance carrier under an Insurance Policy required to be procured by Design-Build Contractor denies coverage with respect to any claims reported to such carrier, upon Design-Build Contractor's request, Developer shall cooperate (and in accordance with Section 17.1 of the PPA, shall request IFA and others to cooperate) in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Design-Build Contractor shall bear all costs of contesting the denial of coverage.

17.1.1E Bankrupt Insurer. In the event an Insurer providing any of the Insurance Policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the Indiana Department of Insurance or the Kentucky Department of Insurance, or has its rating lowered below the minimum rating allowed by Section 17.1 of the PPA, the Party responsible for procuring such Insurance Policies shall exercise best efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in this Section 17.1 so as to avoid any lapse in insurance coverage.

17.1.1F Procurement of Insurance by Developer. Developer has the right, but is not obligated, to procure on Design-Build Contractor's behalf any or all Insurance Policies for coverages otherwise required be provided by Design-Build Contractor hereunder. The cost of any Insurance Policies procured by Developer on Design-Build Contractor's behalf shall be deducted from the Contract Sum.

17.1.2 [Not Used]

17.1.3 [Not Used]

17.1.4 Notice and Prosecution of Claims.

17.1.4.1 IFA and Developer shall each have the right, but not the obligation, to report directly to insurers and process their respective claims against applicable Insurance Policies. Unless otherwise directed by IFA or Developer in writing with respect to their respective insurance claims, Design-Build Contractor shall be responsible for reporting and processing all potential claims against the Insurance Policies required hereunder. Design-Build Contractor agrees to report timely to the

insurer(s) under such Insurance Policies any and all matters which may give rise to an insurance claim by Design-Build Contractor, Developer, IFA or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. Design-Build Contractor shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Design-Build Contractor shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

17.1.4.2 Design-Build Contractor shall immediately notify Developer, and thereafter keep Developer fully informed, of any incident, potential claim, claim or other matter of which Design-Build Contractor becomes aware that involves or could conceivably involve an Indemnified party as a defendant.

17.1.4.3 Developer agrees to promptly notify Design-Build Contractor of incidents, potential claims against Developer, and matters which may give rise to an insurance claim against Developer, and to tender to the insurer Developer's defense of the claim under such Insurance Policies. Developer shall cooperate with Design-Build Contractor as necessary for Design-Build Contractor to fulfill its duties hereunder, including providing Design-Build Contractor a copy of all written materials Developer receives asserting a claim against Developer that is subject to defense by an insurer under an Insurance Policy.

17.1.4.4 If in any instance Design-Build Contractor has not performed its obligations respecting insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then, for purposes of determining Design-Build Contractor's liability and the limits thereon or determining reductions in compensation due from Developer to Design-Build Contractor on account of available insurance, Design-Build Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Design-Build Contractor performed such obligations and not committed such failure. In addition, if Design-Build Contractor elects under Section 20.2.4 to keep this Agreement in effect despite existence or occurrence of Insurance Unavailability, then, for purposes of determining Design-Build Contractor's liability for harm and loss, including harm or loss to Developer and third parties, and the limits thereon, or determining reductions in compensation due from Developer to Design-Build Contractor on account of available insurance, Design-Build Contractor shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which it would have been obligated to carry had such coverage been commercially available. Nothing in this Section 17.1.7. or elsewhere in this Section 17.1 shall be construed to treat Design-Build Contractor as electing to self-insure where Design-Build Contractor is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Section 17.1.

17.1.5 Application of Insurance Proceeds. All insurance proceeds received for physical property damage to the East End Crossing under any Insurance Policies, other than any business interruption insurance maintained as part of such Insurance Policies, shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the East End Crossing in respect of which such proceeds were received.

17.1.6 Umbrella and Excess Policies. Design-Build Contractor 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 this Agreement for the applicable type of coverage.

17.1.7 Inadequacy of Required Coverages. Developer makes no representation that the scope of coverage and limits of liability specified for any Insurance Policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect Design-Build Contractor against its undertakings under this Agreement to Developer, or its liabilities to any third party. It is the responsibility of Design-Build Contractor and each Contractor to determine if any changes or additional coverages are required to adequately protect their interests. No such limits of liability or approved variances therefrom shall preclude Developer from taking any actions as are available to it under the DBC Documents or PPA Documents, or otherwise at Law.

17.1.8 Unavailability of Required Coverages. Design-Build Contractor shall promptly notify Developer if it is unable, after using its diligent efforts, to procure the required Insurance Policy coverages in the global insurance and reinsurance markets and may request that Developer (a) pursue the alternative provisions of Section 17.1.8 of the PPA or (b) procure such insurance on Design-Build Contractor's behalf in accordance with Section 17.1.1F. Neither making such request, nor any action by IFA or Developer to modify, provide or eliminate any coverage requirement or to provide alternative coverage in accordance with Section 17.1.8 of the PPA, shall relieve Design-Build Contractor of any liability for its failure to procure the required Insurance Policy coverages hereunder. Design-Build Contractor shall be liable to Developer for any Loss to Developer suffered by such failure, including the cost of insurance procured in accordance with Section 17.1.1F, any reduction in the Maximum Availability Payment under Section 17.1.8.2(b) of the PPA or termination of the PPA under Section 17.1.8.4 of the PPA.

17.1.9 [Not Used]

17.2 Payment and Performance Security.

17.2.1 Design and Construction Security Requirements. As a further condition precedent to commencement of any Construction Work, Design-Build Contractor shall have obtained, delivered to IFA and maintain the Payment Bond and Performance Security required under Section 17.2.1 of the PPA securing Developer's

obligations under the PPA, in the same amounts and forms and having the same terms required for the Payment Bond and Performance Security required of Developer by Section 17.2.1 of the PPA.

17.2.2 Payment Certifications.

17.2.2.1 Design-Build Contractor acknowledges that, as further security against stop notices, liens and claims for failure of Developer, Design-Build Contractor, or any other prime Contractor for the Design Work and Construction Work to pay amounts due for work, services, materials, equipment and supplies, Developer is required to deliver to IFA the items set forth in Section 17.2.2 of the PPA.

17.2.2.2 Within ten (10) days after the end of each calendar month until Final Acceptance of all Project Sections, Design-Build Contractor shall deliver to Developer:

(a) A written certificate of Design-Build Contractor certifying as to all Design Work and Construction Work that Design-Build Contractor, and all subcontractors, laborers, Suppliers, Utility Owners and other third parties, have been paid all amounts due to date under their respective Contracts or purchase agreements, except only for (i) services, materials and equipment provided in the immediately preceding month, (ii) retainage provided in the relevant Contract, (iii) amounts in honest dispute, and any amounts in honest dispute shall be set forth in detail in an attachment to the certificate, and (iv) claims arising our of Relief Events which are either in process or for which the time periods for asserting such claims have not yet passed;

(b) A written certificate and release signed by Design-Build Contractor, each other prime Contractor for Design Work or Construction Work, and each subcontractor or Supplier that provided services, materials or equipment in the preceding month, certifying that it has received payment in full of all amounts due under their respective Contracts or purchase agreements, except only for (i) amounts not yet due and payable, (ii) retainage, (iii) amounts in dispute, stating any amounts in dispute, and (iv) claims arising out of Relief Events which are either in process or for which the time periods for asserting such claims have not yet passed, and waiving and releasing any and all claims, liens or security interests, known or unknown, suspected or unsuspected, for payment arising out of such services, materials or equipment against IFA, the State, the East End Crossing and any Payment Bonds provided to IFA under this Section 17.2; and

(c) Certified payrolls submitted by Design-Build Contractor, each other prime Contractor for Construction Work and each subcontractor to the Indiana Department of Labor certifying wages paid and compliance with applicable prevailing wage requirements.

17.2.2.3 If Developer does not receive any such certificate or certified payroll, it shall provide Notice thereof to Design-Build Contractor, and if such certificate or certified payroll is not received within seven (7) days of such Notice, it may

require Design-Build Contractor to immediately increase the amount of the Payment Bond and Performance Security to such amount as Developer determines is appropriate, including as necessary in response to any requirement imposed by IFA under Section 17.2.2.3 of the PPA, no later than seven (7) days.

17.2.2A Liquid Security. Design-Build Contractor shall provide to and maintain with Developer liquid security in the form contained in Exhibit 26 ("**Liquid Security**") at all times until the expiration of the Warranty Period as provided below. Developer must return the applicable Liquid Security to Design-Build Contractor upon its expiration as provided below. To the extent that the terms, requirements and other provisions of this Section 17.2.2A or Exhibit 26 are inconsistent with Section 17.3, this Section 17.2.2A and Exhibit 26 shall control with respect to the Liquid Security. The amount of the Liquid Security shall be as follows:

17.2.2A.1 from the date of provision of the Liquid Security by Design-Build Contractor until the Substantial Completion Date, an amount equal to [seven and one-half percent (7.5%)] of the Contract Sum;

17.2.2A.2 from the day after Substantial Completion Date until the Final Acceptance Date, an amount equal to [three and three-quarters percent (3.75%)] of the Contract Sum; and

17.2.2A.3 from the day after the Final Acceptance Date until the expiration of the Warranty Period, an amount equal to [one and one-half percent (1.5%)] of the Contract Sum; provided that if the Warranty Period is extended in connection with Corrective Work completed, the amount of the Liquid Security may be reduced on the date that the Warranty Period would have originally expired to a sum equal to two hundred percent (200%) of the value of the Corrective Work for which a warranty remains outstanding.

17.3 Letters of Credit.

17.3.1 General Provisions. Wherever in the DBC Documents Design-Build Contractor has the option or obligation to deliver to Developer a letter of credit, the following provisions shall apply except to the extent expressly provided otherwise in the DBC Documents:

17.3.1.1 The letter of credit shall:

(a) Be a standby letter of credit;

(b) Be issued by a financial institution that is not an Affiliate, has a credit rating for long-term, unsecured debt of not less than "A-/A3" from one of the Rating Agencies, and has an office in the United States at which the letter of credit can be presented for payment by facsimile or by electronic means. If the bank issuing the letter of credit fails to maintain such credit rating, Design-Build Contractor shall deliver a substitute letter of credit issued by a qualified financial institution within thirty (30) days of the date that the prior financial institution failed to maintain such credit rating or

otherwise furnish additional security acceptable to Developer as may be required from time to time to protect the interests of Developer;

(c) Be in form approved by Developer in its good faith discretion;

(d) Be payable immediately, conditioned only on written presentment from Developer to the issuer of a sight draft drawn on the letter of credit and a certificate stating that Developer has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to Developer, without requirement to present the original letter of credit;

(e) Be in place for the entire period of time for which the letter of credit is providing security. Letters of credit with an expiration date shall provide for automatic renewal unless the issuer provides notice to Developer and to Design-Build Contractor to the contrary no later than thirty (30) days prior to the expiration date;

(f) Allow for multiple draws;

(g) Name Developer as beneficiary, and not provide for any other dual or multiple beneficiaries; and

(h) Be consistent with the requirements of this Section 17.3.

17.3.1.2 If Design-Build Contractor has failed to pay or perform when due the duty, obligation or liability under the DBC Documents for which the letter of credit is held, Developer shall have the right to draw on the letter of credit as and when provided in Section 19.2.7. If Developer makes such a draw on the letter of credit, Developer shall use and apply the proceeds as provided in this Agreement for such letter of credit.

17.3.1.3 Developer shall have the right to draw on the letter of credit, without prior Notice to Design-Build Contractor, if (a) for any reason Design-Build Contractor fails to deliver to Developer a new or replacement letter of credit, on the same terms, by not later than thirty (30) days before such expiration date, unless the applicable terms of the DBC Documents expressly require no further letter of credit with respect to the duty, obligation or liability in question, or (b) the financial institution issuing the letter of credit fails to meet the requirements set forth in Section 17.3.1.1(b) and Design-Build Contractor fails to provide a substitute letter of credit issued by a qualified financial institution within thirty (30) days before its expiration date. If Developer makes such a draw on the letter of credit, Developer shall be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit, without payment of interest to Design-Build Contractor.

17.3.1.4 Draw on letters of credit shall not be conditioned on prior resort to Design-Build Contractor or any other security of Design-Build Contractor. For

all draws conditioned on prior Notice from Developer to Design-Build Contractor, no such Notice shall be required if it would preclude draw before the expiration date of the letter of credit. Developer shall use and apply draws on letters of credit (or cash security held from draws on letters of credit) toward satisfying the relevant obligation of Design-Build Contractor (or, if applicable, any other Person for which the letter of credit is performance security). Subject to Developer's rights under Sections 17.3.1.2 and 17.3.1.3, if Developer receives proceeds of a draw in excess of the relevant obligation, Developer shall promptly refund the excess to Design-Build Contractor (or such other Person) after all relevant obligations are satisfied in full.

17.3.1.5 Design-Build Contractor's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from Developer a refund of the proceeds which are misapplied, and subject to Section 19.4.4, reimbursement of the reasonable costs Design-Build Contractor incurs as a result of such misapplication; provided that at the time of such refund Design-Build Contractor increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Design-Build Contractor acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Design-Build Contractor injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Design-Build Contractor covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and Design-Build Contractor irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

17.3.1.6 Design-Build Contractor shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with Developer's presentment of sight drafts and drawing against letters of credit or replacements thereof.

17.3.1.7 If Developer makes a permitted assignment of its rights and interests under this Agreement, Design-Build Contractor shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Design-Build Contractor.

17.3.1.8 Developer acknowledges that if the letter of credit is performance security for a Person other than Design-Build Contractor (e.g., a Key Contractor), Developer's draw may only be based on the underlying obligations of such Person.

17.3.2 Special Letter of Credit Provisions. Any terms and conditions applicable to a particular letter of credit which Design-Build Contractor is required to or

may provide under this Agreement are set forth in the provisions of this Agreement describing such letter of credit.

17.4 Guarantees.

17.4.1 If Design-Build Contractor or any Affiliate receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, then either (i) Design-Build Contractor shall cause such Person to (a) expressly include Developer and IFA as guaranteed parties under such guaranty, with the same protections and rights of Notice, enforcement and collection as are available to any other guaranteed party, and (b) deliver to each of Developer and IFA a duplicate original of such guaranty, which guaranty shall provide that the rights and protections of Developer and IFA shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party or (ii) Design-Build Contractor shall deliver to IFA, concurrently with the issuance of such guaranty, a duplicate original of such guaranty and such other documents reasonably satisfactory to IFA permitting IFA, subject to the rights of the Collateral Agent set forth in Article 21 of the PPA and any Direct Agreement, to become the transferee beneficiary under such guaranty and to enforce it, including enforcing the guaranty in favor of IFA or the East End Crossing, or both, if, subject to Section 17.4.2, IFA determines that (A) the Design-Build Contractor has breached or failed to perform its obligations under this Agreement, (B) such breach has caused, or with the passage of time reasonably may cause, a "Developer Default" under the PPA and, if a "Developer Default" under the PPA has occurred, the applicable cure period has expired without full and complete cure and (C) Developer or the Collateral Agent has failed to call upon or otherwise enforce such guaranty for the purpose of causing the performance of such obligations by or on behalf of the Design-Build Contractor within ten (10) days after IFA delivers notice of such breach or expected breach to Developer and the Collateral Agent, which transfer documents shall include a certified copy of the guaranty and a present, executed transfer and assignment of the beneficiary rights from Design-Build Contractor or Collateral Agent, as applicable, to IFA; and the guaranty shall expressly authorize such transfer without condition and permit draw without presentation of the original guaranty.

17.4.2 IFA has agreed under Section 17.4 of the PPA to forebear from exercising remedies under any such guaranty pursuant to which it is a beneficiary or exercising its right to become a beneficiary thereunder pursuant to Section 17.4.1(ii) of the PPA so long as Developer or a Lender is diligently pursuing remedies thereunder.

17.5 Indemnity by Design-Build Contractor.

17.5.1 Subject to Section 17.5.2, Design-Build Contractor shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party (including IFA under Section 17.5 of the PPA) arising out of, relating to or resulting from:

17.5.1.1 Design-Build Contractor's breach or alleged breach of the DBC Documents;

17.5.1.2 The failure or alleged failure by any DBC-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management) relating to the performance of the D&C Work;

17.5.1.3 Any alleged patent or copyright infringement or other allegedly improper appropriation or use by any DBC-Related Entity of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the D&C Work, or arising out of any use in connection with the East End Crossing of methods, processes, designs, information, or other items furnished or communicated to Developer or another Indemnified Party pursuant to the DBC Documents; provided that this indemnity shall not apply to any infringement resulting from Developer's failure to comply with specific written instructions regarding use provided to Developer by Design-Build Contractor;

17.5.1.4 The actual or alleged fraud, bad faith, willful misconduct, gross negligence, breach of applicable Law or contract, or other culpable act of any DBC-Related Entity in or associated with performance of the D&C Work;

17.5.1.5 Any and all claims by any governmental or taxing authority claiming Taxes based on gross receipts, purchases or sales, the use of any property or income of any DBC-Related Entity with respect to any payment for the D&C Work made to or earned by any DBC-Related Entity;

17.5.1.6 Any and all stop Notices, liens and claims filed in connection with the D&C Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop Notice, lien or claim, and any other liability to Contractors. laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, provided that Developer is not in default in payments owing (if any) to Design-Build Contractor with respect to such D&C Work;

17.5.1.7 Any actual or threatened Design-Build Contractor Release of Hazardous Materials relating to Design-Build Contractor's performance of the D&C Work;

17.5.1.8 The claim or assertion by any other developer or contractor that any DBC-Related Entity interfered with or hindered the progress or completion of work being performed by the other contractor or developer, or failed to cooperate reasonably with the other developer or contractor, so as to cause inconvenience, disruption, delay or loss, except where the DBC-Related Entity was not in any manner engaged in performance of the D&C Work;

17.5.1.9 Any dispute between Design-Build Contractor and a Utility Owner, or any DBC-Related Entity's performance of, or failure to perform, the obligations under any Utility Agreement;

17.5.1.10 (a) Any DBC-Related Entity's breach of or failure to perform an obligation that Developer owes to a third Person, including IFA and Governmental Entities, under Law or under the PPA or any other agreement between Developer and a third Person, where performance of the obligation is delegated to Design-Build Contractor under the DBC Documents or (b) the acts or omissions of any DBC-Related Entity which render Developer unable to perform or abide by an obligation that Developer owes to a third Person, including Governmental Entities, under any agreement between Developer and a third Person, where the agreement is previously disclosed or known to Design-Build Contractor;

17.5.1.11 Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (a) the failure of any DBC-Related Entity to comply with Good Industry Practice, requirements of the DBC Documents, Project Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the D&C Work, (b) the intentional misconduct or negligence of any DBC-Related Entity in connection with the performance of the D&C Work, or (c) the actual physical entry onto or encroachment upon another's property by any DBC-Related Entity in connection with the performance of the D&C Work;

17.5.1.12 [Not Used]

17.5.1.13 If applicable, the authorization, issuance, sale, trading, redemption or servicing of the PABs or any other bonds issued to finance the East End Crossing (whether Developer or another entity is the issuer), or Design-Build Contractor's failure to comply with any requirement necessary to preserve the tax exempt status of interest paid on the PABs or other bonds; or

17.5.1.14 Any errors, inconsistencies or other Defects in the design or construction of the East End Crossing and/or of Utility Adjustments included in the D&C Work.

17.5.2 Subject to the releases and disclaimers herein, Design-Build Contractor's indemnity obligation shall not extend to any third-party Loss to the extent directly caused by:

17.5.2.1 The negligence, recklessness or willful misconduct, bad faith or fraud of the Indemnified Party;

17.5.2.2 Developer's breach of any of its material obligations under the DBC Documents;

17.5.2.2A IFA's breach of any of its material obligations under the PPA Documents;

17.5.2.3 An Indemnified Party's violation of any Laws or Governmental Approvals; or

17.5.2.4 Any material defect inherent in a prescriptive design, construction, operations or maintenance specification included in the Technical Provisions, but only where prior to occurrence of the third-party Loss Design-Build Contractor complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that it was deficient or, if Design-Build Contractor actually knew of the deficiency, unsuccessfully sought Developer's waiver of or approval of a Deviation from such specification.

17.5.3 In claims by an employee of Design-Build Contractor, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 17.5 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Design-Build Contractor or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

17.5.4 For purposes of this Section 17.5 and Section 17.5A, "third party" means any Person other than an Indemnified Party and Design-Build Contractor, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim that is (a) against an Indemnified Party, (b) within the scope of the indemnities and (c) not covered by the Indemnified Party's worker's compensation program.

17.5A Indemnity by Developer.

17.5A.1 Subject to Sections 17.5A.2 and 17.5B, Developer shall release, protect, defend, indemnify and hold harmless the Design-Build Contractor and DBC Parent Guarantors from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party, to the extent caused by:

17.5A.1.1 The negligence, reckless or willful misconduct, bad faith or fraud of the Developer;

17.5A.1.2 Any actual or threatened Developer-Related Entity, Release of Hazardous Materials; or

17.5A.1.3 Any and all claims by any governmental or taxing authority for sales, use, value-added or similar Taxes based on amounts payable to Developer under this Agreement or that are income, franchise, doing business or similar Taxes imposed on Developer or any direct or indirect holder of a beneficial interest in Developer.

17.5A.2 Developer's indemnity obligations, shall not extend to any Loss to the extent caused by:

17.5A.2.1 The negligence, reckless or willful misconduct, bad faith or fraud of any DBC-Related Entity;

17.5A.2.2 A Relief Event, subject to Developer's obligations as provided for in this Agreement; or

17.5A.2.3 Design-Build Contractor's material breach of any of its obligations under the Contract Documents.

17.5A.3 In claims by an employee of Developer, Design-Build Contractor, Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 17.5A shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer, Design-Build Contractor or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

17.5B Limitation on Indemnities. Developer and Design-Build Contractor have no right of indemnity under Sections 17.5 and 17.5A for their own negligence, reckless or willful misconduct, bad faith or fraud.

17.5C Parent Guarantees.

17.5C.1 Concurrently with the execution and delivery of this Agreement, Design-Build Contractor shall provide to Developer the Parent Guarantees in the form contained in Exhibit 25, each guaranteeing all obligations of Design-Build Contractor under this Agreement. Such Parent Guarantees shall comply with the requirements of Section 17.4.1 of the PPA.

17.5C.2 In addition to, and without limit to any provisions throughout this Agreement in respect of the recourse that Developer may have to the Parent Guarantees, Developer shall be entitled, without exhausting or first having recourse to any other security or remedies available hereunder, to enforce, draw upon or otherwise realize either Parent Guarantee in the event that any amounts owing by Design-Build Contractor have not been paid when due or any default or non-compliance under this Agreement by Design-Build Contractor has not been cured or rectified within the time required under this Agreement or applicable cure period if any including:

17.5C.2.1 any Delay Liquidated Damages which are not paid by Design-Build Contractor to Developer when due; or

17.5A.2.1 any amount owed to Developer by Design-Build Contractor as a result of Developer having to take action to rectify a default by Design-Build Contractor that Design-Build Contractor has not cured within the applicable cure period is not paid when due.

17.5C.3 Developer may make multiple calls and demands on each Parent Guarantee.

17.6 Defense and Indemnification Procedures with Respect to Design-Build Contractor Indemnity.

17.6.1 If Developer receives Notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 17.5, and if Developer gives Notice thereof pursuant to Section 17.1.4.3, then Developer shall have the right to conduct its own defense unless either an insurer accepts defense of the claim within the time required by Law or Design-Build Contractor accepts the tender of the claim in accordance with Section 17.6.3.

17.6.2 If the insurer under any applicable Insurance Policy accepts the tender of defense, Developer and Design-Build Contractor shall cooperate in the defense as required by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then Section 17.6.3 shall apply.

17.6.3 If the defense is tendered to Design-Build Contractor, then within thirty (30) days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a Notice stating that Design-Build Contractor:

17.6.3.1 Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

17.6.3.2 Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

17.6.3.3 Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement.

17.6.4 If Design-Build Contractor accepts the tender of defense under Sections 17.6.3.1 and 17.6.3.2, Design-Build Contractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Design-Build Contractor shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

17.6.4.1 Design-Build Contractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

17.6.4.2 The Indemnified Party shall fully cooperate in said defense, provide to Design-Build Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Design-Build Contractor concerning such defense.

17.6.5 If Design-Build Contractor responds to the tender of defense as specified in Section 17.6.3.3, the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

17.6.6 Notwithstanding Sections 17.6.3.1 and 17.6.3.2, the Indemnified Party may revocably assume its own defense at any time by delivering to Design-Build Contractor Notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives Notice of the claim or at any time thereafter, reasonably determines that:

17.6.6.1 A conflict exists between it and Design-Build Contractor which prevents or potentially prevents Design-Build Contractor from presenting a full and effective defense;

17.6.6.2 Design-Build Contractor is otherwise not providing an effective defense in connection with the claim; or

17.6.6.3 Design-Build Contractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

17.6.7 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Design-Build Contractor shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending. If the Indemnified Party is entitled to and elects to conduct its own defense, then:

17.6.7.1 In the case of a defense that otherwise would be conducted under Section 17.6.3.1, the Indemnified Party shall have the right to settle or compromise the claim with each of Design-Build Contractor's and Design-Build Contractor's relevant insurer(s)' prior written consent, which, in each case, shall not be unreasonably withheld or delayed;

17.6.7.2 In the case of a defense that otherwise would be conducted under Section 17.6.3.2, the Indemnified Party and Design-Build Contractor shall consult with each other on a regular basis to determine whether settlement is appropriate and, subject to the rights of any insurer providing coverage for the claim under a policy required under this Agreement, and the Indemnified Party shall have the right to settle or compromise the claim with Design-Build Contractor's prior written consent without prejudice to the Indemnified Party's rights to be indemnified by Design-Build Contractor; and

17.6.7.3 In the case of a defense conducted under Section 17.6.3.3, the Indemnified Party shall, subject to the rights of any insurer providing coverage for the claim under a policy required under this Agreement, have the right to settle or compromise the claim without Design-Build Contractor's prior written consent and without prejudice to its rights to be indemnified by Design-Build Contractor.

17.6.8 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 17.6.6, shall be resolved according to the Dispute Resolution Procedures. Design-Build Contractor shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

17.6A Defense and Indemnification Procedures with Respect to Developer Indemnity.

17.6A.1 If Design-Build Contractor receives Notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 17.5A, and if Design-Build Contractor gives Notice thereof to Developer, then Design-Build Contractor shall have the right to conduct its own defense unless either an insurer accepts defense of the claim within the time required by Law or Developer accepts the tender of the claim in accordance with Section 17.6A.3.

17.6A.2 If the insurer under any applicable Insurance Policy accepts the tender of defense, Design-Build Contractor and Developer shall cooperate in the defense as required by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then Section 17.6A.3 shall apply.

17.6A.3 If the defense is tendered to Developer, then within 30 days after receipt of the tender it shall notify Design-Build Contractor whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written Notice stating that Developer:

17.6A.3.1 Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

17.6A.3.2 Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

17.6A.3.3 Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement.

17.6A.4 If Developer accepts the tender of defense under Section 17.6A.3.1, Developer shall have the right to select legal counsel for Design-Build Contractor, subject to reasonable approval by Design-Build Contractor, and Developer shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

17.6A.4.1 Developer shall fully and regularly inform Design-Build Contractor of the progress of the defense and of any settlement discussions; and

17.6A.4.2 Design-Build Contractor shall fully cooperate in said defense, provide to Developer all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to Design-Build Contractor, and maintain the confidentiality of all communications between it and Developer concerning such defense.

17.6A.5 If Developer responds to the tender of defense as specified in Section 17.6A.3.2 or 17.6A.3.3, Design-Build Contractor shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

17.6A.6 Notwithstanding Sections 17.6A.3.1 and 17.6A.3.2, Design-Build Contractor may revocably assume its own defense at any time by delivering to Developer written Notice of such election and the reasons therefor, if Design-Build Contractor, at the time it gives Notice of the claim or at any time thereafter, reasonably determines that:

17.6A.6.1 A conflict exists between it and Developer which prevents or potentially prevents Developer from presenting a full and effective defense;

17.6A.6.2 Developer is otherwise not providing an effective defense in connection with the claim; or

17.6A.6.3 Developer lacks the financial capacity to satisfy potential liability or to provide an effective defense.

17.6A.7 If Design-Build Contractor is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Developer shall reimburse on a current basis all reasonable costs and expenses Design-Build Contractor incurs in investigating and defending. In the event Design-Build Contractor is entitled to and elects to conduct its own defense, then:

17.6A.7.1 In the case of a defense that otherwise would be conducted under Section 17.6A.3.1, Design-Build Contractor shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed;

17.6A.7.2 In the case of a defense that otherwise would be conducted under Section 17.6A.3.2, Design-Build Contractor shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court or Arbitrator following reasonable Notice to Developer and opportunity to be heard and without prejudice to Design-Build Contractor's rights to be indemnified by Developer; and

17.6A.7.3 In the case of a defense conducted under Section 17.6A.3.3, Design-Build Contractor shall have the right to settle or compromise the claim without Developer's prior written consent and without prejudice to its rights to be indemnified by Developer.

17.6A.8 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 17.6A.6, shall be resolved according to the Dispute Resolution Procedures. Developer shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of Design-Build Contractor.

17.7 [Not Used]

ARTICLE 18

REPRESENTATIONS AND WARRANTIES

18.1 Design-Build Contractor Representations and Warranties. Design-Build Contractor hereby represents and warrants to Developer as follows:

18.1.1 [Not Used]

18.1.2 [Not Used]

18.1.3 Design-Build Contractor certifies, by entering into this Agreement, that none of Design-Build Contractor, WCC, VCGP or their respective principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. For purposes of this Section 18.1.3, the term "principal" for purposes of this Agreement 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 Design-Build Contractor, WCC or VCGP, as applicable.

18.1.4 [Not Used]

18.1.5 Design-Build Contractor, its employees and its Contractor(s) and its employees have maintained and complied with, and throughout the term of this Agreement will maintain and comply with, all required authority, license status, applicable licensing standards, certification standards, accrediting standards, professional ability, skills and capacity to perform the D&C Work.

18.1.6 As of the Effective Date, based upon its Reasonable Investigation, Design-Build Contractor 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 subsurface conditions discoverable through such Reasonable Investigation, and applicable Laws, and Design-Build Contractor has reasonable grounds for believing and does believe that the East End Crossing can be designed and built within such constraints.

18.1.7 Except as to parcels that IFA lacked title or access to prior to the Setting Date, Design-Build Contractor, in accordance with Good Industry Practice, conducted a Reasonable Investigation prior to the Setting Date, and as a result of such Reasonable Investigation, Design-Build Contractor is familiar with and accepts the physical requirements of the D&C Work, subject to IFA's obligations regarding Hazardous Materials under Section 5.9 of the PPA and Design-Build Contractor's rights to seek relief under Article 15.

18.1.8 Prior to the Effective Date, Design-Build Contractor familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals. Except as specifically permitted under Article 15 or 16, Design-Build Contractor shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the DBC Documents or PPA Documents or would have an adverse affect on costs. As of the Effective Date, Design-Build Contractor has no reason to believe that any Governmental Approval required to be obtained by Design-Build Contractor will not be granted in due course and thereafter remain in effect so as to enable the D&C Work to proceed in accordance with the DBC Documents and PPA Documents.

18.1.9 Design-Build Contractor shall obtain and maintain, and all D&C Work furnished by Design-Build Contractor will be performed by or under the supervision of Persons who hold, all necessary or required registrations, permits or approvals and valid licenses to practice in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the D&C Work in accordance with the DBC Documents and PPA Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

18.1.10 As of the Effective Date, Design-Build Contractor is an unincorporated joint venture of WCC and VCGP, WCC is a corporation duly organized and validly existing under the laws of the State of Illinois, and VCGP is a limited company duly organized and validly existing under the laws of France; and each of the foregoing entities 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 DBC Documents to which Design-Build Contractor is a party and to perform each and all of the obligations of Design-Build Contractor provided for herein and therein. Each of Design-Build Contractor, WCC, and VCGP is duly qualified to do business, and is in good standing, in the State and in the Commonwealth of Kentucky, in each case, as of the Effective Date, and will remain duly qualified and in good standing throughout the DBC Term and for as long thereafter as any obligations remain outstanding under the DBC Documents. Each of Design-Build Contractor, WCC, and VCGP 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.

18.1.11 The execution, delivery and performance of the DBC Documents to which Design-Build Contractor is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of Design-Build Contractor and the DBC JV Members; each person executing the DBC Documents on behalf of Design-Build Contractor or the DBC JV Members has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Design-Build Contractor or the DBC JV Members, as applicable; and the DBC Documents have been (or will be) duly executed and delivered by Design-Build Contractor.

18.1.12 Neither the execution and delivery by Design-Build Contractor of the DBC Documents to which Design-Build Contractor is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Design-Build Contractor or any agreement, judgment or decree to which Design-Build Contractor is a party or is bound.

18.1.13 The execution and delivery by Design-Build Contractor of the DBC Documents to which Design-Build Contractor is (or will be) a party, and the performance by Design-Build Contractor of its obligations thereunder, will not conflict with any Laws applicable to Design-Build Contractor that are valid and in effect on the date of execution and delivery. As of the Effective Date, Design-Build Contractor is not in breach of any applicable Law that would have a material adverse effect on the D&C Work or the performance of any of its obligations under the DBC Documents.

18.1.14 Each of the DBC Documents to which Design-Build Contractor is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Design-Build Contractor, enforceable against Design-Build Contractor and, if applicable, each DBC JV Member and each DBC Parent Guarantor, 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.

18.1.15 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Design-Build Contractor which challenges Design-Build Contractor's authority to execute, deliver or perform, or the validity or enforceability of, the DBC Documents to which Design-Build Contractor is a party, or which challenges the authority of the Design-Build Contractor official executing the DBC Documents; and Design-Build Contractor 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 Design-Build Contractor is aware. Design-Build Contractor has no current, pending or outstanding criminal, civil, or enforcement actions initiated by IFA or the State, and agrees that it will immediately notify Developer and IFA of any such actions.

18.1.16 As of the Proposal Due Date Design-Build Contractor disclosed to Developer in writing all organizational conflicts of interest of Design-Build Contractor and its Contractors of which Design-Build Contractor was actually aware; and between

the Proposal Due Date and the Effective Date Design-Build Contractor has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Design-Build Contractor or its Contractors identified in Developer's 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.

18.1.17 To the extent the Lead Engineering Firm is not Design-Build Contractor, Design-Build Contractor represents and warrants, as of the effective date of the relevant Key Contract, as follows: (a) the Lead Engineering Firm is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business, and is in good standing, in the State and in the Commonwealth of Kentucky, (b) the ownership interests of each of the Lead Engineering Firm that is a single purpose entity formed for the East End Crossing (including options, warrants and other rights to acquire ownership interests), is owned by the Persons whom Design-Build Contractor has set forth in a written certification delivered to Developer and IFA prior to the Effective Date; (c) the Lead Engineering Firm has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Design-Build Contractor; (d) the Lead Engineering Firm has (i) obtained and will maintain all necessary or required registrations, permits, licenses and approvals required under applicable Law and (ii) expertise, qualifications, experience, competence, skills and know-how to perform the Design Work and Construction Work, as applicable, in accordance with the DBC Documents and PPA Documents; (e) the Lead Engineering Firm will comply with all health, safety and environmental Laws in the performance of any work activities for, or on behalf of, Design-Build Contractor for the benefit of Developer or IFA; and (f) the Lead Engineering Firm is not in breach of any applicable Law that would have a material adverse effect on any aspect of the D&C Work.

18.1.18 Design-Build Contractor has no authority or right to impose any fee, toll, charge or other amount for the use of the East End Crossing.

18.1.19 Design-Build Contractor represents, warrants and certifies by entering into this Agreement, that none of Design-Build Contractor, the DBC JV Members, or their respective 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.

18.1.20 As required by IC 5-22-3-7: Design-Build Contractor and any principals of Design-Build Contractor certify that, (i) in accordance with IC 5-22-3-7 (A) Design-Build Contractor, except for *de minimis* and nonsystematic violations, has not violated the terms of (1) IC 24-4.7 (Telephone Solicitation Of Consumers), (2) IC 24-5-12 (Telephone Solicitations), or (3) IC 24-5-14 (Regulation of Automatic Dialing Machines) in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal Law; and (B) Design-Build Contractor will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by federal

Law; and (ii) an Affiliate or principal of Design-Build Contractor and any agent acting on behalf of Design-Build Contractor or on behalf of an Affiliate or principal of Design-Build Contractor (A) except for *de minimis* and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal Law; and (B) will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by federal Law.

18.1.21 Each individual signing this Agreement on behalf of Design-Build Contractor or the DBC JV Members, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of Design-Build Contractor or the DBC JV Member, as applicable, that he/she has not, nor has any other member, employee, representative, agent or officer of Design-Build Contractor or the DBC JV Member, as applicable, 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 this Agreement other than that which appears upon the face of this Agreement.

18.2 Developer Representations and Warranties. Developer hereby represents and warrants to Design-Build Contractor as follows:

18.2.1 As of the Effective Date, Developer has full power, right and authority to execute, deliver and perform the DBC Documents and the Principal Developer Documents to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein.

18.2.2 Each person executing this Agreement and the other Principal Developer Documents to which Developer 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 Developer; and this Agreement and the other Principal Developer Documents have been (or will be) duly executed and delivered by Developer.

18.2.3 Each of this Agreement and the Principal Developer Documents to which Developer is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Developer, enforceable against 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.

18.2.4 As of the Effective Date, 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, this Agreement or the other Principal Developer Documents, or which challenges Developer's authority to execute this Agreement or the other Principal Developer Documents; and Developer has disclosed to Design-Build Contractor any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

18.2.5 Neither the execution and delivery by Developer of the DBC Documents, 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 any agreement, judgment or decree to which Developer is a party or is bound.

18.2.6 The execution and delivery by Developer of the DBC Documents, 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 performance of any of its obligations under the DBC Documents.

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

18.3 Survival of Representations and Warranties. The representations and warranties of Developer and Design-Build Contractor contained herein shall survive expiration or earlier termination of this Agreement.

18.4 [Not Used]

18.5 "Bring-Down" of Certain Representations and Warranties at Financial Close.

18.5.1 On the date of Financial Close, Design-Build Contractor shall execute and deliver to Developer a certificate substantially in the form of Exhibit 2-S updating certain of Design-Build Contractor's representations and warranties in this Article 18 and effective as of the date of Financial Close. Failure to execute and deliver such certificate shall be a Design-Build Contractor Default hereunder.

18.5.2 On the date of Financial Close, Developer shall execute and deliver to Design-Build Contractor a certificate substantially in the form of Exhibit 2-T updating certain of Developer's representations and warranties in this Article 18 and effective as of the date of Financial Close. Failure to execute and deliver such certificate shall be a Developer Default hereunder.

ARTICLE 19

DEFAULT; REMEDIES; DISPUTE RESOLUTION

19.1 Default by Design-Build Contractor; Cure Periods.

19.1.1 Design-Build Contractor Default. Design-Build Contractor shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "Design-Build Contractor Default"):

19.1.1.1 Design-Build Contractor (a) fails to begin D&C Work within thirty (30) days following issuance of NTP1 or NTP2, (b) fails to satisfy all conditions to commencement of Design Work (except those conditions for which Developer has expressly agreed to retain responsibility) and to commence Design Work with diligence and continuity within thirty (30) days following issuance of NTP1, or (c) fails to satisfy all conditions to commencement of Construction Work and to commence Construction Work with diligence and continuity, within thirty (30) days following issuance of NTP2, in each case, as may be extended pursuant to this Agreement;

19.1.1.2 An Abandonment;

19.1.1.3 Design-Build Contractor fails to achieve (a) DB Substantial Completion by the DB Long Stop Date or (b) DB Final Acceptance by the DB Final Acceptance Deadline (for the avoidance of doubt, in each case as such dates may be extended by IFA in consequence of a Relief Event under terms of the PPA), except to the extent such failure is caused by a Developer Change or other action or inaction of Developer (other than actions or inactions of Developer specifically contemplated or permitted by this Agreement) and not due to any action or inaction of Design-Build Contractor;

19.1.1.4 [Not Used];

19.1.1.5 Design-Build Contractor (a) fails to make any payment due Developer under the DBC Documents when due, or (b) fails to deposit funds to any custodial account, trust account or other reserve or account in the amount and within the time period required by the DBC Documents;

19.1.1.6 [Not Used];

19.1.1.7 There occurs any use of the East End Crossing or Airspace or any portion thereof by any DBC-Related Entity in violation of this Agreement, the Technical Provisions, Governmental Approvals or Laws;

19.1.1.8 [Not Used];

19.1.1.9 Any representation or warranty in the DBC Documents made by Design-Build Contractor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Design-Build Contractor to Developer or IFA pursuant to the DBC Documents or PPA Documents is false, misleading or inaccurate in any material respect when made or omits material information when made;

19.1.1.10 Design-Build Contractor fails to obtain, provide, maintain and deliver originals, certificates or required evidence of any insurance, bonds, guarantees, letters of credit or other payment or performance security as and when required under this Agreement for the benefit of relevant parties, or fails to comply with

any requirement of this Agreement pertaining to the amount, terms or coverage of the same;

19.1.1.11 Design-Build Contractor or either DBC JV Member makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement, the East End Crossing or Design-Build Contractor's Interest, or there occurs an Equity Transfer or a Change of Control, in violation of Article 22;

19.1.1.12 Design-Build Contractor fails, within thirty (30) days of receipt of Notice from Developer that Design-Build Contractor has failed to timely observe or perform or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by Design-Build Contractor under the DBC Documents or PPA Documents, including failure to pay for or perform the Design Work, Construction Work or any portion thereof in accordance with the DBC Documents or PPA Documents, to cure any such failure identified in such Developer Notice;

19.1.1.13 After exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency of (a) Design-Build Contractor or any DBC JV Member, (b) any affiliate of Design-Build Contractor or of a DBC JV Member (as "affiliate" is defined in 29 CFR § 16.105 or successor regulation of similar import), (c) any DBC Parent Guarantor or (d) any DBC Key Contractor whose work is not completed;

19.1.1.14 There occurs any Persistent Design-Build Contractor Default, Developer delivers to Design-Build Contractor written Notice of the Persistent Design-Build Contractor Default, and either (a) Design-Build Contractor fails to deliver to Developer, within thirty (30) days after such Notice is delivered, a remedial plan meeting the requirements for approval set forth in Section 19.2.6 or (b) Design-Build Contractor fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan;

19.1.1.15 Design-Build Contractor fails to comply with IFA's written suspension of Work order issued in accordance with Section 19.2.8 of the PPA within the time reasonably allowed in such order;

19.1.1.16 Both DBC JV Members are subject to Insolvency Events at the same time, unless at least one DBC Parent Guarantor (which is not subject to any ongoing Insolvency Event, has not repudiated its obligations, and is not in breach of its obligations under this Agreement or its Parent Guarantee) assumes and performs, or causes to be performed, the obligations of Design-Build Contractor hereunder;

19.1.1.17 [Not Used]

19.1.1.18 There occurs an Insolvency Event with respect to a DBC Parent Guarantor, unless, as of the occurrence of such Insolvency Event and throughout the duration thereof, the other DBC Parent Guarantor is solvent, is not subject to any ongoing Insolvency Event, is not and has not been the debtor in any a voluntary or involuntary case within the definition of Insolvency Event, has not repudiated its guaranty and is not in breach of its guaranty;

19.1.1.19 [Not Used]

19.1.1.20 The Design-Build Contractor has incurred liabilities under this Agreement which reach the Liability Cap unless the Design-Build Contractor has agreed to increase the Liability Cap to an amount mutually agreed by the Parties;

19.1.1.21 Either Parent Guarantee is terminated, revoked, rendered void or unenforceable;

19.1.1.22 Design-Build Contractor fails to pay any Delay Liquidated Damages or any other sum due to Developer under this Agreement (which sum or sums are not in Dispute and subject to the Dispute Resolution Procedure) when due;

19.1.1.23 Design-Build Contractor fails to provide a remedial plan when required under Section 3.4.2A.3 or Design-Build Contractor fails to use reasonable efforts to comply with such remedial plan;

19.1.1.24 Design-Build Contractor is in material breach of any other of its obligations hereunder; or

19.1.1.25 There exists a "Developer Default" under the PPA, the cause of which is attributable to any breach of Design-Build Contractor hereunder.

19.1.2 Cure Periods. Subject to Section 19.2.2 and subject to remedies that this Article 19 expressly states may be exercised before lapse of a cure period, Design-Build Contractor shall have the following cure periods with respect to the following Design-Build Contractor Defaults:

19.1.2.1 Respecting a Design-Build Contractor Default under Section 19.1.1.14(a), a period of three (3) days after Developer delivers to Design-Build Contractor Notice of the Design-Build Contractor Default;

19.1.2.2 Respecting a Design-Build Contractor Default under Section 19.1.1.1, 19.1.1.5, 19.1.1.10, 19.1.1.11, 19.1.1.19, 19.1.1.20, 19.1.1.21, 19.1.1.22 or 19.1.1.23, a period of ten (10) days after Developer delivers to Design-Build Contractor Notice of the Design-Build Contractor Default; provided that Developer shall have the right, but not the obligation, to effect cure, at Design-Build Contractor's expense, if a Design-Build Contractor Default under Section 19.1.1.10 continues beyond three days after such Notice is delivered;

19.1.2.3 Respecting a Design-Build Contractor Default under Section 19.1.1.2, 19.1.1.7 or 19.1.1.14(b), a period of twenty (20) days after Developer delivers to Design-Build Contractor Notice of the Design-Build Contractor Default;

19.1.2.4 Respecting a Design-Build Contractor Default under Section 19.1.1.9, 19.1.1.12 or 19.1.1.13, a period of twenty (20) days after Developer delivers to Design-Build Contractor Notice of the Design-Build Contractor Default; provided that (a) if the Design-Build Contractor Default, including a Developer Default under Section 19.1.1.12, is of such a nature that the cure cannot with diligence be completed within such time period and Design-Build Contractor has commenced immediately after receiving the default Notice meaningful steps to cure, Design-Build Contractor shall have such additional period of time, up to a maximum cure period of ninety (90) days, as is reasonably necessary to diligently effect cure, (b) as to Section 19.1.1.9, cure will be regarded as complete when the adverse effects of the breach are cured, and (c) as to Section 19.1.1.13, if the debarred, suspended or voluntarily excluded Person possesses such ownership or management authority that the transfer thereof would constitute a Change of Control, cure will be regarded as complete when Design-Build Contractor proves it has removed such Person from any position or ability to manage, direct or control the decisions of Design-Build Contractor or to perform D&C Work and replaced such Person with one Developer first approves in writing as provided in Section 22.3, and if the debarred, suspended or voluntarily excluded Person is a DBC Key Contractor cure will be regarded as complete when Design-Build Contractor replaces the DBC Key Contractor with Developer's prior written approval in its good faith discretion as provided in Section 7.3.1;

19.1.2.5 Respecting a Design-Build Contractor Default under Section 19.1.1.3, there shall be no cure period, and there shall be no right to Notice of such Design-Build Contractor Default;

19.1.2.6 Respecting a Design-Build Contractor Default under Section 19.1.1.15 or 19.1.1.16, there shall be no cure period, and there shall be no right to Notice of a Design-Build Contractor Default under Section 19.1.1.16; and

19.1.2.7 Respecting a Design-Build Contractor Default under Section 19.1.1.18, a period of five (5) days from the date of the Design-Build Contractor Default to commence diligent efforts to cure, and twenty (20) days to effect cure of such default by providing a letter of credit or payment to Developer in the amount of the DBC Parent Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the DBC Parent Guarantor.

19.2 Developer Remedies for Design-Build Contractor Default.

19.2.1 Termination. If any Design-Build Contractor Default is or becomes a Default Termination Event set forth in Section 20.3.1, then Developer may terminate this Agreement as provided in Section 20.3. Such termination shall, among other things, automatically terminate all of Design-Build Contractor's rights under this

Agreement, whereupon Design-Build Contractor shall take all action required to be taken by Design-Build Contractor under Section 20.7.

19.2.2 Immediate Entry and Cure of Wrongful Use or Closure. Design-Build Contractor acknowledges IFA's right under Section 19.2.2 of the PPA in the event of any "Developer Default" under Section 19.1.1.7 of the PPA, without notice and without awaiting lapse of the period to cure, to enter and take control of the relevant portion of the East End Crossing to restore the permitted uses and reopen and continue traffic operations for the benefit of the public, until such time as such breach is cured or IFA terminates the PPA. In addition, Developer shall have the right in the event of any Design-Build Contractor Default under Section 19.1.1.7 (of this Agreement), in the event of any "Developer Default" under Section 19.1.1.7 of the PPA, or at direction of IFA in connection with action taken by IFA under Section 19.2.2 of the PPA, without Notice and without awaiting lapse of the period to cure, to enter and take control of the relevant portion of the East End Crossing to restore the permitted uses and reopen and continue traffic operations for the benefit of the public, until such time as such breach is cured or Developer terminates this Agreement. To the extent caused by a Design-Build Contractor Default, Design-Build Contractor shall pay to Developer on demand Developer's Recoverable Costs, plus any amounts paid to by Developer to IFA under Section 19.2.2 of the PPA, in connection with such action. So long as IFA or Developer undertakes such action in good faith (or, in the case of Developer, if Developer takes such action at direction of IFA of IFA or concurrently with or subsequent to IFA action), even if under a mistaken belief in the occurrence of the event giving rise to such action, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose IFA or Developer to any liability to Design-Build Contractor and shall not entitle Design-Build Contractor to any other remedy except if IFA's or Developer's action constitutes gross negligence, recklessness or willful misconduct or, where (and only where) Developer acts without any action by IFA under the PPA, negligence. Immediately following rectification of such Design-Build Contractor Default, as determined by IFA or Developer, as applicable, acting reasonably, IFA or Developer shall relinquish control and possession of the relevant portion of the East End Crossing back to Design-Build Contractor.

19.2.3 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance.

19.2.3.1 If at any time Design-Build Contractor or its Surety under Payment Bonds and bonds for Performance Security fails to meet any Safety Standard or timely perform Safety Compliance or Developer and Design-Build Contractor cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to Developer, acting reasonably, Developer shall have the absolute right and entitlement to undertake or direct Design-Build Contractor to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by Developer or with the Safety Compliance Order. If at any time a condition or deficiency of the East End Crossing violates any Law respecting health, safety or right of use and access, including the Americans With Disabilities Act and regulations of the

Occupational Safety and Health Administration (OSHA), Developer may take any immediate corrective actions required. Design-Build Contractor acknowledges IFA's corresponding right under Section 19.2.3.1 of the PPA to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by IFA or with the Safety Compliance Order.

19.2.3.2 To the extent that any work done pursuant to Section 19.2.3.1 is undertaken by Developer or IFA and is reasonably necessary to comply with Safety Standards, perform validly issued Safety Compliance Orders or correct a violation of Law respecting health, safety or right of use and access, Design-Build Contractor shall pay to Developer on demand Developer's Recoverable Costs in connection with such work, plus any amounts paid to by Developer to IFA under Section 19.2.3.2 of the PPA, and Developer (whether it undertakes the work or has directed Design-Build Contractor to undertake the work) shall have no obligation or liability to compensate Design-Build Contractor for any Losses Design-Build Contractor suffers or incurs as a result thereof.

19.2.3.3 To the extent that any work done pursuant to Section 19.2.3.1 is undertaken by Developer and is not reasonably necessary to comply with Safety Standards, perform validly issued Safety Compliance Orders or correct a violation of Law respecting health, safety or right of use and access, Developer shall compensate Design-Build Contractor only for Losses Design-Build Contractor suffers or incurs as a direct result thereof. The Parties acknowledge that, to the extent that any work done pursuant to Section 19.2.3.1 of the PPA is undertake by IFA and is not reasonably necessary to comply with Safety Standards, perform validly issued Safety Compliance Orders or correct a violation of Law respecting health, safety or right of use and access, as determined under Section 19.2.3.3 of the PPA, IFA has agreed to compensate Developer only for Losses Developer suffers or incurs as a direct result thereof; to the extent such Losses are suffered by Design-Build Contractor, Developer shall remit to Developer such compensation received from IFA, but only to the extent and when such compensation is actually received.

19.2.3.4 To the extent that any Safety Compliance Order work pursuant to Section 19.2.3.1 is undertaken by Design-Build Contractor under written protest delivered prior to starting the work and it is finally determined that the Safety Compliance work was not necessary, the unnecessary work under the Safety Compliance Order shall be treated as a Developer Change. The Parties acknowledges that to the extent that any Safety Compliance Order work pursuant to Section 19.2.3.1 of the PPA is undertaken by Design-Build Contractor (on behalf of Developer) under written protest delivered prior to starting the work and it is finally determined under Section 19.2.3.4 of the PPA that the Safety Compliance work was not necessary, the unnecessary work under the Safety Compliance Order will be treated as an IFA Change.

19.2.3.5 Notwithstanding anything to the contrary contained in this Agreement, if in the good faith judgment of Developer Design-Build Contractor has failed to meet any Safety Standards or perform Safety Compliance and the failure

results in an Emergency or danger to persons or property, and if Design-Build Contractor is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger, Developer may (but is not obligated to), without Notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, (a) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Design-Build Contractor shall pay to Developer on demand the cost of such action, including Developer's Recoverable Costs, or (b) suspend Construction Work and/or close or cause to be closed any and all portions of East End Crossing affected by the Emergency or danger. So long as Developer undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose Developer to any liability to Design-Build Contractor and shall not entitle Design-Build Contractor to any other remedy, except if Developer's action constitutes negligence, recklessness or willful misconduct. Design-Build Contractor acknowledges that Developer has a high priority, paramount public interest in protecting public and worker safety at the East End Crossing and adjacent and connecting areas. Developer's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by Developer, acting reasonably, Developer shall allow the Construction Work to continue or such portions of the East End Crossing to reopen, as the case may be. Design-Build Contractor acknowledges IFA's corresponding right under Section 19.2.3.5 of the PPA.

19.2.4 Developer Step-in Rights.

19.2.4.1 Upon the occurrence of a Design-Build Contractor Default and expiration, without full and complete cure, of the cure period, if any, available to Design-Build Contractor, without waiving or releasing Design-Build Contractor from any obligations, Developer shall have the right, but not the obligation, for so long as such Design-Build Contractor Default remains uncured by Developer or Design-Build Contractor, to pay and perform all or any portion of Design-Build Contractor's obligations and the D&C Work that are the subject of such Design-Build Contractor Default, as well as any other then-existing breaches or failures to perform for which Design-Build Contractor received prior Notice from Developer but has not commenced or does not continue diligent efforts to cure. Exercise of such cure rights is subject to the terms and conditions of this Section 19.2.4.

19.2.4.2 Developer may, to the extent reasonably required for or incident to curing the Design-Build Contractor Default or such other breaches or failures to perform and subject to the provisions of the Direct Agreement:

(a) Perform or attempt to perform, or caused to be performed, such D&C Work;

(b) Employ security guards and other safeguards to protect the East End Crossing;

(c) Spend such sums as Developer deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such D&C Work, without obligation or liability to Design-Build Contractor or any Contractors for loss of opportunity to perform the same D&C Work or supply the same materials and equipment;

(d) In accordance with Section 19.2.7, draw on and use proceeds from the Payment Bond and Performance Security and any other available security to the extent such instruments provide recourse to pay such sums;

(e) Execute all applications, certificates and other documents as may be required;

(f) Make decisions respecting, assume control over and continue D&C Work as may be reasonably required;

(g) Modify or terminate any contractual arrangements in Developer's good faith discretion, without liability for termination fees, costs or other charges in accordance with the terms and conditions of those contractual arrangements, including the requirements of Section 7.3.2;

(h) Meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose Design-Build Contractor irrevocably appoints Developer as its attorney-in-fact with full power and authority to act for and bind Design-Build Contractor in its place and stead;

(i) Take any and all other actions it may in its sole discretion consider necessary to effect cure and perform the D&C Work; and

(j) Prosecute and defend any action or proceeding incident to the D&C Work.

19.2.4.3 Design-Build Contractor shall reimburse Developer on demand Developer's Recoverable Costs in connection with the performance of any act or D&C Work authorized by this Section 19.2.4.

19.2.4.4 In addition to its continuing rights under the PPA and this Agreement, including rights of access and entry onto the East End Crossing and Project Right of Way, Project Specific Locations and Toll Collection System Locations throughout the DBC Term, including under Section 3.5, Developer retains a non-rescindable right of entry by Developer and its Authorized Representatives, Contractors, subcontractors, vendors and employees onto all Project Specific Locations and Toll

Collection System Locations, exercisable at any time or times without Notice, for the purpose of carrying out Developer's obligations under the PPA and Developer's step-in rights under this Section 19.2.4. Neither Developer nor any of its Authorized Representatives, Contractors, subcontractors, vendor and employees shall be liable to Design-Build Contractor in any manner for any inconvenience or disturbance arising out of its entry onto the East End Crossing, the Project Right of Way or Project Specific Locations in order to perform under this Section 19.2.4, unless caused by the gross negligence, recklessness or willful misconduct of such Person. If any Person exercises any right to pay or perform under this Section 19.2.4, it nevertheless shall have no liability to Design-Build Contractor for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, construction, operation or maintenance, unless caused by the gross negligence, recklessness or willful misconduct of such Person.

19.2.4.5 Developer's rights under this Section 19.2.4 are subject to the right of any Surety under Payment Bonds and bonds for Performance Security to assume performance and completion of all bonded work.

19.2.4.6 [Not Used]

19.2.4.7 If Developer takes action described in this Section 19.2.4 and it is later finally determined that Developer lacked the right to do so because there did not occur a Design-Build Contractor Default and expiration, without full and complete cure, of the cure period, if any, available to Design-Build Contractor, then Developer's action shall be treated as a Developer Change.

19.2.4A IFA Step-In Rights. Design-Build Contractor acknowledges IFA's corresponding right under Section 19.2.4 of the PPA. If IFA exercises this right under Section 19.2.4 of the PPA in relation to any aspect of the D&C Work and as a result of a Design-Build Contractor Default, Design-Build Contractor shall pay to Developer on demand IFA's Recoverable Costs and Developer's Recoverable Costs in connection with such action. In the event IFA exercises its right under Section 19.2.4 of the PPA for reasons other than a Design-Build Contractor Default and Design-Build Contractor desires to assert a claim in connection therewith or to dispute IFA's exercise of such right, Design-Build Contractor may assert a Pass Through Claim in accordance with Article 19A; Developer shall have no other liability to Design-Build Contractor in connection with such exercise by IFA, except to the extent such exercise by IFA is caused by a Developer Default under this Agreement or by a "Developer Default" under the PPA that is not caused by a Design-Build Contractor Default under this Agreement

19.2.5 Damages; Offset.

19.2.5.1 Subject to Developer's rights set forth in Sections 19.2.10 and 19.2.11, and subject to the limitation on Developer's rights set forth in Sections 19.2.12 and 19.2.13A, Developer shall be entitled to recover any and all damages available at Law on account of the occurrence of a Design-Build Contractor Default. Design-Build Contractor shall owe any such damages that accrue after the occurrence

of the Design-Build Contractor Default regardless of when Notice thereof is given or whether the Design-Build Contractor Default is subsequently cured.

19.2.5.2 Where this Agreement is not terminated, such damages include (a) costs Developer incurs to complete the Design Work and Construction Work in excess of the Contract Sum, (b) compensation and reimbursements due but unpaid to Developer under the DBC Documents, (c) costs to remedy any defective part of the D&C Work, and (d) costs to rectify any breach or failure to perform by Design-Build Contractor and/or to bring the condition of the East End Crossing to that required by the DBC Documents.

19.2.5.3 [Not Used]

19.2.5.4 Damages owed Developer shall bear interest from and after the date any amount becomes due to Developer until paid at a floating rate equal to the LIBOR in effect from time to time plus four hundred (400) basis points or other rate specified therefor in this Agreement.

19.2.5.5 Developer may deduct and offset any damages owing to it under the DBC Documents from and against any amounts Developer may owe to Design-Build Contractor.

19.2.5.6 [Not Used]

19.2.6 Remedial Plan Delivery and Implementation.

19.2.6.1 Design-Build Contractor recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous Noncompliance Events, whether such Noncompliance Events are cured or not, will undermine the confidence and trust essential to the success of the public-private arrangement under the PPA and will have a material, cumulative adverse impact on the value of the PPA to IFA and, therefore, the value of this Agreement to Developer. Design-Build Contractor acknowledges and agrees that measures for determining the existence of such a pattern or practice described in the definition of Persistent Design-Build Contractor Default are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

19.2.6.2 Upon the occurrence of a Persistent Design-Build Contractor Default, or as required by Section 3.4.2A.3, Design-Build Contractor shall, within thirty (30) days after Notice from Developer, be required to prepare and submit a remedial plan for Developer approval in its good faith discretion. The remedial plan shall set forth a schedule and specific actions to be taken by Design-Build Contractor to improve its performance and (a) in the case of a Persistent Design-Build Contractor Default, reduce (i) Design-Build Contractor's cumulative number of Noncompliance Points assessed under Section 11.3 and cumulative number of breaches and failures to perform to the point that such Persistent Design-Build Contractor Default will not continue and (ii) the cumulative number of Uncured Noncompliance Points outstanding by at least fifty percent (50%), or (b) in the case of circumstances described in Section

3.4.2A.3, demonstrate how Design-Build Contractor will accelerate the remaining D&C Work in the manner necessary to achieve Substantial Completion by no later than the DB Long Stop Date. Developer may require that such actions include improving Design-Build Contractor's quality management practices, plans and procedures, revising and restating Management Plans, changing organizational and management structure, increasing monitoring and inspections, changing DBC Key Personnel and other important personnel, replacement of Contractors, and delivering security to Developer.

19.2.6.3 Design-Build Contractor acknowledges that Noncompliance Points counted toward Persistent Design-Build Contractor Default will be reduced only by action of IFA in accordance with Section 19.2.6.3 of the PPA, if applicable.

19.2.6.4 Design-Build Contractor's failure to deliver to Developer the required remedial plan within such thirty (30)-day period shall constitute a material Design-Build Contractor Default, which may result in issuance of a Warning Notice triggering a five (5)-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material Design-Build Contractor Default which may result in issuance of a Warning Notice triggering a thirty (30)-day cure period. Either such Warning Notice may trigger a Default Termination Event under Article 20 if such underlying Design-Build Contractor Default remains uncured after expiration of such five (5)-day or thirty (30)-day cure period, as applicable.

19.2.6.4A Design-Build Contractor acknowledges the obligations of Developer under Section 19.2.6 of the PPA with respect to the occurrence of a Persistent Developer Default. With respect to the occurrence of a Persistent Developer Default caused, in whole or in part, by Noncompliance Events relating to the D&C Work or any action or failure of Design-Build Contractor, Design-Build Contractor shall prepare and submit to Developer, within 30 days after IFA gives notice to Developer of the Persistent Developer Default (which Developer shall promptly forward to Design-Build Contractor), the remedial plan required by Section 19.2.6.2 of the PPA and shall undertake such remedial measures as may be required thereby.

19.2.7 Payment Bond and Performance Security.

19.2.7.1 Subject to Section 19.2.7.3, upon the occurrence of a Design-Build Contractor Default and expiration, without full and complete cure, of the applicable cure period, if any, under Section 19.1.2, without necessity for a Warning Notice, and without waiving or releasing Design-Build Contractor from any obligations, Developer shall be entitled to make demand upon and enforce any bond provided as Performance Security, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to Developer under this Agreement with respect to the Design-Build Contractor Default in question in any order in Developer's sole discretion. Developer will apply the proceeds

of any such action to the satisfaction of Design-Build Contractor's obligations under this Agreement, including payment of amounts due Developer.

19.2.7.2 [Not Used]

19.2.7.3 No prior Notice from Developer shall be required if it would preclude draw on the bond, letter of credit, guaranty or other payment or performance security before its expiration date; and in the case of an expiring letter of credit, the provisions of Section 17.3.1.3 shall apply.

19.2.7.4 [Not Used]

19.2.8 Suspension of Work.

19.2.8.1 Developer shall have the right and authority, without obligation or liability, to suspend, in whole or in part, the D&C Work by written order to Design-Build Contractor, due to any of the following, regardless of whether a Design-Build Contractor Default has been declared or any cure period (other than the cure period provided below) has not yet lapsed:

(a) Failure to perform the D&C Work in compliance with, or other breach of, the DBC Documents, except Noncompliance Events where no Persistent Design-Build Contractor Default exists where such failure is not substantially cured within fifteen (15) days after Developer delivers Notice thereof to Design-Build Contractor;

(b) Failure to comply with any Law or Governmental Approval (including failure to implement protective measures for Endangered and Threatened Species, failure to handle, preserve and protect archeological, paleontological, cultural or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

(c) Performance of Design Work prior to issuance of NTP1, or if NTP1 has been issued, performance of Design Work prior to all conditions precedent to commencement of Design Work being met (as prescribed under Section 5.3.2 of the PPA), or performance of Construction Work prior to issuance of NTP2;

(d) Discovery of Nonconforming Work or of any activity that is proceeding or about to proceed that would constitute or cause Nonconforming Work where the Nonconforming Work or activity is not substantially cured within fifteen (15) days after Developer delivers Notice thereof to Design-Build Contractor or within such fifteen (15) days Design-Build Contractor provides and submits to Developer a plan for cure, such plan to be diligently executed and completed no later than one hundred twenty (120) days after submission of such plan to Developer, unless Design-Build Contractor demonstrates to Developer's reasonable satisfaction that full and complete cure of the Nonconforming Work, and verification of such cure, will remain practicable despite continuation of D&C Work without suspension;

(e) Design-Build Contractor has failed to (i) pay in full when due sums owing any Contractor for services, materials or equipment, except only for retainage provided in the relevant Contract and amounts in dispute, or (ii) deliver any certificate, release or certified payroll required under Section 17.2.2.2;

(f) Failure to provide proof of required insurance coverage as set forth in Section 17.1.2.4 (which suspension is also available in the case of such failure following a written request rather than Notice of Design-Build Contractor Default, as set forth in Section 17.1.2.4);

(g) Failure to deliver or maintain Payment Bonds and Performance Security;

(h) The existence of conditions unsafe for workers, other East End Crossing personnel or the general public, including failures to comply with Safety Standards or perform Safety Compliance as set forth in Section 19.2.3 (and in any such case the order of suspension may be issued without awaiting any cure period); and

(i) Failure to carry out and comply with Directive Letters.

19.2.8.1A The issuance by IFA of a written order under Section 19.2.8 of the PPA suspending D&C Work, in whole or in part, shall automatically, without further action by Developer, suspend such D&C Work hereunder.

19.2.8.2 In addition to the protections from liability under Section 19.2.3.5, Developer shall have no liability to Design-Build Contractor, and Design-Build Contractor shall have no right to Extra Work Costs, Delay Costs, time extension, extension of Project Schedule Deadlines, compensation for losses due to delays in Construction Payments or for additional interest costs due to delayed receipt of the Construction Payment, or other relief, due to any suspension under Section 19.2.8.1.

19.2.8.3 Developer shall have the right and authority to suspend, in whole or in part, the D&C Work for reasons other than those set forth in Section 19.2.8.1. If Developer purports to order suspension of D&C Work under Section 19.2.8.1 but it is finally determined under the Dispute Resolution Procedures that there exist no grounds under Section 19.2.8.1 for such suspension, then (a) Design-Build Contractor shall be entitled to submit a Claim for compensation for Losses incurred by Design-Build Contractor because of such suspension, (b) solely for the purposes of determining AP Delay Liquidated Damages under Section 10A.4.1, and not for any other purpose, the Scheduled DB Substantial Completion Date used for determining AP Delay Liquidated Damages shall be extended by the number of days that Developer suspended the D&C Work without grounds under Section 19.2.8.1, and (c) solely for the purposes of determining whether there exists a Design-Build Contractor Default under Section 19.1.1.3, and not for any other purpose, the DB Long Stop Date and DB Final Acceptance Deadline shall be extended by the number of days that Developer suspended the D&C Work without grounds under Section 19.2.8.1. If IFA orders (or is

deemed to order, pursuant to the PPA) suspension of D&C Work under Section 19.2.8.3 of the PPA and such suspension is an IFA-Caused Delay, then any claim for relief or compensation shall be made pursuant to and subject to the terms of Articles 15 and 19A.

19.2.8.4 Design-Build Contractor shall promptly comply with any such written suspension order, even if Design-Build Contractor disputes the grounds for suspension. Design-Build Contractor shall promptly recommence the D&C Work upon receipt of Notice from Developer directing Design-Build Contractor to resume work. Developer will lift the suspension order promptly after Design-Build Contractor fully cures and corrects the applicable breach or failure to perform or any other reason for the suspension order ceases to apply.

19.2.9 Warning Notices.

19.2.9.1 Without prejudice to any other right or remedy available to Developer, Developer may deliver a Notice (a "**Warning Notice**") to Design-Build Contractor, stating explicitly that it is a "Warning Notice" of a material Design-Build Contractor Default and stating in reasonable detail the matter or matters giving rise to the Notice and, if applicable, amounts due from Design-Build Contractor, and reminding Design-Build Contractor of the implications of such Notice, whenever there occurs a Design-Build Contractor Default.

19.2.9.2 The issuance of a Warning Notice may trigger a Default Termination Event as provided in Section 20.3.1.

19.2.9.3 Developer may issue a Warning Notice at the same time it delivers a Notice of Design-Build Contractor Default, and a Notice of Design-Build Contractor Default may be issued as a Warning Notice. In either such case, the cure period available to Design-Build Contractor, if any, shall be as set forth in Section 19.1.2. If Developer issues a Warning Notice for any Design-Build Contractor Default after it issues a Notice of such Design-Build Contractor Default, then the remaining cure period available to Design-Build Contractor, if any, for such Design-Build Contractor Default before Developer may terminate this Agreement on account of such Design-Build Contractor Default shall be extended by the time period between the date the Notice of such Design-Build Contractor Default was issued and the date the Warning Notice is issued. However, this shall not affect the time when Developer may exercise any other remedy respecting such Design-Build Contractor Default.

19.2.10 Other Rights and Remedies. Subject to Sections 19.2.12 and 20.9, Developer shall also be entitled to exercise any other rights and remedies available under this Agreement, or available at Law or in equity.

19.2.11 Cumulative, Non-Exclusive Remedies. Subject to Sections 18.4, 19.2.12 and 20.9, each right and remedy of Developer hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or

beginning of the exercise by Developer of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Developer of any or all other such rights or remedies.

19.2.12 Limitation on Consequential Damages.

19.2.12.1 Notwithstanding any other provision of the DBC Documents and except as set forth in Section 19.2.12.2, to the extent permitted by applicable Law, Design-Build Contractor shall not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach by Design-Build Contractor of this Agreement or any other DBC Document, tort (including negligence) or any other theory of liability, and Developer releases Design-Build Contractor from any such liability.

19.2.12.2 The foregoing limitation on Design-Build Contractor's liability for consequential damages shall not apply to or limit any right of recovery Developer may have respecting the following:

(a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 17.1, (ii) covered by the proceeds of insurance actually carried by or insuring Design-Build Contractor under policies solely with respect to the East End Crossing and the D&C Work, regardless of whether required to be carried pursuant to Section 17.1, or (iii) Design-Build Contractor is deemed to have self-insured the Loss pursuant to Section 17.1.4.4;

(b) Losses arising out of or relating to fraud, criminal conduct, intentional misconduct (which does not include any intentional Design-Build Contractor Default), recklessness, bad faith or gross negligence on the part of any DBC-Related Entity;

(c) Design-Build Contractor's indemnities set forth in Sections 5.9.10 and 17.5 (only to the extent any such indemnities relate to claims, causes of action or Losses asserted by or awarded to third parties);

(d) Design-Build Contractor's obligation to pay liquidated damages in accordance with the DBC Documents;

(e) Losses arising out of or relating to Design-Build Contractor Releases of Hazardous Materials;

(f) Amounts Design-Build Contractor may owe or be obligated to reimburse to Developer under the express provisions of the DBC Documents, including, subject to any agreed scope of work and budget, Developer's Recoverable Costs;

(g) Interest, late charges, fees, transaction fees and charges, penalties and similar charges that the DBC Documents expressly state are due from Design-Build Contractor to Developer; and

(h) Any credits, deductions or offsets that the DBC Documents expressly provide to Developer against amounts owing Design-Build Contractor.

19.2.12.3 All insurance policies purchased shall be endorsed to provide coverage as if no limitation on Design-Build Contractor's liability for consequential damages exists.

19.2.13 [Not Used]

19.2.13A Liability Cap.

19.2.13A.1 Subject to Section 19.2.12 and except as set forth in Sections 19.2.13A.2 and 19.2.13A.3, in no event shall Design-Build Contractor be liable to Developer for an aggregate amount (including Delay Liquidated Damages paid pursuant to Section 10A.4) in excess of forty percent (40%) of the initial Contract Sum (the "**Liability Cap**").

19.2.13A.2 At any time, Design-Build Contractor, in it sole discretion, may elect by written notice to Developer to increase the then-current Liability Cap so as to avoid a Design-Build Contractor Default under Section 19.1.1.20.

19.2.13A.3 The foregoing limitation on Design-Build Contractor's liability shall not apply to or limit Developer's right of recovery respecting the following:

(a) liabilities that arise out of any sum recovered by the Design-Build Contractor through insurance required to be maintained by it pursuant to Article 17, by Developer, by IFA or by any other party, or which could have been recovered through insurance if the Design-Build Contractor had maintained the coverage required to be maintained by it pursuant to Article 17 or in respect of which Developer would have had insurance in place but for a breach of, or default under, Developer's insurance policy attributable to any Design-Build Contractor act;

(b) liabilities that arise out of third-party claims (other than from IFA or the Lenders) associated with the D&C Works (including any third-party claims for any damage or destruction of property or death or personal injury);

(c) liabilities that arise out of abandonment, willful default, willful misconduct, intentional disregard of Laws or fraud of or by the Design-Build Contractor;

(d) liabilities that arise out of any indemnities given by the Design-Build Contractor to Developer under this Agreement respecting any of the following:

(i) third party claims (other than from IFA or the Lenders);

(ii) personal injury or death; or

(iii) any third party Intellectual Property;

(e) fines and penalties under statute or any reasonable costs incurred by Developer or any Developer-Related Entity, and for which the Design-Build Contractor is liable to Developer or a Developer-Related Entity, in complying with statutory obligations or any order of a Governmental Authority; or

(f) any amount paid to Developer by Design-Build Contractor to the extent that the same is subsequently recovered by Design-Build Contractor from Developer or any Developer-Related Entity.

19.3 Default by Developer; Cure Periods.

19.3.1 Developer Default. Developer shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "Developer Default"):

19.3.1.1 Developer fails to make any payment due Design-Build Contractor under this Agreement when due, provided that such payment is not subject to a Dispute;

19.3.1.2 Any representation or warranty made by Developer under Section 18.2 is false, misleading or inaccurate in any material respect when made or omits material information when made;

19.3.1.3 Developer fails to observe or perform any other covenant, agreement, term or condition required to be observed or performed by Developer, or is in breach of any other obligation, under this Agreement;

19.3.1.4 [not used]

19.3.1.4A Any termination of the PPA under Section 20.3 of the PPA for Developer Default under the PPA Agreement, except if such Developer Default under the PPA has been caused by a Design-Build Contractor Default under, or Design-Build Contractor's breach of, this Agreement; or

19.3.1.4B Any Developer Act.

19.3.2 Cure Periods. Developer shall have the following cure periods with respect to the following Developer Defaults:

19.3.2.1 Respecting a Developer Default under Section 19.3.1.1, a period of forty-five (45) days after Design-Build Contractor delivers to Developer Notice of the Developer Default; and

19.3.2.2 Respecting a Developer Default under Section 19.3.1.2 or 19.3.1.3, a period of ninety (90) days after Design-Build Contractor delivers to Developer Notice of the Developer Default; provided that (a) if the Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and Developer has commenced meaningful steps to cure immediately after receiving the default Notice, Developer shall have such additional period of time, up to a maximum cure period of one hundred eighty (180) days, as is reasonably necessary to diligently effect cure, and (b) as to Section 19.3.1.2, cure will be regarded as complete when the adverse effects of the breach are cured.

19.4 Design-Build Contractor Remedies for Developer Default.

19.4.1 Termination. Subject to Section 20.9, Design-Build Contractor will have the right to terminate this Agreement and recover termination damages as more particularly set forth in, and subject to the terms and conditions of, Section 20.4.

19.4.2 Damages and Other Remedies. Design-Build Contractor shall have and may exercise the following remedies upon the occurrence of an Developer Default and expiration, without cure, of the applicable cure period.

19.4.2.1 Except with respect to a Pass Through Claim, Design-Build Contractor shall be entitled to compensation for Losses incurred due to a Developer Default.

19.4.2.2 If the Developer Default is a failure to pay when due any undisputed portion of the Contract Sum under Section 10A.1 or any undisputed portion of a progress payment owing under a Change Order and Developer fails to cure such Developer Default within forty-five (45) days after receiving from Design-Build Contractor Notice thereof, Design-Build Contractor shall be entitled to suspend Design Work and Construction Work, subject to the following terms and conditions:

(a) Design-Build Contractor shall be responsible for safely securing and monitoring the Site and all materials and equipment;

(b) Design-Build Contractor shall continue to provide traffic management in accordance with the Transportation Management Plan and Temporary Traffic Control Plan;

(c) The right to suspend D&C Work does not include the right to suspend or cancel Insurance Policies or any Payment Bond and Performance Security; and

(d) The suspension of D&C Work shall cease, and Design-Build Contractor shall resume performance of the D&C Work, within ten (10) days after the default is cured.

19.4.2.2A Unless the Developer Default is caused by an "IFA Default" under the PPA, Design-Build Contractor shall be entitled to compensation for Losses incurred during the 45-day cure period under Section 19.4.2.2 during which Developer has failed to make any such payment as described in Section 19.4.2.2.

19.4.2.3 Subject to Section 19.4.4 and except as specifically provided otherwise in this Agreement (including the first paragraph of Article 15 and Sections 19.4.2.4A and 20.9), Design-Build Contractor also shall be entitled to exercise any other remedies available under this Agreement or at Law or in equity, including offset rights to the extent and only to the extent available under Section 19.4.3.

19.4.2.4 Subject to Section 19.4.4 and except as specifically provided otherwise in this Agreement (including the first paragraph of Article 15 and Sections 19.4.2.4A and 20.9), each right and remedy of Design-Build Contractor hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Design-Build Contractor of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Design-Build Contractor of any or all other such rights or remedies.

19.4.2.4A Respecting a Developer Default under Section 19.3.1.4B, Design-Build Contractor's sole and exclusive remedy with respect to the Pass Through Claim shall be to recover from Developer the amount by which monetary relief for the applicable Pass Through Claim was lessened due to the Developer Act.

19.4.3 Offset Rights.

19.4.3.1 Design-Build Contractor may deduct and offset any Claim amount owing to it, provided such Claim amount is undisputed or has been fully and finally liquidated through Dispute Resolution Procedures or otherwise, from and against any amounts Design-Build Contractor may owe to Developer.

19.4.3.2 Except as specifically set forth in this Section, Design-Build Contractor shall have no rights of offset or deduction, whether available at Law or in equity, and Design-Build Contractor hereby irrevocably waives and releases any such rights.

19.4.4 Limitations on Remedies.

19.4.4.1 Notwithstanding any other provision of the DBC Documents and except as forth in Section 19.4.4.2, to the extent permitted by applicable Law, Developer shall not be liable for punitive damages or special, indirect or incidental consequential damages, whether arising out of breach of this Agreement, tort

(including negligence) or any other theory of liability, and Design-Build Contractor releases Developer from any such liability.

19.4.4.2 The foregoing limitation on Developer's liability for consequential damages shall not apply to or limit any right of recovery Design-Build Contractor may have respecting the following:

(a) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Developer Default), recklessness, bad faith or gross negligence on the part of Developer;

(b) [Not Used]

(c) Losses arising out of Developer Release(s) of Hazardous Materials;

(d) Any amounts Developer may owe or be obligated to reimburse under the express provisions of this Agreement for Relief Events or events of termination;

(e) Amounts Developer may owe or be obligated to reimburse to Design-Build Contractor under the express provisions of the DBC Documents;

(f) Interest and charges that the DBC Documents expressly state are due from Developer to Design-Build Contractor; and

(g) Any credits, deductions or offsets that the DBC Documents expressly provide to Design-Build Contractor against amounts owing Developer.

19.4.4.3 The measure of compensation available to Design-Build Contractor as set forth in this Agreement for an event of termination shall constitute the sole and exclusive monetary relief and damages available to Design-Build Contractor from Developer arising out of or relating to such event; and Design-Build Contractor irrevocably waives and releases any right to any other or additional damages or compensation from Developer. No award of compensation or damages shall be duplicative.

19.4.4.4 Design-Build Contractor shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against Developer, except (a) for any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Proprietary Intellectual Property in violation of the licenses granted under Section 23.4, or to specifically enforce Developer's duty of confidentiality under Section 23.4.6, (b) for declaratory relief pursuant to the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the DBC Documents, or (c) declaratory relief pursuant to the Dispute Resolution Procedures declaring specific terms and conditions that shall bind the

Parties, but only where this Agreement expressly calls for such a method of resolving a Dispute.

19.4.4.5 Without limiting the effect of Section 19.4.4.3 and notwithstanding Section 19.4.4.4, if Developer wrongfully withholds an approval or consent required under this Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Agreement, then (a) Design-Build Contractor's sole remedies against Developer shall be to submit a Claim for compensation for Losses incurred by Design-Build Contractor because of such event and (b) solely for the purposes of determining AP Delay Liquidated Damages under Section 10A.4.1, and not for any other purpose, the Scheduled DB Substantial Completion Date used for determining AP Delay Liquidated Damages shall be extended by the number of days of delay caused by such event.

19.4.4.6 Without limiting the effect of Section 19.4.4.3, Design-Build Contractor shall have no right to suspend D&C Work except as set forth in Section 19.4.2.2.

19.4.4.7 [Not Used]

19.5 Partnering.

19.5.1 [Not Used]

19.5.2 Design-Build Contractor acknowledges that, pursuant to Section 19.5.2 of the PPA, IFA and Developer have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under the PPA through a voluntary, non-binding "partnering" process drawing upon the strengths of each organization to identify and achieve reciprocal goals.

19.5.3 Design-Build Contractor acknowledges that the objectives of the partnering process are (a) to identify potential problem areas, issues and differences of opinion early, (b) to develop and implement procedures for resolving them in order to prevent them from becoming claims and disputes, (c) to achieve effective and efficient performance and completion of the Work in accordance with the PPA Documents, and (d) to create mutual trust and respect for each party's respective roles and interests in the East End Crossing while recognizing the respective risks inherent in those roles.

19.5.4 Design-Build Contractor acknowledges that in continuance of IFA's and Developer's existing partnering process, within ninety (90) days after the "Effective Date" of the PPA (as such term is defined under the PPA), IFA and Developer have agreed to attend a team-building workshop and through such workshop negotiate and sign a mutually acceptable non-binding partnering charter to govern the process of partnering for the East End Crossing. The charter will include non-binding rules and guidelines for engaging in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter will call for the formation and meetings of a partnering panel, identify the Key Personnel of Developer and key representatives of IFA who will serve on the partnering

panel, and set the location for meetings. The charter also will include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering panel meetings, who should attend such meetings, and, subject to Section 19.6.5 of the PPA, exchange of statements, materials and communications during partnering panel meetings. In any event, the partnering charter will recognize and be consistent with the obligations of IFA and Developer contained in the PPA with respect to communications, cooperation, coordination and procedures for resolving claims and disputes. Design-Build Contractor shall participate, as requested by Developer, in the partnering process, including by attending the team-building workshop and signing the partnering charter.

19.5.5 Under the non-binding procedures, rules and guidelines of the partnering charter, the parties thereto will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters.

19.5.6 Pursuant to Section 19.5.6 of the PPA, if Developer and IFA succeed in resolving a claim or dispute under the PPA through the partnering procedures, they have agreed to memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith. Developer will provide Design-Build Contractor with an opportunity to participate in such process.

19.6 Dispute Resolution Procedures.

19.6.1 Amicable Settlement.

19.6.1.1 The Parties will use all reasonable endeavors for a period of twenty (20) Business Days from the date on which the Notice of Dispute is served (or such longer period as may be agreed in writing between the Parties) to resolve the Dispute by amicable negotiation.

19.6.1.2 If a Dispute is not resolved in accordance with Section 19.6.1.1, it will be referred to the chief executive officer or equivalent of the Parties to resolve the Dispute by amicable negotiation, for a period of ten (10) Business Days from the expiry of the period prescribed in Section 19.6.1.1 (or such longer period as may be agreed in writing between the Parties).

19.6.2 Mediation. If a Dispute is not resolved in accordance with Section 19.6.1.2 prior to the expiration of the ten-Business Day period described thereunder, the Parties agree to submit the matter to settlement proceedings under the ADR Rules of the International Chamber of Commerce ("**ICC**"), save that, unless the Parties agree otherwise, the seat of the proceeding will be in Chicago, Illinois. If the Dispute has not been settled pursuant to the said Rules within forty-five (45) days following the filing of a Request for ADR or within such other period as the parties may agree in writing, the Dispute shall be finally settled in accordance with Section 19.6.3.

19.6.3 Arbitration.

19.6.3.1 Any Dispute, including a dispute as to the validity or existence of this Section 19.6.3, shall be finally resolved by arbitration conducted in the English language by three arbitrators (the "**Tribunal**") pursuant to the Rules of Arbitration of the ICC. The seat of the arbitration will be in Chicago, Illinois, and, unless the Parties agree otherwise, all testimonial hearings shall be held in Chicago, Illinois.

19.6.3.2 For the avoidance of doubt and without prejudice to the application of Article 10 of the Rules of Arbitration of the ICC, where there are multiple parties to an arbitration and the multiple claimants and/or defendants fail to agree a joint nomination of an arbitrator in accordance with Article 10.1 of the Rules of Arbitration of the ICC, such multiple claimants and/or defendants shall be treated as having consented to the Dispute being finally decided by the Tribunal that comprises the arbitrator nominated pursuant to Article 10.2 of the Rules of Arbitration of the ICC.

19.6.3.3 Any award and information relating to an arbitration arising out of this Agreement may be relied upon by any Party to the arbitration as evidence in connected proceedings without the consent of the Tribunal. For the avoidance of doubt, this Section 19.6.3.3 does not operate to the effect that an arbitral award rendered by one Tribunal is binding on another Tribunal.

ARTICLE 19A

EQUIVALENT PROJECT RELIEF

19A.1 General Provisions.

19A.1.1 Definitions.

19A.1.1.1 A "**Pass Through Claim**" means any claim that Design-Build Contractor may assert against Developer under this Agreement where Developer may assert a corresponding claim against IFA under the PPA, including (a) a claim for which the cause is a Relief Event, (b) a claim by Design-Build Contractor that Developer is in breach of this Agreement where such breach is caused by a breach by IFA of the PPA, and (c) a claim by Design-Build Contractor involving events or circumstances giving rise to a possible claim by Developer against IFA under the PPA or other remedies, compensation, reimbursement or for Developer under the PPA. Without limitation, Claims in connection with the payment of the Contract Sum are not Pass Through Claims.

19A.1.1.2 An "**IFA Claim**" means any claim that Developer may assert against Design-Build Contractor under this Agreement where IFA has asserted a corresponding claim against Developer under the PPA, including (a) a claim by IFA that Developer is in breach of the PPA where such breach is caused by a breach by Design-Build Contractor of this Agreement and (b) a claim by IFA involving events or circumstances giving rise to a possible claim by Developer against Design-Build

Contractor under this Agreement or other remedies, compensation, reimbursement or for Developer under this Agreement.

19A.1.1.3 A "**Corresponding PPA Claim**" means (a) with respect to a Pass Through Claim, the corresponding claim that Developer may assert against IFA under the PPA, as described in Section 19A.1.1.1, and (b) with respect to an IFA Claim, the corresponding claim that IFA has asserted against Developer under the PPA, as described in Section 19A.1.1.2.

19A.1.1.4 A "**PPA Dispute Proceeding**" means with respect to a Pass Through Claim or IFA Claim, the proceeding under the PPA by which the Corresponding PPA Claim is resolved.

19A.1.2 Purpose. The Parties acknowledge and agree that:

19A.1.2.1 Disputes, differences, or claims arising between IFA and Developer under the PPA may be concerned with matters that also arise in respect of the respective rights and obligations of Developer and Design-Build Contractor under the DBC Documents.

19A.1.2.2 Disputes, differences, or claims arising between Developer and Design-Build Contractor under the DBC Documents may be concerned with matters which also arise in respect of the respective rights and obligations of IFA and Developer under the PPA.

19A.1.2.3 A decision of IFA under the PPA may be concerned with matters that also arise in respect of the respective rights and obligations of Developer and Design-Build Contractor under the DBC Documents.

19A.1.2.4 Disputes with or claims against IFA, and matters concerning IFA decisions, actions, or omissions, must be conclusively resolved in accordance with the PPA Dispute Proceeding.

19A.2 Pass Through Claims (Claims to Be Brought Against IFA).

19A.2.1 Initial Notice. Design-Build Contractor shall give Notice to Developer as soon as reasonably practicable upon becoming aware of any events or circumstances giving rise to a possible Pass Through Claim and in any event within any applicable time periods required under this Agreement, including those in Article 15 if applicable.

19A.2.2 Procedures for Pass Through Claims.

19A.2.2.1 The Parties shall adhere to the procedures, requirements, and limitations set forth in Section 19A.4 and, if applicable, Article 15, with respect to the pursuit of the Corresponding PPA Claim against IFA.

19A.2.2.2 As between Developer and Design-Build Contractor, the resolution of a Pass Through Claim will not be subject to any Dispute Resolution Procedures under Section 19.6 or otherwise progressed, and all applicable time periods with respect to the resolution of such claim hereunder will be tolled, while the PPA Dispute Proceeding with respect to the Corresponding PPA Claim is pending. For the avoidance of doubt, to the extent that only a portion of a Claim by Design-Build Contractor against Developer is a Pass Through Claim, this Section 19A.2.2.2 applies only to the portion of such Claim that is a Pass Through Claim, and the balance of the Claim shall be resolved in accordance with Section 19.6.

19A.2.3 Effect of PPA Dispute Proceeding. With respect to its Pass Through Claim against Developer under the DBC Documents, Design-Build Contractor is bound by the resolution or final determination of the Corresponding PPA Claim under the PPA. For the avoidance of doubt, to the extent that only a portion of a Claim by Design-Build Contractor against Developer is a Pass Through Claim, this Section 19A.2.3 and Section 19A.2.4 apply only to the portion of such Claim that is a Pass Through Claim, and resolution or final determination of a Corresponding PPA Claim under the PPA does not bind Design-Build Contractor with respect to resolution of a Claim under this Agreement with respect to a Developer Act. Design-Build Contractor may not recover from Developer for Losses incurred with respect to a Developer Act to the extent Design-Build Contractor recovers for such Losses with respect to a Pass Through Claim.

19A.2.4 Recovery. Where a Pass Through Claim arises, Design-Build Contractor acknowledges that Developer has certain remedies or entitlements under the PPA with respect to the Corresponding PPA Claim. The purpose of this Section 19A.2 and Article 15, notwithstanding any other provisions of this Agreement, is to provide Design-Build Contractor comparable remedies or entitlements in respect of Pass Through Claims and to limit Design-Build Contractor's rights and entitlements against Developer in respect of Pass Through Claims by reference to Developer's rights and entitlements under or in connection with the PPA. These comparable remedies and entitlements from IFA are CONDITIONS PRECEDENT to Developer's obligations to Design-Build Contractor and Design-Build Contractor's corresponding remedies and entitlements, as determined pursuant to this Article 19A, are referred to as "**Equivalent Project Relief**". The Parties acknowledge and agree that the purpose of this Section 19A.2.4 is not to reduce or disentitle or otherwise affect the validity or entitlement of any claim by Developer against IFA under, arising out of, or in connection with the PPA. In respect of all Pass Through Claims:

19A.2.4.1 Design-Build Contractor shall be entitled to, and Developer's liability shall be limited to, whatever compensation, monetary relief, schedule relief, or other remedy that Developer actually recovers from IFA under the PPA with respect to the Corresponding PPA Claim (provided that Design-Build Contractor's entitlement to, and Developer's liability for, any interest, if any, shall be as provided in Section 10A.3.2.1), less the portion of such recovery, if any, not attributable to Design-Build Contractor's Loss under this Agreement (such as, for example, compensation for missed Availability Payments). The schedule relief to which Design-

Build Contractor is entitled shall be calculated subject to Section 15.4A.1, and the monetary relief to which Design-Build Contractor is entitled shall be calculated taking into account Design-Build Contractor's obligations to bear the cost of Claim Deductibles and insurance deductibles and the risk of receipt of insurance proceeds pursuant to this Agreement.

19A.2.4.2 Developer's liability to Design-Build Contractor shall be satisfied and discharged:

(a) by payment to Design-Build Contractor of the amount determined in accordance with Section 19A.2.4.1 and acknowledgment by Design-Build Contractor (which shall not be unreasonably withheld) that all proceedings under the PPA have been exhausted or the matter is otherwise settled; or

(b) if it is determined through a PPA Dispute Proceeding that IFA is not liable to Developer for the Corresponding PPP Claim, in which case Design-Build Contractor shall be bound by such determination of that matter and Developer shall be discharged of all liability to Design-Build Contractor in respect of such Pass Through Claim; provided that (i) Developer has complied with its obligations under this Section 19A.2 or Article 15, as applicable, and (ii) all appeals from such determination have been exhausted.

19A.2.4.3 To the extent that Design-Build Contractor has recovered compensation in respect of a Pass Through Claim under this Section 19A.2, Design-Build Contractor is not entitled to the compensation under any other provision of this Agreement for the same Pass Through Claim.

19A.2.4.4 Where IFA elects under the PPA to compensate Developer for Extra Work Costs and Delay Costs through "Deferral of Compensation" (as defined under the PPA), Developer shall compensate Design-Build Contractor for such Extra Work Costs and Delay Costs as progress payments invoiced as the applicable D&C Work is completed or, if the Parties agree, as a lump sum.

19A.2.4.5 With respect to Developer's obligation to make any payment to which Design-Build Contractor is entitled under this Section 19A.2 that is a payment for Extra Work Costs or Delay Costs:

(a) Developer's payment obligation does not arise until all of the applicable requirements and processes of Article 10A have been satisfied and completed;

(b) except as provided in Section 19A.2.4.5(c), Developer's payment obligation does not arise until Developer's receipt of such amount from IFA under the PPA; and

(c) where IFA has elected under the PPA to compensate Developer by a "Deferral of Compensation" (as defined under the PPA), Developer's payment obligation does not arise until the determination under the PPA of the quantum

attributed to such Extra Work Costs or Delay Costs for the purposes of determining the additional compensation to Developer the PPA to restore Developer's financial balance as a result of such "Deferral of Compensation".

19A.2.4.6 Subject to Sections 19A.2.4.4 and 19A.2.4.5 with respect to Extra Work Costs and Delay Costs, any payment to which Design-Build Contractor is entitled under this Section 19A.2 shall be paid by Developer to Design-Build Contractor within ten Business Days after resolution or settlement of the Corresponding PPA Claim; provided that, if Developer is entitled to be paid or granted any amount in respect of such Corresponding PPA Claim, Developer's obligation to make payment to Design-Build Contractor does not arise until Developer's receipt of such amount from IFA under the PPA.

19A.3 IFA Claims (Claims Brought by IFA).

19A.3.1 Initial Notice. Each Party shall give Notice to the other Party as soon as reasonably practicable upon becoming aware of any events or circumstances giving rise to a possible IFA Claim.

19A.3.2 Procedures for IFA Claims.

19A.3.2.1 The Parties shall adhere to the procedures, requirements, and limitations set forth in Section 19A.4 with respect to the pursuit of the Corresponding PPA Claim against IFA.

19A.3.2.2 As between Developer and Design-Build Contractor, the resolution of an IFA Claim will not be subject to any Dispute Resolution Procedures under Section 19.6 or otherwise progressed, and all applicable time periods with respect to the resolution of such claim hereunder will be tolled, while the PPA Dispute Proceeding with respect to the Corresponding PPA Claim is pending. For the avoidance of doubt, to the extent that only a portion of a claim by Developer against Design-Build Contractor is an IFA Claim, this Section 19A.3.2.2 applies only to the portion of such claim that is an IFA Claim, and the balance of the claim shall be resolved in accordance with Section 19.6.

19A.3.3 Effect of PPA Dispute Proceeding. With respect to any IFA Claim brought by Developer under the DBC Documents, each of Developer and Design-Build Contractor shall be bound by the resolution or final determination of the Corresponding PPA Claim under the PPA. For the avoidance of doubt, to the extent that only a portion of a claim by Developer against Design-Build Contractor is an IFA Claim, this Section 19A.3.3 applies only to the portion of such claim that is an IFA Claim.

19A.3.4 Indemnity Relating to IFA Claims. In the event of an award rendered between IFA and Developer under the PPA with respect to a Corresponding PPA Claim, pursuant to which Developer is liable in any respect whatsoever, Design Build Contractor will forthwith on demand indemnify Developer in full in respect of such liability.

19A.4 PPA Dispute Proceedings. The provisions of this Section 19A.4 apply in connection with a Pass Through Claim or IFA Claim.

19A.4.1 Election of Party to Pursue Claim.

19A.4.1.1 With respect to any Pass Through Claim, Developer, in consultation with Design-Build Contractor, shall elect whether (a) Design-Build Contractor (in the name of Developer) will pursue the Corresponding PPA Claim under the PPA, in which case Section 19A.4.2 shall apply, or (b) Developer will pursue the Corresponding PPA Claim under the PPA, in which case Section 19A.4.3 shall apply. Notwithstanding the foregoing or anything in this Agreement to the contrary, Developer shall not be obliged to submit to IFA or otherwise pursue (or permit Design-Build Contractor to pursue in the name of Developer) a Pass Through Claim if (a) such claim is manifestly frivolous or vexatious or (b) Developer compensates Design-Build Contractor for its Claim under this Agreement (the amount of such compensation to be reasonably determined by Developer, subject to Dispute Resolution Procedures if Design-Build Contractor disagrees with Developer's determination).

19A.4.1.2 With respect to any IFA Claim, Developer, acting reasonably in consultation with Design-Build Contractor, shall elect whether (a) Design-Build Contractor (in the name of Developer) will challenge and defend against the Corresponding PPA Claim under the PPA, in which case Section 19A.4.2 shall apply, or (b) Developer will challenge and defend against the Corresponding PPA Claim under the PPA, in which case Section 19A.4.3 shall apply

19A.4.1.3 If Developer has elected under this Section 19A.4.1 that Section 19A.4.2 shall apply in relation to a Pass Through Claim or IFA Claim, Developer shall be entitled, in consultation with Design-Build Contractor, to revoke such election only where it is reasonable for Developer to do so. Upon any such revocation, the provisions of Section 19A.4.3 shall apply as of and after the date of such revocation.

19A.4.2 Delegation to Design-Build Contractor. If this Section 19A.4.2 applies (as determined under Section 19A.4.1):

19A.4.2.1 Design-Build Contractor (in the name of Developer) shall pursue, or challenge and defend against, as the case may be, the Corresponding PPA Claim, in each case in the manner and within the time limits prescribed therefor in the PPA and in such a manner as not to prejudice or affect the rights, remedies, and obligations of Developer in relation to IFA.

19A.4.2.2 Developer will be entitled to attend any meetings between IFA and Design-Build Contractor at which Corresponding PPA Claim is being discussed.

19A.4.2.3 Subject to Section 19A.4.7, Developer will provide such assistance to Design-Build Contractor as Design-Build Contractor may reasonably require in relation to the Corresponding PPA Claim.

19A.4.3 Pursuit of Claim by Developer. If this Section 19A.4.3 applies (as determined under Section 19A.4.1):

19A.4.3.1 Developer will use all reasonable endeavors to pursue, or challenge and defend against, as the case may be, the Corresponding PPA Claim.

19A.4.3.2 Design-Build Contractor will be entitled to attend any meetings between IFA and Developer at which the Corresponding PPA Claim is being discussed.

19A.4.3.3 Subject to Section 19A.4.7, Design-Build Contractor will provide such assistance to Developer as Developer may reasonably require in relation to the Corresponding PPA Claim.

19A.4.4 Obligation to Initiate Certain Disputes. Except as provided in Section 19A.4.1.1, Developer shall, at Design-Build Contractor's request, dispute any decision of IFA under the PPA (or in accordance with Sections 19A.4.1 and 19A.4.2, permit Design-Build Contractor to dispute such decision in the name of Developer) where, in Design-Build Contractor's reasonable opinion, IFA's decision adversely affects, or could with the passing of time adversely affect, Design-Build Contractor's rights or liabilities, or ability or capacity to undertake (or the cost or time of undertaking) its obligations, under this Agreement or the DBC Documents.

19A.4.5 Cooperation; Communication; Strategy. For each PPA Dispute Proceeding:

19A.4.5.1 Design-Build Contractor and Developer must co-operate fully with, and reasonably assist, each other in the negotiations and resolution of the dispute or claim under the PPA.

19A.4.5.2 Design-Build Contractor and Developer must provide each other with copies of all relevant documents and information in relation to such PPA Dispute Proceeding.

19A.4.6 Resolution or Settlement. Developer may agree with IFA to a resolution or settlement of any Corresponding PPA Claim in the course of the PPA Dispute Proceeding, subject to the following:

19A.4.6.1 With respect to any PPA Dispute Proceeding that relates solely to a Pass Through Claim of Design-Build Contractor and does not involve any claim by Developer, Design-Build Contractor and Developer shall jointly decide and direct Developer's resolution or settlement of the Corresponding PPA Claim, and Developer shall not agree to a resolution or settlement of the Corresponding PPA Claim without Design-Build Contractor's written consent; provided that Developer and Design-Build Contractor shall jointly approve the resolution or settlement as it relates to the method of payment by IFA for any Pass Through Claim proceeds.

19A.4.6.2 With respect to any other PPA Dispute Proceeding ***not*** described in Section 19A.4.6.1, Developer must obtain Design-Build Contractor's prior written consent, which consent shall not be unreasonably withheld or delayed, before agreeing with IFA to a resolution or settlement of the Corresponding PPA Claim.

19A.4.7 Costs and Expenses.

19A.4.7.1 With respect to any PPA Dispute Proceeding that relates solely to a Pass Through Claim of Design-Build Contractor and does not involve any claim by Developer, or that relates solely to an IFA Claim caused by a Design-Build Contractor Default, the costs and expenses, including attorneys' fees and expert fees, incurred in relation to the PPA Dispute Proceeding, including such reasonable costs and expenses incurred by Developer (provided that Developer shall mitigate, and not unnecessarily duplicate, its costs and expenses), shall be borne solely by Design-Build Contractor.

19A.4.7.2 With respect to any other PPA Dispute Proceeding ***not*** described in Section 19A.4.7.1, each of the Parties will bear its own costs and expenses, including attorneys' fees and expert fees, incurred in relation to the PPA Dispute Proceeding.

ARTICLE 20

TERMINATION

20.1 Termination Following an IFA-Fault PPA Termination. Upon any termination of the PPA under Sections 20.1 or 20.4 of the PPA, Developer may terminate this Agreement as of an Early Termination Date as described in Section 1 of Exhibit 22; and Design-Build Contractor will be entitled to compensation determined in accordance with Section 1 of Exhibit 22. Payment will be due and payable as and when provided in Section 1 of Exhibit 22. Termination of this Agreement shall not relieve Developer or Design-Build Contractor or any DBC Parent Guarantor or surety of its obligation for any payments due or claims arising from the D&C Work performed prior to such termination. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.2 Termination Following a No-Fault PPA Termination. Upon any termination of the PPA under Sections 20.2 or 20.5 of the PPA, Developer may terminate this Agreement as of an Early Termination Date as described in Section 2 of Exhibit 22; and Design-Build Contractor will be entitled to compensation determined in accordance with Section 2 of Exhibit 22. Payment will be due and payable as and when provided in Section 2 of Exhibit 22. Termination of this Agreement shall not relieve Developer or Design-Build Contractor or any DBC Parent Guarantor or surety of its obligation for any payments due or claims arising from the D&C Work performed prior to such termination. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.3 Termination for Design-Build Contractor Default. Design-Build Contractor agrees, acknowledges and stipulates that any of the following Design-Build Contractor Defaults would result in material and substantial harm to Developer's rights and interests under this Agreement and therefore constitute a material Design-Build Contractor Default justifying termination if not cured within the applicable cure period, if any. After expiration of the applicable cure period (if any) provided to Design-Build Contractor under this Agreement, the following Design-Build Contractor Defaults (each a "**Default Termination Event**") shall entitle Developer, at its sole election, to terminate this Agreement and the other DBC Documents by delivering Notice of termination to Design-Build Contractor. Termination of this Agreement shall not relieve Developer or Design-Build Contractor or any DBC Parent Guarantor or surety of its obligation for any payments due or claims arising from the D&C Work performed prior to such termination. Termination shall be effective as of an Early Termination Date as described in Section 3 of Exhibit 22; and, subject to Section 19.2.13A, Developer will be entitled to damages determined in accordance with Section 3 of Exhibit 22. Payment will be due and payable as and when provided in Section 3 of Exhibit 22. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.3.1 There occurs any Design-Build Contractor Default under Section 19.1.1.1, 19.1.1.2, 19.1.1.3(a), 19.1.1.5 (but only for a material failure to pay or deposit), 19.1.1.7 (but only for a material violation of this Agreement, the Technical Provisions, Governmental Approvals or Laws, as determined by Developer in its good faith discretion), 19.1.1.11, 19.1.1.14, 19.1.1.15, 19.1.1.16, 19.1.1.18, 19.1.1.20, 19.1.1.21, 19.1.1.22 (but only if the unpaid amount exceeds [redacted]) or 19.1.1.23; or

20.3.2 There occurs any other Design-Build Contractor Default for which Developer issues a Warning Notice under Section 19.2.9 and such Design-Build Contractor Default is not fully and completely cured within the applicable cure period, if any, set forth in Section 19.2.2.

20.4 Termination for Developer Default, Suspension of D&C Work or Delayed Notice to Proceed.

20.4.1 In the event of a Developer Default under Section 19.3.1.1 that if not cured would result in material and substantial harm to Design-Build Contractor's rights and interests under this Agreement and that remains uncured following Notice and expiration of the applicable cure period under Section 19.3.2, or in the event of a Developer Default under Section 19.3.1.4A, Design-Build Contractor may deliver to Developer a further Notice setting forth such Developer Default and warning Developer that Design-Build Contractor may elect to terminate this Agreement if Developer does not cure such Developer Default within 30 days after the delivery of such Notice. Developer may avoid termination by effecting cure within such 30-day period. Failing such cure, Design-Build Contractor shall have the right to terminate this Agreement, effective as of an Early Termination Date as described in Section 4 of Exhibit 22.

20.4.2 In the event of a Developer Default under Section 19.3.1.3 that remains uncured following Notice and expiration of the applicable cure period under Section 19.3.2, Design-Build Contractor shall have the right to terminate this Agreement, effective immediately upon delivery of Notice of termination to Developer.

20.4.3 Upon termination of this Agreement under this Section 20.4, Design-Build Contractor will be entitled to compensation determined in accordance with Section 4 of Exhibit 22. Payment will be due and payable as and when provided in Section 4 of Exhibit 22. Termination of this Agreement shall not relieve Developer or Design-Build Contractor or any DBC Parent Guarantor or surety of its obligation for any payments due or claims arising from the D&C Work performed prior to such termination. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.4.4 Notwithstanding the foregoing, this Section 20.4 shall have no effect where, at the time such right to terminate would arise, circumstances exist entitling either Party to terminate under Section 20.1, 20.2, 20.3 or 20.6.

20.5 [Not Used]

20.6 Termination for Failure of Financial Close.

20.6.1 Upon any termination of the PPA under Section 20.6.1 of the PPA, Developer may terminate this Agreement as of an Early Termination Date as described in Section 6.1 of Exhibit 22; and Design-Build Contractor will be entitled to compensation determined in accordance with Section 6.1 of Exhibit 22. Payment will be due and payable as and when provided in Section 6.1 of Exhibit 22. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.6.2 Upon any termination of the PPA under Section 20.6.2 of the PPA, Developer may terminate this Agreement as of an Early Termination Date as described in Section 6.2 of Exhibit 22; and Design-Build Contractor will be entitled to compensation determined in accordance with Section 6.2 of Exhibit 22. Payment will be due and payable as and when provided in Section 6.2 of Exhibit 22. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

20.7 Termination Procedures and Duties. Upon expiration of the DBC Term, the provisions of this Section 20.7 shall apply. Design-Build Contractor shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Developer or Design-Build Contractor on account of termination.

20.7.1 Performance of D&C Work Pending Early Termination Date. In any case where Notice of termination precedes the effective Early Termination Date, Design-Build Contractor shall continue performing the D&C Work in accordance with,

and without excuse from, all the standards, requirements and provisions of the DBC Documents, and without curtailment of services, quality and performance.

20.7.2 Transition Plan.

20.7.2.1 Not later than ninety (90) days prior to expiration of the DBC Term, or, if applicable, within three (3) days after Design-Build Contractor receives or delivers a Notice of termination, Design-Build Contractor shall meet and confer with Developer for the purpose of developing a transition plan for the orderly transition of D&C Work and demobilization. The Parties shall use diligent efforts to complete preparation of the transition plan not later than thirty (30) days prior to expiration of the DBC Term or, if applicable, within fifteen (15) days after the date Design-Build Contractor receives or delivers the Notice of termination.

20.7.2.2 Design-Build Contractor acknowledges the corresponding obligations of Developer under Section 20.7.2 of the PPA to deliver a transition plan to IFA in connection with expiration or early termination of the PPA. Unless this Agreement has already expired or terminated or until three (3) years after the Substantial Completion Date (whichever is sooner), Design-Build Contractor shall assist Developer is preparing and implementing such transition plan in accordance with Developer's obligations under Section 20.7.2 of the PPA.

20.7.3 Relinquishment and Possession of East End Crossing. On the Termination Date, or as soon thereafter as is possible or as is provided in the approved transition plan, Design-Build Contractor shall relinquish and surrender all management, custody and control of the East End Crossing, including the TCS, and Project Right of Way, to Developer, IFA or IFA's Authorized Representative, as may be applicable, and shall cause all persons and entities claiming under or through Design-Build Contractor to do likewise, in at least the condition required by the Handback Requirements.

20.7.4 Continuance or Termination of Key Contracts Prior to Work Completion.

20.7.4.1 If as of the Termination Date Design-Build Contractor has not completed the D&C Work, in whole or in part, Developer shall elect, by Notice to Design-Build Contractor not later than thirty (30) days after the Termination Date, to continue in effect the relevant DBC Key Contracts or to require their termination. Developer may elect to keep certain DBC Key Contracts in effect and require termination of other DBC Key Contracts. If Developer does not deliver Notice of election within such time period, Developer shall be deemed to elect to require termination of the applicable DBC Key Contract(s). If Developer elects to continue any DBC Key Contracts, then Design-Build Contractor shall execute and deliver to Developer a written assignment, in form and substance acceptable to Developer, acting reasonably, of all Design-Build Contractor's right, title and interest in and to such DBC Key Contracts, and Developer shall assume in writing Design-Build Contractor's obligations thereunder that arise from and after the later of the Termination Date or the effective date of assignment.

20.7.4.2 If Developer elects (or is deemed to elect) to require termination of any DBC Key Contracts, then Design-Build Contractor shall:

(a) Take such steps as are necessary to terminate the relevant DBC Key Contracts, including notifying each DBC Key Contractor that its DBC Key Contract is being terminated and that each of them is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by Developer;

(b) Immediately demobilize and secure in a safe manner Project Specific Locations, Toll Collection System Locations and any other staging, lay down and storage areas used by such DBC Key Contractors for the East End Crossing in a manner satisfactory to Developer, and remove all debris and waste materials (including Hazardous Materials that are in the process of removal) except as otherwise approved by Developer in writing;

(c) Take such other actions as are necessary or appropriate to mitigate further cost;

(d) Subject to Developer's reasonable prior written approval, settle all outstanding liabilities and all claims arising out of such DBC Key Contracts;

(e) As a condition to Design-Build Contractor receiving all payments required to be paid by Developer under Article 20 and pursuant to the requirements of the transition plan, cause each of the DBC Key Contractors to execute and deliver to Developer a written assignment, in form and substance acceptable to Developer, acting reasonably, of all of their right, title and interest in and to (i) all Governmental Approvals, Utility Agreements and other third party agreements and permits pertaining to the East End Crossing or the D&C Work, including for the TCS or Toll Collection System Locations, except subcontracts for performance of the D&C Work, provided Developer assumes in writing all of the DBC Key Contractor's obligations thereunder that arise after the Termination Date, and (ii) all warranties, to the extent assignable, claims and causes of action held by each of them against subcontractors and other third parties pertaining to the East End Crossing or the Work; and

(f) As a condition to Design-Build Contractor receiving all payments required to be paid by Developer under Article 20 and pursuant to the requirements of the transition plan, carry out such other directions as Developer may give for termination of the D&C Work in accordance with the transition plan.

20.7.5 [Not Used]

20.7.6 Other Close-Out Activities.

20.7.6.1 Not later than ninety (90) days prior to the expiration of the DBC Term, or within thirty (30) days after any earlier Notice of termination is delivered, Design-Build Contractor shall provide Developer with a true and complete list

of all materials, goods, machinery, equipment, hardware, parts, supplies and other tangible property in inventory or storage (whether held by Design-Build Contractor or any Person on behalf of or for the account of Design-Build Contractor) for use in or respecting the D&C Work or the East End Crossing, including the TCS, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the D&C Work or the East End Crossing, including the TCS. In addition, on or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Design-Build Contractor shall transfer title through bills of sale or other documents of title, as directed by Developer, and deliver to Developer or Developer's Authorized Representative, all such materials, goods, machinery, equipment, hardware, parts, supplies and other property, provided Developer assumes in writing all of Design-Build Contractor's obligations under any contracts relating to the foregoing that arise after the later of the Termination Date or the effective date of the transfer.

20.7.6.2 Not later than ninety (90) days prior to the expiration of the DBC Term, or within thirty (30) days after any earlier Notice of termination is delivered, Design-Build Contractor shall provide Developer with a true and complete list of all the data and documents identified in this Section 20.7.6.2. On or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Design-Build Contractor shall deliver to Developer the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to Developer, acting reasonably, assigning and transferring to Developer all right, title and interest of Design-Build Contractor and its Contractors in and to the following:

(a) All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, Record Drawings, plans, surveys, and other documents and information pertaining to the design or construction of the East End Crossing or the Utility Adjustments, free of any intellectual property rights or claims of Design-Build Contractor or any Contractor;

(b) All samples, borings, boring logs, geotechnical data and similar data and information relating to the East End Crossing or Project Right of Way;

(c) All Books and Records, reports, test reports, studies and other documents of a similar nature relating to the Work, the East End Crossing or the Project Right of Way; and

(d) All other work product and other Intellectual Property used or owned by Design-Build Contractor or any Affiliate relating to the Work, the East End Crossing or the Project Right of Way, provided that the transfer of any such Intellectual Property shall be subject to Sections 23.4 and 23.5.

20.7.6.3 Design-Build Contractor shall take all action that may be necessary, or that Developer may direct, for the protection and preservation of the East

End Crossing, the Work and such materials, goods, machinery, equipment, hardware, parts, supplies, data, documentation and other property.

20.7.6.4 [Not Used]

20.7.6.5 On or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Design-Build Contractor shall execute and deliver to Developer a written assignment, in form and substance acceptable to Developer, acting reasonably, all of Design-Build Contractor's right, title and interest in and to any Intellectual Property Escrows or similar arrangements for the protection source code or source code documentation of others used for or relating to the East End Crossing or the Work.

20.7.6.6 On or about the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Design-Build Contractor shall execute and deliver to Developer a written assignment, in form and substance acceptable to Developer, acting reasonably, of all Design-Build Contractor's right, title and interest in and to all warranties, claims and causes of action held by Design-Build Contractor against third parties in connection with the East End Crossing or the D&C Work, including claims under casualty and business interruption insurance.

20.7.6.7 Design-Build Contractor shall otherwise assist Developer in such manner as Developer may require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of management, maintenance, operation and control of the East End Crossing, including the TCS, to Developer, and shall, if appropriate and if requested by Developer, take all steps as may be necessary to enforce the provisions of the DBC Key Contracts pertaining to the surrender of East End Crossing management, maintenance, operation and control.

20.7.6.8 For a period of four (4) years following the Termination Date, Design-Build Contractor shall maintain a secure archive copy of all electronic data transferred to Developer.

20.7.6.9 All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by Design-Build Contractor prior to execution of this Agreement, but specifically developed under this Agreement shall be considered "work for hire" and Design-Build Contractor transfers any ownership claim to Developer and all such materials will be the property of Developer. Use of these materials, other than related to contract performance by Design-Build Contractor, without the prior written consent of Developer, is prohibited. During the performance of this Agreement, Design-Build Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by Developer and used to develop or assist in the services provided while the materials are in the possession of Design-Build Contractor. Any loss or damage thereto shall be restored at Design-Build Contractor's expense. Design-Build Contractor shall provide full, immediate, and unrestricted access to the work product during the term of this Agreement.

20.7.7 Compensation; Proration of Costs.

20.7.7.1 From and after the Termination Date, even though Design-Build Contractor may be continuing services temporarily pursuant to a transition plan, Design-Build Contractor shall cease to have any right to compensation, except for compensation accrued and owing prior to the Termination Date.

20.7.7.2 Within ninety (90) days after the Termination Date, the Parties shall adjust and prorate as of the Termination Date costs of operation and maintenance of the East End Crossing, including utility costs and deposits. If the Parties do not have complete or accurate information by such date, they shall make the adjustment and proration using a good faith estimate, and thereafter promptly readjust when the complete and accurate information is obtained. The Parties acknowledge that certain adjustments or readjustments may depend on receipt of bills, invoices or other information from a third party, and that the third party may delay in providing such information. Any readjustment necessary only because of error in calculation and not due to lack of complete and accurate information shall be irrevocably waived unless the Party seeking readjustment delivers written request therefor to the other Party not later than one hundred eighty (180) days following the Termination Date.

20.8 Effect of Termination.

20.8.1 Cessation of Developer's Interest and Liens and Encumbrances. Termination of this Agreement under any provision of this Article 20 shall automatically cause, as of the Termination Date, the cessation of any and all rights or interest of Design-Build Contractor, tangible and intangible, in or with respect to the East End Crossing, the Project Right of Way, and the Project Right of Entry. Thereupon, Design-Build Contractor shall cause the East End Crossing, the Project Right of Way, and the Project Right of Entry to be and remain free and clear of any lien or encumbrance created, permitted or suffered by Design-Build Contractor or anyone claiming by, through or under Design-Build Contractor.

20.8.2 [Not Used]

20.8.3 Contracts and Agreements. Regardless of Developer's prior actual or constructive knowledge thereof, no Contract or agreement, including agreements regarding TCS Locations and equipment, to which Design-Build Contractor is a party as of the Termination Date shall bind Developer or IFA, unless Developer or IFA, as applicable, elects to assume such Contract or agreement in writing. Except in the case of Developer's or IFA's express written assumption, no such Contract or agreement shall entitle the contracting party to continue performance of work or services respecting the East End Crossing following Design-Build Contractor's relinquishment to Developer or IFA of East End Crossing management, custody and control, or to any claim, legal or equitable, against Developer or IFA, as applicable.

20.9 Liability after Termination; Final Release.

20.9.1 No termination of this Agreement shall excuse either Party from any liability arising out of any default as provided in this Agreement that occurred prior to termination. Notwithstanding the foregoing, any termination of this Agreement under Section 20.3, 20.5 or 20.6 shall automatically extinguish any Claim of Design-Build Contractor to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date from Relief Events that occurred prior to termination.

20.9.2 [Not Used].

20.9.3 Subject to Section 20.9.1, if this Agreement is earlier terminated for any reason, then Developer's payment to Design-Build Contractor of the amounts required under this Agreement (if any) shall constitute full and final satisfaction of, and upon payment Developer shall be forever released and discharged from, any and all Claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Design-Build Contractor may have against Developer arising out of or relating to this Agreement or termination thereof, the other DBC Documents, or the East End Crossing, except for specific Claims and Disputes that are asserted by Design-Build Contractor in accordance with Section 19.6.3.1 not later than thirty (30) days after the effective date of termination, are unresolved at the time of such payment and are not related to termination or Termination Compensation. Upon such payment, Design-Build Contractor shall execute and deliver to Developer all such releases and discharges as Developer may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

20.10 Exclusive Termination Rights. This Article 20, together with the express provisions on termination set forth in Sections 19.2.1 and 19.4.1 and Articles 19A and 21, contain the entire and exclusive provisions and rights of Design-Build Contractor and Developer regarding termination of this Agreement, and any and all other rights to terminate at Law or in equity are hereby waived to the maximum extent permitted by Law.

20.11 Payment of Termination Compensation. If there exists as of the expiration of the DBC Term, any outstanding unpaid amount owing from one Party to the other Party, or any outstanding, unsatisfied claim for sums owing from one Party to the other Party, including any unpaid Termination Compensation, then such obligation or claim shall survive termination.

20.12 [Not Used]

20.13 Access to Information. Design-Build Contractor shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with Developer all data, documents and information pertaining thereto, on an Open Book Basis.

ARTICLE 21

LENDERS' RIGHTS

21.1 Conditions and Limitations Respecting Lenders' Rights. Design-Build Contractor acknowledges the provisions of Article 21 of the PPA. Any Security Document to which Design-Build Contractor is party shall not be valid or effective, or affect IFA or Developer in the enforcement of their respective rights and remedies, unless it strictly complies with the provisions of Article 21 of the PPA.

ARTICLE 22

ASSIGNMENT AND TRANSFER

22.1 Restrictions on Assignment and Other Transfers of Design-Build Contractor's Interest.

22.1.1 Design-Build Contractor shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber the Design-Build Contractor's Interest or any portion thereof without Developer's prior written approval in accordance with Section 22.3.

22.1.2 Design-Build Contractor shall not grant any special right of entry onto, use of, or right to manage and control the East End Crossing to any other Person that is not in the ordinary course of Design-Build Contractor performing the D&C Work, without Developer's prior written approval in accordance with Section 22.3.

22.1.3 Any purported voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control of the East End Crossing in violation of this Section 22.1 shall be null and void *ab initio* and Developer, at its option, may declare any such attempted action to be a material Design-Build Contractor Default.

22.2 [Not Used]

22.3 Standards and Procedures for Developer Approval. Where Developer's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control (each a "transaction"), Developer may withhold or condition its approval in its sole discretion. Any such decision of Developer to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

22.4 Assignment of PPA by IFA. Design-Build Contractor acknowledges the rights of IFA to assign all or any portion or its rights, title and interests in and to the East End Crossing, project Right of Way, PPA Documents, Payment Bonds and

Performance Security, guarantees, letters of credit and other security for payment or performance pursuant to, and subject to the limitations of, Section 22.4 of the PPA.

22.4A Assignment by Developer. Developer may assign all or any portion of its rights and interests in the DBC Documents, without Design-Build Contractor's consent, in accordance with Article 22 of the PPA.

22.5 [Not Used]

22.6 Change of Organization or Name.

22.6.1 Design-Build Contractor shall not change the legal form of its organization in a manner that adversely affects Developer's rights, protections and remedies under the DBC Documents without the prior written approval of Developer, which consent may be granted or withheld in Developer's sole discretion.

22.6.2 If either Party changes its name, such Party agrees to promptly furnish the other Party with Notice of change of name and appropriate supporting documentation.

ARTICLE 23

RECORDS AND AUDITS; INTELLECTUAL PROPERTY

23.1 Maintenance and Inspection of Records.

23.1.1 Design-Build Contractor shall keep and maintain in Indianapolis, Indiana, or in another location Developer approves in writing in its sole discretion, all Books and Records relating to the East End Crossing, Project Right of Way, Utility Adjustments and D&C Work, including copies of all original documents delivered to Developer and IFA. Design-Build Contractor shall keep and maintain such Books and Records in accordance with applicable provisions of the DBC Documents and PPA Documents, including the Technical Provisions, applicable provisions of the Project Management Plan, and in accordance with Good Industry Practice. Design-Build Contractor shall notify Developer where such records and documents are kept.

23.1.2 Without limiting the foregoing, Design-Build Contractor shall maintain accurate and complete all such Books and Records, as set forth in the Technical Provisions.

23.1.3 Design-Build Contractor shall make all its Books and Records available for inspection by IFA, Developer and their respective Authorized Representatives, designees and legal counsel. Design-Build Contractor shall make the same available at Design-Build Contractor's principal offices in Indiana, or pursuant to each Intellectual Property Escrow, at all times during normal business hours, or at other reasonable times, in each case, without charge, through the term of the DBC

Documents until the time set forth in Section 23.1.6. Design-Build Contractor shall furnish copies at no cost to IFA or Developer, if requested. Design-Build Contractor shall provide to IFA or Developer, or make available to IFA or Developer for review pursuant to each Intellectual Property Escrow, copies thereof as and when reasonably requested by IFA or Developer, without charge. Each of IFA and Developer may conduct any such inspection upon forty-eight (48) hours' prior Notice, or unannounced and without prior Notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. To avoid confusion, this paragraph shall remain in full force and effect regardless of whether either Party or both of the Parties have invoked the Dispute Resolution Procedures herein.

23.1.4 Design-Build Contractor shall retain all Books and Records for a minimum of three (3) years after the date of final payment under the DBC Documents; provided that if the DBC Documents specify any different time period for retention of particular records, such time period shall control, and if applicable Law specifies any longer period, such time period shall control. Any provision of the DBC Documents establishing a stated period for records retention means the period of time, as stated, after the date the record or document is generated, unless specifically provided otherwise. Notwithstanding the foregoing, all records which relate to Claims and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Claims, Disputes and actions are finally resolved.

23.1.5 Design-Build Contractor shall permit Developer, upon ten (10) days' prior Notice to Design-Build Contractor (which Notice shall identify the persons the Developer requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of Design-Build Contractor under this Agreement with any of the directors, chief executive officer and chief financial officer of Design-Build Contractor or its Representatives, for the purpose of enabling Developer to determine whether Design-Build Contractor is in compliance with this Agreement and applicable Law. To avoid confusion, this paragraph shall remain in full force and effect regardless of whether either Party or both of the Parties have invoked the Dispute Resolution Procedures herein.

23.1.6 Refer to Attachment 1 to Exhibit 23 (Federal Requirements) regarding applicable federal requirements in respect of maintenance and inspection of Books and Records, with which Design-Build Contractor shall comply.

23.1.7 The provisions of Section 3.5.3 apply to those Books and Records that Design-Build Contractor deems confidential or proprietary.

23.2 Audits.

23.2.1 Developer shall have such rights to review and audit Design-Build Contractor, its Contractors and their respective Books and Records as and when Developer deems necessary for purposes of verifying compliance with the DBC Documents and applicable Law and verifying Claims. Without limiting the foregoing:

23.2.1.1 Developer shall have the right to audit Design-Build Contractor's Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation;

23.2.1.2 The audits may be performed by employees of Developer or by an auditor under contract with Developer;

23.2.1.3 Design-Build Contractor, Contractors or their agents shall provide adequate facilities, acceptable to Developer, for the audits;

23.2.1.4 Design-Build Contractor shall allow auditor(s) access to such Books and Records during normal business hours, allow interviews of any employee who might have information related to such Books and Records, and otherwise cooperate with the auditors; and

23.2.1.5 Design-Build Contractor shall cause each Contract to include a similar right of the State to audit records and interview staff of the Contractor, and a similar covenant to cooperate with the auditors.

23.2.1.6 Refer to Section 1.5.2.5 of the Technical Provisions regarding audits of performance of the activities set forth in the Project Management Plan, including the Public Involvement Plan.

23.2.2 Developer may conduct any such audit of Books and Records as follows:

23.2.2.1 In the case of an audit of a Claim, at any time following the filing of the Claim, without Notice for an audit commenced any time before sixty (60) days after the expiration of the DBC Term, and with five (5) days' prior Notice to Design-Build Contractor, any Contractors or their respective agents for an audit commenced thereafter; and

23.2.2.2 In the case of any other audit, upon forty-eight (48) hours' prior Notice, or unannounced and without prior Notice where there is good faith suspicion of fraud.

23.2.3 Failure of Design-Build Contractor, Contractors or their agents to maintain and retain sufficient Books and Records to allow the auditors to verify all or a portion of a Claim or to permit the auditor access to its Books and Records to verify a Claim shall constitute a waiver of the Claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents relating to the Claim:

23.2.3.1 Daily time sheets and supervisor's daily reports;

23.2.3.2 Union agreements;

23.2.3.3 Insurance, welfare, and benefits records;

23.2.3.4 Payroll registers;

23.2.3.5 Earnings records;

23.2.3.6 Payroll tax forms;

23.2.3.7 Material invoices and requisitions;

23.2.3.8 Material cost distribution work sheet;

23.2.3.9 Equipment records (list of company equipment, rates, etc.);

23.2.3.10 Contractors' (including Suppliers') invoices;

23.2.3.11 Contractors' and agents' payment certificates;

23.2.3.12 Canceled checks (payroll and Suppliers);

23.2.3.13 Job cost report;

23.2.3.14 Job payroll ledger;

23.2.3.15 General ledger;

23.2.3.16 Cash disbursements journal;

23.2.3.17 All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and

23.2.3.18 Work sheets used to prepare the Claim establishing (a) the cost components of the Claim, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals, and (b) the lost revenue components of the Claim.

23.2.4 Full compliance by Design-Build Contractor with the provisions of Section 23.2.3 is a contractual condition precedent to Design-Build Contractor's right to seek relief on a Claim under Section 19.6.

23.2.5 Any rights of the federal government and any agency thereof, including FHWA, to review and audit Design-Build Contractor, its Contractors and their respective Books and Records are set forth in Exhibit 23 (Federal Requirements) and applicable Law. Without limiting the foregoing, the U.S. Comptroller General and his/her representatives shall have the authority to:

23.2.5.1 Examine any records of Design-Build Contractor or any of its Contractors, or any State or local government agency administering this Agreement, that directly pertain to and involve transactions relating to this Agreement or any Contract; and

23.2.5.2 Interview any officer or employee of Design-Build Contractor or any of its Contractors, or of any State or local government agency administering this Agreement, regarding such transactions.

23.2.6 Developer's rights of audit include the right to observe the business operations of Design-Build Contractor and its Contractors to confirm the accuracy of Books and Records.

23.2.7 Design-Build Contractor shall include in the Project Management Plan internal procedures to facilitate review and audit by Developer and, if applicable, FHWA.

23.2.8 Design-Build Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with Developer audits, and shall cause all Contractors to warrant the completeness and accuracy of all information such Contractors provide in connection with Developer audits.

23.2.9 Design-Build Contractor's internal and third-party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, consistent with the audit requirements referred to in Section 3.2.7 and described in Section 2.2 of the Technical Provisions. In addition, Design-Build Contractor shall perform Performance Inspections as set forth in Section 22 of the Technical Provisions.

23.2.10 Design-Build Contractor acknowledges the audit rights of IFA under Section 23.2 of the PPA and shall comply, and assist Developer in complying, any audit undertake by IFA in accordance therewith.

23.3 Public Records Act. Design-Build Contractor acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in Developer's possession, including materials submitted by Design-Build Contractor to Developer or IFA, may be subject to the provisions of the Public Records Act. Design-Build Contractor shall comply, and shall assist Developer in complying, with the procedures set forth in Section 23.3 of the PPA with respect to the public release or confidentiality of such information.

23.4 Intellectual Property.

23.4.1 Subject to Section 23.5, Design-Build Contractor shall deliver to Developer copies of all Proprietary Intellectual Property owned by Design-Build Contractor that it uses in providing the D&C Work. Except as provided otherwise in Section 20.7.6.2 or elsewhere in the DBC Documents, all Proprietary Intellectual Property, including with respect to Technology Enhancements, source code and source code documentation, shall remain exclusively the property of Design-Build Contractor or

its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to Developer.

23.4.2 Developer shall have and is hereby granted a perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary Intellectual Property of Design-Build Contractor, including with respect to Technology Enhancements, source code and source code documentation, solely in connection with the East End Crossing; provided that Developer shall have the right to exercise such license only at the following times:

23.4.2.1 From and after the expiration or earlier termination of the DBC Term for any reason whatsoever;

23.4.2.2 During any time that Developer is exercising its step-in rights pursuant to Section 19.2.2 or 19.2.4, in which case Developer may exercise such license only in connection with the East End Crossing;

23.4.2.3 During any time that a receiver is appointed for Design-Build Contractor, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Design-Build Contractor is the debtor; and

23.4.2.4 During any time that Design-Build Contractor has been replaced.

23.4.3 Developer shall have no right to sell any Proprietary Intellectual Property of Design-Build Contractor or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any purpose other than as set forth in Section 23.4.2.

23.4.4 [Not Used]

23.4.5 [Not Used]

23.4.6 Subject to Section 23.3, Developer shall:

23.4.6.1 Not disclose any Proprietary Intellectual Property of Design-Build Contractor to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of Developer relating thereto;

23.4.6.2 Enter into a commercially reasonable confidentiality agreement if requested by Design-Build Contractor with respect to the licensed Proprietary Intellectual Property; and

23.4.6.3 Include in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable

standards of confidentiality, to protect all Proprietary Intellectual Property of Design-Build Contractor and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

23.4.7 Notwithstanding any contrary provision of this Agreement, in no event shall Developer or any of its directors, officers, employees, consultants or agents be liable to Design-Build Contractor, any Affiliate or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 23.4.6 unless such breach is the result of gross negligence or intentional misconduct. Design-Build Contractor hereby irrevocably waives all claims to any such damages. The foregoing provisions do not limit Design-Build Contractor's equitable remedies set forth in Section 19.4.4.4.

23.4.8 Design-Build Contractor shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

23.4.9 The following provisions shall apply with respect to any Proprietary Intellectual Property, including with respect to Technology Enhancements, source code and source code documentation, owned by a Person other than Design-Build Contractor, including any Affiliate, except for mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to Developer using commercially reasonable efforts.

23.4.9.1 Design-Build Contractor shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the East End Crossing, both for Design-Build Contractor and Developer, perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the East End Crossing.

23.4.9.2 Each such license shall be of at least identical scope, purpose, duration and applicability as the license granted under Section 23.4.2.

23.4.9.3 The limitations on sale, transfer, sublicensing and disclosure by Developer set forth in Sections 23.4.3 through 23.4.6 shall also apply to Developer's licenses in such Proprietary Intellectual Property.

23.4.9.4 Design-Build Contractor shall also either cause to be delivered to Developer copies of such Proprietary Intellectual Property or obtain from such owner consent to have the relevant Proprietary Intellectual Property deposited into an Intellectual Property Escrow pursuant to the provisions of Section 23.5.

23.4.10 Design-Build Contractor acknowledges the provisions of Section 23.4 of the PPA and the obligations of Developer, and rights of IFA, thereunder. Developer may sub-license to IFA, to the extent required by and in accordance with the

terms and limitations of Section 23.4 of the PPA, any Proprietary Intellectual Property of Design-Build Contractor licensed to Developer in accordance with this Section 23.4.

23.5 Intellectual Property Escrows. Design-Build Contractor may elect to deliver Proprietary Intellectual Property to an Intellectual Property Escrow in accordance with Section 23.5 of the PPA.

23.6 [Not Used]

23.6A Confidentiality.

23.6A.1 This Section 23.6A is subject at all times to Sections 23.1 through 23.5.

23.6A.2 In this Section 23.6A, "Information" means all information relating to the other Party which is supplied by or on behalf of the other Party (whether before or after the date of this Agreement), either in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by the receiving Party and such term includes all Work Products, analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.

23.6A.3 Each Party will maintain the confidentiality of any Information, except that Information may be disclosed or provided:

23.6A.3.1 by Design-Build Contractor to DBC-Related Entities and to Design-Build Contractor's and DBC-Related Entities' directors, officers, employees, consultants and agents, including accountants, legal counsel and other advisors;

23.6A.3.2 by Developer to Developer-Related Entities and to Developer's and Developer-Related Entities' directors, officers, employees, consultants and agents, including accountants, legal counsel and other advisors

23.6A.3.3 by Developer to IFA or otherwise as IFA may reasonably require under the PPA in the event of, or following, termination of this Agreement or the PPA;

23.6A.3.4 by Developer:

(a) to the Lenders to the extent such Information is reasonably required by the Lenders in connection with Financial Close or Developer is obligated to supply such Information to Lenders by the terms of the Funding Agreements; and

(b) to any Other Developer Key Contractor or their respective Contractors to the extent such Information is necessary for the performance

by Developer of its obligations under this Agreement or any Other Developer Key Contract or Contract;

23.6A.3.5 by Design-Build Contractor to any Contractor of Design-Build Contractor to the extent such Information is necessary for the performance by the Contractor of Design-Build Contractor of its obligations under the applicable Contract; and

23.6A.3.6 by either Party to the extent:

(a) it is required to disclose such Information pursuant to an Applicable Requirement or by any subpoena or similar legal process or by any Relevant Authority;

(b) the other Party confirms in writing that such Information is not required to be treated as confidential;

(c) such Information is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement,

it being understood that, in the case of Sections 23.6A.3.1, 23.6A.3.2, 23.6A.3.3 and 23.6A.3.4, the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will so provide such Information subject to the same or similar requirements to maintain confidentiality as contained in this Agreement.

ARTICLE 24

FEDERAL REQUIREMENTS; COMPLIANCE WITH OTHER LAWS

24.1 Compliance with Federal Requirements. Subject to Section 24.2, Design-Build Contractor shall comply and require its Contractors to comply with all federal requirements applicable to transportation projects that receive federal credit or funds, including those set forth in Exhibit 23 (Federal Requirements).

24.2 [Not Used]

24.3 Federal Status of East End Crossing.

24.3.1 Design-Build Contractor acknowledges that the FHWA has designated the East End Crossing as a "Major Project" under 23 USC § 106, which requires submission and approval of a project management plan, a finance plan and annual updates thereto, as provided in 23 USC § 106(h), and that the Project Management Plan, Financial Plan and the annual updates thereto required under the PPA Documents and DBC Documents are intended to fulfill these requirements.

24.3.2 Design-Build Contractor also acknowledges that the East End Crossing will be part of the National Highway System, as defined in 23 CFR § 470, that as such the East End Crossing must meet federal design and construction requirements for facilities on the National Highway System, and that the Technical Provisions are intended to incorporate such federal design and construction requirements.

24.4 Role of and Cooperation with FHWA. Design-Build Contractor acknowledges that the FHWA may have certain approval and oversight rights respecting the Project Management Plan, Financial Plan and design and construction standards for the entire East End Crossing. Design-Build Contractor shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the East End Crossing.

24.5 Conflicting Provisions. In the event of any conflict between any applicable federal requirements and the other requirements of the DBC Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

24.6 Compliance with other Laws.

24.6.1 Design-Build Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with IFA or the State, as set forth in IC 4-2-6 *et seq*., IC 4-2-7 *et seq*., the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004. If Design-Build Contractor is not familiar with these ethical requirements, Design-Build Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>. If Design-Build Contractor or its agents violate any applicable ethical standards, the Selected Firm may be subject to penalties under IC 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable Laws.

24.6.2 Design-Build Contractor and its agents shall abide by all requirements of IC 8-15.5-13-7 in respect of the prohibition on political contributions by Design-Build Contractor. Neither Design-Build Contractor nor any individual who has an interest in Design-Build Contractor, may make any contribution to any candidate, or committee, during and up to and including three (3) years following the DBC Term.

24.6.3 Design-Build Contractor shall comply with all applicable federal, state and local Laws, and all provisions required thereby to be included herein are hereby incorporated by reference.

ARTICLE 25

MISCELLANEOUS

25.1 Taxes. Design-Build Contractor shall pay, prior to delinquency, all applicable Taxes, including, pursuant to IC 8-15.5-8-3, all sales and use Taxes, in each case for

which Design-Build Contractor is responsible in carrying out the D&C Work and its other obligations hereunder. Design-Build Contractor accepts sole responsibility, and agrees that it shall have no right to a Relief Event or to any other Claim, due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes.

25.2 Amendments. The DBC Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement (e.g. Sections 5.2.6, 16.1 and 16.3).

25.3 Waiver.

25.3.1 No waiver of any term, covenant or condition of this Agreement or the other DBC Documents shall be valid unless in writing and signed by the obligee Party. No right conferred on either Party under this Agreement or the other DBC Documents shall be deemed waived, and no breach of this Agreement or other DBC Documents excused, unless such waiver is in writing and signed by the Party claimed to have waived such right. The exercise by a Party of any right or remedy provided under this Agreement or the other DBC Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Agreement or the other DBC Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other DBC Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

25.3.2 Except as provided otherwise in the DBC Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under this Agreement or the other DBC Documents.

25.3.3 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the DBC Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the DBC Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

25.3.4 Neither Developer's review, approval or acceptance of, nor payment for, the services required under this Agreement or the other DBC Documents shall be construed to operate as a waiver of any rights under this Agreement or any of the other DBC Documents or for any cause of action arising out of the performance of

this Agreement or the other DBC Documents, and Design-Build Contractor shall be and remain liable to Developer in accordance with applicable Law for all damages to Developer as set forth in the DBC Documents.

25.4 Independent Contractor; No Joint Venture or Partnership.

25.4.1 Design-Build Contractor is an independent contractor, and nothing contained in the DBC Documents shall be construed as constituting any relationship with Developer other than that of independent contractor.

25.4.2 Both Parties, in the performance of the DBC Documents, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. Nothing in the DBC Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between Developer and Design-Build Contractor; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give Developer control or joint control over Design-Build Contractor's financial decisions or discretionary actions concerning the East End Crossing and D&C Work.

25.4.3 In no event shall the relationship between Developer and Design-Build Contractor be construed as creating any relationship whatsoever between Developer and Design-Build Contractor's employees or agents. Neither Design-Build Contractor nor any of its employees or agents is or shall be deemed to be an employee or agent of Developer. Except as otherwise specified in the DBC Documents, Design-Build Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that Design-Build Contractor or any Contractor hires to perform or assist in performing the Work.

25.5 Successors and Assigns. The DBC Documents shall be binding upon and inure to the benefit of Developer and Design-Build Contractor and each of their permitted successors, assigns and legal representatives.

25.6 Designation of Representatives; Cooperation with Representatives.

25.6.1 Developer and Design-Build Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the DBC Documents ("**Authorized Representative**"). Exhibit 24 (Initial Designation of Authorized Representatives) provides the initial Authorized Representative designations. Subject to Section 25.6.1A, a Party may change such designations by a subsequent writing delivered to the other Party in accordance with Section 25.11.

25.6.1A The appointment of Design-Build Contractor's Authorized Representative shall be subject to the approval of Developer, not to be unreasonably withheld or delayed. At Developer's request, Design-Build Contractor shall replace its Authorized Representative.

25.6.2 Design-Build Contractor shall cooperate with Developer and all representatives of Developer designated as described above.

25.7 Survival. Design-Build Contractor's and Developer's representations and warranties, the dispute resolution provisions contained in Section 19.6, the indemnifications, limitations and releases contained in Sections 5.9.10 and 17.5, the express obligations of the Parties following termination (including those set forth in Sections 20.7, 20.8 and 20.10 Exhibit 22), and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the D&C Work shall survive the expiration or earlier termination of this Agreement and/or the completion of the D&C Work. The jurisdiction of the Arbitrator shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the PPA Documents that are subject to its jurisdiction as set forth in Section 19.6.

25.8 Limitation on Third-party Beneficiaries.

25.8.1 Except as provided in Section 25.8.2, it is not intended by any of the provisions of the DBC Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 25.8, the duties, obligations and responsibilities of the Parties to the DBC Documents with respect to third parties shall remain as imposed by Law. The DBC Documents shall not be construed to create a contractual relationship of any kind between Developer and a Contractor or any Person other than Design-Build Contractor.

25.8.2 [Each of the Indemnified Parties is intended to be a third party beneficiary solely with respect to the indemnity by Design-Build Contractor under Section 17.5 and may enforce its rights as an Indemnified Party thereunder.]

25.9 No Personal Liability of Developer Employees; No Tort Liability.

25.9.1 Developer's Authorized Representatives are acting solely as agents and representatives of Developer when carrying out the provisions of or exercising the power or authority granted to them under this Agreement. They shall not be liable either personally or as employees of Developer for actions in their ordinary course of employment.

25.9.2 The Parties agree to provide to each other's Authorized Representative Notice of any claim which such Party may receive from any third party

relating in any way to the matters addressed in this Agreement, and shall otherwise provide Notice in such form and within such period as is required by Law.

25.10 Governing Law. The DBC Documents shall be governed by and construed in accordance with the laws of the State of Indiana. Any suit must be brought in the Marion County, Indiana Circuit/Superior Court located in Marion County, Indiana. Design-Build Contractor hereby specifically consents to this jurisdiction.

25.11 Notices and Communications.

25.11.1 Notices under the DBC Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

25.11.2 All Notices to Design-Build Contractor shall be delivered to the following address or as otherwise directed by Design-Build Contractor's Authorized Representative:

Walsh Construction Company /
VINCI Construction Grands Projets JV
[Address]
Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

In addition, copies of all notices to proceed, Notices regarding Disputes, and suspension, termination and default Notices shall be delivered to the following persons:

Walsh Construction Company
929 W. Adams Street
Chicago, Illinois 60607
Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

And:

VINCI Construction Grands Projets
5 Cours Ferdinand-de-Lesseps
92500 Rueil-Malmaison
France
Attention: _____
Telephone: _____

Facsimile: _____
E-mail: _____

All Notices to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

WVB East End Partners, LLC
[Address]
Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

In addition, copies of all notices to proceed, Notices regarding Disputes, and suspension, termination and default Notices shall be delivered to the following persons:

[Walsh Equity Member]
[Address]
Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

And:

[VINCI Equity Member]
[Address]
Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

And:

[Bilfinger Equity Member]
[Address]
Attention: _____
Telephone: _____
Facsimile: _____
E-mail: _____

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, Notices sent by facsimile after 4:00 p.m. ET and all other Notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

Any technical or other communications pertaining to the D&C Work shall be conducted by Design-Build Contractor's Authorized Representative and technical representatives designated by Developer.

25.12 Integration of PPA Documents. Developer and Design-Build Contractor agree and expressly intend that, subject to Sections 1.2.2, 1.2.3 and 25.13, this Agreement and other DBC Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

25.13 Severability. If any clause, provision, section, subsection or part of the DBC Documents is ruled invalid (including invalid due to Change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including Design-Build Contractor's compensation to account for any change in the D&C Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section, subsection or part shall not affect the validity or enforceability of the balance of the DBC Documents, which shall be construed and enforced as if the DBC Documents did not contain such invalid or unenforceable clause, provision, section, subsection or part.

25.14 Construction and Interpretation of Agreement.

25.14.1 The language in all parts of the DBC Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that the DBC Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers, information and drafts during the Proposal preparation process, that each Party has been given the opportunity to independently review the DBC Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the DBC Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the DBC Documents, the DBC Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized.

25.14.2 The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

25.14.3 References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument, and all amendments hereto and thereto. Any references to any covenant, condition, obligation and/or undertaking

"herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Exhibits, Articles and Sections refer to the Exhibits, Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the other DBC Documents, words that have well-known technical or construction industry meanings are used in this Agreement or the other DBC Documents in accordance with such recognized meaning. All references to a subsection or clause "above" or "below" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "including," "includes" or "include" is used in the DBC Documents, it is deemed to be followed by the words "without limitation." Wherever reference is made in the DBC Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

25.14.4 As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

25.14.5 All monetary amounts and obligations set forth in the DBC Documents are expressed and payable in U.S. dollars.

25.15 Usury Savings. The DBC Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by Indiana Law (the "maximum legal rate"), if any. If, by the terms of the DBC Documents either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the DBC Documents shall, to the extent permitted by applicable Indiana Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

25.16 Approvals under DBC Documents.

25.16.1 [Not Used]

25.16.2 In all cases where approvals or consents are required to be provided under the DBC Documents by Design-Build Contractor and no particular standard for such approvals or consents is expressly provided, such approvals or consents shall not be unreasonably withheld or delayed. In cases where sole discretion is specified, Design-Build Contractor's decision shall be final, binding and not subject to the Dispute Resolution Procedures.

25.17 Entire Agreement. The DBC Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

25.18 Authority to Bind Design-Build Contractor. Each of the signatories for Design-Build Contractor and the DBC JV Members represents that he/she has been duly authorized to execute this Agreement on behalf of Design-Build Contractor and his/her respective DBC JV Member and has obtained all necessary or applicable approvals to make this Agreement fully binding upon Design-Build Contractor and his/her respective DBC JV Member when his/her signature is affixed, and accepted by Developer.

25.19 Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25.20 Joint and Several Liability. Each of WCC and VCGP agrees that it is jointly and severally liable for the performance of Design-Build Contractor's liabilities and obligations under this Agreement; and that such joint and several liability shall not in any way be reduced, diminished or released by any change to the constitution of Design-Build Contractor. If any other Party or replacement Party to this Agreement is or becomes a joint venture or a partnership, all members of such joint venture or partnership shall have joint and several liability for the obligations and liabilities of such Party under this Agreement, and such obligations and liabilities shall not in any way be reduced, diminished or released by any change in the constitution of such Party.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the date first written above.

WVB East End Partners, LLC (Developer)

By: _____

Name: _____

Title: _____

Walsh Construction Company /
VINCI Construction Grands Projets JV
(Design-Build Contractor)

By Walsh Construction Company

By: _____

Name: _____

Title: _____

By VINCI Construction Grands Projets

By: _____

Name: _____

Title: _____

EXHIBIT 1

DEFINITIONS

Unless otherwise specified, wherever the following terms are used in the Agreement, they have the meanings set forth below.

Capitalized terms used, but not defined, in the Agreement have the meaning ascribed thereto in the PPA.

"**Additional Properties**" means properties that are both (a) outside the boundaries for the Project Right of Way as set forth in the ROW Maps and (b) either (i) added to the Project Right of Way for permanent use for East End Crossing-related purposes or (ii) added for temporary use as Project Specific Locations.

"**Adjust**" means to perform a Utility Adjustment.

"**Adjustment**" means a Utility Adjustment.

"**Adjustment Standards**" means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the East End Crossing) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the DBC Documents or PPA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 5.5.3 of the PPA.

"**Affiliate**" means:

(a) with respect to Developer, an "Affiliate" of Developer under the PPA, as such term is defined under the PPA; and

(b) with respect to Design-Build Contractor, (i) any DBC Parent Guarantor, (ii) any Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Build Contractor or any DBC Parent Guarantor and (iii) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by Design-Build Contractor, any DBC Parent Guarantor or any Affiliate of Design-Build Contractor under clause (b)(ii) of this definition.

For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

"**Affiliated**" means having the status of an Affiliate.

"**Agreement**" has the meaning set forth in the Preamble.

"**Airspace**" means any and all real property, including the surface of the ground and submerged lands, within the vertical column extending above and below the surface boundaries or water surface, as applicable, of the Project Right of Way and not necessary or required for the East End Crossing or for developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the East End Crossing or Developer's timely fulfillment of its obligations under the PPA Documents.

"**AP Delay Liquidated Damages**" has the meaning set forth in Section 10A.4.1.

"**Arbitrator"** means the individual appointed to hear and resolve disputes between the Parties as provided in Section 19.6.

"**Authorized Representative**" has the meaning set forth in Section 25.6.

"**Baseline Substantial Completion Date**" has the meaning set forth in the PPA.

"**Betterment**" has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the Utility Agreement(s) applicable to the Utility; in all other cases, "Betterment" means any upgrading of the Utility in the course of such Utility Adjustment that is not attributable to the construction of the East End Crossing and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility. Notwithstanding the foregoing, the following are not considered Betterments unless otherwise provided in the applicable Utility Agreement(s):

(a) Any upgrading which is required for accommodation of the East End Crossing;

(b) Replacement devices or materials that are of equivalent standards although not identical;

(c) Replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) Any upgrading required by applicable Law;

(e) Replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);

(f) Any upgrading required by the Utility Owner's applicable Adjustment Standards; and

(g) Any discretionary decision by a Utility Owner that is contemplated within a particular standard described in clause (f) above.

With respect to any Replacement Utility Property Interest, "Betterment" has the meaning (if any) set forth in the applicable Utility Agreement(s). In all other cases, a

Replacement Utility Property Interest shall be considered a Betterment, except to the extent that reinstallation of a Utility in the Replacement Utility Property Interest (i) is necessary in order to meet the requirements of the PPA Documents, or (ii) is called for by Developer in the interest of overall economy for the East End Crossing.

"**Bondholder Long Stop Date**" means the date that is two (2) months prior to the Long Stop Date.

"**Books and Records**" means any and all documents, books, records, papers, or other information relating to the East End Crossing, including (a) all design and construction documents, and operations and maintenance documents (including but not limited to drawings, specifications, submittals, subcontracts, subconsultant agreements, purchase orders, invoices, schedules, meeting minutes, budgets, forecasts, change orders; (b) all budgets, certificates, claims, contract agreements, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Design-Build Contractor or any of its Representatives in connection with the East End Crossing or the Project; and (c) with respect to all of the above, any Information that is stored electronically or on computer-related media, including in the Electronic Document Management System; *provided however*, that nothing in the Agreement shall require the disclosure by any Party of Books and Records that is protected by the attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party.

"**Business Day**" means any weekday (i.e., Monday through Friday) except for those weekdays on which banks are not required or authorized by applicable Law to close in the State.

"**Business Opportunities**" has the meaning set forth in Sections 8.2.2 and 8.2.3 of the PPA.

"**Change in Adjustment Standards**" means any change in Adjustment Standards after the Setting Date that directly affects the design or construction of Utility Adjustments and is (a) necessary to conform to applicable Law or Change in Law or (b) adopted by the applicable Utility Owner after the Setting Date, excluding any such changes in Adjustment Standards known to Developer as of the Setting Date. A Change in Law that changes, adds to or replaces Adjustment Standards, as well as revisions to the Technical Provisions to conform to such Change in Law, shall be treated as a Change in Adjustment Standards rather than an IFA Change to the Technical Provisions.

"**Change in Law**" means:

(a) the adoption of any Law of the State, the Commonwealth of Kentucky or a local government or political subdivision of either, after the Setting Date, provided such new Law is materially inconsistent with the Laws of the State, the Commonwealth of Kentucky or such local government or political subdivision in effect on the Setting Date,

(b) any change in any Law of the State, the Commonwealth of Kentucky or a local government or political subdivision of either or in the interpretation or application thereof by any Governmental Entity after the Setting Date, provided such change is materially inconsistent with Laws of the State, the Commonwealth of Kentucky or such local government or political subdivision in effect on the Setting Date;

excluding, however,

(i) any such change in or new Law of the State or the Commonwealth of Kentucky that also constitutes or causes a Change in Adjustment Standards,

(ii) any change in or new Law of the State or the Commonwealth of Kentucky pending, passed or adopted but not yet effective as of the Setting Date,

(iii) any change in State or the Commonwealth of Kentucky labor Laws, and

(iv) any change in State or the Commonwealth of Kentucky tax Laws of general application except the adoption after the Setting Date of any Law not otherwise excluded that results in the levy of State or the Commonwealth of Kentucky *ad valorem* property taxes on the Developer's Interest (it being understood that any change in State or the Commonwealth of Kentucky tax laws shall not be deemed of general application if it is solely directed at and the effect of which is solely borne by Developer or private operators of transportation assets or transportation asset developers, in each case, in the State or the Commonwealth of Kentucky).

New or revised statutes or regulations of the United States or a federal agency, the State, the Commonwealth of Kentucky or a local government or political subdivision of either, enacted, promulgated or adopted after the Setting Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards and Project Standards, but excluding Adjustment Standards, relating to the D&C Work or O&M Work, as well as revisions to the Technical Provisions to conform to such new or revised statutes, shall be treated as a Change in Law (subject to the foregoing exclusions) rather than an IFA Change to the Technical Provisions.

"**Change of Control**" means any Equity Transfer, transfer of an interest, direct or indirect, in a DBC Parent Guarantor, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Design-Build Contractor or a material aspect of its business. A change in possession of the power to direct or control

or cause the direction or control of the management of a DBC Parent Guarantor may constitute a Change of Control of Design-Build Contractor if such DBC Parent Guarantor possesses, immediately prior to such Change of Control, the power to direct or control or cause the direction or control of the management of Design-Build Contractor. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) A change in possession of the power to direct or control the management of Design-Build Contractor or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a DBC Parent Guarantor (but not if the DBC Parent Guarantor is the ultimate parent organization); *provided*, *however*, that this exception shall not apply if the transferee in such transaction is, at the time of the transaction, suspended or debarred, subject to an agreement for voluntary exclusion, or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(b) An upstream reorganization or transfer of direct or indirect interests in Design-Build Contractor so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Design-Build Contractor;

(c) A transfer of interests between managed funds that are under common ownership or control, except a change in the management or control of a fund that manages or controls Design-Build Contractor; or

(d) The exercise of minority veto or voting rights (whether provided by applicable Law, by Design-Build Contractor's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Design-Build Contractor, *provided* that if such minority veto or voting rights are provided by shareholder or similar agreements, Developer has received copies of such agreements.

"**Change Order**" means a Change Order as defined under the PPA.

"**Change Request**" means a Change Request as defined under the PPA.

"**Claim**" means a demand by Design-Build Contractor for a time extension or payment of money or damages to Design-Build Contractor, including a Pass Through Claim, or a demand by Developer for payment of money or damages from Design-Build Contractor to Developer.

"**Claim Deductible**" means, as defined by the PPA, the following amounts, as applicable: (a) the first $40,000 of Extra Work Costs, subject to adjustment as provided in Section 15.6.2.3 of the PPA; and (b) the amount equal to the Delay Costs for (i) the first three days of delay for Relief Events occurring before the Substantial Completion Date and (ii) the first seven days of delay for Relief Events occurring on and after the Substantial Completion Date.

"**Comparable Facilities**" means highways and bridges, as applicable, that are substantially similar to the East End Crossing and associated facilities including frontage roads, as applicable. For purposes of this definition, determination of what highways or bridges are substantially similar to the East End Crossing shall be based on any one or more of similar age, design, engineering, construction, topographical features**,** operating systems and features, or other features or situations, and/or based on a geographical area in which highways or bridges have been or are susceptible to being affected by a common event (such as but not limited to flood or tornado). The presence or absence of tolling and tolling facilities shall not be a factor in determining whether a highway or bridge is substantially similar to the East End Crossing.

"**Compensation Amount**" means the amount, if any, owing to Developer or Design-Build Contractor, as applicable, under Article 15 on account of occurrence of a Relief Event.

"**Construction Account**" means the account by that name established under the Indenture of Trust.

"**Construction Documents**" means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the East End Crossing and/or the Utility Adjustments included in the Construction Work, in accordance with the DBC Documents, PPA Documents and the Special Provisions.

"**Construction Manager**" is the Key Personnel listed at Exhibit 2-H to the PPA.

"**Construction Payment Amount**" has the meaning set forth in Section 10A.1.2.

"**Construction Payment Items**" means those items of D&C Work that are listed in Exhibit 29.

"**Construction Payment Schedule**" means the Construction Payment Schedule contained in Exhibit 29.

"**Construction Payment**" has the meaning set forth in Section 10A.1.2.

"**Construction Period**" means the period starting on the Effective Date and ending on the Substantial Completion Date.

"**Construction Work**" means all Work to build or construct, reconstruct, rehabilitate, make, form, manufacture, furnish, install, integrate, supply, deliver or equip the East End Crossing and/or the Utility Adjustments. Construction Work includes Landscaping Work and aesthetic treatments.

"**Consumer Price Index**" or "**CPI**" means the Consumer Price Index All Items (BES Series ID: CUUR0000SA0), as published by the United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-84 = 100, or if such

publication ceases to be in existence, a comparable index selected by IFA and approved by Developer, acting reasonably. If such index is revised so that the base year differs from that set forth above, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index, consistent with the adjustments made with respect to the calculation of CPI under the PPA.

"**Contract**" means any agreement, and any supplement or amendment thereto, by Design-Build Contractor with any other Person, Contractor or Supplier to perform any part of the D&C Work or provide any materials, equipment or supplies for any part of the D&C Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "**Contract**" excludes Utility Agreements.

"**Contract Interest Rate**" means, for any date, two percent (2%) over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the Wall Street Journal (Eastern edition) under "Money Rates".

"**Contractor**" means any Person with whom Design-Build Contractor has entered into any Contract to perform any part of the D&C Work or provide any materials, equipment, hardware or supplies for any part of the D&C Work, on behalf of Design-Build Contractor, and any other Person with whom any Contractor has further subcontracted any part of the D&C Work, at all tiers.

"**Contract Sum**" has the meaning set forth in Section 10A.1.1.

"**Controlling Work**" Item means the activity or work item on the Critical Path of the D&C Work having the least amount of Total Float.

"**Corrective Work**" means work necessary to remedy any Nonconforming Work, Patent Defect or Latent Defect.

"**Corresponding PPA Claim**" has the meaning set forth in Section 19A.1.

"**Critical Path**" means the longest chain(s), in terms of time, of logically connected activities on the Project Schedule ending with Final Acceptance. Any delay along a Critical Path will affect the calculated Substantial Completion Date or Final Acceptance Date.

"**D&C Work**" means the Design Work and Construction Work, including those obligations pertaining to design and construction set forth in the Technical Provisions, and all other Work that is made the responsibility of Design-Build Contractor under the Agreement.

"**Day**" or "**day**" means calendar day unless otherwise expressly specified.

"**DB Final Acceptance**" means (a) the occurrence for all Project Sections of all the events and satisfaction of all the conditions set forth in Section 5.8.5 of the Agreement that are the responsibility of Design-Build Contractor and (b) the satisfaction of Design-Build Contractor's obligations under Section 5.8.4 of the Agreement.

"**DB Final Acceptance Deadline**" means the date of the Final Acceptance Deadline.

"**DB Long Stop Date**" means the date that is [redacted] before the Long Stop Date.

"**DB Substantial Completion**" has the meaning set forth in the PPA.

"**DBC Documents**" has the meaning set forth in Section 1.2.1.

"**DBC JV Members**" has the meaning set forth in the Preamble.

"**DBC Key Contract**" has the meaning set forth in Section 7.3.1.

"**DBC Key Contractor**" means a Contractor (other than Design-Build Contractor) under any DBC Key Contract.

"**DBC Key Personnel**" means each of the "Key Personnel," as defined under the PPA, employed or retained by Design-Build Contractor or a DBC-Related Entity.

"**DBC Parent Guarantor**" means each of The Walsh Group Ltd., an Illinois corporation, and VINCI Construction, a limited company organized under the laws of France.

"**DBC-Related Entities**" means (a) Design-Build Contractor, (b) DBC Parent Guarantors, (c) Contractors (including Suppliers), (d) any other Persons (except IFA, the Department and Developer) performing any of the D&C Work, (e) any other Persons (except IFA, the Department and Developer) for whom Design-Build Contractor may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors and assign of any of the foregoing.

"**DBC Term**" means the period set forth in Section 2.1.7.

Deductible Relief Event" means the Relief Events referenced in clauses (e), (g) (but only as to performance or failure to perform work by a Governmental Entity), (j), (k), (l), (m) (but only as to releases by a third party), (n), (o), (p), (q), (r) (t) and (u) of the definition of "Relief Event" under the PPA.

"**Default Termination Event**" means each of the Design-Build Contractor Defaults listed in Section 20.3.1.

"**Defect**" means a defect, whether by design, manufacture, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Element of the East End Crossing, which would cause or have the potential to cause one or more of the following: (a) a hazard, nuisance or other risk to public or worker health or

safety, including the health and safety of Users; (b) a structural deterioration of the affected Element or any other part of the East End Crossing; (c) damage to a third party or a third party's property or equipment; (d) damage to the Environment; (e) failure of the affected Element or any other part of the East End Crossing to meet a Performance Requirement or any other requirement of the PPA Documents; (f) failure of an Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in the Performance and Measurement Table; or (g) loss of Toll Revenues.

"**Delay Costs**" means Design-Build Contractor's additional costs that result to Controlling Work Items from a Relief Event Delay, which are limited to (a) direct costs for the actual idle labor and equipment, (b) the indirect costs and expenses thereof excluding cost of funds (whether debt or equity) and excluding Lender charges, damages and penalties, and (c) profit thereon, all as calculated pursuant to Exhibit 17 (Extra Work Costs and Delay Costs Specifications); provided that for delays to non-Controlling Work Items incident to a Relief Event Delay, the term Delay Costs does not include any indirect costs, expenses or profit thereon; provided further that, in the event of a Relief Event Delay resulting from concurrent IFA-Caused Delays and delays for which Developer or Design-Build Contractor is responsible under the PPA Documents, the Parties acknowledge that, as between them and IFA under the PPA, they are not entitled to Delay Costs to the extent they are responsible for the delay under the PPA. Delay Costs do not include any costs that Design-Build Contractor can or could reasonably mitigate.

"**Delay Liquidated Damages**" means AP Delay Liquidated Damages and Milestone Delay Liquidated Damages.

"**Department**" means the Indiana Department of Transportation.

"**Design-Build Contractor**" has the meaning set forth in the Preamble.

"**Design-Build Contractor Default**" has the meaning set forth in Section 19.1.1.

"**Design-Build Contractor Knowledge**" means actual knowledge of an event, fact or circumstance by a any Person employed by the Design-Build Contractor or its Affiliates who has significant involvement with the Project and whose job title is Construction Manager (or the equivalent) or higher.

"**Design-Build Contractor Release(s) of Hazardous Material**" means (a) Releases of Hazardous Material, or the exacerbation of any such releases, attributable to the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any DBC-Related Entity, provided that the removal of Hazardous Materials by Design-Build Contract or a DBC-Related Entity in accordance with the requirements of the Agreement shall not be a "Design-Build Contractor Release of Hazardous Material"; (b) Releases of Hazardous Materials arranged to be brought onto the Site or elsewhere by any DBC-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by

any DBC-Related Entity in violation of the requirements of the DBC Documents, PPA Documents or any applicable Law or Governmental Approval.

"**Design-Build Contractor's Interest**" means all right, title and interest of Design-Build Contractor or any DBC JV Member in, to, under or derived from the Agreement and the other DBC Documents.

"**Design Documents**" means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the East End Crossing and/or the Utility Adjustments included in the Design Work and/or the Construction Work. Design Documents include the Final Design Documents.

"**Design Work**" means all Work of design, engineering or architecture for the East End Crossing, Project Right of Way acquisition or Utility Adjustments.

"**Design Work Commencement Deadline**" means [●].

"**Developer**" has the meaning set forth in the Preamble.

"**Developer Act**" means with respect to a Pass Through Claim, any Developer Default hereunder or any deliberate or negligent act or omission of Developer that impairs the validity of, or the relief available from IFA for, the Corresponding PPA Claim.

"**Developer Change**" means any change in the scope of the D&C Work that Developer has directed Design-Build Contractor to undertake, except to the extent such change is or results from an IFA Change under the PPA. Solely for the purposes of determining AP Delay Liquidated Damages under Section 10A.4.1, the Scheduled DB Substantial Completion Date used for determining AP Delay Liquidated Damages shall be extended by the number of days of delay caused by a Developer Change.

"**Developer Default**" has the meaning set forth in Section 19.3.1.

"**Developer-Related Entities**" means (a) Developer, (b) Developer's "Equity Members" as defined under the PPA, (c) Contractors (including Suppliers), (d) any other Persons (except IFA and the Department) performing any of the Work, (e) any other Persons except IFA and the Department) for whom Developer may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors and assign of any of the foregoing; but excluding in all cases (except when referring to "Developer-Related Entities" as defined under the PPA) Design-Build Contractor and any DBC-Related Entity.

"**Developer Utility Agreements**" has the meaning set forth in the PPA.

"**Developer's Recoverable Costs**" means the sum of:

(a) The costs of any assistance, action, activity or Work undertaken by Developer for which Design-Build Contractor is liable or is to reimburse Developer under the terms of the DBC Documents, including the charges of third party experts, consultants and contractors and reasonably allocated wages, salaries, compensation, benefits and overhead of Developer staff and employees performing such action, activity or Work; plus

(b) Third-party costs Developer incurs to publicly procure any such third party experts, consultants or contractors; plus

(c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of Developer's in-house counsel), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with investigating and defending claims by and resolving disputes with third party contractors; plus

(d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the DBC Documents (or if none, at the time incurred by Developer) and continuing until paid in full.

"**Deviation**" means any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions.

"**Direct Agreement**" means [●].

"**Directive Letter**" has the meaning set forth in the PPA.

"**Disadvantaged Business Enterprise**" or "**DBE**" has the meaning set forth in the PPA.

"**Discriminatory O&M Change**" has the meaning set forth in the PPA.

"**Dispute**" means any Claim, dispute, disagreement or controversy between Design-Build Contractor and Developer concerning their respective rights and obligations under the DBC Documents, including concerning any alleged breach or failure to perform and remedies.

"**Dispute Resolution Procedures**" means the procedures for resolving Disputes set forth in Section 19.6; provided that reference to "Dispute Resolution Procedures under the PPA" means "Dispute Resolution Procedures" between Developer and IFA under the PPA.

"**Early Termination Date**" means the effective date of termination of the Agreement for any reason prior to the stated expiration of the DBC Term.

"**East End Crossing**" means the transportation facilities and all related structures and improvements used in connection with operation of such transportation facilities, to be financed, developed, designed, constructed, operated and maintained, or any of the foregoing, pursuant to the terms of the PPA Documents. The East End Crossing is divided into the Project Sections. For avoidance of doubt, the East End Crossing does not include the design and construction of the Old Salem Road realignment or the new bridge carrying Old Salem Road over proposed SR 265.

"**Effective Date**" means the date of the execution of the Agreement by Design-Build Contractor and Developer or such other date as shall be mutually agreed upon in writing by Design-Build Contractor and Developer.

"**Element**" means an individual component, system or subsystem of the East End Crossing or of a Utility Adjustment, and shall include at a minimum a breakdown into the items described in the Performance and Measurement Criteria, further subdivided by Performance Sections where appropriate.

"**Emergency**" means any unforeseen event affecting the East End Crossing, whether directly or indirectly, which (a) causes or has the potential to cause disruption to the free flow of traffic on the East End Crossing or a threat to the safety of the public; (b) is an immediate or imminent threat to the long term integrity of any part of the infrastructure of the East End Crossing, to the Environment or to property adjacent to the East End Crossing; (c) is recognized by the Indiana Department of Public Safety as an emergency; or (d) is recognized or declared by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

"**Emergency Repair Work**" means any Work performed pursuant to Section 9.3 of the PPA.

"**Emergency Services**" means law enforcement, fire, paramedic, ambulance service and other similar services.

"**Environment**" means air, soils, submerged lands, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and historic, archeological and paleontological resources.

"**Environmental Approvals**" means all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project as applicable to the East End Crossing and/or the East End Crossing, including the NEPA Documents.

"**Environmental Law**" means any Law applicable to the East End Crossing or the Work requiring consideration of environmental impacts or addressing, regulating or imposing liability, actions or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the Environment,

Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations ordinances or other Governmental Approvals adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the East End Crossing or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to: (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials; (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater; (c) Releases of Hazardous Materials; (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources; (e) The operation and closure of underground storage tanks; (f) and safety of employees and other persons; and (g) Notification, documentation, and record keeping requirements relating to the foregoing. Without limiting the above, the term "Environmental Laws" shall also include the following: (i)The National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.), as amended; (ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), as amended; (iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), as may be further amended; (iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 et seq.), as amended; (v) The Clean Air Act (42 U.S.C. §§ 7401 et seq.), as amended; (vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 et seq.); (vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, et seq.), as amended; (viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended; (ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), as amended; (x) The Oil Pollution Act (33 U.S.C. §§ 2701, et. seq.), as amended; (xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), as amended; (xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 et seq.), as amended; (xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 et seq.), as amended; (xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), as amended; (xv) The Endangered Species Act (16 U.S.C. §§ 1531 et seq.), as amended; (xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.), as amended; (xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), as amended; (xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 et seq.), as amended; (xix) The Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668 et seq.), as amended; (xx) The Migratory Bird Treaty Act (16 U.S.C. §§ 703 et seq.), as amended; (xxi) The Marine Mammal Protection Act (16 U.S.C. §§ 1361 et seq.), as amended; (xxii) Indiana Statutes, Title 46, Water, Air, Energy, and Environmental Conservation, as amended; (xxiii) The federal and state regulations listed in Section 7.4 of the Technical Provisions, as amended; and (xxiv) Section 4(f) of the U.S. Department of Transportation Act, 49 U.S.C. § 303(c), as amended).

"**Environmental Litigation**" means any lawsuit that is filed in a court of competent jurisdiction and seeks to overturn, set aside, enjoin, or otherwise inhibit the implementation of a federal, state, or local agency's approval of the Louisville-Southern Indiana Ohio River Bridges Project based on the agency's alleged non-compliance with

applicable Laws (including Environmental Laws), including but not limited to: the National Environmental Policy Act, 42 U.S.C. § 4231 *et seq.*; Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c); the National Historic Preservation Act, 16 U.S.C. § 470; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; and the Endangered Species Act, 16 U.S.C. § 1531 *et seq.;* and other federal, state, or local Laws.

"**Equity Transfer**" means any assignment, mortgage, encumbrance, conveyance, sale, or other transfer of equity interest in Design-Build Contractor.

"**Equivalent Project Relief**" has the meaning set forth in Section 19A.2.4.

"**Extra Work**" means any Work in the nature of additional work, altered work or deleted work which is directly attributable to occurrence of a Relief Event, as applicable, and absent such event would not be required by the DBC Documents. The term "Extra Work" does not include Relief Event Delay.

"**Extra Work Costs**" means the incremental increase in the following costs of Design-Build Contractor directly attributable to Extra Work, which shall be calculated pursuant to Exhibit 17 (Extra Work Costs and Delay Costs Specifications): (a) labor and burden costs; (b) material and supply costs; (c) equipment costs; (d) indirect costs and expenses excluding cost of funds (whether debt or equity) and excluding Lender charges, damages and penalties; and (e) profit.

"**Final Acceptance**" means the occurrence for all Project Sections of all the events and satisfaction of all the conditions set forth in Section 5.8.5 of the PPA, as and when confirmed by IFA's issuance of a certificate in accordance with the procedures and within the time frame established in Section 5.8.5 of the PPA.

"**Final Acceptance Date**" means the date that Final Acceptance has been achieved for all Project Sections.

"**Final Acceptance Deadline**" means the deadline for achieving Final Acceptance for all Project Sections, as set forth in the Project Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the PPA.

"**Final Design**" means, depending on the context: (a) the Final Design Documents, which is a deliverable described at Table 25-1 of the Technical Provisions, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents, in either case .

"**Final Design Documents**" means the complete final construction drawings, including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams, specifications, reports, studies, calculations, electronic files, records and submittals, necessary or related to construction and maintenance of the East End Crossing or any portion thereof and any Utility s included in the Design Work or the Construction Work.

"**Flood Event**" means a "flood" (as defined by the Federal Emergency Management Agency) where flood waters at the Site reach two or more acres measured, at or in excess of: (a) for the period commencing on the Effective Date up to and including the earlier of (i) the Substantial Completion Date and (ii) early termination of the Agreement, NAVD88 Elevation 434.00 (or its equivalent, successor measurement); or (b) for the period commencing the day subsequent to the Substantial Completion Date up to and including the end of the Term, NAVD88 Elevation 457.00 (or its equivalent, successor measurement), in each case as such measurement is officially determined and recorded by the U.S. National Oceanic and Atmospheric Administration's National Weather Service for the geographic region that includes the Site.

"**Funding Agreements**" means the Indenture of Trust and [●].

"**Good Industry Practice**" means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced professional designer, engineer, constructor, operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Governmental Approvals, using accepted design and construction standards and criteria normally used on similar projects in Indiana, and engaged in the same type of undertaking in the United States under similar circumstances and conditions, including environmental conditions.

"**Governmental Approval**" means any registration, permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided or issued by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the East End Crossing or the Work.

"**Governmental Entity**" means any federal, State, Commonwealth of Kentucky or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than IFA.

"**Hazardous Materials**" means any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Law, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. For the avoidance of doubt, unexploded ordnance is not considered a Hazardous Material, although substances contained in or leaking from unexploded ordnance may be within this definition of Hazardous Material. "Hazardous Materials" includes the following: (a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-

hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws); (b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto; (c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (d) Any flammable substances or explosives; (e) Any radioactive materials; (f) Any asbestos or asbestos-containing materials; (g) Any lead and lead-based paint; (h) Any radon or radon gas; (i) Any methane gas or similar gaseous materials; (j) Any urea formaldehyde foam insulation; (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls; (l) Pesticides; (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, Users or any Persons in the vicinity of the East End Crossing or to the indoor or outdoor Environment; and (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

"**Hazardous Materials Management**" means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials and Recognized Environmental Conditions encountered, impacted, disturbed, released, caused by or occurring in connection with the East End Crossing, Project Right of Way or the Work, as well as investigation, characterization and remediation of such Hazardous Materials and Recognized Environmental Conditions. Hazardous Materials Management may include sampling, handling, stock-piling, storing, backfilling in place, asphalt batching, recycling, dewatering, treating, cleaning up, excavating, removing, remediating, transporting and/or disposing off-site of Hazardous Materials and otherwise managing Recognized Environmental Conditions, whichever approach is effective, most cost-efficient and authorized under applicable Law.

"**ICC**" has the meaning set forth in Section 19.6.2.

"**IFA**" has the meaning set forth in the Recitals.

"**IFA Change**" has the meaning set forth under the PPA.

"**IFA Claim**" has the meaning set forth in Section 19A.1.

"**IFA REAA Statement**" has the meaning set forth in Section 15.8.4.

"**IFA's Recoverable Costs**" has the meaning set forth under the PPA.

"**Incident**" has the meaning set forth under the PPA.

"**Indemnified Parties**" means Developer, IFA, the Department, KYTC, KPTIA, LASIBA, the Joint Interlocal Board for the Ohio River Bridges Project, the State, the Commonwealth of Kentucky and each of their respective successors, assigns, officeholders, officers, directors, commissioners, agents, representatives, agents, consultants and employees.

"**Indenture of Trust**" means that certain Indenture of Trust, dated as of [●], by Developer and [●], as trustee.

"**Insolvency Event**" means, with respect to any Person, the occurrence of any of the following:

(a) Such Person (i) commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; (ii) seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; (iii) becomes insolvent, or generally does not pay its debts as they become due; (iv) admits in writing its inability to pay its debts; (v) makes an assignment for the benefit of creditors; or (vi) takes any action to authorize any of the foregoing; or

(b) (i) An involuntary case is commenced against such Person seeking (1) liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such Person or such Person's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; (2) the appointment of a trustee, receiver, liquidator, custodian or other similar official of Design-Build Contractor or any substantial part of Design-Build Contractor's assets; (3) the issuance of a writ of attachment, execution, or similar process; or (4) like relief; and (ii) such involuntary case shall not be contested by such Person in good faith or shall remain un-dismissed and un-stayed for a period of sixty (60) days.

"**Insurance Policies**" means all of the insurance policies Developer, Design-Build Contractor, and the Lead Engineering Firm are required to carry pursuant to Section 17.1 and Exhibit 19 (Insurance Coverage Requirements) to the Agreement.

"**Intellectual Property**" means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the East End Crossing, East End Crossing design data or East End Crossing traffic data. Intellectual Property includes traffic management algorithms, and software, source code and source code documentation used in connection with the East End Crossing

(including software, source code and source code documentation used for management of traffic on the East End Crossing). Intellectual Property also includes the Financial Model Formulas, Financial Model and Financial Modeling Data. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

"**Intellectual Property Escrow**" has the meaning set forth under the PPA.

"**Interpretive Engineering Decision**" has the meaning set forth in Section 3.7.1.

"**Key Contract**" means any Contract constituting a "Key Contract" as defined under the PPA, but excluding this Agreement.

"**Key Contractor**" means the Contractor under any Key Contract.

"**Key Submittal**" means:

(a) all Submittals relating to the approvals or determinations under Sections 1.2.4;

(b) all Utility Agreements;

(c) all Submittals relating to NTP 1, NTP 2, Substantial Completion and Final Acceptance;

(d) all Submittals relating to the purchase, renewal and proof of insurance and to claims in excess of [redacted]; and

(e) any Submittals where the effect of approval or implementation of such Submittal would be to impact the Developer's rights or liabilities, or ability or capacity to undertake (or the cost or time of undertaking) its obligations under the Agreement or any Principal Developer Document (as applicable).

"**Known or Suspected Hazardous Materials**" means Hazardous Materials and Recognized Environmental Conditions that are known or reasonably suspected to exist as of the Setting Date from information or analysis contained in or referenced in the Reference Information Documents, including any of the phase 1 environmental site assessments and reports contained in the Reference Information Documents as of the Setting Date. "Known or Suspected Hazardous Materials" include Hazardous Materials and Recognized Environmental Conditions arising in or from any of the Hazardous Materials sites listed in the Final Environmental Impact Statement, the Supplemental Final Environmental Impact Statement and Section 7.9 of the Technical Provisions.

"**Landscaping Statement**" has the meaning set forth in Section 5.10.6.1.

"**Landscaping Work**" has the meaning set forth in Section 5.10.1.

"**Landscaping Work Allowance**" has the meaning set forth in Section 5.10.3.

"**Latent Defect**" means any Nonconforming Work that is not a Patent Defect.

"**Latent Defect Period**" means the period of time in which a Claim may be brought for a Latent Defect under applicable Law, which shall in no event be less than 10 years from the Substantial Completion Date. For purposes of calculating the Latent Defect Period under the Indiana statute of repose, IC 32-30-1 *et seq.*, the Parties agree that the "date of substantial completion" shall be deemed to be the Substantial Completion Date as defined herein, upon the occurrence of which Developer is entitled to Availability Payments in accordance with Section 10.2.1 of the PPA.

"**Law**" or "**Laws**" means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by IFA within the scope of its administration of the PPA Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the East End Crossing or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws," however, excludes Governmental Approvals.

"**LD Cap**" means 7.5% of the initial Contract Sum.

"**Lender**" has the meaning set forth under the PPA.

"**Lenders' Technical Advisor**" means the "Independent Technical Advisor" under the Indenture of Trust.

"**Liability Cap**" has the meaning set forth in Section 19.2.13A.1.

"**Liquid Security**" has the meaning set forth in Section 17.2.2A.

"**Long Stop Date**" means the outside deadline for achieving Substantial Completion, as set forth in the Project Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the PPA.

"**Losses**" means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

"**Major Environmental Approvals**" means those Environmental Approvals identified in Attachment 7-1 of the Technical Provisions that are not IFA-Provided Approvals.

"**Material D&C Subcontractor**" has the meaning set forth in the definition of "Material D&C Subcontract" below.

"**Material D&C Subcontract**" means one or more Contracts or subcontracts, regardless of tier, between Design-Build Contractor or one of is Contractors, on one hand, and a Contractor or subcontractor (the "**Material D&C Subcontractor**"), on the other hand, for the performance of a portion of the D&C Work, for which the contract value (in total for all such Contracts or subcontracts with the Material D&C Subcontractor) exceeds [redacted].

"**Maximum Availability Payment**" or "**MAP**" means the maximum Availability Payment that Developer can earn in a given Fiscal Year from and after the Substantial Completion Date, as calculated in accordance with Exhibit 10 (Payment Mechanism) to the PPA, and as may be further adjusted in accordance with the PPA Documents.

"**Milestone**" means each of the milestones set forth at Exhibit 29, as well as the Scheduled DB Substantial Completion Date, DB Long Stop Date and DB Final Acceptance Deadline.

"**Milestone Delay Liquidated Damages**" has the meaning set forth in Section 10A.4.2.

"**Milestone Payment**" has the meaning set forth under the PPA.

"**Noncompliance Event**" has the meaning set forth under the PPA.

"**Noncompliance Points**" has the meaning set forth under the PPA.

"**Nonconformance Report**" has the meaning set forth under the PPA.

"**Nonconforming Work**" means Work that does not conform to (and does not exceed) the requirements of the DBC Documents, PPA Documents, the Governmental Approvals, applicable Law, the Design Documents or the Construction Documents.

"**Non-Discriminatory O&M Change**" has the meaning set forth under the PPA.

"**Notice**" means a written notice, notification, correspondence, order or other communication given under the Agreement to a Party that complies with the prescriptions set forth in Section 25.11.

"**Notice of Determination**" has the meaning set forth in Section 10A.2.1.3.

"**NTP1**" has the meaning set forth under the PPA.

"**NTP1 Conditions Deadline**" has the meaning set forth under the PPA.

"**NTP2**" has the meaning set forth under the PPA.

"**NTP2 Conditions Deadline**" has the meaning set forth under the PPA.

"**O&M Work**" has the meaning set forth under the PPA.

"**Open Book Basis**" means allowing Developer to review all underlying assumptions, data, documents and information associated with pricing or compensation or adjustments thereto, costs of the D&C Work, Extra Work Costs, Delay Costs, costs claims under Article 15, schedule, composition of equipment spreads, equipment rates (including rental rates), labor rates and benefits, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, swap and hedge rates, insurance rates, bonding rates, letter of credit fees, overhead, profit, and other items reasonably required by Developer to satisfy itself as to validity or reasonableness.

"**Operating Period**" has the meaning set forth under the PPA.

"**Other Developer Key Contractor**" means a Key Contractor other than Design-Build Contractor.

"**Oversight**" means monitoring, inspecting, sampling, measuring, spot checking, attending, observing, testing, investigating and conducting any other oversight respecting any part or aspect of the East End Crossing or the Work, including all the activities described in Section 3.4.1.2.

"**Party**" means Developer or IFA, as the context may require, and "**Parties**" means Developer and IFA, collectively.

"**Pass Through Claim**" has the meaning set forth in Section 19A.1.

"**Patent Defect**" means any Nonconforming Work that is discovered or should have been discovered by reasonable inspection during the Warranty Period (other than Nonconforming Work which has been accepted by IFA under the PPA and by Developer hereunder).

"**Payment Bond**" means one or more payment bonds in place as a condition to issuance of NTP2 and commencement of the D&C Work, as more particularly set forth in Section 17.2.1.

"**Payment Certificate**" means the certificate issued pursuant to Section 10A.2.3.1.

"**Performance Security**" means one or more performance bonds or letters of credit in place as a condition to issuance of NTP2 and commencement of the D&C Work, as more particularly set forth in Section 17.2.1.

"**Persistent Design-Build Contractor Default**" has the meaning set forth in Section 2.1 of Exhibit 12.

"**Person**" means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity, as well as IFA.

"**PPA Dispute Proceeding**" has the meaning set forth in Section 19A.1.

"**PPA Documents**" has the meaning set forth under the PPA.

"**Preliminary Project Baseline Schedule**" means the high level, logic-based critical path schedule representing Developer's plan to complete performance of the Work beginning on the date of NTP1 and concluding with Final Acceptance, as set forth in Exhibit 2-B (Preliminary Project Baseline Schedule) to the PPA.

"**Principal Developer Documents**" means (a) those "Principal Project Documents," as defined under the PPA, to which Developer is a party and (b) the PPA.

"**Project**" has the meaning set forth in the Recitals.

"**Project Baseline Schedule**" means the logic-based critical path schedule for all Work through Final Acceptance, as more particularly described in Section 1.5.2.1.1 of the Technical Provisions, and which is a deliverable described at Table 25-1 of the Technical Provisions.

"**Project Management Plan**" has the meaning set forth under the PPA.

"**Project Manager**" has the meaning set forth under the PPA.

"**Project Right of Entry**" has the meaning set forth in Section 2.1.2.

"**Project Right of Way**" or "**Project ROW**" means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines delineating the outside boundaries of the East End Crossing set forth in the ROW Maps contained in the Reference Information Documents, as such boundaries may be adjusted from time to time in accordance with the PPA Documents (including adjustments for Additional Properties). The term specifically includes all air space, surface rights and subsurface rights within the boundaries of the Project Right of Way.

"**Project Schedule**" means one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Project Status Schedule and the Project recovery schedule) for all Work leading up to and including Substantial Completion and Final Acceptance, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Section 1.5.2.1 of the Technical Provisions.

"**Project Schedule Deadline**" means one or more of the NTP1 Conditions Deadline, Financial Close Deadline, NTP2 Conditions Deadline, Baseline Substantial Completion Date, Final Acceptance Deadline and Long Stop Date, as the case may be.

"**Project Section**" means each of "sections" 4 through 6 inclusive of the East End Crossing as identified in the NEPA Documents and described in Section 1.1 of the Technical Provisions.

"**Project Specific Locations**" means areas in which Developer proposes temporary East End Crossing-specific activities in connection with the Construction Work not within the Project Right of Way boundaries identified in the NEPA Documents, such as construction work sites, temporary work areas, lay down areas, staging areas, storage areas, stockpiling areas, earth work material borrow sites, equipment parking areas, and similar areas.

"**Project Standards**" has the meaning set forth in Section 26 of the Technical Provisions.

"**Proprietary Intellectual Property**" means Intellectual Property created, used, applied or reduced to practice in connection with the East End Crossing or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.

"**Public-Private Agreement**" or "**PPA**" has the meaning set forth in the Recitals.

"**Public Records Act**" means IC 5-14-3, as amended from time to time.

"**Punch List**" has the meaning set forth under the PPA.

"**Quality Manager**" has the meaning set forth under the PPA.

"**REAA Statement**" has the meaning set forth in Section 15.8.1.

"**Reasonable Accuracy**" means with respect to the description or identification of a Utility in the Utility Information:

(a) The Utility's actual centerline location is located at or less than five (5) feet distant from the horizontal centerline location indicated therefor in the Utility Information (without regard to vertical location);

(b) The Utility Information does not show the Utility as abandoned (i.e., nonexistent except "on paper", or existent but no longer active) when in fact the Utility exists and is active;

(c) The Utility Information shows non-existent or inactive Utilities as abandoned; or

(d) The Utility has an actual nominal diameter (excluding casings and any other appurtenances) greater than 12 inches, and its actual nominal diameter is either greater than or less than the diameter shown in the Utility Information by 25% or less of the diameter shown in the Utility Information

Any other inaccuracies in the Utility Information (e.g., as to type of material or encasement status) shall have no impact on "reasonable accuracy" of its identification and shall not result in a determination that the Utility was not identified with "reasonable accuracy." If there is any discrepancy between any of the components of the Utility

Information, only the most accurate information shall be relevant for purposes of determination of "reasonable accuracy."

"**Reasonable Investigation**" means the following activities by appropriate, qualified professionals prior to the Setting Date:

(a) Visit and visual, non-intrusive inspection of the Site and adjacent locations, except areas to which access rights have not been made available by the Setting Date;

(b) Review and analysis of all Reference Information Documents;

(c) Review and analysis of IFA-Provided Approvals available prior to the Setting Date;

(d) Reasonable inquiry with Utility Owners, including request for and review of Utility plans provided by Utility Owners;

(e) Review and analysis of material Laws applicable to the Project or the D&C Work as of the Setting Date; and

(f) Other activities sufficient to familiarize Design-Build Contractor with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations;

except that none of the foregoing activities includes conducting field studies, geotechnical investigations, or original research of private records or public records not contained or referenced in the Reference Information Documents or Technical Provisions.

"**Record Drawings**" means construction drawings and related documentation revised to show significant changes made to the East End Crossing during the construction process or during the Operating Period; usually based on marked-up Final Design Documents furnished by Developer; also known as as-built plans. The Record Drawings is a deliverable described at Table 25-1 of the Technical Provisions.

"**Reference Information Documents**" means the collection of information, data, documents and other materials that IFA has made available to Developer in connection with the East End Crossing or the Work (including those contained in the RFP documents) for general or reference information only and without any warranty as to their accuracy, completeness or fitness for any particular purpose. The Reference Information Documents are not PPA Documents. Prior to the Effective Date, IFA made available to Developer a non-exclusive list of Reference Information Documents.

"**Related Transportation Facilities**" has the meaning set forth under the PPA.

"**Release of Hazardous Materials**" or "**Release**" means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, surface water, groundwater, submerged lands or Environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

"**Relief Event**" means an event constituting a "Relief Event" as defined under the PPA.

"**Relief Event Delay**" means a delay to a Controlling Work Item, after consumption of all Total Float available pursuant to Section 5.7.6, provided that such delay is solely and directly attributable to a Relief Event that is not concurrent with any other delay that is not caused by a Relief Event, and excluding delay due to loss, damage or destruction described in Section 15.7.12 of the PPA.

"**Relief Event Notice**" means a "Relief Event Notice" as defined under the PPA.

"**Relief Events Allowance Amount**" has the meaning set forth under the PPA.

"**Relief Events Allowance Account**" means the account by such name established and maintained pursuant to Section 15.6.1.1 of the PPA.

"**Safety Compliance**" means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the East End Crossing to correct a specific safety condition or risk of the East End Crossing that IFA or a Governmental Entity has reasonably determined to exist by investigation or analysis.

"**Safety Standards**" means those provisions of the Technical Provisions that IFA indicates that it, the Department, FHWA or AASHTO considers to be important measures to protect public safety, worker safety or the safety of property. As a matter of clarification, provisions of Technical Provisions primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

"**Scheduled DB Substantial Completion Date**" means the scheduled date for DB Substantial Completion set forth in the initial Project Schedule included in Exhibit 2-A, as may be adjusted in accordance with the DBC Documents.

"**Seismic Event**" means the trembling or shaking movement of the earth's surface that produces ground motions at the Site that, (a) if prior to Substantial Completion, directly impacts, and causes damage to, temporary or permanent works of the East End Crossing or (b) if following Substantial Completion, exceeds the Design Requirements and directly impacts and causes damage to the permanent works of the East End Crossing.

"**Setting Date**" has the meaning set forth under the PPA.

"**Site**" means Project Right of Way and any temporary rights or interests that Developer may acquire in connection with the East End Crossing or the Utility Adjustments included in the Construction Work, including Project Specific Locations but excluding Toll Collection System Locations.

"**State**" means the State of Indiana.

"**Statement**" has the meaning set forth in Section 10A.2.1.1.

"**Submittal**" means any document, work product or other written or electronic end product or item required under the PPA Documents to be delivered or submitted to IFA. "Submittal" does not include notices or correspondence to be submitted to IFA under the PPA Documents.

"**Substantial Completion**" has the meaning set forth under the PPA.

"**Substantial Completion Date**" has the meaning set forth under the PPA.

"**Supplier**" means any Person not performing work at or on the Site which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the East End Crossing to Design-Build Contractor or to any Contractor in connection with the performance of the D&C Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing D&C Work at the Site.

"**Surety**" means each properly licensed surety company, insurance company or other Person approved as a "Surety" by IFA under the PPA which has issued any of the Payment and Performance Bonds.

"**Taxes**" means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the East End Crossing, the performance of the Work, the Milestone Payment, Availability Payments, other compensation or act, business, status or transaction of Developer, including any interest, penalty or addition thereto, and including utility rates or rents, in all cases whether disputed or undisputed.

"**Technical Provisions**" means the "East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project), Technical Provisions," executed by IFA and Developer concurrently with the PPA, constituting the document describing the scope of the Work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the East End Crossing and/or the Utility Adjustments, as such provisions may be changed, added to, deleted or replaced pursuant to the PPA.

"**Temporary Traffic Control Plans**" has the meaning set forth under the PPA.

"**Termination Compensation**" means each measure of compensation, if any, owing from Developer to Design-Build Contractor upon termination of the Agreement prior to the stated expiration of the DBC Term.

"**Termination Date**" means (a) the date of expiration of the DBC Term or (b) if applicable, the Early Termination Date.

"**Third Party Claims**" means any and all claims, disputes, disagreements, causes of action, demands, suits, actions, judgments, investigations or proceedings brought by a Person that is not a Party with respect to damages, injuries, liabilities, obligations, losses, costs, penalties, fines or expenses (including attorneys' fees and expenses) sustained or incurred by such Person.

"**Threatened or Endangered Species**" means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, et seq. or any species listed as threatened or endangered pursuant to the State endangered species act.

"**Toll Collection System**" or "**TCS**" means the electronic toll collection system for the East End Crossing, including its components, systems and subsystems (including the CSC, VPS, VES and AVCS, CSC Storefronts, kiosks and toll information signs), the hardware and physical infrastructure, and the related software.

"**Tolling Infrastructure Turnover Date**" has the meaning set forth under the PPA.

"**Tolling Systems Integrator**" has the meaning set forth under the PPA.

"**Total Float**" means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will delay occurrence of either the Substantial Completion Date or the Final Acceptance Date. Such Total Float is generally identified as the difference between the early start date and late start date, or early completion date and late completion date, for each of the activities shown on the Project Schedule.

"**Total Project Capital Cost**" has the meaning set forth under the PPA.

"**Tribunal**" has the meaning set forth in Section 19.6.3.1.

"**Type 1 Utility Adjustment**" has the meaning set forth in Section 18.1.2 of the Technical Provisions.

"**Type 2 Utility Adjustment**" has the meaning set forth in Section 18.1.2 of the Technical Provisions.

"**Type 3 Utility Adjustment**" has the meaning set forth in Section 18.1.2 of the Technical Provisions.

"**Uncured Noncompliance Points**" has the meaning set forth under the PPA.

"**Utility**" or "**utility**" means and includes poles, plants, lines, trenches, bridges, tunnels, pipelines, and any other system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, coal or other mineral slurry, steam, heat, light, chemicals, air, sewage, drainage not connected with a highway drainage system, irrigation, or another substance. The term "Utility" or "utility" also includes a system for furnishing transportation of goods or persons by means of railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline, or a similar means. The term "Utility" or "utility" excludes (a) storm water facilities providing drainage for the Project ROW, (b) street lights and traffic signals, and (c) ITS and IVHS facilities. The necessary appurtenances to each Utility Owner Project shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

"**Utility Adjustment**" means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the East End Crossing; provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project Right of Way, the Utility Adjustment Work for each crossing of the Project Right of Way by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project Right of Way, the Utility Adjustment Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Adjustment.

"**Utility Enhancement**" has the meaning set forth in Section 5.5.6.

"**Utility Owner**" means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

"**VCGP**" has the meaning set forth in the Preamble.

"**Warranty Inspection**" has the meaning set forth in Section 5.2A.1.2.

"**Warranty Period**" means the period of 24 months after the Substantial Completion Date, extended as applicable pursuant to Section 5.2A.3.3.

"**WCC**" has the meaning set forth in the Preamble.

"**Work**" means the work required to be furnished and provided by Developer under the PPA Documents (which is delegated in part to Design-Build Contractor under the Agreement), including all administrative, design, engineering, real property acquisition and occupant relocation, construction, Landscaping Work, Rehabilitation Work, Utility Adjustment, utility accommodation, support services, financing services, operations,

maintenance and management services, except for those efforts which such PPA Documents expressly specify will be performed by Persons other than Developer, Design-Build Contractor, Developer-Related Entities, or Design-Build Contractor Entities.

EXHIBIT 2

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

2-A Schematic Design
2-B Preliminary Project Baseline Schedule
2-C [Not Used]
2-D [Not Used]
2-E Preliminary Project Management Plan
2-F Initial Design and Construction Commitment
2-G [Not Used]
2-H Equity Members, Contractors and Key Personnel Commitments
2-I [Not Used]
2-J [Not Used]
2-K Equal Employment Opportunity Certification
2-L Preliminary DBE Performance Plan
2-M DBE Certification
2-N 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 Design-Build Contractor Bring Down Certificate
2-T Form of Developer Bring Down Certificate

EXHIBIT 2-A

SCHEMATIC DESIGN

EXHIBIT 2-B

PRELIMINARY PROJECT BASELINE SCHEDULE

EXHIBIT 2-E

PRELIMINARY PROJECT MANAGEMENT PLAN

EXHIBIT 2-F

INITIAL DESIGN AND CONSTRUCTION COMMITMENT

EXHIBIT 2-H

DBC Contractors and DBC Key Personnel Commitments

EXHIBIT 2-K

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

EXHIBIT 2-L

PRELIMINARY DBE PERFORMANCE PLAN

EXHIBIT 2-M

DBE CERTIFICATION

EXHIBIT 2-N

PRELIMINARY WORKFORCE DIVERSITY AND SMALL BUSINESS PERFORMANCE PLAN

EXHIBIT 2-O

BUY AMERICA CERTIFICATION

EXHIBIT 2-P

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

EXHIBIT 2-Q

DEBARMENT AND SUSPENSION CERTIFICATION

EXHIBIT 2-R

DRUG-FREE WORKPLACE CERTIFICATION

EXHIBIT 2-S

FORM OF DESIGN-BUILD CONTRACTOR BRING-DOWN CERTIFICATE

[*On Design-Build Contractor Letterhead*]

[*Date*]

Pursuant to Section 18.5 of the Design-Build Contract (the "**Agreement**"), by and between WVB East End Partners, LLC ("**Developer**") and Walsh Construction Company / VINCI Construction Grands Projets JV ("**Design-Build Contractor**"), Design-Build Contractor hereby represents, certifies and warrants to Developer as follows:

1. [Not Used]

2. [Not Used]

3. None of Design-Build Contractor, WCC, VCGP or their respective principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into 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, DBC 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 Design-Build Contractor, WCC or VCGP, as applicable.

4. [Not Used]

5. As of the date of this Certificate, based upon its Reasonable Investigation, Design-Build Contractor 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 subsurface conditions discoverable through such Reasonable Investigation, and applicable Laws, and Design-Build Contractor has reasonable grounds for believing and does believe that the East End Crossing can be designed and built within such constraints.

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

7. As of the date hereof, Design-Build Contractor is an unincorporated joint venture of Walsh Construction Company ("**WCC**") and VINCI Construction Grands Projets ("**VCGP**"), WCC is a corporation duly organized and validly existing under the

laws of the State of Illinois, and VCGP is a limited company duly organized and validly existing under the laws of France; and each of the foregoing entities has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to perform each and all of the obligations of Design-Build Contractor provided for in the Agreement. Design-Build Contractor is duly qualified to do business, and is in good standing, in the State and in the Commonwealth of Kentucky, in each case, as of the date hereof. Each of Design-Build Contractor, WCC, and VCGP 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. [Not Used]

9. [Not Used]

10. [Not Used]

11. [Not Used]

12. There is no action, suit, proceeding, investigation or litigation pending and served on Design-Build Contractor which challenges Design-Build Contractor's authority to execute, deliver or perform, or the validity or enforceability of, the DBC Documents to which Design-Build Contractor is a party, or which challenges the authority of the Design-Build Contractor official executing the DBC Documents; and Design-Build Contractor has disclosed to Developer prior to [the effective date of the Initial Funding Agreements] any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Design-Build Contractor is aware. Design-Build Contractor has no current, pending or outstanding criminal, civil, or enforcement actions initiated by IFA, the State or the Commonwealth of Kentucky, and Design-Build Contractor agrees that it will immediately notify Developer of any such actions.

13. Between the Effective Date and the date hereof, Design-Build Contractor 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 Design-Build Contractor or its Contractors identified in Developer's 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. None of Design-Build Contractor, the DBC JV Members, or their respective 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. Each individual signing the Agreement on behalf of Design-Build Contractor or the DBC JV Members, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of Design-Build Contractor or the DBC JV Member, as applicable, that he/she has not, nor has any

other member, employee, representative, agent or officer of Design-Build Contractor or the DBC JV Member, as applicable, 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.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have been authorized by all necessary organizational action to make this certification on behalf of Design-Build Contractor and further certify that they have caused this certificate to be executed as of the date first written above.

Walsh Construction Company /
VINCI Construction Grands Projets JV

By: Walsh Construction Company

Signature: _____

Name: _____

Title: _____

By: VINCI Construction Grands Projets

Signature: _____

Name: _____

Title: _____

State of Indiana)
County of _____)

This instrument was acknowledged before me on this [_____] day of [_____], 201[___] by [*name*], [*title*] of Walsh Construction Company, an Illinois corporation, on behalf of said corporation.

_____
Notary Public in and for the State of Indiana

_____
Printed Name of Notary Public

[Notary Seal]

My Commission Expires:

State of Indiana)
County of _____)

This instrument was acknowledged before me on this [_____] day of [_____], 201[___] by [*name*], [*title*] of VINCI Construction Grands Projets, a French limited company, on behalf of said company.

_____
Notary Public in and for the State of Indiana

_____
Printed Name of Notary Public

[Notary Seal]

My Commission Expires:

EXHIBIT 2-T

FORM OF DEVELOPER BRING-DOWN CERTIFICATE

[*On Developer Letterhead*]

[*Date*]

Pursuant to Section 18.5 of the Design-Build Contract (the "**Agreement**"), by and between WVB East End Partners, LLC ("**Developer**") and Walsh Construction Company / VINCI Construction Grands Projets JV ("**Design-Build Contractor**"), Developer hereby represents, certifies and warrants to Design-Build Contractor as at the Effective Date of the Agreement as follows:

1. Developer has full power, right and authority to execute, deliver and perform the DBC Documents and the Principal Developer Documents to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein.

2. Each person executing on behalf of Developer the Agreement and the Principal Developer Documents to which Developer is a party has been duly authorized to execute and deliver each such document on behalf of Developer; and the Agreement and such Principal Developer Documents have been duly executed and delivered by Developer.

3. The Agreement and the Principal Developer Documents to which Developer is a party have each been duly authorized by Developer, and each constitutes a legal, valid and binding obligation of Developer enforceable against Developer in accordance with its terms.

4. Neither the execution and delivery by Developer of the DBC Documents, 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 any agreement, judgment or decree to which Developer is a party or is bound.

5. The execution and delivery by Developer of the DBC Documents, and the performance by IFA 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 performance of any of its obligations under the DBC Documents.

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

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned, the duly elected and qualified [*title*] of WVB East End Partners, LLC, a Delaware limited liability company, has been authorized by all necessary organizational action to make this certification on behalf of Developer (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: _____

State of Indiana)
County of _____)

This instrument was acknowledged before me on this [_____] day of [_____], 201[___] by [*name*], [*title*] of WVB East End Partners, LLC, a Delaware limited liability company, on behalf of said company.

_____
Notary Public in and for the State of Indiana

[Notary Seal]

_____
Printed Name of Notary Public

My Commission Expires:

EXHIBIT 5

HAZARDOUS MATERIALS RISK ALLOCATION TERMS

All risks associated with the discovery of Hazardous Materials in, on, under or within the Project Right of Way, including costs and expenses and schedule delays arising out of any Hazardous Materials in, on or under the Project Right of Way, before Substantial Completion, and any Design-Build Contractor Releases of Hazardous Materials (both before and after Substantial Completion), will be borne by Design-Build Contractor, except as follows.

1. If there occurs any Relief Event under clause (m) or (n) of the definition of "Relief Event" under the PPA, and if Developer and Design-Build Contractor (in accordance with Article 15 of the Agreement) timely satisfy the terms and conditions for asserting a Relief Event set forth in Section 15.1 of the PPA, then IFA has agreed pursuant to Exhibit 5 to the PPA to 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 the Project Right of Way 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 Design-Build Contractor 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 under the PPA 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 is only liable for the least costly alternative, provided, that if Design-Build Contractor 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 IFA, Developer and Design-Build Contractor, and if Developer agrees, then Design-Build Contractor shall obtain IFA's concurrence in such judgment, which concurrence IFA has agreed will not be unreasonably withheld, conditioned or delayed, and Design-Build Contractor shall respond to all reasonable requests by IFA for supporting information in respect of such judgment, whereupon Design-Build Contractor 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 PPA and shall be payable first out of the Relief Events Allowance as provided in Section 15.6 of the PPA 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" under the PPA), subject to the applicable limitations set forth in Section 3 below.

3. Pursuant to and without limiting Section 3 of Exhibit 5 to the PPA, Design-Build Contractor acknowledges that 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," as defined under the PPA (it being understood that the foregoing does not limit any right Design-Build Contractor may have to recover for liabilities, costs, expenses or Losses attributable to Releases of Hazardous Materials caused by Developer or a Developer-Related Entity which are not made the responsibility of Design-Build Contractor under the DBC Documents);

(b) Extra Work Costs and Delay Costs arising out of Releases of Hazardous Materials from vehicles operating within the Project Right of Way, 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 Design-Build Contractor'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 (in consultation with Design-Build Contractor) will negotiate in good faith and in accordance with Exhibit 5 to the PPA an amount for such costs and expenses for which IFA has agreed to be liable to pay;

(e) "Developer Releases of Hazardous Materials" as defined under the PPA;

(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 or Design-Build Contractor 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 or Design-Build Contractor'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 or Design-Build Contractor is required to avoid pursuant to the Technical Provisions; or

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

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 Agreement with respect to off-site disposal for which Developer is not compensated by IFA. If no such unit price is stated in the Agreement, 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 PPA. As between Developer and Design-Build Contractor, Design-Build Contractor will retain generator and arranger status for Hazardous Materials to the extent set forth in Section 5.9.10 of the Agreement.

6. Developer and Design-Build Contractor may be entitled to schedule, performance and other relief from IFA due to a Relief Event under clause (m) or (n) of the definition of "Relief Event" under the PPA to the extent provided in Sections 15.11 and 15.12 of the PPA; provided that the Parties acknowledge that no time extension is allowed with respect to immaterial quantities of Hazardous Materials in any particular location.

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*.

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*.

EXHIBIT 12

NONCOMPLIANCE POINTS SYSTEM AND PERSISTENT DESIGN-BUILD CONTRACTOR DEFAULT

Design-Build Contractor acknowledges Exhibit 12 to the PPA, including its Attachment 1, a copy of which is attached hereto for reference of the Parties, pursuant to which IFA may assess Noncompliance Points under the PPA for failures or breaches under the PPA caused by Design-Build Contractor as delegate of Developer. This Exhibit 12 in no way obviates or lessens the requirements of Exhibit 12 to the PPA, the rights of IFA thereunder, or the consequences under the PPA or the Agreement resulting from the assessment of Noncompliance Points by IFA.

1 Noncompliance Points System

1.1 Attachment 1 to Exhibit 12 of the PPA identifies the actions, omissions, failures and breaches of Design-Build Contractor that may result in the assessment of Noncompliance Points by IFA under the PPA, the number of Noncompliance Points that may be assessed for each such action, omission, failure or breach, and the cure period available to Design-Build Contractor for each such action, omission, failure or breach, other than for Design-Build Contractor's failure to submit a deliverable by its due date.

1.2 The Parties acknowledge that a Persistent Developer Default may exist under the PPA regardless of whether a Persistent Design-Build Contractor Default exists hereunder, and that the Parties have a mutual interest in avoiding a Persistent Developer Default under the PPA. Therefore, regardless of whether there exists a Persistent Design-Build Contractor Default hereunder, and regardless of whether the Noncompliance Points or breaches or failures to perform accumulated to date were caused by Design-Build Contractor, Design-Build Contractor shall use all commercially reasonable efforts to avoid the assessment of Noncompliance Points by IFA (as contemplated by Section 2.1 of Exhibit 12 to the PPA) or breaches or failures to perform under the PPA Documents (as contemplated by Section 2.2 of Exhibit 12 to the PPA) whenever the cumulative number of Noncompliance Points or breaches or failures to perform, as the case may be, exceeds 60% of any threshold defined under Sections 2.1 and 2.2 of Exhibit 12 to the PPA, respectively.

1.3 Design-Build Contractor shall use all commercially reasonable efforts to comply with a remedial plan required by IFA under the PPA due to a Persistent Developer Default.

2 Trigger Points for Persistent Design-Build Contractor Default and Uncured Noncompliance Points

2.1 "**Persistent Design-Build Contractor Default**" means:

(a) accumulation of Noncompliance Points assessed by IFA in accordance with Article 11 of the PPA to the extent caused by any action, omission, failure or breach of Design-Build Contractor, including those Noncompliance Points

assessed on account of breaches or failures that have been cured, at or above any of the trigger points set forth in Section 2.2 of this Exhibit 12; or

(b) accumulation at or above any of the trigger points set forth in Section 2.3 of this Exhibit 12 of non-material breaches or failures to timely observe or perform or to cause to be observed or performed any covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the PPA Documents and delegated to Design-Build Contractor under the Agreement and not otherwise the subject of a notice from IFA declaring a "Developer Default" under the PPA, including non-material breaches or failures to perform the Design Work or Construction Work in accordance with the PPA Documents.

For the purpose of Section 2.1(b), the Parties acknowledge that pursuant to the PPA Documents, a breach or failure to perform is counted (i) only if it is the subject of a written notice from IFA to Developer (which Developer shall provide to Design-Build Contractor), except that no notice is required to count continuation of the breach or failure to perform beyond the applicable cure period as a new and separate breach or failure to perform, as described in Section 11.3.5 of the PPA; (ii) regardless of whether it is cured; (iii) regardless of whether it is of the same or different type, nature or character as any other breach or failure to perform included in the count; and (iv) regardless of whether it is the basis for assessment of Noncompliance Points.

2.2 A Persistent Design-Build Contractor Default under Section 2.1(a) of this Exhibit 12 shall exist entitling Developer to require submittal of Design-Build Contractor's remedial plan under Section 19.2.6 of the Agreement, on any date that:

(a) The cumulative number of Noncompliance Points assessed by IFA during any consecutive 365-day period (excluding any Noncompliance Points assessed for cured Noncompliance Events during the period prior to the Substantial Completion Date) caused by any action, omission, failure or breach of Design-Build Contractor equals or exceeds the following:

(i) For any consecutive 365-day period ending prior to the Substantial Completion Date, 85;

(ii) For any consecutive 365-day period a portion of which includes any days prior to the Substantial Completion Date, 85; and

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

(b) The cumulative number of Noncompliance Points 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) caused by any action, omission, failure or breach of Design-Build Contractor equals or exceeds the following:

(i) For any consecutive 1095-day period ending prior to the Substantial Completion Date, 160;

(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, 160; 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, 150; 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, 135; and

(v) For any other consecutive 1095-day period, 120.

2.3 A Persistent Design-Build Contractor Default under Section 2.1(b) of this Exhibit 12 shall exist entitling Developer to require submittal of Design-Build Contractor's remedial plan under Section 19.2.6 of the Agreement, on any date that the cumulative number of breaches or failures to perform under Section 2.1(b) of this Exhibit 12 caused by any action, omission, failure or breach of Design-Build Contractor 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, 55;

(b) For any consecutive 365-day period a portion of which includes any days prior to the Substantial Completion Date, 55; and

(c) For any other consecutive 365-day period, 35.

2.4 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.

EXHIBIT 17

EXTRA WORK COSTS AND DELAY COSTS SPECIFICATIONS

1. EXTRA WORK COSTS. Design-Build Contractor acknowledges that, at the sole discretion of IFA acting in accordance with Exhibit 17 to the PPA, Extra Work Costs will 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 will be negotiated in accordance with the PPA 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 Design-Build Contractor and Developer risk associated with the lump sum pricing.

1.1.2 Lump sum Extra Work Costs also include a reasonable, negotiated markup for Contractor indirect costs, overhead and profit and Design-Build Contractor and Developer indirect costs and overhead. Design-Build Contractor acknowledges that the negotiated lump sum will not include any home office overhead of Developer, Design-Build Contractor or its Contractors or any markup on Contractor, Design-Build Contractor or Developer direct or indirect costs for Design-Build Contractor or Developer profit. Such indirect costs will 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 Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, the price of a negotiated lump sum for Extra Work Costs will 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, Design-Build Contractor 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, Design-Build Contractor will 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, all in accordance with Exhibit 17 to the PPA. The direct costs of labor, materials and equipment shall be determined as set forth in Sections 1.2.1 ("Labor"), 1.2.2 ("Materials"), and 1.2.3 ("Equipment Rental"), respectively, of Exhibit 17 to the PPA, each of which is summarized below. Markup for overhead and profit shall be determined as set forth in Section 1.2.4 of Exhibit 17 to the PPA ("Costs of Delay, Indirect Costs, Overhead and Profit").

1.2.1 Labor.

1.2.1.1 Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, Extra Work Costs will 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 or Design-Build Contractor. 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. Design-Build Contractor acknowledges that in no case will an officer or director of Developer, Design-Build Contractor 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, Design-Build Contractor, 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. Design-Build Contractor acknowledges that, as required by Exhibit 17 to the PPA, the labor surcharge will 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 will 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. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, IFA reserves the right to furnish any materials it deems advisable, and neither Developer nor Design-Build Contractor has claim for costs and markup on those materials.

1.2.2.2 Developer-Furnished Materials. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, only materials furnished by Developer or Design-Build Contractor 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, Design-Build Contractor, 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, in accordance with Section 1.2.2.2(d) of Exhibit 17 to the PPA, 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.* Design-Build Contractor acknowledges that if Design-Build Contractor 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, in accordance with Section 1.2.2.2(e) of Exhibit 17 to the

PPA, 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) Design-Build Contractor acknowledges that, in accordance with Exhibit 17 of the PPA, Extra Work Costs for the use of equipment shall be 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, Design-Build Contractor 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, Design-Build Contractor-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 DBC Term by the percentage increase, if any, in the CPI since the previous July 1.

(b) Design-Build Contractor acknowledges that 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. Design-Build Contractor 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 DBC 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 DBC 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.

(a) Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, 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 under Section 1.2.3.3 of Exhibit 17 to the PPA, 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 is in Operation	Hours Includable in 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 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 Design-Build Contractor desire the return of the equipment to a location other than its original location, IFA has agreed to 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. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, 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 Design-Build Contractor 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. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, 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 Design-Build Contractor 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, acting in accordance with Section 1.2.3.5(b) of the PPA, will establish an hourly rental rate for determining the Extra Work Costs of fully maintained and operated rental dump trucks. Design-Build Contractor shall provide IFA with complete information on the hourly rental rates available for rental of fully maintained and operated dump trucks;

(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. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA:

(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) Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, IFA will pay Developer 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). Developer shall retain [●]% of such markup and remit the balance to Design-Build Contractor.

(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. 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.][1]

(c) These markups shall constitute the full compensation for all Developer's (inclusive of Design-Build Contractor'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, Design-Build Contractor or its Contractors for Developer or Design-Build Contractor profit.

1.2.4.3 No Charge or Markup for Home Office Overhead. There shall be no home office overhead added for Developer, Design-Build Contractor or any of its Contractors.

1.2.5 Affiliate Extra Work Costs.

1.2.5.1 Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, 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 PPA.

[1] NTD: Are there any circumstances in which Developer will provide its own labor or materials? This provision of PPA Exhibit 17 would not apply to Design-Build Contractor.

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 Design-Build Contractor, 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 in accordance with Section 2 of Exhibit 17 to the PPA, which is summarized 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. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, 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 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" under the PPA (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 has agreed pursuant to Section 2.2.4 of Exhibit 17 to the PPA to 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. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, 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][2] 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, Design-Build Contractor's, or any Contractor's cost of idle time of labor and equipment for Developer or Design-Build Contractor 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 under the PPA 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. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, if the Delay is to a non-Controlling Work Item, then no indirect costs and expenses, and no profit, of Developer, Design-Build Contractor or any Contractor are allowable as Delay Costs.

2.5 Home Office Idled Labor and Equipment. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, there shall be no home office costs of idled labor or idled equipment added for Developer, Design-Build Contractor, or any of its Contractors.

2.6 [Not Used]

2.7 Delay Costs in respect of Certain Relief Events relating to Environmental Litigation. Design-Build Contractor acknowledges that, in accordance with Exhibit 17 to the PPA, if the Delay is due to an undisputed Relief Event under clause (s) of the definition of "Relief Event" under the PPA, 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 (and Design-Build Contractor, on an Equivalent Project Relief basis) is 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 DBC Term:

[2] See note above. Are there any circumstances in which Developer will provide its own labor or materials?

Payment for escalation costs due to an undisputed Relief Event under clause (s) of the definition of "Relief Event" under the PPA 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. Design-Build Contractor, on Developer's behalf, 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 has agreed to pay for storage of materials due to the delay. Only the actual cost of storing the materials will be paid. No markup will be 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.

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 (in accordance with Exhibit 19 to the PPA).

(d) Developer, IFA and 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 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 PPA (Seismic Event) for IFA responsibilities for the earthquake (seismic event) deductible. Design-Build Contractor shall be responsible for the payment of the deductible.

2. [Not Used]

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 of the PPA 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 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) 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. Design-Build Contractor shall be responsible for payment of the deductible in respect of delayed opening insurance coverage until the Substantial Completion Date.

(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 of the PPA, 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;

(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. Design-Build Contractor shall be responsible for payment of the deductible related to claims with respect to the acts, omissions, and activities of Design-Build Contractor and its contractors and subcontractors and subconsultants of every tier.

(f) With respect to any portion of the East End Crossing that Developer designs and/or builds (or causes to be designed and built), but that Developer 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 DBC Term, Design-Build Contractor 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 D&C 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.

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

(c) Design-Build Contractor'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, Design-Build Contractor 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. Design-Build Contractor shall be responsible for payment of the deductible.

(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.

(e) The policy shall provide a deductible not exceeding $500,000 per occurrence. Design-Build Contractor shall be responsible for payment of the deductible.

7. Professional Liability Insurance

At all times during the DBC 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 (10) 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, Design-Build Contractor shall procure and keep in force, and shall cause the Lead Engineering Firm (in the case of the Design Work) and each Contractor that is under direct contract with Design-Build Contractor and provides professional services to Design-Build Contractor 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) 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. Design-Build Contractor or Lead Engineering Firm, respectively, shall be responsible for payment of the deductible under the respective policy procured by each of them.

(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 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 Design-Build Contractor 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 processional services for any “Developer-Related Entity” (as defined under the PPA) with 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,

subconstractors 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.

Design-Build Contractor shall be responsible for payment of the deductible under the policy with respect to any claim made by an employee of Design-Build Contractor or any contractor, subcontractor or subconsultant of Design-Build Contractor.

9. Employer's Liability Insurance

At all times during the DBC Term, Design-Build Contractor shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance for Design-Build Contractor, 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 Design-Build Contractor, the Contractor and all subcontractors and subconsultants working on or about any Project Right of Way or otherwise engaged in the Work.

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

(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, Design-Build Contractor 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 D&C Work, Design-Build Contractor shall submit to IFA and Developer, and obtain approval from each of them, of the deductible amounts for all Key Contractors under the policy. Design-Build Contractor shall be responsible for payment of the deductible under the policy.

10. Primary Vessel Hull and Machinery Insurance

Design-Build Contractor 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 D&C Work.

(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 conclusion of the DBC 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, Design-Build Contractor 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, Developer, 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 D&C Work, Design-Build Contractor shall submit to IFA and Developer, and obtain approval from each of them, of the deductible amounts under each such Insurance Policy.

11. Aviation Insurance

Design-Build Contractor 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 D&C Work through the DBC Term.

(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, Design-Build Contractor 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, Developer, 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 D&C Work, Design-Build Contractor shall submit to IFA and Developer, and obtain approval from each of them, of the deductible amounts under each such Insurance Policy.

12. Contractors' Insurance

(a) At all times during the DBC Term, Design-Build Contractor 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 PPA, 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 Design-Build Contractor-provided liability insurance. Design-Build Contractor 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. Design-Build Contractor acknowledges that, pursuant to Section 12 of Exhibit 19 to the PPA, IFA has the right to contact the Contractors directly in order to verify the above coverage. Developer shall also have the right to contact the Contractors directly in order to verify the above coverage.

(b) At all times during the DBC Term, Design-Build Contractor shall cause each DBC Key Contractor that has vehicles on the Project Right of Way or uses vehicles in connection with the D&C 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 DBC Key Contractor shall be the named insured under its respective automobile liability policy.

(iii) Each policy shall have a policy limit of $24,000,000 each accident, except as noted in Sections 14 and 15 below.

(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 DBC Term, Design-Build Contractor 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. Design-Build Contractor 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 $20,000,000 each occurrence 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 contractors 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 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 or Design-Build Contractor (as applicable) 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 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.

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

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 WVB East End Partners, LLC (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, Walsh Construction Company / VINCI Construction Grands Projets JV, a joint venture of Walsh Construction Company and VINCI Construction Grands Projets 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 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.]

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 WVB East End Partners, LLC (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, Walsh Construction Company / VINCI Construction Grands Projets JV, a joint venture of Walsh Construction Company and VINCI Construction Grands Projets 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.

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 _____.

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.]

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.

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

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.

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

EXHIBIT 20-E

FORM OF PERFORMANCE LETTER OF CREDIT

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 Design-Build Contractor]

BENEFICIARY: [Name of Developer][3]

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 _____ ("**Developer**"), 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 _____(Design-Build Contractor's name)_____ ("**Design-Build Contractor**") to perform certain obligations under

[3] May also name Collateral Agent.

the certain Design-Build Contract for the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) between Design-Build Contractor and Developer dated _____, 2012 (the "**Agreement**")."

or

"This drawing is due to the failure of _____(Design-Build Contractor's name)_____("**Design-Build Contractor**") to deliver to Developer a new or replacement letter of credit, on the same terms, by the deadline set forth in the certain Design-Build Contract for the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) between Design-Build Contractor 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 Design-Build Contract for the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) between Developer and _____(Design-Build Contractor's name)_____ ("**Design-Build Contractor**") dated _____, 2012 (the "**Agreement**") and Design-Build Contractor 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 Developer 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 Developer at the address for Developer stated above or any other address specified in writing from an executive officer of Developer to the Issuer at the Issuer's address stated above.

Developer is authorized to assign and transfer its beneficiary rights hereunder to the Indiana Finance Authority ("**IFA**") without condition or limitation, whereupon such assignment and transfer IFA may draw upon this Letter of Credit without presentation of the original Letter of Credit. This Letter of Credit shall be automatically assigned, and the beneficiary rights hereunder shall be automatically transferred to, IFA as the exclusive transferee beneficiary upon Final Acceptance, as determined under the

Public-Private Agreement, the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) between IFA and Developer dated _____, 2012.

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)

EXHIBIT 21

FORM OF DIRECT AGREEMENT

[*To be provided by Lender's Counsel*]

EXHIBIT 22

EARLY TERMINATION DATES AND TERMS FOR TERMINATION COMPENSATION

1 IFA-Fault PPA Termination. If the Agreement is terminated pursuant to Section 20.1 of the Agreement:

1.1 The Early Termination Date shall be as specified in the Notice of termination is provided by Developer to Design-Build Contractor, but in no event earlier than 30 days after the date such Notice is delivered.

1.2 Subject to Section 1.3 below, Developer shall pay compensation to Design-Build Contractor in an amount equal to:

1.2.1 The value of all properly executed D&C Work up to and including the date of termination of the Agreement and any other amounts due under the Agreement but not yet paid; plus

1.2.2 The cost of plant and materials ordered for the D&C Work that have been delivered to Design-Build Contractor, or of which the Design-Build Contractor is liable to accept delivery (provided that such plant and materials shall become the property of Developer when paid for by Developer); plus

1.2.3 The costs to Design-Build Contractor of cancellation and termination of subcontracts actually terminated; plus

1.2.4 The cost of removal and return of Design-Build Contractor's equipment from the Site; plus

1.2.5 The cost of repatriation of the Design-Build Contractor's staff and labor employed in connection with the D&C Work at the date of termination; plus

1.2.6 Any other cost or liability (excluding indirect Losses) which in the circumstances was necessarily actually incurred by Design-Build Contractor for carrying out the D&C Work; provided such costs or liability have been reasonably mitigated by Design-Build Contractor and have not been covered by the other payments mentioned in the above provisions.

1.3 Developer's liability shall be limited to the amount of compensation Developer actually recovers from IFA under the PPA attributable to the foregoing costs of Design-Build Contractor. Developer shall incur no liability whatsoever to Design-Build Contractor for any Termination Compensation under this Section 1 unless and until IFA pays compensation to Developer in accordance with Exhibit 22 to the PPA.

1.4 The Termination Compensation under this Section 1 shall be due and payable by Developer in immediately available funds within 30 days after IFA pays compensation to Developer for termination of the PPA.

2 No-Fault Termination. If the Agreement is terminated pursuant to Section 20.2 of the Agreement:

2.1 The Early Termination Date shall be as specified in the Notice of termination is provided by Developer to Design-Build Contractor, but in no event earlier than 30 days after the date such Notice is delivered.

2.2 Subject to Section 2.3 below, Developer shall pay compensation to Design-Build Contractor in an amount equal to:

2.2.1 The value of all properly executed D&C Work up to and including the date of termination of the Agreement and any other amounts due under the Agreement but not yet paid; plus

2.2.2 The cost of plant and materials ordered for the D&C Work that have been delivered to Design-Build Contractor, or of which the Design-Build Contractor is liable to accept delivery (provided that such plant and materials shall become the property of Developer when paid for by Developer); plus

2.2.3 The costs to Design-Build Contractor of cancellation and termination of subcontracts actually terminated; plus

2.2.4 The cost of removal and return of Design-Build Contractor's equipment from the Site; plus

2.2.5 The cost of repatriation of the Design-Build Contractor's staff and labor employed in connection with the D&C Work at the date of termination; plus

2.2.6 Any other cost or liability (excluding indirect Losses) which in the circumstances was necessarily actually incurred by Design-Build Contractor for carrying out the D&C Work; provided such costs or liability have been reasonably mitigated by Design-Build Contractor and have not been covered by the other payments mentioned in the above provisions.

2.3 Developer's liability shall be limited to the amount of compensation Developer actually recovers from IFA under the PPA attributable to the foregoing costs of Design-Build Contractor. Developer shall incur no liability whatsoever to Design-Build Contractor for any Termination Compensation under this Section 2 unless and until IFA pays compensation to Developer in accordance with Exhibit 22 to the PPA.

2.4 The Termination Compensation under this Section 2 shall be due and payable by Developer in immediately available funds within 30 days after IFA pays compensation to Developer for termination of the PPA.

3 Design-Build Contractor Default. If the Agreement is terminated pursuant to Section 20.3 of the Agreement:

3.1 The Early Termination Date shall be as specified in the Notice of termination is provided by Developer to Design-Build Contractor.

3.2 If Developer issues Notice of termination of the Agreement due to a Default Termination Event, and the PPA is not also concurrently terminated, Design-Build Contractor shall pay damages to Developer equal to the following amount:

3.2.1 The cost to Developer of employing one or more replacement Contractors to complete the D&C Work and make good any Defects, including any Corrective Work, and including the costs of re-tendering such replacement Contractors; plus

3.2.2 The amount owed or paid to Design-Build Contractor for the value of D&C Work carried out prior to and through the date of termination of the Agreement; plus

3.2.3 Losses incurred by Developer (excluding indirect Losses, but including interest, breakage costs, and principal due under the financing arrangements) for delays to completion caused by Design-Build Contractor or the termination of the Agreement, together with any accrued liability of the Design-Build Contractor remaining unpaid; less

3.2.4 The amount that would have been payable to Design-Build Contractor for the D&C Work properly executed in accordance with the DBC Documents if the Agreement had not been terminated.

3.3 If Developer issues Notice of termination of the Agreement due to a Default Termination Event, and the PPA is also concurrently terminated, Design-Build Contractor shall pay damages to Developer equal to all Losses (excluding indirect Losses) incurred by Developer (including any compensation to be paid to IFA or Lenders) as a result of the termination of the PPA to the extent attributable to the Design-Build Contractor Default.

3.4 The damages under this Section 3 shall be due and payable by Design-Build Contractor in immediately available funds within 90 days after Developer issues Notice of termination of the Agreement.

4 Developer Default. If the Agreement is terminated pursuant to Section 20.4 of the Agreement:

4.1 The Early Termination Date shall be as specified in the Notice of termination is provided by Design-Build Contractor to Developer, which in the case of termination pursuant to Section 20.4.1 shall not be earlier than [●] days after the date such Notice is delivered.

4.2 Developer shall pay compensation to Design-Build Contractor in an amount equal to:

4.2.1 The value of all properly executed D&C Work up to and including the date of termination of the Agreement and any other amounts due under the Agreement but not yet paid; plus

4.2.2 The cost of plant and materials ordered for the D&C Work that have been delivered to Design-Build Contractor, or of which the Design-Build Contractor is liable to accept delivery (provided that such plant and materials shall become the property of Developer when paid for by Developer); plus

4.2.3 The costs to Design-Build Contractor of cancellation and termination of subcontracts actually terminated; plus

4.2.4 The cost of removal and return of Design-Build Contractor's equipment from the Site; plus

4.2.5 The cost of repatriation of the Design-Build Contractor's staff and labor employed in connection with the D&C Work at the date of termination; plus

4.2.6 Any other cost or liability (excluding indirect Losses) which in the circumstances was necessarily actually incurred by Design-Build Contractor for carrying out the D&C Work; provided such costs or liability have been reasonably mitigated by Design-Build Contractor and have not been covered by the other payments mentioned in the above provisions; plus

4.2.7 Lost profits anticipated for the remainder of the D&C Work unrealized as of the termination.

4.4 The Termination Compensation under this Section 3 shall be due and payable by Developer in immediately available funds within 90 days after Design-Build Contractor issues Notice of termination of the Agreement.

5 [Not Used]

6 Termination for Failure of Financial Close.

6.1 If the Agreement is terminated pursuant to Section 20.6.1 of the Agreement:

6.1.1 The Early Termination Date shall be as specified in the Notice of termination is provided by Developer to Design-Build Contractor.

6.1.2 The Parties acknowledge that compensation to be paid by IFA in respect of a termination of the PPA under Section 20.6 of the PPA is calculated in accordance with, and subject to the limitations and requirements of, Section 6 of Exhibit 22 to the PPA. Design-Build Contractor shall timely submit to Developer documentation of Design-Build Contractor's costs and expenses that are eligible for reimbursement by IFA under Section 6 of Exhibit 22 to the PPA. Developer shall include such eligible costs and expenses in the written statement to be submitted to IFA for reimbursement;

provided, however, that if the aggregate costs and expenses of Developer, Design-Build Contractor and others to be included in the written statement exceed the maximum amount that may be claimed under Section 6 of Exhibit 22 to the PPA, Developer shall reduce or eliminate costs and expenses of each party to be included in the written statement proportionally (as an equal percentage of each party's costs and expenses). Subject to Section 6.3 below, Developer shall pay compensation to Design-Build Contractor in an amount equal to Design-Build Contractor's eligible costs and expenses included in such written statement submitted to IFA.

6.1.3 Developer's liability shall be limited to the amount of compensation Developer actually recovers from IFA under the PPA attributable to Design-Build Contractor's eligible costs and expenses. Developer shall incur no liability whatsoever to Design-Build Contractor for any Termination Compensation under this Section 6 unless and until IFA pays compensation to Developer in accordance with Exhibit 22 to the PPA.

6.1.4 The Termination Compensation under this Section 6 shall be due and payable by Developer in immediately available funds within 30 days after IFA pays compensation to Developer for termination of the PPA.

6.2 If the Agreement is terminated pursuant to Section 20.6.2 of the Agreement:

6.2.1 If the failure of Developer to fulfill its obligations under the PPA with respect to achieving Financial Close (which failure gave rise to the termination of the PPA pursuant to Section 20.6.2 of the PPA) is caused in whole or in part by a failure of Design-Build Contractor to fulfill any of its obligations under the DBC Documents, then the termination of the Agreement shall be treated as a termination for Design-Build Contractor Default and subject to Section 3 above.

6.2.2 Except as provided in Section 6.2.1 above, the termination of the Agreement shall be treated as a termination for Developer Default and subject to Section 4 above.

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

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 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 Agreement 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 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), Design-Build Contractor 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 Design-Build Contractor 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), Design-Build Contractor 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) Design-Build Contractor agrees to include this section in each Contract at each tier, without modification except as appropriate to identify the Contractor who will be subject to its provisions.

ATTACHMENT 2 TO 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.

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 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 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

(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 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.

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 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.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a

high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that,

should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission

of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, 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.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such

prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT 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.

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*]

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	**Goals for female participation in each trade**
(per-cent)	**(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 County Participation**	**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")

[Not Used]

EXHIBIT 24

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

[*To Come*]

EXHIBIT 25

FORM OF PARENT GUARANTY

THIS GUARANTY (this "**Guaranty**"), made this ____ day of [●], 2012, by [●], a [●] ("**Guarantor**"), to and for the benefit of WVB East End Partners, LLC, a Delaware limited liability company ("**Developer**").

RECITALS:

WHEREAS, Developer and 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 have executed that certain Public-Private Agreement, dated as of [●] (the "**PPA**"), pursuant to which Developer has agreed to design, construct, finance, operate and maintain the East End Crossing (Louisville-Southern Indiana Ohio River Bridges Project) (the "**Project**"), as more fully described in the PPA;

WHEREAS, Developer and Walsh Construction Company / VINCI Construction Grands Projets JV, a joint venture of Walsh Construction Company, an Illinois corporation, and VINCI Construction Grands Projets, a French limited company ("**Design-Build Contractor**") have executed that certain Design-Build Contract, dated as of [●] (the "**Design-Build Contract**"), pursuant to which Design-Build Contractor has agreed to provide the D&C Work (as defined in the Design-Build Contract) for the Project;

WHEREAS, as a material inducement for Developer to enter into the Design-Build Contract, Guarantor has agreed to guaranty all obligations of Design-Build Contractor under the Design-Build Contract; and

WHEREAS, it is in the best interests of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the Design-Build Contract.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, and for the purpose of inducing Developer to enter into the Design-Build Contract, Guarantor hereby covenants and agrees as follows:

1. Capitalized terms used herein and not defined herein shall have the meaning given such terms in the Design-Build Contract. Guarantor hereby unconditionally and irrevocably guarantees to Developer all obligations of Design-Build Contractor under the Design-Build Contract, including, without limitation, completion of the D&C Work, all warranty and other continuing obligations under the Design-Build Contract, all obligations arising under indemnities provided by Design-Build Contractor under the Design-Build Contract and payment of all amounts owing by Design-Build Contractor under the Design-Build Contract (including liquidated damages and any

amount owed by Design-Build Contractor to Developer as a result of Developer having to rectify a default or omission of Design-Build Contractor), in each case in accordance with the terms and conditions of the Design-Build Contract (the foregoing duties, obligations and liabilities, howsoever created, arising and/or evidenced, now or hereafter existing, being hereinafter sometimes collectively referred to as the "Obligations"). Guarantor hereby covenants and agrees to and with Developer that, in the event of default, non-payment or other non-compliance by Design-Build Contractor in performance of the Obligations, Guarantor shall forthwith pay or perform such Obligations immediately by Developer. Guarantor shall, after notice given in writing to Guarantor specifying that Design-Build Contractor has failed to perform any Obligations (provided that no such notice shall be required to cause Guarantor to be obligated to immediately perform hereunder if such notice is prohibited by law or court order), pay or pay or perform such Obligations. Guarantor shall not be in default hereunder with respect to a payment due by Design-Build Contractor to Developer if such amount owing is paid within five (5) business days of the date on which notice is given in writing to Guarantor specifying the failure by Design-Build Contractor to make such payment (provided that if such notice is prohibited by law or court order, Design-Build Contractor shall be immediately obligated to pay any amounts due by Design-Build Contractor to Developer upon any such failure to pay).

2. Guarantor agrees that its Obligations hereunder will not be affected by any circumstance which constitutes a legal or equitable discharge or defense of a guarantor or surety other than irrevocable performance in full of the Obligations. Without limiting the generality of the foregoing, the liability of Guarantor under this Guaranty will not be released, reduced or affected by reason of, and Guarantor hereby waives: (a) notice of acceptance of this Guaranty; (b) notice of any advances made by Developer in connection with the Design-Build Contract; (c) notice of any change in the corporate or organizational status, the constitution, the business, the objects or the shareholders, members or partners of Design-Build Contractor or Developer, or by reason of any termination of or change in the relationships that exist between Design-Build Contractor, Developer and/or Guarantor, or any act or omission of Design-Build Contractor or Developer pursuant to any other arrangement or contract with Guarantor; (d) notice of any waiver, amendment, modification, postponement, release, renewal, extension, accrual or termination of any of the Obligations or the Design-Build Contract or any change in scope of the Design-Build Contract; (e) notice of the reliance of Developer upon this Guaranty; (f) notice of the occurrence, existence or continuance of any event of default, default, or failure of payment or performance under the Design-Build Contract; (g) demand for payment, diligence, presentment, filing of claims with a court in the event of receivership or bankruptcy of Developer or Design-Build Contractor, protest or notice with respect to the Obligations, and all demands whatsoever; (h) notice of any subcontracting or assignment by Design-Build Contractor of its interest or obligations in the Design-Build Contract or the taking over of the Design-Build Contract by any financing party; and (i) any other notice, demand, protest or formality which would be otherwise legally required to charge Guarantor with liability hereunder; and Guarantor covenants and agrees that this Guaranty will not be discharged, except by complete and irrevocable payment and performance in full of the Obligations.

3. Guarantor hereby assents, without the requirement or condition that notice of any kind or nature be given to Guarantor on account thereof, to (a) any waiver, amendment, modification, postponement, release, renewal, extension or termination of any of the Obligations or of the Design-Build Contract; (b) the taking, addition, substitution, exchange, sale, surrender, release, termination or other disposition, in whole or in part, at any time or times of any security or collateral now or hereafter held by Developer in respect of the Obligations; (c) any lack of diligence in collection, any failure to resort to or exhaust other rights, powers or remedies, or any other waiver or failure of any type on the part of Developer to enforce any of the terms, covenants, agreements, conditions and provisions contained in the Design-Build Contract; (d) the acceptance by Developer of (i) any prepayments or partial payments under the Design-Build Contract and (ii) any payment in full satisfaction of less than all of the amount due under the Design-Build Contract; (e) any change in the scope of the Design-Build Contract; and (f) any other action or failure to act on the part of Developer or Design-Build Contractor in respect of all or any of the Obligations or the enforcement or collection thereof. The obligations of Guarantor to make all payments due hereunder and to perform the other Obligations hereunder shall not be subject to any right of setoff, recoupment, deduction or counterclaim, or any other defense that Guarantor or any other person or entity may now or hereafter have against Developer, Design-Build Contractor or any other person or entity.

4. This Guaranty and the liability of Guarantor hereunder is and shall be an unconditional and irrevocable guaranty of payment and performance, and not a guarantee of collection, and shall remain in full force and effect at all times and in all respects and shall terminate only upon the irrevocable full and complete performance of the Obligations. This is a guaranty of payment when due and not of collectability. This Guaranty and the liability of Guarantor hereunder shall not be subject to or contingent upon (a) the genuineness, validity, regularity or enforceability of the Design-Build Contract, or (b) any law, ordinance, rule, regulation, writ, order or decree now or hereafter in effect which might in any manner affect the Obligations or any rights, powers or remedies of Developer in respect thereof, or cause or permit to be invoked any alteration of time, amount or manner of payment of any of the Obligations. Further, this Guaranty shall not be deemed discharged, impaired or affected by (i) the power or authority of Developer or Design-Build Contractor to execute, acknowledge or deliver the Design-Build Contract; (ii) any subcontracting or assignment by Developer or Design-Build Contractor of its interest in the Design-Build Contract; (iii) the existence or non-existence of Developer or Design-Build Contractor as a legal entity; (iv) the unenforceability of any Obligation; or (v) any other defense based on the status or qualification of Developer or Design-Build Contractor.

5. The covenants, agreements and obligations of Guarantor under, and the rights, powers and remedies of Developer for the enforcement of, this Guaranty shall not be affected, impaired, modified, changed, diminished, released, or limited in any manner whatsoever by reason of any impairment, modification, change, diminution, release or limitation of any and all of the obligations of, or of any right, power or remedy for the enforcement thereof against, Developer in bankruptcy, insolvency or reorganization resulting from the operation of any present or future provision of the

Federal Bankruptcy Act, or of any state bankruptcy or insolvency statutes, or from the decision of any court, or otherwise.

6. Developer shall have the right to pursue its rights, powers and remedies under this Guaranty at any time and from time to time against Guarantor without being obligated or required first to resort to, and/or exercise and pursue, any rights, powers or remedies against Design-Build Contractor or any other guarantor, to exhaust any such rights, powers or remedies available to Developer against Design-Build Contractor or any other guarantor, to resort to any security, bonds or collateral or other guaranty now or hereafter held by Developer in respect of the Obligations, to marshall the assets of Design-Build Contractor, or to seek any other rights, powers or remedies to enforce the payment or collection or the performance and observance of the Obligations; and Developer may pursue any and all such rights, powers and remedies at any time(s) or in any order as Developer, in its sole discretion, may determine, and the exercise and pursuit of any of such rights, powers and remedies shall not constitute a legal or equitable discharge of Guarantor. All of the rights, powers and remedies of Developer under the Design-Build Contract and this Guaranty are intended to be distinct, separate and cumulative, and none of such rights, powers and remedies therein and herein contained is intended to be exclusive of or a waiver of any other right, power or remedy therein or herein contained. A separate action may be brought and prosecuted against Guarantor whether or not any action is brought against Design-Build Contractor or any such other guarantors and whether or not Design-Build Contractor is joined in any such action or actions.

7. No forbearance or delay on the part of Developer in exercising any of its rights, powers or remedies under this Guaranty, and no failure, neglect or refusal by Developer to exercise the same, shall operate as a waiver of any such rights, powers or remedies; no notice to or demand on Guarantor shall be deemed to be a waiver of any of the covenants, agreements or obligations of Guarantor hereunder or of the right of Developer to take any action without notice or demand, as provided herein. Except as expressly authorized herein, in no event shall any modification or waiver of the provisions of this Guaranty be effective unless such modification or waiver is in writing and signed by the parties to be charged therewith; and any such modification and waiver shall be a modification and waiver only with respect to the specific matter involved and shall in no way impair the rights of Developer in any other respect or at any other time.

8. This Guaranty is a primary obligation of Guarantor and not merely a contract of surety. Guarantor will indemnify Developer for any direct loss suffered by it if any of the Obligations is or becomes unenforceable, for any reason, event or circumstance.

9. Guarantor represents and warrants to Developer that:

(i) it has the corporate capacity and power to execute this Guaranty and all necessary actions or consents to authorize the execution and performance of same have been taken or obtained;

(ii) this Guaranty constitutes a valid and binding obligation of Guarantor;

(iii) it has had adequate means to obtain sufficient information concerning Design-Build Contractor and its financial condition and affairs; and

(iv) it has not depended or relied on Developer, its agents or representatives, for any information whatsoever concerning Design-Build Contractor or its financial condition and affairs or other matters material to Guarantor's decision to provide this Guaranty or for any advice or guidance with respect to such decision.

Guarantor acknowledges that Developer has no duty or responsibility whatsoever, now or in the future, to provide to Guarantor any information or advice concerning Design-Build Contractor's financial condition and affairs, the Project or the Obligations other than to advise of a Design-Build Contractor default.

10. Guarantor covenants that it will perform all acts and execute all deeds and documents reasonably necessary to give full effect to the provisions hereof and to ensure that this Guaranty will be at all times enforceable against Guarantor in respect of all of the Obligations, including without limitation the execution of any written acknowledgement in favor of Developer that Developer is entitled to the benefit of this Guaranty in respect of the Obligations owing to it. Developer's rights under this Guaranty are cumulative and are in addition and not in substitution for any rights provided by law or the Design-Build Contract or any other guarantee or security that Developer may have or hold in relation to the Design-Build Contract, and Developer may exercise its rights under this Guaranty from time to time without first having recourse to any such right, guarantee or security. Guarantor shall not be in default hereunder with respect to a payment due by Design-Build Contractor to Developer if such amount owing is paid within five (5) business days of the date on which notice is given in writing to Guarantor specifying the failure by Design-Build Contractor to make such payment.

11. Guarantor covenants and agrees that it will preserve and maintain its legal existence. In the event of any amalgamation or merger of the Guarantor with any other person, the Guarantor confirms it will remain fully responsible and liable for all obligations and duties under this Guaranty.

12. Guarantor hereby agrees to pay all costs, expenses and charges, including, without limitation, court costs and reasonable attorneys' fees and expenses, which may be incurred or sustained by Developer in connection with the enforcement of the Obligations and/or this Guaranty.

13. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York. Each provision hereof is intended to be severable. If any clause, phrase, provision or portion of this Guaranty or the application thereof is determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, the remaining clauses, phrases, provisions and portions of this Guaranty

shall not be affected or impaired thereby, but each remaining clause, phrase, provision and portion shall be valid and be enforceable to the fullest extent permitted by law. Any waiver by Developer of the terms of this Guaranty or any consent or approval given by Developer shall only be effective if given in writing and then only for the purpose and upon the terms and conditions (if any) on which it is given.

14. Guarantor shall not be subrogated to any of the rights of Developer or its successors and assigns under the Design-Build Contract by reason of any of the provisions of this Guaranty or by reason of the performance by Guarantor of any of Guarantor's obligations, agreements and undertakings hereunder, unless and until all Obligations have been irrevocably paid and performed in full.

15. Guarantor hereby agrees that the rights and protections of Developer afforded by this Guaranty shall not be reduced, waived, released or adversely affected by the acts or omissions of the guaranteed party, other than through the rendering of payment and performance of the Obligations.

16. Any notice, communication or demand required or permitted under this Guaranty shall be in writing. Any such notice, communication or demand shall be deemed to have been duly given or served if sent by registered or certified mail, return receipt requested, to the party to which it is directed, addressed to the respective addresses shown below:

If to Guarantor:
[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]

If to Developer:
[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]

With a copy to:
[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]

or to such address as either party shall from time to time furnish to the other. A notice, demand or other communication shall be deemed received on the date of deposit in the U. S. Mail.

17. Guarantor may not transfer, convey or assign this Guaranty, or any interest therein, without the prior written consent of Developer. This Guaranty and all the covenants, agreements and obligations of Guarantor hereunder shall extend to and be binding upon the successors and permitted assigns of Guarantor and shall not be discharged, affected or impaired, in whole or in part, upon the dissolution, bankruptcy or insolvency of Guarantor.

18. This Guaranty and all the covenants, agreements and obligations of Guarantor herein contained shall extend to and inure to the benefit of the successors and assigns of Developer.

19. Guarantor acknowledges and agrees that, pursuant to Section 17.4 of the PPA, a duplicate original of this Guaranty has been delivered to the IFA by Design-Build Contractor and the IFA is entitled to become the transferee beneficiary under this Guaranty and to enforce it without condition, including enforcing this Guaranty in favor of IFA or the East End Crossing, or both, under the circumstances described in Section 17.4 of the PPA (including Section 17.4.2 of the PPA, pursuant to which IFA has agreed to forebear from exercising remedies under any this Guaranty so long as Developer or a Lender is diligently pursuing remedies hereunder). Upon such a transfer to the IFA, Guarantor agrees that the IFA may draw on this Guaranty without presentation of the original Guaranty.

20. Notwithstanding any other provision of this Guaranty to the contrary:

(i) in no event shall the aggregate liability of Guarantor under this Guaranty exceed the maximum aggregate liability of Design-Build Contractor and shall be subject to the same limit of liability set out in Section 19.2.13A of the Design-Build Contract, but this limit of liability (1) shall be subject to the same exceptions as apply to the limit of liability of set out in the Design-Build Contract and (2) shall not apply to interest and enforcement costs payable under this Guaranty;

(ii) in determining Guarantor's liability under this Guaranty other than Section 8 above, Guarantor shall, subject to Section 4 of this Guaranty, have the benefit of all (but no greater) rights, remedies, defenses and limitations that Design-Build Contractor is or would have been entitled to assert under the Design-Build Contract;

(iii) in determining Guarantor's liability under Section 8 above, such liability shall, subject to Section 4 this Guaranty, be determined as if the Guarantor had the benefit of all (but no greater) rights, remedies, defenses and limitations that Design-Build Contractor would be entitled to assert under the Design-Build Contract if the obligation that is unenforceable, invalid or illegal were enforceable, valid or legal; and

(iv) Guarantor shall be liable for the obligations of Design-Build Contractor under the Design-Build Contract only to the extent such obligations have not

otherwise been paid or performed strictly in accordance with the terms of the Design-Build Contract.

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date first above written.

[GUARANTOR]

By: _____
Its [President]

ATTEST:

By: _____
Its [Secretary]

EXHIBIT 26

FORM OF LIQUID SECURITY

Irrevocable Transferable Standby Letter of Credit

Date _____

From: [*ISSUING BANK*], [*name and address*]

To: WVB East End Partners, LLC, [*insert address*] (the "**Beneficiary**")

Applicant: [*name and address*]

Irrevocable Transferable Standby Letter of Credit No._____

Amount: (US$[●]) _____ United States Dollars.

Whereas Walsh Construction Company / VINCI Construction Grands Projets JV, having its office at [*address*] (the "**Design-Build Contractor**"), a joint venture formed by Walsh Construction Company, an Illinois corporation having its head office at 929 West Adams Street, Chicago, Illinois 60607, and VINCI Construction Grands Projets, a French limited company having its head office at 5 Cours Ferdinand-de-Lesseps, 92500 Rueil-Malmaison, France, have entered into that certain Design-Build Contract for the East End Crossing Louisville-Southern Indiana Ohio River Bridges Project) (as amended, restated, supplemented or otherwise modified from time to time, the "**Design-Build Contract**") dated _____ with WVB East End Partners, LLC, having its head office at [*address*] (the "**Beneficiary**").

Whereas under the Design-Build Contract, [*name*] (the "**Applicant**"), as one of the entities comprising the Design-Build Contractor is required to provide the Beneficiary with an Irrevocable Transferable Standby Letter of Credit in the amount of US$[●] as security for the performance of all its obligations under the Design-Build Contract.

We, [*name of bank*] having our business address at [*address*] (the "**Bank**") hereby establish this Irrevocable Transferable Standby Letter of Credit in favor of the Beneficiary, for the account of the Applicant for drawing(s) in an aggregate amount of US$[●] (the "**Letter of Credit**"). All fees under this Letter of Credit shall be for the account of the Applicant.

The Bank irrevocably and unconditionally undertakes to pay to the Beneficiary or a Transferee (defined below), as the case may be, any sum or sums not exceeding the balance outstanding under this Letter of Credit upon presentation to the Bank of a dated draw certificate in the form of Annex 1 hereto, which forms an integral part of this Letter of Credit, properly completed and purportedly signed by two (2) authorized signatories of the Beneficiary or a Transferee, as the case may be, and presented for payment at

the Bank's counters at [*address*] Attention: [*description and phone number*] on or before our close of business on _____, 20__ (the "**Expiry Date**"), any extended expiry date as set out below (the "**New Expiry Date**") or the Final Expiry Date as defined and set out below.

It is a condition of this Letter of Credit that it will be considered automatically extended for additional one year periods, unless at least sixty (60) days prior to the Expiry Date or the current New Expiry Date, as applicable, the Bank notifies by registered mail or courier to the Beneficiary at the above-mentioned address, or the Transferee, as the case may be, and to the Applicant at the above-mentioned address, in writing that it elects not to so extend this Letter of Credit. In the event that:

(i) the Bank elects not to extend the Expiry Date or the current New Expiry Date, as applicable, of this Letter of Credit at least 60 days prior to the Expiry Date or the current New Expiry Date, as applicable, and

(ii) the Applicant has failed to provide a replacement Letter of Credit that is acceptable to the Beneficiary or a Transferee, as the case may be, by at least thirty (30) days prior to the Expiry Date or the current New Expiry Date, as applicable,

the Bank undertakes to pay to the Beneficiary or the Transferee, as the case may be, the balance outstanding of this Letter of Credit upon receipt by the Bank of the presentation of a dated draw certificate in the form of Annex 2 hereto, which forms an integral part of this Letter of Credit, properly completed and purportedly signed by two (2) authorized signatories of the Beneficiary or the Transferee, as the case may be, stating that:

(i) the Beneficiary has been notified by the Bank of its election not to extend this Letter of Credit, and

(ii) the Applicant has not provided the Beneficiary or the Transferee, as the case may be, with a replacement Irrevocable Transferable Standby of Credit or alternate satisfactory security by at least thirty (30) days prior to the Expiry Date or the current New Expiry Date, as applicable, and presented for payment at the Bank's counters at [specify address] Attention [description and phone number] on or before the Bank's close of business on the Expiry Date or the current New Expiry Date, as applicable.

Notwithstanding the foregoing, in no event will this Letter of Credit extend beyond [*date*] (the "**Final Expiry Date**").

The Bank's maximum liability under this Letter of Credit provided that no drawings have been honored by the Bank is US$[●].

For information purposes only the Bank shall immediately notify the Applicant of the Bank receiving a demand for payment under the terms of this Letter of Credit. Such notification shall not in any way be cause for preclusion or delay of payment by the Bank. The Bank shall not be responsible for enquiring into the authority of any persons signing the draw certificate provided the draw certificate appears on its face to be in order.

Partial drawings are permitted hereunder. However, the aggregate of such drawings shall not exceed the amount set forth in this Letter of Credit.

It is a condition of this Letter of Credit that it is transferable and may be transferred in its entirety, but not in part, and may be successively transferred by the Beneficiary or designated transferee hereunder ("**Transferee**") subject to (i) compliance with all laws applicable to the Bank relating to the transfer or assignment of documentary instruments and (ii) certification by the Beneficiary or the Transferee, as applicable, that the transfer of the Beneficiary's or successive Transferee's rights in this Letter of Credit to such Transferee is permitted under the terms and conditions of the Design-Build Contract and the]Design-Build Contractor's Lenders' Direct Agreement] dated as of [●], between [●]. Transfer under this Letter of Credit to such Transferee shall be effected upon presentation to the Bank of the original of this Letter of Credit and any amendments hereto accompanied by a request in the form of Annex 3 hereto, which forms an integral part of this Letter of Credit, designating the Transferee, presented by the Beneficiary or a successive Transferee. The Bank shall forthwith issue [its Advice of Transfer] a new irrevocable transferable standby letter of credit in favour of the Transferee.

All payments made by the Bank under this Letter of Credit shall be made free, clear of and without any deduction or withholding for or on account of any set-off, counterclaim or tax unless and to the extent the Bank is required by law to make payment subject to the deduction or withholding of tax.

The original of this Letter of Credit including any amendments shall accompany any drawing. In case of a partial drawing of this Letter of Credit, the original of this Letter of Credit will be duly endorsed by the Bank and returned to the Beneficiary.

Except as expressly stated in this Letter of Credit, the Bank's undertaking under this Letter of Credit is not subject to any agreement, condition or qualification, including, without limitation, any reimbursement with respect to any drawing or the grant or perfection of any security interest or lien.

Except with respect to any transfer referred to above, this Letter of Credit may not be modified or revoked without the Bank's express written consent and the express written consent of both the Beneficiary and the Applicant.

[This Letter of Credit is subject to and shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 ("**UCP**").] *or* [This Letter of Credit is subject to and shall be

governed by the International Standby Practice ICC Chamber of Commerce Publication No 590 ("ISP 98").]

[Issuing Bank's Name]

_____	_____
Authorized Signature	Authorized Signature

Annex 1 to Irrevocable Transferable Standby Letter of Credit No. _____

(Form of Draw Certificate)

[Date]

To: [Name] (the "**Issuing Bank**")

[Address]

From: (full name & address of the Beneficiary)

Subject: This is the form of demand specified in our Irrevocable Transferable Standby Letter of Credit number [number] issued on the [date] by [Issuing bank's name] (the "**Letter of Credit**")

Re: Design-Build Contract dated [●], between WVB East End Partners, LLC and Walsh Construction Company / VINCI Construction Grands Projets JV (the "**Design-Build Contractor**")

Dear Sirs,

We, the undersigned, being authorized officers of the Beneficiary or a Transferee under the above captioned Letter of Credit hereby demand you to forthwith pay to us the amount of _____(currency and amount in figures and letters).

We certify that demand under the Letter of Credit has arisen under the terms of the Design-Build Contract as follows:

(a) a breach, default or any other circumstance pursuant to which the Beneficiary or Transferee, as the case may be, is entitled to draw on this Letter of Credit under the terms of the Design-Build Contract has occurred;

(b) that the Beneficiary or the Transferee, as the case may be, has complied with the requirements under the Design-Build Contract in respect of the delivery of notice to the Applicant and Design-Build Contractor of such breach, default or other circumstance and any applicable cure period has expired;

(c) that as a result thereof, the Beneficiary or the Transferee, as the case may be, has become entitled to draw this Letter of Credit under the terms of the Design-Build Contract; and

(d) that said amount has not otherwise been paid to us, whether directly or indirectly by or on behalf of the Design-Build Contractor.

[Beneficiary][Transferee]

Per: Authorized Officer

Name & Title:

[Beneficiary][Transferee]

Per: Authorized Officer

Name & Title:

Annex 2 to Irrevocable Transferable Standby Letter of Credit No. _____

[Date]

To: [Name] (the "**Issuing Bank**")

[Address]

From: (full name & address of the Beneficiary)

Subject: This is the form of demand specified in our Irrevocable Standby Letter of Credit number [number] issued on the [date] by [Issuing bank's name] (the "**Letter of Credit**")

Dear Sirs,

We, the undersigned, being authorized officers of the Beneficiary or a Transferee under the above captioned Letter of Credit hereby demand you to forthwith pay to us the amount of [currency and amount in figures and letters].

We state and declare:

(a) that the Beneficiary has been notified by the Bank of its election not to extend the Letter of Credit; and

(b) the Applicant has not provided the Beneficiary or the Transferee, as the case may be, with a replacement Irrevocable Transferable Standby of Credit or alternate satisfactory security by at least thirty (30) days prior to the Expiry Date or the current New Expiry Date, as applicable.

[Beneficiary][Transferee]

Per: Authorized Officer

Name & Title:

[Beneficiary][Transferee]

Per: Authorized Officer

Name & Title:

Annex 3 to Irrevocable Transferable Standby Letter of Credit No. _____

REQUEST FORM FOR FULL TRANSFER

[Bank Name]

[Bank Address]

DEAR SIR/MADAM:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

NAME OF TRANSFEREE	
ADDRESS OF TRANSFEREE	
OTHER TRANSFEREE INFORMATION	

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT IN ITS ENTIRETY.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE, AND THE TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED DIRECTLY TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH LETTER OF CREDIT IS RETURNED HEREWITH, TOGETHER WITH ANY AND ALL AMENDMENTS.

WE CERTIFY THAT:

(1) THE TRANSFEREE IS A SUCCESSOR OR ASSIGNEE OF THE BENEFICIARY UNDER THE DESIGN-BUILD CONTRACT DATED [●], BETWEEN WVB EAST END PARTNERS, LLC AND WALSH CONSTRUCTION COMPANY / VINCI CONSTRUCTION GRANDS PROJETS JV (THE "**DESIGN-BUILD CONTRACT**"); AND

(2) THE TRANSFER OF THE UNDERSIGNED BENEFICIARY'S RIGHTS IN THE ABOVE LETTER OF CREDIT TO SUCH TRANSFEREE IS PERMITTED UNDER THE TERMS AND CONDITIONS OF THE DESIGN-BUILD CONTRACT AND THE DESIGN-BUILD CONTRACTOR LENDERS' DIRECT AGREEMENT DATED AS OF [●], BETWEEN [●].

SIGNATURE AUTHENTICATION

BENEFICIARY'S NAME AS PER L/C	BANK
SIGNATURE OF BENEFICIARY	BANK AUTHORIZED SIGNATURE

SIGNATURE AUTHENTICATION

TRANSFEREE'S NAME AS PER L/C	BANK
SIGNATURE OF TRANSFEREE	BANK AUTHORIZED SIGNATURE

EXHIBIT 28

EXTRACTS FROM FUNDING AGREEMENT

[*To come*]

EXHIBIT 29

CONSTRUCTION PAYMENT ITEMS AND SCHEDULE

[*To be updated at Financial Close*]

1. Milestone Schedule



2. Construction Payment Schedule



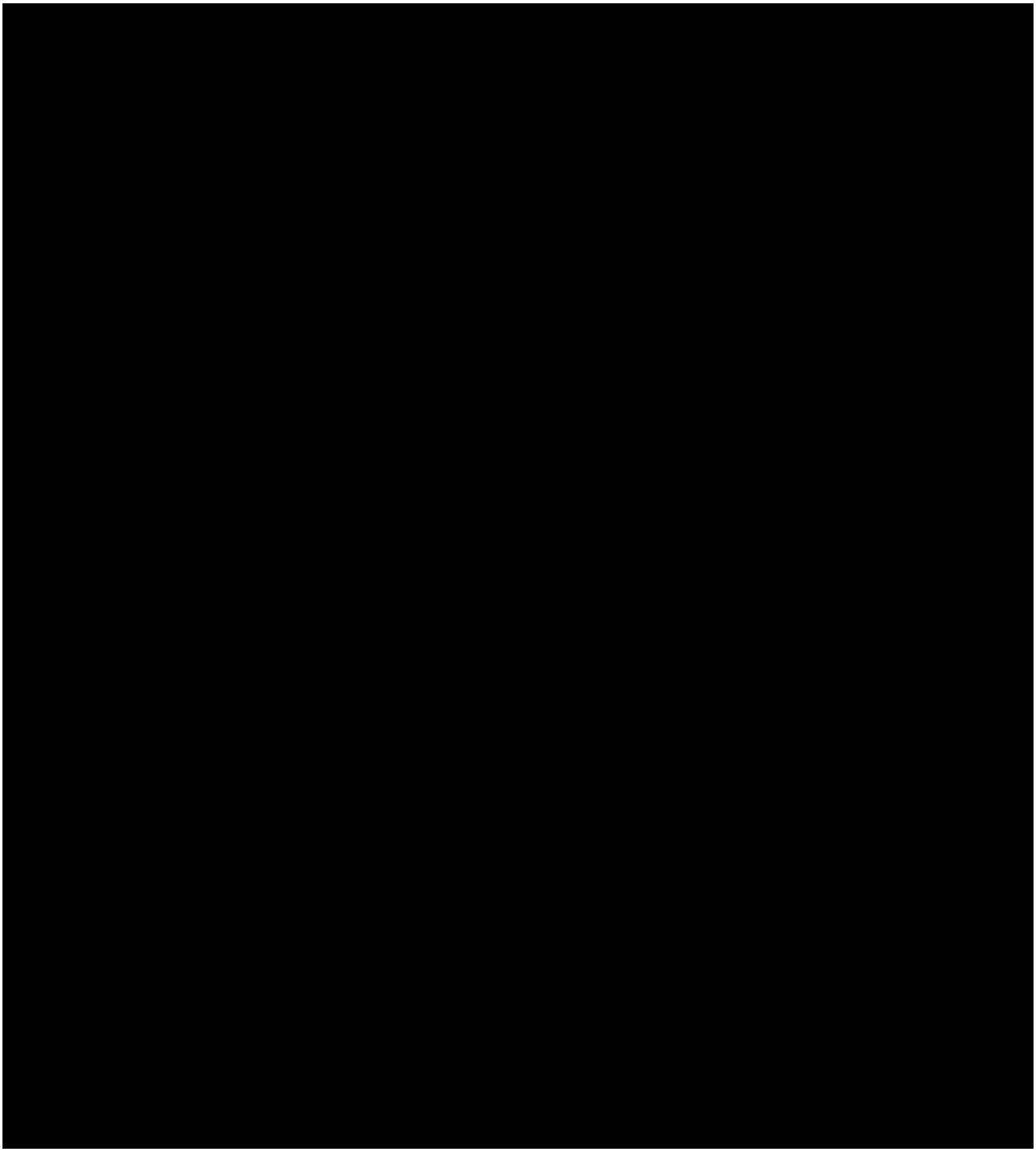


EXHIBIT 30

FORM OF MONTHLY STATEMENT

[*To come*]

EXHIBIT 31

MAINTENANCE FACILITIES; PARTS AND EQUIPMENT

1. Maintenance Facility.

[*To Come*]

2. Parts and Equipment.

Prior to the Substantial Completion Date, Design-Build Contractor shall furnish the following parts and equipment to Developer for Developer's use:

(a) 10% of the inventory of light bulbs and luminaries needed to operate the Project;

(b) 150-feet of guardrail;

(c) 150-feet of cable barriers; and

(d) Two attenuators.

Each of the foregoing parts and equipment shall conform to specifications of the Technical Provisions or other applicable PPA Documents and be of sufficient quality to enable Developer to use them in the proper operation and maintenance of the Project.

SPV Operations and Maintenance Commitment

OPERATIONS AND MAINTENANCE COMMITMENT

WVB East End Partners is committing to self-perform operations and maintenance work under the PPA Documents in an amount no less than 30% of the operations and maintenance work. As such, WVB East End Partners has no Lead O&M Contractor and, pursuant to Instructions to Proposer, Exhibit B Section 3.2.2, is not including an executed contract or terms sheet for operations and maintenance work.

CJV/Lead Engineer Design Agreement

Walsh Construction Company / Vinci Construction Grands Projets JV and Jacobs Engineering Group, Inc.

AGREEMENT FOR DESIGN SERVICES (PHASE I)

I. PARTIES AND PROJECT

This Agreement for Design Services (Phase I), hereinafter "Design Agreement (Phase I)" is entered into as of October 24, 2012, by and between Walsh Construction Company / Vinci Construction Grands Projets JV ("Contractor"), and Jacobs Engineering Group Inc., ("Architect/Engineer").

Contractor's address is	The Architect/Engineer's address is:
929 W. Adams	The Landmark Center 1099 N. Meridian Street, Suite 500
Chicago, IL 60607	Indianapolis, Indiana 46204

Project: The Louisville-Southern Indiana Ohio River Bridges Project

Summary of Architect/Engineer's Scope: See attached "Summary of Architect Scope"

Name of Project("Project"):	The Louisville-Southern Indiana Ohio River Bridges Project
Project Owner ("Owner"):	The State of Indiana
Project Concession ("Concession"):	WVB East End Partners

Project Background: Contractor intends to submit a proposal to the Concession which in turn will submit to Owner for the design and construction of the Project. If successful, Contractor shall enter into a contract with the Concession for the construction of the Project (the "Design-Build Agreement").

Contractor hereby engages the Architect/Engineer to provide Architect/Engineering preliminary design and proposal services for the Project, and the Architect/Engineer hereby agrees to provide those services, as described in this Design Agreement (Phase I).

Contractor and the Architect/Engineer agree with each other as follows:

II. DEFINITIONS

A. "Architect/Engineer's Phase I Services" or "Services" means the services to be performed by the Architect/Engineer as described in Section IV below, including basic and additional services.

B. "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the terms of any agreement between the parties in connection with the Project, for payment of money, extension of time or other relief.

C. "Design Agreement (Phase II)" means the Agreement for Design and Observation Services in the form attached hereto as EXHIBIT E.

D. "Phase I Deliverables" means those documents and materials to be prepared by the Architect/Engineer for delivery to Contractor under this Design Agreement (Phase I), a list of which is attached hereto as EXHIBIT D, as that list may be revised from time to time by agreement of the parties. Such Deliverables shall comply with the requirements of the Owner's RFP, including the design of the size, quality and character of the Project, and the materials and such other elements of the Project, as well as what might reasonably be expected from a preliminary design effort.

E. "Phase II Deliverables" means those documents and materials to be provided by the Architect/Engineer to Contractor under Design Agreement (Phase II).

F. Not Used.

G. "Proposal" means the complete set of materials the Contractor intends to submit to the Concession which is compliant with all aspects of the Owner's RFP relating to the Design-Build portion of the Project plus any additional materials Contractor determines should be submitted in response to the Owner's RFP, including design drawings, outline specifications, cost estimates, time schedules, models and other graphic and written materials.

H. "Proposal Audit" means the written report to be prepared by the Architect/Engineer pursuant to Section IV, Section A.11.

I. Not Used.

J. "Separate Consultant" means any individual or entity other than the Architect/Engineer, providing design or Architect/Engineering services in connection with the Design-Build portion Project under separate contract with Contractor. (NOTE: THE CONTRACTOR MUST IDENTIFY THESE TO THE ARCHITECT/ENGINEER IN WRITING.)

K. "Subconsultant" means any individual or entity providing design or engineering services in connection with the Design-Build portion Project under separate contract with the Architect/Engineer.

L. "Work" means the design services, labor, material and equipment used or incorporated in the design and construction of the Project.

III. SCOPE OF SERVICES AND PAYMENT

A. **SCOPE OF SERVICES.** The Architect/Engineer shall provide properly licensed and qualified personnel and design professionals as well as all necessary materials to complete the Architect/Engineer's Phase I Services, including but not limited to preparing and furnishing the Phase I Deliverables and working closely with Contractor in the preparation and submission of the Proposal.

B. **COMMENCEMENT AND COMPLETION.** The Architect/Engineer shall commence performance of the Architect/Engineer's Phase I Services on the date the final RFP is issued and once they receive written notice to proceed from the Contractor. Subject to adjustment of this Design Agreement (Phase I) by mutual agreement, the Architect/Engineer's Phase I Services under this Design Agreement (Phase I) shall be completed in accordance with a schedule which will be agreed upon by Contractor and the Architect/Engineer within 15 days from the date the RFP is issued by the Owner and which will be set forth in the form attached as EXHIBIT D and which meets all deadlines under the Owner's RFP. The Architect/Engineer acknowledges that the time which is set forth in this schedule for provision of the Architect/Engineer's Phase I Services shall permit delivery of the services in a manner consistent with Architect/Engineer's Standard of Care and all Architect/Engineer's obligations under this Design Agreement (Phase I). The Parties agree and acknowledge that time is of the essence.

C. **PAYMENT.** Subject to Section IV.A.14., for all Phase I Services performed prior to and up to the date of the submission by the Contractor of its response to the RFP, Architect/Engineer shall be paid in accordance with EXHIBIT A. Prior to submitting Proposal, Contractor and the Architect/Engineer shall enter into the Design Agreement (Phase II) in the form set forth in EXHIBIT E and the Architect/Engineer shall accept its compensation under that Design Agreement (Phase II) as full compensation for all of the Architect/Engineer's services, except for the sums due pursuant to this Design Agreement (Phase I).

In the event Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Architect/Engineer's services that have been successfully performed are not being paid, Contractor shall give written notice of such claim to Architect/Engineer and may take reasonable steps to ensure that such obligations are paid. If upon receipt of said notice, Architect/Engineer does not within ten (10) business days' supply reasonable evidence that there is a good faith dispute or that the monies owing have been paid, Contractor shall have the right to withhold out of any payments due or to become due to Architect/Engineer the amount necessary to protect Contractor from any and all loss, damage or expense, plus attorneys' fees.

As a condition precedent to any obligation or duty of Contractor to make any progress payment or the final payment to Architect/Engineer, Architect/Engineer shall provide, in the forms agreed upon by the parties, sworn releases of lien from Architect/Engineer and its Subconsultants and suppliers, acknowledging receipt of payment for all labor, materials, supplies, equipment or any services or goods provided in connection with the Project through the date of the applicable progress payment or final payment application. Such releases of lien shall accompany Architect/Engineer's progress payment and final payment applications and shall cover all items for which payment is sought in each

application. No payments will be made to Architect/Engineer if the required releases of lien have not been submitted correctly and on the form agreed upon.

No payment made under the Contract shall operate as an admission or acceptance by Contractor that the Contract has been complied with or preclude any action for damages against Architect/Engineer should it fail to fully and properly perform under the Agreement.

[redacted]

D. **REVIEW OF OWNER'S REQUEST FOR PROPOSAL.** The Architect/Engineer acknowledges that the Architect/Engineer will examine, read, and comply with all of the requirements of the Owner's RFP as it relates to the Design portion of the Project. If the Architect/Engineer discovers any conflict between the requirements of the Owner's RFP and this Design Agreement (Phase I or Phase II), the Architect/Engineer shall inform Contractor of that conflict. The Architect/Engineer has verified the conditions under which the Architect/Engineer's Phase II Services are to be provided and accepts full responsibility therefore; provided; however, if the Contractor rejects, in writing, the Architect/Engineer's recommendation that certain Architect/Engineering work be conducted in the Phase I period, then Architect/Engineer shall not be responsible to the extent that the failure to perform such recommended Architect/Engineering work causes a material adverse consequence to the Phase I Deliverables. [redacted]

[redacted]

E. **ENTIRE AGREEMENT; EXHIBITS.** This Design Agreement (Phase I), together with the Exhibits listed below, all of which are incorporated in this Design Agreement (Phase I) by this reference, form the entire agreement between the parties, and supersede all previous oral or written agreements or representations.

EXHIBIT A - PHASE I	PAYMENT TERMS FOR PHASE I SERVICES
EXHIBIT B - PHASE I	NOT USED
EXHIBIT C - PHASE I	ARCHITECT/ENGINEER' PROJECT TEAM
EXHIBIT D - PHASE I	PHASE I DELIVERABLES
EXHIBIT E - PHASE I	AGREEMENT FOR DESIGN AND OBSERVATION SERVICES (PHASE II)

F. **PRIORITY OF DOCUMENTS.** Whenever possible, all the contract documents, including: the Design-Build Agreement, the Design Agreement (Phase I) and the Design Agreement (Phase II), shall be construed and interpreted in a consistent, harmonious and supplementary manner. In the event the contract documents cannot be interpreted in a consistent, harmonious and supplementary manner, the most stringent shall apply.

However, in the event there are irreconcilable conflicts, ambiguities or discrepancies within the contract documents, the precedence in resolving such conflicts, ambiguities, or discrepancies shall be as follows:

a. Exhibits to the Design Agreement (Phase I) (exclusive of Exhibit E), then
b. Design Agreement (Phase I),

With respect to the Design-Build Agreement the priority shall be as set forth in the Design Build Agreement.

IV. THE ARCHITECT/ENGINEER'S PHASE I SERVICES

A. BASIC SERVICES.

1. The Architect/Engineer shall provide all architectural and Architect/Engineering design services required to respond to the Owner's RFP (except however those design and engineering services identified by the Contractor IN WRITING as being provided by the Separate Consultants). The Architect/Engineer's services shall include all services reasonably required to fully comply with the design requirements of the Owner's RFP including the design of the size, quality and character of the Project, and the materials and such other elements of the Project, as well as what might reasonably be expected from a preliminary design effort.

2. The Architect/Engineer shall visit the site and review the Project program, schedule and budget, as described in the Owner's RFP, to ascertain the requirements of the Project and shall review those requirements with Contractor.

3. The Architect/Engineer shall review and confirm the accuracy and completeness of information supplied by Contractor or contained in the Design Build portion of the Owner's RFP that has not already been designed and stamped by others.

4. The Architect/Engineer shall provide, after consultation with Contractor, a preliminary evaluation of the Contractor's construction schedule as it relates to the Design Build portion of the Project, including recommendations for assuring that the EXHIBIT D schedule and Phase I Deliverables are consistent with each other and satisfy the requirements of the Owner's RFP.

5. The Architect/Engineer and Contractor shall prepare a schedule (EXHIBIT D) setting forth the dates for completion of Architect/Engineer's Phase I Services and the Phase I Deliverables sufficient to allow Contractor and the Architect/Engineer to meet the RFP's requirements and deadlines for completion and submission of the Proposal. The Architect/Engineer shall provide the entire Architect/Engineer's Phase I Services including but not limited to the provision of the Phase I Deliverables in accordance with that schedule. The Phase I Deliverables are not a limitation on the scope of the services.

6. The Architect/Engineer shall coordinate with Contractor regarding design related requests for approval by the Owner of any adjustments to or clarification of terms of the RFP.

7. The Architect/Engineer shall, on an ongoing basis, as the design is developed, propose and review with Contractor alternative approaches to design and construction of the Project consistent with the Owner's RFP. For the avoidance of doubt the Contractor may propose on an ongoing basis alternative approaches or Value Engineering approaches which will be reviewed by the Architect/Engineer.

8. The Architect/Engineer shall prepare and submit to Contractor Phase I Deliverables which are compliant with the design requirements of the Owner's RFP based on the approach to design and construction of the Project selected by Contractor in sufficient time for Architect/Engineer to meet the EXHIBIT D schedule.

9. The Architect/Engineer shall meet with Contractor at appropriate intervals to review the progress of the Architect/Engineer's work, to submit to Contractor information required by Contractor for cost estimating and scheduling purposes and to present to Contractor matters requiring Contractor's approval or decision.

10. Not Used.

11. The Architect/Engineer shall, before Contractor submits the Proposal, prepare and submit to Contractor a Proposal Audit, comparing the requirements of the RFP as it relates to the Design Build portion of the Project to the contents of the Proposal and providing comments and recommendations for measures to assure that the Proposal satisfies the RFP. The Architect/Engineer shall also confirm in the Proposal Audit that the designs shown in the Phase I Deliverables do not conflict with the Proposal.

12. The Architect/Engineer shall prepare all parts of the Proposal which in any way relate to design services, which shall include the following:

    a. Completion of design documents in form and content required by the RFP, including drawings, outline specifications and models (if required);

    b. Preparation of all written sections of the Proposal relating in any way to the design to the extent required by the RFP or requested by Contractor;

13. The Architect/Engineer shall assist Contractor in preparing a list of the Phase II Deliverables, consistent with the Construction Schedule upon which the Proposal is based.

14. If, following submission of the Proposal, the Concession and Contractor enter into negotiations about the Proposal or the Project, the Architect/Engineer, as requested by Contractor, shall cooperate as in those negotiations, including attending conferences and providing written and graphic responses to requests for

clarification or modification of the Proposal. [redacted]

B. **CONTRACTOR'S MEANS AND METHODS.** Contractor has included in EXHIBIT B, attached hereto, descriptions of its construction means and methods, and the scope and scale of its temporary works, that it plans to utilize in building the Project. Architect/Engineer shall accommodate these plans as much as feasible into its Phase I Services. If such plans of Contractor cannot be accommodated in the design of the Project, Architect/Engineer will bring such issues to Contractor's attention.

C. **PROVISION OF SERVICES.**

1. The Architect/Engineer shall provide the Architect/Engineer's Phase I Services through qualified employees of the Architect/Engineer or qualified subcontractors of the Architect/Engineer, all of whom shall be duly licensed as appropriate to the work and shall be paid by the Architect/Engineer. Neither the Architect/Engineer nor its employees or Subconsultants, if any, shall be deemed to be the servants or employees of the Concession.

2. The Architect/Engineer shall provide the Architect/Engineer's Phase I Services through the Architect/Engineer's Project Team identified in EXHIBIT C hereto. The Architect/Engineer shall not replace any member of the Architect/Engineer's Project Team without the approval of Contractor, which approval by Contractor shall not be unreasonably withheld. The Architect/Engineer shall replace any member of the Architect/Engineer's Project Team to which Contractor reasonably objects.

3. The design contained in the Phase I Deliverables shall be fully responsive to and in compliance with the Owner's RFP, but due to the preliminary and incomplete nature of such Deliverables, they might not contain details required by applicable laws, statutes, ordinances, building codes, orders, rules, and regulations.

4. The Architect/Engineer shall be responsible for coordination of the Services of all Subconsultants to assure consistency and conformance with this Design Agreement(Phase I).

5. The Architect/Engineer shall present matters requiring decision, approval or other action by Contractor to Contractor in a timely manner, allowing Contractor a reasonable time to respond. Without limiting the generality of the foregoing, the Architect/Engineer shall allow Contractor 7 days to respond to requests for decisions, approval or other action unless circumstances require otherwise, in which event the Architect/Engineer shall provide Contractor with notice of the date on which the Architect/Engineer requires a response and a reasonable time for the Contractor to respond.

6. Nothing contained in this Design Agreement (Phase I), the Proposal, or any other document or instrument of service prepared by the Architect/Engineer under this Design Agreement (Phase I) shall create any obligation or contractual relationship between any third party and either Party.

7. The Architect/Engineer shall promptly respond to requests from Contractor for information Contractor requires to complete the Proposal. Without limiting the generality of the foregoing, the Contractor shall allow Architect/Engineer 7 days to respond to requests for response to requests for required information unless circumstances require otherwise, in which event the Contractor shall provide Architect/Engineer with notice of the date on which the Contractor requires a response and reasonable time for Architect/Engineer to respond.

8. Architect/Engineer shall furnish services of geotechnical Architect/Engineers and other consultants for determining site, subsoil, subsurface, air and water conditions. Architect/Engineer shall select and pay said geotechnical Architect/Engineers or other consultants. Such services shall include, as required, applicable test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, and other necessary operations for determining site, subsoil, subsurface, air and water conditions, with reports and appropriate professional recommendations.

9. To the extent Architect/Engineer's services are approved or passed on to Concession by Contractor, it shall not relieve, reduce or in any manner effect Architect/Engineer's full responsibility to Contractor for its services and obligations under this Agreement.

10. Architect/Engineer shall perform its Services for the exclusive benefit of Contractor and shall not contract with any other entity for the purposes of submitting a proposal for the Project, unless and until Owner awards the Project to another Concession.

D. **THE ARCHITECT/ENGINEER'S PROJECT REPRESENTATIVE.** The Architect/Engineer shall designate a representative ("Architect/Engineer's Representative") authorized to act on the Architect/Engineer's behalf with respect to the Project and all matters arising from or otherwise relating to the Project.

E. **ARCHITECT/ENGINEER'S STANDARD OF CARE.** The standard of care for all professional services provided by the Architect/Engineer pursuant to this Design Agreement (Phase I) shall be [redacted]

Architect/Engineer's responsibility for damages incurred by Contractor as a result of the Phase I Deliverables is subject to Contractor providing Architect/Engineer with prompt written notice as soon as it becomes aware of the error, omission or change.

V. CONTRACTOR'S RESPONSIBILITIES

A. INFORMATION AND SERVICES SUPPLIED BY CONTRACTOR

1. Contractor shall furnish to the Architect/Engineer all information provided by the Owner and/or Concession as they relate to the Design Build portion of the Project, including but not limited to design objectives, constraints, and criteria.

2. The Architect/Engineer may rely on information provided by Contractor regarding the Project, including information Contractor obtains from the RFP, the Owner, the Concession and any Separate Consultants, to the extent Contractor is entitled to rely on that information in the RFP; but the Architect/Engineer shall exercise its own judgment in interpreting and applying that information and determining whether the information is sufficient for the Architect/Engineer's purposes. The Architect/Engineer shall notify Contractor, in writing, of any discovered inaccuracies or deficiencies in such information.

3. The Contractor may offer some design suggestions of the Phase I in liaison with the Architect/Engineer. The objective is to benefit from the in house Contractor's expertise in designing long span bridges, precast segmental construction, cable stay bridges or NATM tunnels for example.

B. **CONTRACTOR'S PROJECT REPRESENTATIVE.** Contractor shall designate a representative ("Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project and all matters arising from or otherwise relating to the Project.

C. **COMMUNICATIONS.**

1. The Architect/Engineer shall communicate with the Concession and/or with Contractor's Separate Consultants only through or with the consent of Contractor. However, it is understood that an open line of communication between Concession, and/or with Contractor's Separate Architect/Engineers and the Architect/Engineer is in the best interest of a successful Project. Contractor agrees to involve Architect/Engineer in or promptly inform Architect/Engineer of discussions, meetings or other proceedings affecting the design portion of the Work.

2. Contractor shall communicate with the Architect/Engineer's subcontractors and consultants only through or with the consent of the Architect/Engineer.

3. Whenever the Architect/Engineer submits materials for review or consultation as required under this Design Agreement (Phase I), Contractor may require the Architect/Engineer to meet with Contractor to present and discuss those materials and Contractor may include the Concession and/or any Separate Consultants in any such meeting.

4. If either Contractor or the Architect/Engineer observes or otherwise becomes aware of any deficiency or defect in the Phase I Deliverables or in any information supplied by Contractor or the Architect/Engineer, that party shall give prompt written notice thereof to the other party.

D. **DECISIONS AND APPROVALS.**

1. Contractor shall meet with the Architect/Engineer at appropriate intervals to review the progress of the Architect/Engineer's Services, exchange information required by Contractor and the Architect/Engineer for completion of the Proposal and to discuss matters requiring Contractor's decision or approval.

2. With respect to matters under this Agreement requiring decision, approval or other action by Contractor, Contractor shall have sole authority and discretion, subject to Architect/Engineer's rights, if any, under this Agreement or at law and equity.

3. Contractor shall not unreasonably withhold or delay decisions, approval or action affecting the Architect/Engineer's schedule.

VI. CLAIMS; DISPUTES

A. **NOTICE; MEDIATION.** If either Contractor or Architect/Engineer has a Claim against the other, the claimant shall promptly give written notice thereof and both Parties shall, in the first instance, endeavor in good faith to negotiate a settlement of the Claim. If the Architect/Engineer's Representative and Contractor's Representative cannot resolve the Claim promptly, officers of the Architect/Engineer and Contractor shall endeavor in good faith to negotiate a settlement of the Claim. If the officers cannot resolve the dispute by negotiation, the parties shall participate in mediation with a third-party neutral mutually acceptable to them, and they will share equally in the cost of the mediation. If the parties do not resolve the dispute within three (3) months of starting the mediation, the parties may proceed with litigation, unless they can first agree on another method of alternative dispute resolution. Subject to Section F below, all litigation will be through the Court having jurisdiction where the Project is located.

B. Not Used.

C. **EQUITABLE REMEDY.** Notwithstanding any requirement that the parties negotiate or mediate, the parties shall in the event of potential irreparable injury or emergency be entitled to seek equitable relief in the Court where the Project is located.

D. **VENUE.** Subject to Section F below, the venue for all litigation shall be the Court having jurisdiction where the Project is located.

E. **WAIVER OF JURY TRIAL.** The Parties waive their right to a trial by jury in any and all disputes or claims arising out of or relating in any way to this Agreement.

G. **JOINDER AND CONSOLIDATION.** Contractor shall have the right to join the Architect/Engineer and any of its Subconsultants in any action, proceeding or dispute resolution process brought by the Owner, the Concession or any third party in connection with any Claim arising out of or relating to the Project in any venue or jurisdiction that Contractor is required to appear as a party defendant or claimant in relation to the Project, notwithstanding any other provision of this Design Agreement (Phase I). Architect/Engineer shall require its Subconsultants to submit to any action, proceeding or dispute resolution process of Claims under the same terms and conditions as this Section VI.

H. **DUTY TO CONTINUE PROSECUTING THE SERVICES.** Architect/Engineer acknowledges and agrees that it shall continue to diligently progress its Services and that it shall not be entitled to slow down, not diligently prosecute, suspend or cease its services or work, notwithstanding the existence of any disputes between the parties including, but not limited to, denied claims, payment disputes, back charges and recognized claims for which agreement cannot be reached. It is understood that by proceeding with its Services, the Architect/Engineer shall in no manner be prejudiced in the assertion of its rights and defenses.

VII. INSURANCE

A. **COVERAGE.** The Architect/Engineer shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from the Architect/Engineer's operations under this Design Agreement (Phase I) whether such operations are by the Architect/Engineer directly or by any of the Architect/Engineer's Subconsultants or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed.

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Architect/Engineer's employees and under any applicable employer's liability law with customary limits.

3. Claims for damages because of bodily injury, or death of any person other than the Architect/Engineer's employees.

4. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Architect/Engineer or (2) by any other person.

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use therefrom.

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

7. Claims for damages because of any act or omission by Architect/Engineer, its representatives, employees, agents, or its Subconsultants, at any tier;

B. **LIMITS.** The Architect/Engineer's commercial general and automobile liability insurance shall include contractual liability coverage and shall be written for not less than limits of liability as follows:

1. Commercial General Liability

a.	Personal Injury	[redacted] Aggregate [redacted] Each Occurrence
b.	Bodily Injury	[redacted] Aggregate [redacted] Each Occurrence
c.	Property Damage	[redacted] Aggregate [redacted] Each Occurrence

2. Comprehensive Automobile Liability

a.	Bodily Injury	[redacted] Aggregate [redacted] Each Occurrence
b.	Property Damage	[redacted] Aggregate [redacted] Each Occurrence

C. **POLICIES.** Commercial General Liability insurance ("CGL") may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

D. **PROFESSIONAL LIABILITY.** The Architect/Engineer shall furnish professional liability insurance coverage ("E&O") which Architect/Engineer carries in the ordinary course of its business as its practice policy ("Practice Policy"), with limits of [redacted] Such policy shall apply to the Phase I Services until the execution of the Design Agreement (Phase II), at which time the E&O policies referenced in the Design Agreement (Phase II) shall be applicable to both the services performed under the Design Agreement (Phase I) and Design Agreement (Phase II).Such policy shall indicate that coverage thereunder will not be canceled or not renewed until at least thirty (30) days after written notice has been given to Contractor.

E. **CANCELLATION AND RENEWAL.** Without in any way diminishing Architect/Engineer's obligation to provide the insurances referenced in this Agreement for the stated durations, the foregoing policies shall contain a provision that coverage's afforded under the policies will not be canceled or not renewed until at least thirty (30)

days' prior written notice has been given to Contractor. Certificates of Insurance showing such coverage's to be in force shall be filed with Contractor prior to commencement of the Architect/Engineer's Phase I Services.

F. **POLICY TERMS AND CONDITIONS.** All policies of insurance required under this Design Agreement (Phase I) shall comply with the following:

1. All insurance shall be issued by carriers reasonably acceptable to Contractor and having a Best's rating of "A" or better and all deductibles shall be paid by Architect/Engineer.

2. With exception of the E&O policy, the maximum deductible under any policy shall be [redacted]

3. Contractor, Concession and the Owner shall be named as additional insureds with respect to the negligence of the Architect/Engineer under all CGL policies, and coverage shall include costs of defense of claims arising from the Architect/Engineer's alleged negligent acts or omissions.

4. Not Used.

VIII. OWNERSHIP OF DOCUMENTS

A. **OWNERSHIP AND USE BY CONTRACTOR.** The Phase I Deliverables may at the option of the Contractor become the property of Contractor whether or not the Project is commenced upon payment to the Architect/Engineer of the full value, as defined in Section IX.C. below, of the Services performed to create the Phase I Deliverables. Contractor may retain and distribute copies to the Concession and Owner. In the event Contractor terminates this Design Agreement (Phase I) for cause, and after making the payment described in Section IX herein, the Contractor may use the Phase I Deliverables and Proposal, including for the preparation of construction documents by other architects and engineers; provided, however, such use shall be subject to the explicit understanding that such documents are preliminary and are not intended or represented to be suitable as final design for the Project or for any reuse on extensions of the Project or use in connection with any other project. Any such use of these documents without written consent of or adaptation by Architect/Engineer for the specific purpose intended will be at the sole risk of the party undertaking such use and without liability or legal exposure to Architect/Engineer.

B. **PUBLICATION.** Not Used

C. **OWNERSHIP AND USE BY OWNER AND OR CONCESSION.** Notwithstanding anything contained in this Design Agreement (Phase I), the Architect/Engineer acknowledges Owner's rights with respect to ownership and use of the Proposal Documents as defined in the RFP; provided, however, such ownership and use shall be subject to the explicit understanding that such documents are preliminary and are not intended or represented to be suitable as final design for the Project or for any reuse on

extensions of the Project or use in connection with any other project. Any such use of these documents without written consent of or adaptation by Architect/Engineer for the specific purpose intended will be at the sole risk of the party undertaking such use and without liability or legal exposure to Architect/Engineer.

IX. TERMINATION

A. **TERMINATION FOR CAUSE.** Either party may terminate this Design Agreement (Phase I) by seven days' written notice if, through no fault of the party initiating the termination, the other party fails substantially to perform its obligations under this Design Agreement (Phase I) and fails to cure the failure to perform within such seven day period.

B. **TERMINATION FOR CONVENIENCE.** In the event the Owner terminates the Project for any reason, or the Concession terminates the Contractor for any reason, Contractor may terminate this Design Agreement (Phase I) at any time for its Convenience upon at least seven days' written notice to the Architect/Engineer.

C. **COMPENSATION.** In the event of termination for cause, Contractor shall compensate the Architect/Engineer for full services performed to date equal to direct labor costs incurred by the Architect/Engineer times a multiplier of TBD, plus the approved reimbursable expenses as provided in this Agreement, less amounts previously paid. In the event the Owner cancels the Project for any reason, Contractor shall compensate the Architect/Engineer for services performed through the date of termination at a value equal to direct labor costs incurred by the Architect/Engineer times a multiplier of TBD plus the approved reimbursable expenses as provided in this Agreement less amounts previously paid.

X. INDEMNIFICATION

A. **ARCHITECT/ENGINEER AND CONTRACTOR PERFORMANCE.** Neither Party shall be liable for any loss or casualty caused by the other Party. Architect/Engineer assumes all risk of loss relating in any way to Architect/Engineer's services regardless of whether Architect/Engineer had previously been paid for such Architect/Engineer's services.

B. **INDEMNITY – GENERAL.** Each Party agrees to indemnify, protect and hold harmless the other Party, their officers, directors, shareholders, and employees, Owner, the Concession, and all persons or entities required to be indemnified under the Design-Build Agreement from and against any and all losses, damages, costs, judgments, settlements and expenses, including without limitation reasonable attorneys' fees, reasonable expert witness fees and court costs, arising or out of any of the following:

1. performance or lack of performance under this Agreement;

2. claims from Architect/Engineer's employees, or Subconsultants, at any tier; or

3. any act or omission by Architect/Engineer, its employees, or its Subconsultants, at any tier;

to the extent caused by the negligence, recklessness or intentional misconduct of the indemnifying Party, persons employed or utilized by the indemnifying Party in the performance of Services under this Design Agreement (Phase I), or anyone for whose acts the indemnifying Party may be legally liable. However, the fact that a portion of the liability, damages, losses or costs is alleged to have been caused by a party indemnified hereunder shall not release the indemnifying Party from its responsibility for the extent of the liability, damages, losses and costs caused by the negligence, recklessness or intentional misconduct of the indemnifying Party, persons employed or subcontracted by the indemnifying Party, in the performance of the Services under this Design Agreement (Phase I), or anyone for whose acts the indemnifying Party may be legally liable.

C. **MUTUAL INDEMNITY FOR THIRD PARTY CLAIMS.** To the fullest extent permitted by law, each Party agrees to indemnify, defend and hold harmless the other Party, its affiliates, sub-engineers and the respective officers, directors, shareholders, employees, agents and sureties of such entities, the Concession and the Owner from and against any and all claims, costs, losses and liabilities (including but not limited to all attorney's fees, expert witness fees and costs of litigation) for personal injury (including death) or damage to the property of third parties, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying Party, its agents, employees or anyone for whose acts the indemnifying Party may be liable.

D. Not Used.

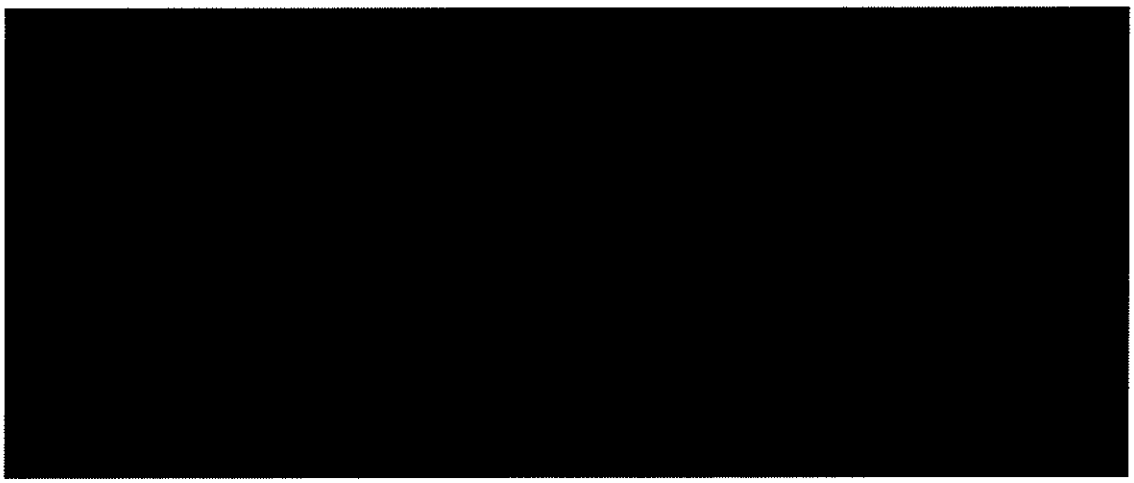
E. **INFRINGEMENT.** Except to the extent Architect/Engineer identifies intellectual property as being used or provided under license from itself or a third party, Architect/Engineer represents that the processes or methods Architect/Engineer provides as a deliverable under Design Agreement (Phase I) do not infringe any patent or intellectual property right of any third party. In the event any such processes or methods infringe any such rights, then:

1. Architect/Engineer undertakes, at its own expense, to make the changes necessary to ensure that any patent or intellectual property right which any third party may have in respect of such processes or methods is not infringed, or to obtain necessary authorizations for use by Contractor.

2. Architect/Engineer agrees to defend, indemnify, protect and hold harmless Contractor, Contractor's officers, directors, shareholders, employees, the Concession, and Owner, and all persons or entities Contractor is required to indemnify under the Design-Build Agreement from and against any and all losses, damages, costs, claims, lawsuits, whether groundless or not, judgments, and expenses, including without limitation attorneys' fees, expert witness fees and court costs arising or alleged to have arisen out of, directly or indirectly, such infringement.

Architect/Engineer reserves the right to exploit any expertise and techniques it has obtained during the performance of the Design Agreement (Phase I), including the rights to use, revise, develop, market, and license any software, data processing, building systems, architectural and engineering expertise and techniques associated with Architect/Engineer's performance of Architect/Engineering services, provided that nothing herein shall be construed to grant Architect/Engineer any right or license to use intellectual property created for and delivered to Contractor as part of Architect/Engineer's services.

F. **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.** Notwithstanding any other provisions of this Agreement and to the fullest extent permitted by law, each Party, on behalf of itself, its parent, affiliates and the directors, officers and employees of such parties, waives all claims against the other for any consequential or other indirect damages including, without limitation, damages for loss of use, revenue or loss of funding, bonding capacity or loss of opportunity; or other similar business interruption losses, however the same may be caused and regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of the Party, its employees, Subconsultants or Separate Consultants.

G. 

XI. CONFIDENTIALITY

Each party shall treat all confidential and proprietary information received from the other party in connection with this Design Agreement (Phase I) or the Design Agreement (Phase II), if it is executed, as confidential and shall not publish or cause to be published any information on technical aspects or price of the Design Agreement (Phase I) without the prior written approval of the other party. For purposes of this paragraph, "confidential and proprietary information" shall include trade or business secrets and technical or business materials that are treated by the party as confidential or proprietary including without limitation engineering and design processes and procedures, merchandising and marketing strategies, form and content of proposals, reports and analyses, technical data, specifications, documentation, details and drawings and information about or belonging to clients or potential clients. "Confidential and proprietary information" does not include information that i) is known to the receiving

Party at the time of disclosure, ii) has been independently developed by the receiving Party without reference to the disclosing Party's confidential information, iii) has become publicly known and generally available through no wrongful act of the receiving Party, or iv) is disclosed pursuant to the lawful order of a court or governmental body. Each Party may furnish Confidential Information to its attorneys, accountants, financial advisors and affiliates with a need to know, so long as such person or entity is bound by professional or contractual obligations to protect the confidentiality of the same.

XII. GENERAL PROVISIONS

A. **ASSIGNMENT.** Neither party may assign, transfer, or pledge its interest in this Agreement without prior written consent of the other Party, which consent will not be unreasonably delayed or conditioned. Provide however, no such consent is required for assignments among affiliates, as a result of merger or acquisition, or as otherwise mandated by law. No assignment will release or discharge the assignor from any duty or responsibility under this Agreement, unless otherwise agreed to in writing by the Parties.

B. **SOLELY FOR BENEFIT OF SIGNATORIES.** This Design Agreement (Phase I) is solely for the benefit of Contractor and the Architect/Engineer.

C. **UNENFORCEABLE PROVISIONS.** Should any clause in this Design Agreement (Phase I), or a particular application thereof, be invalidated by operation of law, the remaining clauses or other applications herein shall continue in full force and effect.

D. **ENTIRE AGREEMENT.** This Design Agreement (Phase I) constitutes the entire agreement between Contractor and the Architect/Engineer. It is expressly understood and agreed that there are no agreements or promises by and between the parties, except this Design Agreement (Phase I) and any additions or changes shall be in writing and signed by both parties. Neither this Design Agreement (Phase I) nor any amendment shall create any third party beneficiaries or third party obligations enforceable against the Architect/Engineer or Contractor.

E. **GOVERNING LAW.** This Design Agreement (Phase I) and disputes related hereto shall be governed by the laws of Indiana.

F. **NOTICES.** All notices required or permitted under this Design Agreement (Phase I) shall be made in writing and delivered to the address or transmitted to the telecopy number set forth on the front page of this Design Agreement (Phase I), or such other address or number as either party may designate by like notice. All notices shall be deemed given when delivered if in person or made by telecopy, and if sent by other means, the earlier of the date of actual receipt or three (3) days after deposit in the U.S. mail, certified with postage prepaid.

G. **SURVIVAL.** All express representations, requirements for payments and indemnification, limitations and allocation of liability, agreements regarding confidentiality and other provisions that by their terms are intended to apply or be effective after termination of the Agreement will survive completion of the Services as well as cancellation or termination of the Agreement for any reason.

H. **CAPTIONS.** The headings of sections and paragraphs are for convenience only and shall not modify rights and obligations created by this Design Agreement (Phase I).

I. **TECHNICAL TERMS.** Words and abbreviations which have well known technical or trade meanings are used in the Proposal in accordance with such recognized meanings.

J. **KNOWING CONSENT.** The parties hereto acknowledge that they have been represented by competent legal counsel in the negotiation of this Agreement and all of the terms and conditions herein were drafted jointly and subject to each party's review, comments and negotiations and consequently, no provision of this Agreement shall be construed against a party on the grounds it was a drafter of this Agreement.

CONTRACTOR AND THE ARCHITECT/ENGINEER entered into the Agreement as of the day and year first written above.

CONTRACTOR Walsh Construction Company, Managing Party of Walsh Construction Company / Vinci Construction Grands Projets JV	**ARCHITECT/ENGINEER** Jacobs Engineering Group, Inc.
By: Daniel J. Walsh	By: KEVIN J. McMAHON
Its: President	Its: GROUP VICE PRESIDENT

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EXHIBIT A
TO
PHASE I AGREEMENT

PAYMENT TERMS FOR PHASE I SERVICES

A. PRE-AWARD DISCOUNTED REIMBURSEMENT

1. The initial Budget for reimbursement of Architect/Engineer Phase I Services will be TBD, based upon a discounted value of services calculated as follows:

2. [redacted]

3.

4.

B. PAYMENT

1. Payment: Invoices will be submitted to Contractor at least monthly, and the approved amounts are due within sixty (60) days from the date of the invoice. If an invoice is disputed, only that portion so disputed may be withheld from payment, and a statement of the basis for the dispute will be provided upon request of the Architect/Engineer.

C. PHASE II PRICE PROPOSAL

1. The Phase II Price Proposal and the proposal for the Pre-Award Services Adjustment will be due by October 25, 2012, based on the current RFP schedule, and in any event, at a minimum of two weeks prior to the actual date for RFP Submittal.

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EXHIBIT B
TO
PHASE I AGREEMENT

CONTRACTOR'S MEANS AND METHODS

Not provided.

EXHIBIT C
TO
PHASE I AGREEMENT

ARCHITECT/ENGINEERS' PROJECT TEAM

To be determined.

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EXHIBIT D
TO
PHASE I AGREEMENT

PHASE I DELIVERABLES

SERVICE	START	FINISH
[redacted]		

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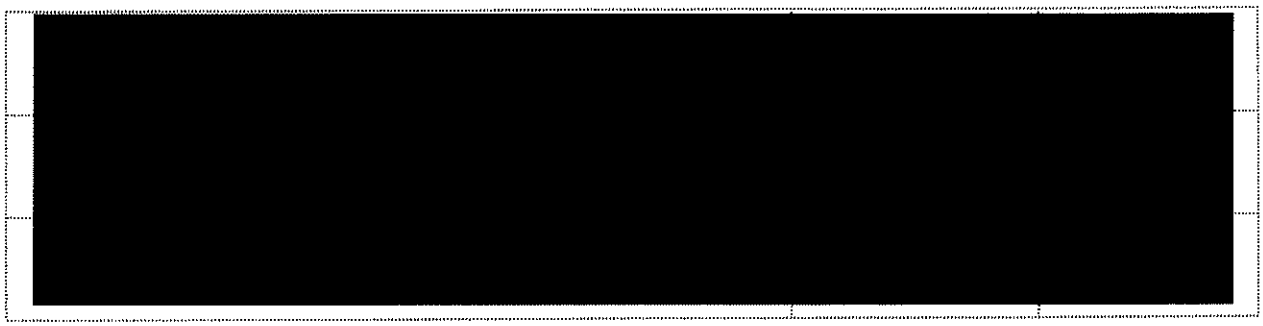

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EXHIBIT E
TO
PHASE I AGREEMENT

AGREEMENT FOR DESIGN AND OBSERVATION SERVICES (PHASE II)

I. PARTIES AND PROJECT

This Agreement for Design Documentation and Observation Services, ("Design Agreement (Phase II)") is entered into as of October 24, 2012, by and between Walsh Construction Company / Vinci Construction Grands Projets JV ("Contractor"), and Jacobs Engineering Group Inc., ("Architect/Engineer").

Contractor's address is:	The Architect/Engineer's address is:
929 W. Adams	The Landmark Center 1099 N. Meridian Street, Suite 500
Chicago, IL 60607	Indianapolis, Indiana 46204

Project: The Louisville-Southern Indiana Ohio River Bridges Project

Summary of Architect/Engineer's Scope: See attached "Summary of Architect Scope"

Name of Project("Project"):	The Louisville-Southern Indiana Ohio River Bridges Project
Project Owner ("Owner"):	The State of Indiana
Project Concession ("Concession"):	WVB East End Partners

Project Background:

Contractor has entered into an agreement, dated __[TBD]___, with Concession, for the design and construction of the Project ("Design Build Agreement") which is described and identified above.

Contractor and the Architect/Engineer entered into that certain Agreement for Design Services (Phase I) ("Design Agreement (Phase I)"), dated October 24, 2012, under which Architect/Engineer prepared Phase I Deliverables and performed other services for the Project. Contractor now engages the Architect/Engineer for the services described in this Design Agreement (Phase II).

Contractor and the Architect/Engineer agree with each other as follows:

II. DEFINITIONS

Definitions of terms defined in Section 1, Parties and Project and Section 2, Definitions of the Design Agreement (Phase I) are incorporated in this Design Agreement (Phase II) by reference.

A. "Architect/Engineer's Phase II Services" or "Services" means the services to be performed by the Architect/Engineer as described in Section IV below, including basic and additional services.

B. "Construction Schedule" means the schedule for the design and construction of the Project as established by Contractor, which is subject to change and shall be provided from time to time to the Architect/Engineer.

C. "Phase II Deliverables" means those documents and materials to be provided by the Architect/Engineer to Contractor under Design Agreement (Phase II). Such Deliverables shall comply with the requirements of the Owner's RFP, including the design of the size, quality and character of the Project, and the materials and such other elements of the Project.

C1. "Phase II Deliverable Schedule" means the list of the dates for completion of design deliverables necessary to support the Construction Schedule as established by Contractor in consultation with the Architect/Engineer during Phase I and which is attached to this Design Agreement (Phase II) as EXHIBIT D, which is subject to change under the Terms of this Agreement

D. "Construction Budget" means the Contractor's costs for design and construction (excluding contingencies) included in the price established in the Design Build Agreement.

E. "Government" or "governmental" means any governmental authority having jurisdiction over the Project.

F. "Law" means all laws, statutes, ordinances, building codes, orders, rules and regulations of any Government applicable to the Project.

G. "Subcontractors" means all contractors, subcontractors, and suppliers who provide labor, material or equipment for the construction of Project pursuant to a contract with Contractor.

H. "Work" means the design services, labor, material and equipment used or incorporated in the design and construction of the Project.

I. "Accepted Proposal" means the version of the Proposal, approved by Contractor and Architect/Engineer, which will be submitted to the Concession and is the basis of the Design Build Agreement, including any amendments to the Proposal and/or the Phase I Deliverables.

J. "Design Build Agreement" means the Prime Contract between the Contractor and the Concession.

III. SCOPE OF SERVICES AND PAYMENT

A. **SCOPE OF SERVICES.** The Architect/Engineer shall provide properly licensed and qualified personnel and design professionals, as well as all necessary equipment and material to complete the Architect/Engineer's Phase II Services in connection with the Project.

B. **PHASE II COMMENCEMENT AND COMPLETION.** The dates in the Phase II Deliverable Schedule contemplate that Architect/Engineer shall commence performance of the Architect/Engineer's Phase II Services no later than [redacted] Subject to adjustment as authorized by this Design Agreement (Phase II) or by mutual agreement, the Architect/Engineer's Services under this Design Agreement (Phase II) shall be completed in accordance with the Phase II Deliverable Schedule in order to avoid delay to the Construction Schedule. The Architect/Engineer acknowledges that the time allowed in the Phase II Deliverable Schedule for provision of the Architect/Engineer's Phase II Services shall permit delivery of the services in a manner consistent with Architect/Engineer's Standard of Care. Architect/Engineer agrees and acknowledges that time is of the essence in regard to all obligations, dates and deadlines contained in this Design Agreement (Phase II). At Contractor's written request, the Architect/Engineer shall prepare phased or fast tracked Phase II Deliverables on a submission schedule materially different from the Phase II Deliverable Schedule which Services shall be considered Additional Services as defined in Article IV.C except to the extent such Contractor request is a result of delays, errors or omissions for which Architect/Engineer is responsible.

C. **PAYMENT.**

1. **Payment for Basic Services.** As full and complete compensation for the satisfactory performance of all services, materials, and obligations which constitute Basic Services under the Design Agreement (Phase II), Contractor shall pay the Architect/Engineer as follows:

a. [redacted]

b.

c.

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d. [redacted]

e.

f.

g.

h.

i.

1A. All other Subconsultants of the Architect/Engineer will be paid on the basis of the following multipliers on direct labor cost of direct labor hours worked, plus direct non-labor expenses at cost:

[redacted]

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[redacted]

All such labor costs shall be part of the Target Price.

2. **Incentive Payments.** [redacted]

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3. In the event Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Architect/Engineer's services that have been successfully performed and are not being paid, Contractor shall give written notice of such claim to Architect/Engineer. If upon receipt of said notice, Architect/Engineer does not within ten (10) business days supply evidence to the satisfaction of Contractor that there is a good faith dispute or that the monies owing have been paid, Contractor shall have the right to withhold out of any payments due or to become due to Architect/Engineer the amount necessary to protect Contractor from any and all loss, damage or expense, plus attorneys' fees.

4. No payment made under the Contract shall operate as an admission or acceptance by Contractor that the Contract has been complied with or preclude any action for damages against Architect/Engineer should it fail to fully and properly perform under the Agreement.

5. [redacted]

D. **FLOW DOWN PROVISION.**

1. The provisions of the Design Build Agreement are incorporated into this Design Agreement (Phase II) by this reference. The Architect/Engineer acknowledges that the Architect/Engineer has examined, read and understood the Design Build Agreement. To the extent the Design Build Agreement relate to the Architect/Engineer's Services, the Architect/Engineer is bound to Contractor to the same extent Contractor is bound to the Concession and Owner under the Design Build Agreement. If the Architect/Engineer discovers any conflict between the requirements of the Design Build Agreement and this Design Agreement (Phase II), the Architect/Engineer shall inform Contractor of that conflict. The Architect/Engineer has verified the conditions under which the Architect/Engineer's Phase II Services are to be provided and accepts full responsibility therefore; provided; however, if the Contractor rejects, in writing, the Architect/Engineer's recommendation that certain Architect/Engineering work be conducted in the Phase I period, then Architect/Engineer shall not responsible to the extent that the failure to perform such recommended Architect/Engineering work causes a material adverse consequence to the Phase I Deliverables or Phase II Deliverable Schedule. This provision shall not affect the Architect/Engineer's full responsibility for the Phase II Deliverables as they are developed and designed after execution of the Design Agreement (Phase II).

2. Architect/Engineer shall be bound to any determinations by the Concession and/or the Owner, consistent with the terms of the Design Build Agreement, any judicial or administrative court or tribunal, or any dispute review board or arbitration panel regarding any work alleged to be outside its Basic Services in regard to any Claim for

which the Concession and/or the Owner is or may be liable on a pass through basis. Without prejudice to its rights, Architect/Engineer agrees to perform any and all work required to be performed as and when directed by Contractor as a result of direction from the Concession and/or the Owner, any judicial or administrative court or tribunal, or any dispute review board or arbitration panel. Without prejudice to its rights, Architect/Engineer further agrees that it shall perform work alleged to be outside its Basic Services in regard to any Claim for which the Concession and/or the Owner is or may be liable on a pass through basis in accordance with the directed schedule without additional compensation when such work is required of Contractor without additional compensation from Concession and/or the Owner, any judicial or administrative court or tribunal, or any dispute review board or arbitration panel.

E. **ENTIRE AGREEMENT; EXHIBITS.** This Design Agreement (Phase II), together with the contracts that are referenced in this Agreement and the EXHIBITS listed below are incorporated in this Design Agreement (Phase II) by this reference and form the entire agreement between the parties, and supersede all previous oral or written agreements or representations, with the exception the Design Agreement (Phase I), which continues to apply to the subject matter thereof.

EXHIBIT A	PHASE II	PAYMENT
EXHIBIT B	PHASE II	ADDITIONAL SERVICES
EXHIBIT C	PHASE II	SCHEDULE OF HOURLY RATES
EXHIBIT D	PHASE II	PHASE II DELIVERABLE SCHEDULE
EXHIBIT E	PHASE II	ARCHITECT/ENGINEER'S DESIGN TEAM
EXHIBIT F	PHASE II	PHASE II DELIVERABLES
EXHIBIT G	PHASE II	NOT USED.

IV. THE ARCHITECT/ENGINEER'S PHASE II SERVICES

A. **BASIC SERVICES.**

1. GENERAL REQUIREMENTS. Architect/Engineer's Phase II Services, including but not limited to the Phase II Deliverables shall comply in all respects with all requirements of the Accepted Proposal, and the Design Build Agreement except as authorized in writing by Contractor. Architect/Engineer's Phase II Services shall permit the construction of the Project in accordance with the quality of workmanship and materials, dimensions, and configurations specified in or reasonably inferred from the Phase I Deliverables which forms the basis of the Accepted Proposal. Architect/Engineer's Phase II Services shall permit the construction of the Project employing the methodologies and techniques that may be identified or reasonably inferable in the Accepted Proposal. The Architect/Engineer shall have full professional responsibility for all such Phase II Services. The Architect/Engineer also shall ensure that its Services:

   a. Comply with all statutes, regulations, codes and by-laws applicable to the design of the Project including without limitation all professional codes and standards applicable to the Architect/Engineer's Phase II Services; and

b. Are in accordance with generally accepted industry standards and have been approved by (or are capable of being approved by) the relevant authorities, and

c. Are performed using the care and skill [redacted]

d. [redacted]

2. MODIFICATION OF PHASE I DELIVERABLES. At the outset of Phase II, the Architect/Engineer shall modify the Phase I Deliverables and/or prepare any additional design documents to the extent necessary to conform to the Accepted Proposal.

3. PHASE II DELIVERABLES. The Architect/Engineer shall provide all necessary design services (excepting however, those design and engineering services provided by Separate Consultants as expressly notified to Architect/Engineer IN WRITING by Contractor) and prepare all drawings, specifications, calculations and other graphic or written materials (the "Phase II Deliverables") reasonably required to (a) describe the detailed requirements for construction of the Project and (b) obtain necessary permits and any other required governmental approvals. The Phase II Deliverables shall be based on the Accepted Proposal, the Design Build Agreement and shall comply with the Law and generally accepted industry standards. The quality of materials and workmanship and the dimensions, configurations, construction methods and techniques called for in the Phase II Deliverables shall be as described in or reasonably inferable from the Accepted Proposal.

4. CONSULTANT COORDINATION. The Architect/Engineer shall manage and coordinate the work of its Subconsultants on this Project, to assure conformance with the Accepted Proposal. Architect/Engineer shall review the work of the Separate Consultants as necessary for the performance of its own Services.

5. GOVERNMENTAL AND CONCESSION AND OWNER APPROVALS. The Architect/Engineer shall meet with governmental and Concession and Owner authorities as required by those authorities or as reasonably requested by Contractor or as the Architect/Engineer otherwise deems appropriate to confirm that the Phase II Deliverables comply with the Law and the Accepted Proposal. The Architect/Engineer shall advise Contractor regarding required Governmental approvals and the Architect/Engineer shall assist Contractor in preparing and filing documents required to obtain those Governmental approvals.

6. VALUE ENGINEERING. At the beginning of Phase II the Contractor and the Architect/Engineer shall set up Value Engineering sessions structured to reach savings on the Construction Budget once the redesign efforts have been computed.

7. SUBSTITUTE MATERIALS. To the extent the Phase II Deliverables permit prospective Subcontractors to apply for approval of substitute materials, the Architect/Engineer shall review those requests and make recommendations to Contractor.

8. MODIFICATIONS TO PHASE II DELIVERABLES [redacted]

9. CONSTRUCTION ADMINISTRATION. During the construction of the Project, the Architect/Engineer shall provide the following services to Contractor:

   a. The Architect/Engineer shall consult with Contractor and its employees or Subcontractors and assist in interpreting the Phase II Deliverables and responding to unforeseen field conditions.

   b. Not Used.

   c. Not Used.

   d. The Architect/Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures or safety precautions and programs in connection with the construction Work.

e. The Architect/Engineer shall, within 7 days after receipt, review, approve, or take other appropriate action with respect to shop drawings, samples or other submissions for the limited purpose of checking for conformance with the design concept expressed in the Phase II Deliverables. The Architect/Engineer's Detailed Design documents shall include a sufficient amount of information so as to minimize the Construction Design effort to be performed by the Contractor and the Architect/Engineer's review effort.

f. The Architect/Engineer shall prepare clarification drawings (responses to Requests for Information "RFIs" submitted by Contractor) in regard to the Phase II Deliverables and document changes in the Work.

g. The Architect/Engineer shall make prompt written notice to Contractor if Architect/Engineer becomes aware of any defect in the construction work or any construction work that does not conform with the Phase II Deliverables. However, the Architect/Engineer shall have no responsibility for its failure to detect any defects or nonconformities in the construction work.

h. The Architect/Engineer shall respond to Contractor's requests for review, approval, clarification, drawings or other action within a reasonable time, but in no event more than 7 days after Contractor makes such requests.

i. Architect/Engineer shall maintain for Contractor, one record copy of all drawings, specifications and modifications thereto in good order and marked currently to record all changes made during the Project as required by the Design-Build Agreement. All changes shall be clearly identified by encircling the changed area of the drawing and providing notes as required. Architect/Engineer shall prepare a complete set of "as-built" record drawings, plans and specifications and provide documentation that the Project is built according to the "as-built" record drawings, plans and specifications all to be signed and sealed as required by the Design Build Agreement.

10. To the extent Architect/Engineer's services are approved or passed on to the Concession and/or the Owner by Contractor, it shall not relieve, reduce or in any manner effect Architect/Engineer's full responsibility to Contractor for its services and obligations under this Agreement.

11. Technical Committee: the Contractor will set up a Technical Committee to review, audit and provide guidance and advice from time to time on the design of the Architect/Engineer. The Architect/Engineer has included in its Services the time and resources necessary to participate actively in the process up until the design reaches stage two completion. Any changes to the design after stage two completion as a result of the Technical Committee required changes, will result in Additional Services.

12. [redacted]

B. **ARCHITECT/ENGINEER'S STANDARD OF CARE.** The standard of care for all professional services provided by the Architect/Engineer pursuant to this Design Agreement (Phase II) shall be the care and skill ordinarily exercised [redacted] Architect/Engineer acknowledges that it may be found in Breach of this agreement under circumstances other than a failure to conform with this Standard of Care.

C. **ADDITIONAL SERVICES.** In addition to the Services described as Additional Services elsewhere in this Agreement, all services not included in the Basic Services and which are requested in writing by Contractor, including, among others, those listed in EXHIBIT B and material changes in Project scope shall constitute Additional Services, except to the extent Contractor's request is a result of delays, errors or omissions for which Architect/Engineer is responsible

1. Upon receipt of any written request and before commencing any additional services, Architect/Engineer shall advise Contractor in writing that Architect/Engineer considers such work as Additional Services and shall provide an estimate in regard to such services. Unless agreed otherwise in writing, Additional Services shall be paid at the rates set forth in EXHIBIT C.

2. No alteration, addition, omission or change in the Basic Services or authorization of Additional Services shall be made except upon Contractor's written direction. No services performed by Architect/Engineer outside the scope of Basic Services will be recognized or paid for unless the same is included within a written change order executed by Contractor.

3. Architect/Engineer shall request, in writing, any increase or decrease in the Target Price or time needed as a result of a proposed alteration, addition or change in Architect/Engineer's Services prior to the issuance of the written change order. Prior to the issuance of any written change order, Contractor may require Architect/Engineer to furnish a detailed itemization showing the difference in value of Architect/Engineer's Services altered, added, omitted or changed by the proposed change order.

4. In the event of a disagreement with Contractor as to whether Services are included in the scope of Basic Services, Contractor may direct Architect/Engineer in writing

to perform such services notwithstanding said disagreement. In this event, Architect/Engineer must provide written notice of such disagreement to Contractor within five business (5) days of the Contractor's written instruction. Upon such notification, Architect/Engineer shall proceed without prejudice to its rights and shall keep daily records of all costs and expenses incurred from that day forward regarding the disputed services.

5. The Architect/Engineer shall immediately commence performance of any additional services when the Contractor so directs.

D. **PROVISION OF SERVICES.**

1. The Architect/Engineer shall provide the Architect/Engineer's Phase II Services through qualified employees of the Architect/Engineer or qualified Subconsultants of Architect/Engineer, all of whom shall be duly licensed as appropriate to the services to be provided and shall be paid by the Architect/Engineer. Neither the Architect/Engineer nor its employees or Subconsultants, if any, shall be deemed to be the servants or employees of the Concession and/or the Owner.

2. The Architect/Engineer shall provide the Architect/Engineer's Phase II Services through the Architect/Engineer's Project Team identified in EXHIBIT E hereto. The Architect/Engineer shall not replace any key member of the Architect/Engineer's Project Team without the approval of Contractor, which approval by Contractor shall not be unreasonably withheld. Contractor shall have the right to approve Architect/Engineer's managers, including those listed in EXHBIT E, based on their resumes and references. The Architect/Engineer shall replace any member of the Architect/Engineer's Project Team to which Contractor reasonably objects.

3. Colocation of part of the design team and construction team on or near the site are included in the Architect/Engineer's Phase II Services as far as reasonably practical for some Sub-consultants and some specific resources. Team members to be collocated on site shall be mutually agreed upon between the Parties.

4. The design shown in the Phase II Deliverables shall conform with the Accepted Proposal; the Design Build Agreement, except to the extent Contractor approves modification of that design, and shall comply with all applicable Laws and the generally accepted industry standards.

5. Nothing contained in this Design Services Agreement (Phase II), the Phase II Deliverables, or any other document or instrument of service prepared by the Architect/Engineer under this Design Services Agreement (Phase II) shall create any obligation or contractual relationship between Contractor and any third party.

6. The Architect/Engineer shall present matters requiring decision, approval or other action by Contractor to Contractor in a timely manner, allowing Contractor a reasonable time to respond. Without limiting the generality of the foregoing, the

Architect/Engineer shall allow Contractor 7 days to respond to requests for decisions, approval or other action unless circumstances require otherwise, in which event the Architect/Engineer shall provide Contractor with notice of the date on which the Architect/Engineer requires a response and a reasonable time for the Contractor to respond.

7. Subject to Section III B. above, the Architect/Engineer shall perform all Architect/Engineers' Phase II Services within the time delineated in the Phase II Deliverable Schedule.

8. The Architect/Engineer shall meet with Contractor at appropriate intervals to review the progress of the Architect/Engineer's work, to submit to Contractor information required by Contractor for cost estimating and scheduling purposes, to request information from Contractor and to present to Contractor matters requiring Contractor's approval or decision.

9. Architect/Engineer will ensure that adequate, capable supervisory personnel, professionals and support staff will be available at all times to meet the Phase II Deliverable Schedule. Architect/Engineer shall, on written demand of Contractor, give adequate evidence to Contractor to substantiate the planned performance and progress of this Agreement and the various parts thereof. Architect/Engineer shall promptly increase its work force, accelerate its performance, work overtime, work Saturdays, Sundays and holidays, if such work is necessary to maintain proper progress. To the extent these Contractor requests are the result of delays, errors or omissions for which Architect/Engineer is responsible, no premium time or other additional amounts shall be paid as a result of such requests.

10. If liquidated or other damages shall be incurred by Contractor by reason of Architect/Engineer's failure to complete its Services on time, Contractor shall have the right to recover the amount of such damages from Architect/Engineer either by deducting such amount from any monies due or which may become due to Architect/Engineer. Liquidated damages, as assessed against Contractor resulting from delays which are the Architect/Engineer's responsibility, are but one item of actual damages that may be incurred by Contractor as a result of Architect/Engineer's failure to timely perform its Services and which Contractor may assess against Architect/Engineer. Architect/Engineer is responsible for all actual damages suffered by Contractor as a result of the Architect/Engineer's lack of timely performance.

11. If at any time either party believes that the Project will exceed the Construction Budget or Construction Schedule, that party shall notify the other party and each shall propose changes in the project or design to bring the project within the Construction Budget and Construction Schedule. [redacted]

[redacted]

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[redacted] Upon receipt of such written request and before commencing such Additional Services, Architect/Engineer shall advise Contractor in writing that Architect/Engineer considers such work as additional services and shall provide an estimate in regard to such services. Notwithstanding the foregoing, Architect/Engineer does not undertake any duty to have familiarity with the integral details of the Construction Budget or Construction Schedule.

12. Architect/Engineer shall furnish services of geotechnical Architect/Engineers and other consultants for determining site, subsoil, subsurface, air and water conditions. Architect/Engineer shall select and pay said geotechnical Architect/Engineers or other consultants. Such services shall include, as required, applicable test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, and other necessary operations for determining site, subsoil, subsurface, air and water conditions, with reports and appropriate professional recommendations.

E. **ENGINEER'S SERVICES DURING CONTRACTOR WARRANTY PERIOD.** The Architect/Engineer shall provide services relating to warranty work required to be done by Contractor pursuant to the Design Build Agreement, during any warranty period specified in the Design Build Agreement at Architect/Engineer's then-current time-and-material rates under a mutually agreed scope and schedule of Services. To the extent such warranty services include redesign of any work resulting from or related to errors, omissions or negligent acts involved in the Architect/Engineer's Phase II Services, they shall be provided without additional charge. In addition, if the error or omission was a failure to conform with Architect/Engineer's Standard of Care, Architect/Engineer shall be responsible for costs associated with Contractor's required rework.

F. **DESIGN TOSCHEDULE.** The Architect/Engineer acknowledges that, pursuant to Design Build Agreement, [redacted] Contractor and the Architect/Engineer therefore agree as follows:

1. The Phase II Deliverables Schedule provides the Architect/Engineer with sufficient time and compensation to perform Architect/Engineer's Phase II Services and is sufficient for the work described in the Accepted Proposal, and the Design Build Agreement.

2. Any delays in or failure of performance by Architect/Engineer shall not constitute a breach or default hereunder if and to the extent such delays or failures of performance are caused by Force Majeure Events as defined in Exhibit 1 of the Public-Private Agreement.

3. If any portion of Architect/Engineer's Services are priced on the basis of a fixed fee or Target Price and such Services are delayed by any act, omission or interference caused by the Owner, the Concession, the Contractor, or its Separate Consultants or Subcontractors, such fixed fee or Target Price amount shall be equitably adjusted for the additional costs incurred by Architect/Engineer as a result of such delay.

V. CONTRACTOR'S RESPONSIBILITIES

A. INFORMATION AND SERVICES SUPPLIED BY CONTRACTOR.

1. Contractor shall furnish on-site tests, inspections and reports as required by Law or the Phase II Deliverables.

2. Contractor shall furnish all cost estimating services required for the Project, other than estimates for Architect/Engineer Services.

3. Not used.

4. The Architect/Engineer may rely on information provided by Contractor regarding the Project, including information Contractor obtains from the Owner, the Concession, and any Separate Consultants, to the extent Contractor is entitled to rely on that information; but the Architect/Engineer shall exercise its own judgment in interpreting and applying that information and determining whether the information is sufficient for the Architect/Engineer's purposes and shall notify Contractor of any discovered inaccuracies or deficiencies in such information. If the information is not sufficient for use in design, Architect/Engineer will notify Contractor, who will obtain additional information for use by Architect/Engineer or will authorize Architect/Engineer to develop the additional information through Additional Services.

B. DECISIONS AND APPROVALS.

1. Contractor shall meet with the Architect/Engineer at appropriate intervals to review the progress of the Architect/Engineer's work, exchange information required by Contractor and the Architect/Engineer for completion of the Phase II Deliverables and to discuss matters requiring Contractor's decision or approval.

2. With respect to matters under this Agreement requiring decision, approval or other action by Contractor, Contractor shall have sole authority and discretion, subject to Architect/Engineer's rights, under this Agreement and at law and equity.

3. Contractor shall not unreasonably withhold or delay decisions, approval or action affecting the Architect/Engineer's schedule.

VI. PROJECT REPRESENTATIVES

Contractor and the Architect/Engineer shall each designate a representative, who shall have authority to act on its behalf with respect to the Project, who shall be fully acquainted with the Project, and who shall render decisions promptly and furnish information expeditiously. Contractor and the Architect/Engineer may each change its representative from time to time by written notice to the other, subject to any restrictions on the Architect/Engineer's right to change the Project Team under Section IV D.2 of this Design Agreement (Phase II).

VII. COMMUNICATIONS

A. **THE ARCHITECT/ENGINEER'S COMMUNICATIONS.** The Architect/Engineer shall communicate with the Concession and/or the Owner, and/or Contractor's Separate Consultants and Subcontractors only through or with the consent of Contractor. However, it is understood that an open line of communication between, Concession and/or the Owner, and/or with Contractor's Separate Architect/Engineers and the Architect/Engineer is in the best interest of a successful Project. Contractor agrees to involve Architect/Engineer in or promptly inform Architect/Engineer of discussions, meetings or other proceedings affecting the design portion of the Work.

B. **CONTRACTOR'S COMMUNICATIONS.** Contractor shall communicate with the Architect/Engineer's Subconsultants, if any, only through or with consent of the Architect/Engineer.

C. **REVIEW AND CONSULTATION.** Whenever the Architect/Engineer submits materials for review or consultation as required under this Design Agreement (Phase II), the Architect/Engineer will, if requested by Contractor, meet with Contractor to present and discuss those materials, and Contractor may include the Concession and/or the Owner and/or any Separate Consultants or Subconsultants in any such meeting.

D. **NOTICE OF DEFICIENCIES AND DEFECTS.** If either Contractor or the Architect/Engineer observes or otherwise becomes aware of any deficiency or defect in the Phase II Deliverables or in any information supplied by Contractor or Architect/Engineer to the other party, that party shall give prompt written notice thereof to the other party.

VIII. CLAIMS; DISPUTES

A. **EXECUTIVE COMMITTEE.** To facilitate the handling of any and all matters, disputes or questions relating in any way to the Design Agreement (Phase II) or the Design Agreement (Phase I) following the execution of this Design Agreement (Phase II) and to avoid, minimize or provide for expeditious resolution of disputes and disagreements, Contractor and the Architect/Engineer each hereby appoint the following representative and alternate to act for it in all such matters with full and complete authority to act on its behalf in relation to any and all matters and things in connection

with, arising out of, or in relation to any and all matters, questions and things involving performance of this Design Agreement (Phase II).

PARTY	REPRESENTATIVE	ALTERNATE
Walsh	[redacted]	
VCGP	[redacted]	
Architect/Engineer	[redacted]	
Architect/Engineer	[redacted]	

Any party may at any time and from time to time change its appointed representative or alternate by filing with the other party a written notice. The alternate representative shall serve only when the primary representative is absent or unable to serve.

B. **MEETINGS.** The Representatives shall meet bi-monthly or as requested by either Representative, subject to seven days' notice (or such lesser period upon which the Representatives may agree), to review the progress of the Work and matters requiring the action or approval of either Party. Such meetings shall be in person or by telephone conferencing and shall, at Contractor's discretion, include representatives of the Concession and/or the Owner, the Subcontractors and others Contractor deems necessary for resolution of the matters to be addressed.

C. **NOTICE; MEDIATION**. If either Party has a Claim against the other, the claimant shall promptly give written notice thereof and both parties shall, in the first instance, endeavor in good faith to negotiate a settlement of the Claim. If the Architect/Engineer's Representative and Contractor's Representative cannot resolve the Claim promptly, officers of the Architect/Engineer and Contractor shall endeavor in good faith to negotiate a settlement of the Claim. If the officers cannot resolve the dispute by negotiation, the parties shall participate in mediation with a third-party neutral mutually acceptable to them, and they will share equally in the cost of the mediation. If mediation is unsuccessful in the resolution of the Claim within three (3) months of starting the mediation, then the parties agree to pursue litigation, unless they can first agree on another method of alternate dispute resolution. Subject to Section G below, all litigation will be through the court having jurisdiction where the Project is located.

D. **EQUITABLE REMEDY**. Notwithstanding any requirement that the parties negotiate, mediate or arbitrate, the parties shall in the event of potential irreparable injury or emergency be entitled to seek equitable relief in the Court where the Project is located.

E. **VENUE.** Subject to Section VIII G. below, the venue for any litigation shall be the Court having jurisdiction where the Project is located.

F. **WAIVER OF JURY TRIAL.** The Parties hereby waive their right to a trial by jury in any and all disputes or claims arising out of or relating in any way to this Agreement.

G. **JOINDER AND CONSOLIDATION.** Contractor shall have the right to join the Architect/Engineer and any of its Subconsultants in any action, proceeding or dispute resolution process brought by the Concession and/or the Owner, or any third party in

connection with any Claim arising out of the Project in any venue or jurisdiction Contractor is required to appear, as a party defendant in relation to the Project, notwithstanding any other provision of this Design Agreement (Phase II). Architect/Engineer shall require its Subconsultants to submit to any action, proceeding or dispute resolution process of Claims under the same terms and conditions as this Section VIII.

H. **DUTY TO CONTINUE PROSECUTING THE SERVICES.** Architect/Engineer acknowledges and agrees that it shall continue to diligently progress its Services and that it shall not be entitled to slow down, not diligently prosecute, suspend or cease its services or work, notwithstanding the existence of any disputes between the parties including, but not limited to, denied claims, payment disputes, back charges and recognized claims for which agreement cannot be reached. It is understood that by proceeding with its Services, the Architect/Engineer shall in no manner be prejudiced in the assertion of its rights and defenses.

I. **ATTORNEYS' FEES.** In the event any litigation arises between Contractor and/or Contractor's surety and Architect/Engineer over the provisions of this Agreement or the Design Agreement (Phase I), the Work, payment therefore or otherwise, the substantially prevailing party shall be entitled to recover all costs and expenses incurred including, but not limited to, court costs, attorneys' fees and expert witness fees, arising before, during, or after mediation, arbitration, trial or other method of dispute resolution, including any costs, attorneys' fees or expenses incurred in any appeal therefrom.

J. **CLAIMS RELATING TO CONCESSION AND/OR OWNER.**

1. **Claim Presentation.** Architect/Engineer agrees to make all Claims for any additional compensation, damages and/or time extension for which the Concession and/or the Owner is or may be liable in strict compliance with the terms and conditions of the Design-Build Agreement with the Concession including, without limitation, the notice, documentation and methods/forums for dispute resolution required by these Agreements so that the Contractor may submit these Claims as pass through claims. Failure to comply with these claims presentation terms and conditions shall be deemed an absolute waiver of any such claims to the extent such waiver applies under the Design-Build Agreement.

2. **Claim Prosecution.** Upon the written request of Architect/Engineer, Contractor may institute any action or proceeding to recover any affirmative claim by Architect/Engineer or appeal on behalf of Architect/Engineer from any ruling or decision of the Concession and/or the Owner. In that event, Architect/Engineer shall pay all costs attributable thereto, including attorneys' fees, and shall render all assistance requested by Contractor. Architect/Engineer shall post whatever security may be required by Contractor to cover Contractor's cost and expenses, including attorneys' fees, prior to and as a condition to Contractor's proceeding on Architect/Engineer's behalf.

3. **Claims Liquidating Agreement.** Architect/Engineer shall have no cause of action against Contractor for any claims for additional compensation or damages

for which Concession and/or the Owner is or may be liable, unless and until Contractor has actually been paid such claim. Such payment is an **ABSOLUTE CONDITION PRECEDENT** to Architect/Engineer filing a cause of action against Contractor in regard to such claim; provided, however,

a. if Contractor i) fails to allow Architect/Engineer to pursue claims and applicable appeals under the applicable dispute resolution process, or ii) settles any claims without written consent of Architect/Engineer; or

b. to the extent the lack of actual payment to Contractor is a result of issues for which Architect/Engineer is not responsible,

then this **ABSOLUTE CONDITION PRECEDENT** shall not apply and Contractor agrees to be responsible for all such payments due Architect/Engineer. Subject to the provisions of 3(a.)and (b.) above, with respect to Architect/Engineer claims for additional compensation or damages for which Concession and/or the Owner is or may be liable, Architect/Engineer shall be bound by the determination of Concession and/or the Owner or in the event of an appeal or further action or proceeding by the determination of same. In the event any award of additional compensation or damages on any such claim does not identify or allocate an amount to Architect/Engineer, then Architect/Engineer shall be entitled only to its proportionate share of any actual net recovery, if any, as determined in Contractor's reasonable discretion, less Contractor's expenses and attorneys' fees in handling said matter.

K. **CLAIMS RELATING TO CONTRACTOR.** Architect/Engineer shall give Contractor written notice of all claims for any additional compensation or damages not included in Section VIII J., within 5 business days upon discovery of the event for which such claim is to be made. A failure to comply with the notice requirement constitutes a Breach of Contract. In submitting any such claim, Architect/Engineer shall comply with the claim submittal and documentation requirements of the Design Build Agreement, as if such claim were a claim for which Concession and/or the Owner was or may be responsible.

L. **CLAIMS RELATING TO ARCHITECT/ENGINEER.** Architect/Engineer shall be responsible and liable for all costs, disbursements and expenses, incurred by Contractor to the extent caused by: (a) Architect/Engineer's breach of any term or condition of this Agreement or the Design Agreement (Phase I); or (b) Contractor having to defend any action or proceeding which relates to a failure to perform within the standard of care, described at Article IV.B above by Architect/Engineer, its Subconsultants, materialmen or anyone for whose acts Architect/Engineer may be liable.

M. **JOINT MITIGATION OF DELAY CLAIMS.** The Parties agree to use good faith efforts to cooperate in the mitigation of delay, disruption or other adverse impact on the performance of the Project, whether arising from acts or omissions of third parties, Architect/Engineer or Contractor. Such joint efforts will take full advantage of the mitigation assets available to the Parties, and shall include, but not be limited to, utilizing the existing Project float, float available from re-sequencing work and other mitigation

reasonably available in order to attempt to mitigate any and all damages resulting from the delay, disruption or other adverse impact.

IX. OWNERSHIP OF DOCUMENTS

A. **OWNERSHIP AND USE BY CONTRACTOR.** The Phase II Deliverables are the property of Contractor whether or not construction of the Project is commenced but provided that the Contractor has paid for them. Contractor may retain and distribute copies to the Concession and/or the Owner. Contractor may use the Phase II Deliverables or other documents furnished by the Architect/Engineer for completion of this Project or additions to this Project, whether or not the Architect/Engineer is in default under this Design Agreement (Phase II), subject to the following conditions:

1. If Contractor terminates this Design Agreement (Phase II) for default before the Architect/Engineer completes, signs and seals the Phase II Deliverables, the Architect/Engineer shall deliver to Contractor reproducible copies, including electronic copies of documents produced or stored on electronic media, of the Phase II Deliverables and other documents prepared by the Architect/Engineer, whether or not those documents are complete as of the date of termination. Contractor shall have the right at its risk and cost to use these documents for any purpose provided the Architect/Engineer's title block and all other identification are removed from the documents before such use.

2. If Contractor terminates this Architect/Engineer Design Agreement (Phase II) for default after the Architect/Engineer signs and seals the Phase II Deliverables, the Architect/Engineer shall deliver reproducible copies of the Phase II Deliverables, including electronic copies of any documents produced or stored on electronic media, to Contractor. Contractor shall have the right to use the Phase II Deliverables for this Project provided the Architect/Engineer's name shall not appear on any change orders and the Architect/Engineer shall not be responsible for changes in the Phase II Deliverables made or authorized by others.

B. **PUBLICATION.** Not Used.

C. **OWNERSHIP AND USE BY CONCESSION AND/OROWNER.** Notwithstanding the other provisions of Section IX, the Architect/Engineer acknowledges Concession and/or the Owner's rights with respect to ownership and use of the Phase II Deliverables as defined in the Design-Build Agreement.

D. **GENERAL USE.** All transfers of ownership and other uses of Phase II Deliverables are subject to the following explicit understandings that, i) until sealed, such documents are preliminary and are not intended or represented to be suitable as final design for the Project or for any reuse on extensions of the Project or use in connection with any other project, and ii) any such use of the unsealed documents without written consent of or adaptation by Architect/Engineer for the specific purpose intended will be at the sole risk of the party undertaking such use and without liability or legal exposure to Architect/Engineer.

X. INSURANCE

The insurance requirements of this Design Agreement (Phase II) are in addition to any insurance required of the Architect/Engineer by the Design-Build Agreement. To the extent the minimum limits of coverage, the maximum deductible amount, or other insurance requirements of the Design-Build Agreement and this Design Agreement differ, the more stringent requirement shall apply.

A. **COVERAGE.** The Architect/Engineer shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from the Architect/Engineer's operations under this Design Agreement (Phase II) whether such operations are by the Architect/Engineer directly or by any of the Architect/Engineer's Subconsultants or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed.

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees and under any applicable employer's liability law with customary limits.

3. Claims for damages because of bodily injury, or death of any person other than his employees.

4. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Architect/Engineer or (2) by any other person.

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use therefrom.

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

7. Claims for damages because of any act or omission by Architect/Engineer, its representatives, employees, agents, or its Subconsultants, at any tier.

B. **LIMITS.** The Architect/Engineer's commercial general and automobile liability insurance shall include contractual liability coverage and shall be written for not less than limits of liability as follows:

1. Commercial General Liability

   a. Personal Injury [redacted] Aggregate

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[redacted] Each Occurrence

b. Bodily Injury [redacted] Aggregate
[redacted] Each Occurrence

c. Property Damage [redacted] Aggregate
[redacted] Each Occurrence

2. Comprehensive Automobile Liability

a. Bodily Injury [redacted] Aggregate
[redacted] Each Occurrence

b. Property Damage [redacted] Aggregate
[redacted] Each Occurrence

C. **POLICIES.** Commercial General Liability insurance ("CGL") may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

D. **PROFESSIONAL LIABILITY.** The Architect/Engineer shall furnish professional liability insurance coverage ("E&O") with coverage limits and deductibles described below. Such policy shall apply to the Phase I Services, as well as Phase II Services. Such policies shall indicate that coverage thereunder will not be canceled or not renewed until at least thirty (30) days after written notice has been given to Contractor.

1. Not used.

2. [redacted] During the five (5) year period E&O insurance must continue in force beyond final completion of the Project, the Architect/Engineer shall provide Contractor proof of coverage and confirmation of annual renewals each year.

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E. **CANCELLATION AND RENEWAL.** Without in any way diminishing Architect/Engineer's obligation to provide the insurances referenced in this Agreement for the stated durations, the foregoing policies shall contain a provision that coverage's afforded under the policies will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to Contractor. Certificates of Insurance showing such coverage's to be in force shall be filed with Contractor prior to commencement of the Architect/Engineer's Phase II Services.

F. **POLICY TERMS AND CONDITIONS.** All policies of insurance required under this Design Agreement (Phase II) shall comply with the following:

1. All insurance shall be issued by carriers having a Best's rating of "A" or better and all deductibles shall be paid by Architect/Engineer.

2. With the exception of the E&O policy, the maximum deductible under any policy shall be [redacted]

3. Contractor and the Concession and the Owner shall be named as additional insured's with respect to the negligence of the Architect/Engineer under all CGL policies, and coverage shall include costs of defense of claims arising from the Architect/Engineer's alleged negligent acts or omissions.

4. Not Used.

G. **CONTRACTOR'S COVERAGES.** During the term of this Agreement, Contractor shall secure and maintain in force the following policies of insurance:

1. Commercial General Liability Insurance, with the coverage limits and other terms as required under the Design Build Agreement. Architect/Engineer shall be endorsed as an additional insured under these policies of Contractor and its Subcontractors.

2. Worker's Compensation and Employer's Liability Insurance, with the coverage limits and other terms as required under the Design Build Agreement. Contractor and its Subcontractors shall waive, and require their insurers to waive, all subrogation rights in favor of Architect/Engineer with respect to these policies.

3. As between Architect/Engineer and Contractor, Contractor agrees to insure the Project and all materials and equipment to be incorporated therein from risks insurable under an All Risk Builder's Risk Insurance Policy. Contractor hereby waives any rights which it or its insurers may have against Architect/Engineer and its Subconsultants for any damages, losses, or expenses resulting from the risks to be insured by Contractor through this policy, and Contractor agrees to include Architect/Engineer and its Subconsultants as additional insured in such policy. Contractor shall include Architect/Engineer and its Subconsultants in any waiver of

rights obtained by Contractor from its Subcontractors with respect to property damage insurance carried by such Subcontractors.

XI. TERMINATION

A. **FOR CAUSE.** Either party may terminate this Design Agreement (Phase II) by ten days' written notice if, through no material fault of the party initiating the termination, the other party fails substantially to perform its obligations under this Design Agreement (Phase II) and fails to cure the failure to perform within such ten day period. In addition and alternatively, should the Architect/Engineer (i) fail to provide its services so as to permit adherence to the Construction Schedule and/or fail in a material manner to comply with the Phase II Deliverable Schedule, (ii) in a material manner fail to perform the Services in accordance with this Design Agreement (Phase II) or (iii) file for bankruptcy, make an assignment for the benefit of creditors, become insolvent, be unable to pay its obligations as they mature, Contractor may deem the Architect/Engineer to be in default and after the expiry of ten (10) days written notice of the default (and provided the default is not fully cured or the Architect/Engineer has not begun to cure such default where such default is not susceptible of cure within said ten (10) days or the Architect/Engineer has failed to diligently continue to cure such default), at Contractor's sole option, and without limitation of other remedies available at law or equity, take one or more of the following actions:

1. take immediate and permanent possession of any and all drawings, other design documents and resources intended for performance of this Agreement in Architect/Engineer's possession in order to assure its availability for completion of Architect/Engineer's obligations under this Agreement and in order to mitigate Contractor's damages arising out of Architect/Engineer's breach of this Agreement; or

3. immediately hire, retain or contract with any and all of Engineer's personnel, employees or Subconsultants that Contractor deems reasonably necessary, in its sole discretion, to assure timely and orderly completion of Architect/Engineer's obligations under this Agreement; or

4. supply such number of design professionals or other services or resources as Contractor deems necessary for the correction, replacement, re-execution or completion of Architect/Engineer's obligations under this Agreement, or any part thereof which Architect/Engineer has failed to correct, complete or perform after the aforesaid notice, and charge the reasonable cost thereof to Architect/Engineer, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees together with any damages or losses Contractor suffers as a result of such default; or

5. contract with one or more additional engineers to perform such part of Architect/Engineer's Services as Contractor shall determine will provide the most expeditious correction, replacement, re-execution or completion of Architect/Engineer's obligations under this Agreement and charge the reasonable

cost thereof to Architect/Engineer, who shall be liable for the payment of same, including reasonable overhead, profit and attorneys' fees together with damages or losses Contractor suffers as a result of such default; or

5. give the Architect/Engineer written notice of termination of this Design Agreement (Phase II) and, at Contractor's option, take permanent possession of all of the Architect/Engineer's material intended for performance of the Services (whether or not located on the Jobsite), which the Architect/Engineer hereby assigns and transfers to Contractor for such purpose, subject only to Contractor's exercising its option hereunder;

6. upon Contractor giving notice of termination of this Design Agreement (Phase II) as aforesaid, Contractor may exercise its option to take an assignment of the contract or contracts of any of the Subconsultants;

7. withhold further payments to the Architect/Engineer until the Services are finished and the services have been completed by others and accepted by Contractor, and upon total performance of the Services, charge the Architect/Engineer the amount by which the full cost of finishing the services exceeds the unpaid balance of the contract price hereunder, plus the amount of all damages caused by the Architect/Engineer's acts, omissions or negligence; however, if such costs of finishing the services plus such damages are less than the unpaid balance of the contract price, Contractor shall pay the Architect/Engineer the difference.

B. **FOR CONVENIENCE.** Contractor may terminate this Design Agreement (Phase II), or any portion thereof, at any time with or without cause upon at least seven days' written notice to the Architect/Engineer only when the Concession terminates the Design Build Agreement In the event of such a termination for convenience and notwithstanding any other provision of this Agreement to the contrary, provided the Architect/Engineer is not in default, the Architect/Engineer shall receive, as its entire and sole compensation, payment for the Services actually performed based on [redacted] The amount due under (a) and (b) shall be reduced by prior payments made to Architect/Engineer and increased by any amounts recovered from Concession by Contractor in regard to any Architect/Engineer claims of record as of the date of termination, but in no event shall such amounts paid and payable hereunder exceed the Architect/Engineer's Target Price, as amended. The remedy provided under this paragraph shall be Architect/Engineer's exclusive remedy under this Agreement against Contractor. The Architect/Engineer shall not be entitled to any loss of anticipated profits. In the event any termination or default of the Architect/Engineer pursuant to this Agreement is later determined to have been improper, such termination or default shall be automatically converted to a termination for convenience under this Section and the

Architect/Engineer shall be limited in its recovery strictly to the compensation provided for in this Section.

XII. INDEMNIFICATION

A. **ARCHITECT/ENGINEERAND CONTRACTOR PERFORMANCE.** Neither Party shall be liable for any loss or casualty caused by the other Party. Architect/Engineer assumes all risk of loss relating in any way to Architect/Engineer's services regardless of whether Architect/Engineer had previously been paid for such Architect/Engineer's services.

B. **INDEMNITY – GENERAL.** Each Party agrees to defend, indemnify, protect and hold harmless the other Party, their officers, directors, shareholders, employees, Concession, Owner, and all persons or entities required to indemnify under the Design-Build Agreement from and against any and all losses, damages (including without limitation any liquidated damages), costs, claims, lawsuits, whether groundless or not, judgments, settlements and expenses, including without limitation attorneys' fees, expert witness fees and court costs, arising or alleged to have arisen out of, any of the following:

1. performance or lack of performance under this Agreement

2. claims from Architect/Engineer's Subconsultants, representatives, employees, or Subconsultants, at any tier; or

3. any act or omission by Architect/Engineer, its representatives, employees, agents, or its Subconsultants, at any tier;

to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying Party, persons employed or utilized by the indemnifying Party in the performance of this Design Agreement (Phase II), or anyone for whose acts the indemnifying Party may be liable. However, the fact that a portion of the liability, damages, losses or costs is alleged to have been caused by a party indemnified hereunder shall not release the indemnifying Party from its responsibility for the extent of the liability, damages, losses and costs caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying Party, persons employed or utilized by the indemnifying Party, in the performance of this Design Agreement (Phase II), or anyone for whose acts the indemnifying Party may be liable.

C. **MUTUAL INDEMNITY FOR THIRD PARTY CLAIMS.** To the fullest extent permitted by law, each Party agrees to indemnify, defend and hold harmless the other Party, its affiliates, sub-engineers and the respective officers, directors, shareholders, employees, agents and sureties of such entities, the Concession and the Owner from and against any and all claims, costs, losses and liabilities (including but not limited to all attorney's fees, expert witness fees and costs of litigation) for personal injury (including death) or damage to the property of third parties, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying Party, its agents, employees, Subconsultants or Subcontractors, or anyone for whose acts the indemnifying

Party may be liable. The indemnity obligation contained in this paragraph is not subject to the Limitation of Liability contained in Section XII.G below.

D. Not Used.

E. **INFRINGEMENT.** Except to the extent Architect/Engineer identifies intellectual property as being used or provided under license from itself or a third party, Architect/Engineer represents that the processes or methods Architect/Engineer provides as a deliverable under Design Agreement (Phase I) or Design Agreement (Phase II) do not infringe any patent or intellectual property right of any third party. In the event any such processes or methods infringe any such rights, then:

1. Architect/Engineer undertakes, at its own expense, to make the changes necessary to ensure that any patent or intellectual property right which any third party may have in respect of such processes or methods is not infringed, or to obtain necessary authorizations for use by Contractor.

2. Architect/Engineer agrees to defend, indemnify, protect and hold harmless Contractor, Contractor's officers, directors, shareholders, and employees, Concession Owner, and all persons or entities Contractor is required to indemnify under the Design-Build Agreement from and against any and all losses, damages (including without limitation any liquidated damages under the Contractor's agreement with Concession), costs, claims, lawsuits, whether groundless or not, judgments and expenses, including without limitation attorneys' fees, expert witness fees and court costs, arising or alleged to have arisen out of, directly or indirectly, such infringement.

Architect/Engineer reserves the right to exploit any expertise and techniques it has obtained during the performance of the Design Agreement (Phase II), including the rights to use, revise, develop, market, and license any software, data processing, building systems, architectural and engineering expertise and techniques associated with Architect/Engineer's performance of Architect/Engineering services, provided that nothing herein shall be construed to grant Architect/Engineer any right or license to use intellectual property created for and delivered to Contractor as part of Architect/Engineer's services.

F. **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.** Notwithstanding any other provisions of this Agreement and to the fullest extent permitted by law, each Party, on behalf of itself, its parent, affiliates and the directors, officers and employees of such parties, waives all claims against the other for any consequential or other indirect damages including, without limitation, damages for loss of use, revenue or loss of funding, bonding capacity or loss of opportunity; and other similar business interruption losses, however the same may be caused and regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of the Party, its employees, Subconsultants, Subcontractors or Separate Consultants.

G. [redacted]



XIII. GENERAL PROVISIONS

A. **ASSIGNMENT.** Neither Party may assign, transfer, or pledge its interest in this Agreement without prior written consent of the other Party, which consent will not be unreasonably delayed or conditioned. Provided however, no such consent is required for assignments among affiliates, as a result of merger or acquisition, or as otherwise mandated by law. No assignment will release or discharge the assignor from any duty or responsibility under this Agreement, unless otherwise agreed to in writing by the Parties.

B. **SOLELY FOR BENEFIT OF SIGNATORIES.** This Design Agreement (Phase II) is solely for the benefit of the signatories hereto.

C. **UNENFORCEABLE PROVISIONS.** Should any clause in this Design Agreement (Phase II), or a particular application thereof, be invalidated by operation of law, the remaining clauses or other applications herein shall continue in full force and effect.

D. **ENTIRE AGREEMENT.** This Design Agreement (Phase II) constitutes the entire agreement between the parties hereto, with the exception of Architect/Engineer's obligations under the Design Agreement (Phase I). It is expressly understood and agreed that there are no agreements or promises by and between the parties, except the Design Agreements (Phases I and II), and any additions or changes thereto shall be in writing and signed by both parties. Neither this Design Agreement (Phase II) nor any amendment shall create any third party beneficiaries or third party obligations enforceable against the Architect/Engineer or Contractor.

E. **GOVERNING LAW.** This Design Agreement (Phase II) and disputes related hereto shall be governed by the laws of Indiana.

F. **NOTICES.** All notices required or permitted under this Design Agreement shall be in writing, and deemed to have been duly given on (i) the day of delivery, if personally

delivered, (ii) the day delivery is certified to, if delivered by a nationally recognized overnight courier service or by United States registered or certified mail (postage prepaid, return receipt requested), or (iii) the date indicated on a transmission confirmation report, if delivery is by means of facsimile transmission. However, if a notice is delivered after close of business at the recipient's address or on a day other than a business day, then the notice shall be deemed to be the next business day. The address for notice to each Party shall be that set forth below, unless changed by prior written notice from such Party.

G. **CAPTIONS.** The headings of sections and paragraphs are for convenience only and shall not modify rights and obligations created by this Design Agreement (Phase II).

H. **TECHNICAL TERMS.** Words and abbreviations which have well known technical or trade meanings are used in this Design Agreement (Phase II) in accordance with such recognized meanings.

I. **KNOWING CONSENT.** The parties hereto acknowledge that they have been represented by competent legal counsel in the negotiation of this Agreement and all of the terms and conditions herein were drafted jointly and subject to each party's review, comments and negotiations and consequently, no provision of this Agreement shall be construed against a party on the grounds it was a drafter of this Agreement.

J. **PRIORITY OF DOCUMENTS.** Whenever possible, all the contract documents, including the Design-Build Agreement with the Contractor, the Design Agreement (Phase I) and the Design Agreement (Phase II), shall be construed and interpreted in a consistent, harmonious and supplementary manner. In the event the contract documents cannot be interpreted in a consistent, harmonious and supplementary manner, the most stringent shall apply. However, in the event there are irreconcilable conflicts, ambiguities or discrepancies within the contract documents, the precedence in resolving such conflicts, ambiguities, or discrepancies shall be as follows:

a. Amendments and Change Orders under this Design Agreement (Phase II), then
b. Exhibits to Design Agreement (Phase II), then
c. Design Agreement (Phase II); then
d. Exhibits to the Phase I Agreement, then
e. Design Agreement (Phase I), then
f. With respect to the Design-Build Agreement with the Contractor, the priority shall be as set forth in the Design Build Agreement.

K. **AUDIT.** Architect/Engineer shall permit an audit or its books and records consistent with the Concession's rights under the Design Build Agreement.

L. **SURVIVAL.** All express representations, requirements for payments and indemnification, limitations and allocation of liability, agreements regarding confidentiality and other provisions that by their terms are intended to apply or be

effective after termination of the Agreement will survive completion of the Services as well as cancellation or termination of the Agreement for any reason.

M. [redacted]

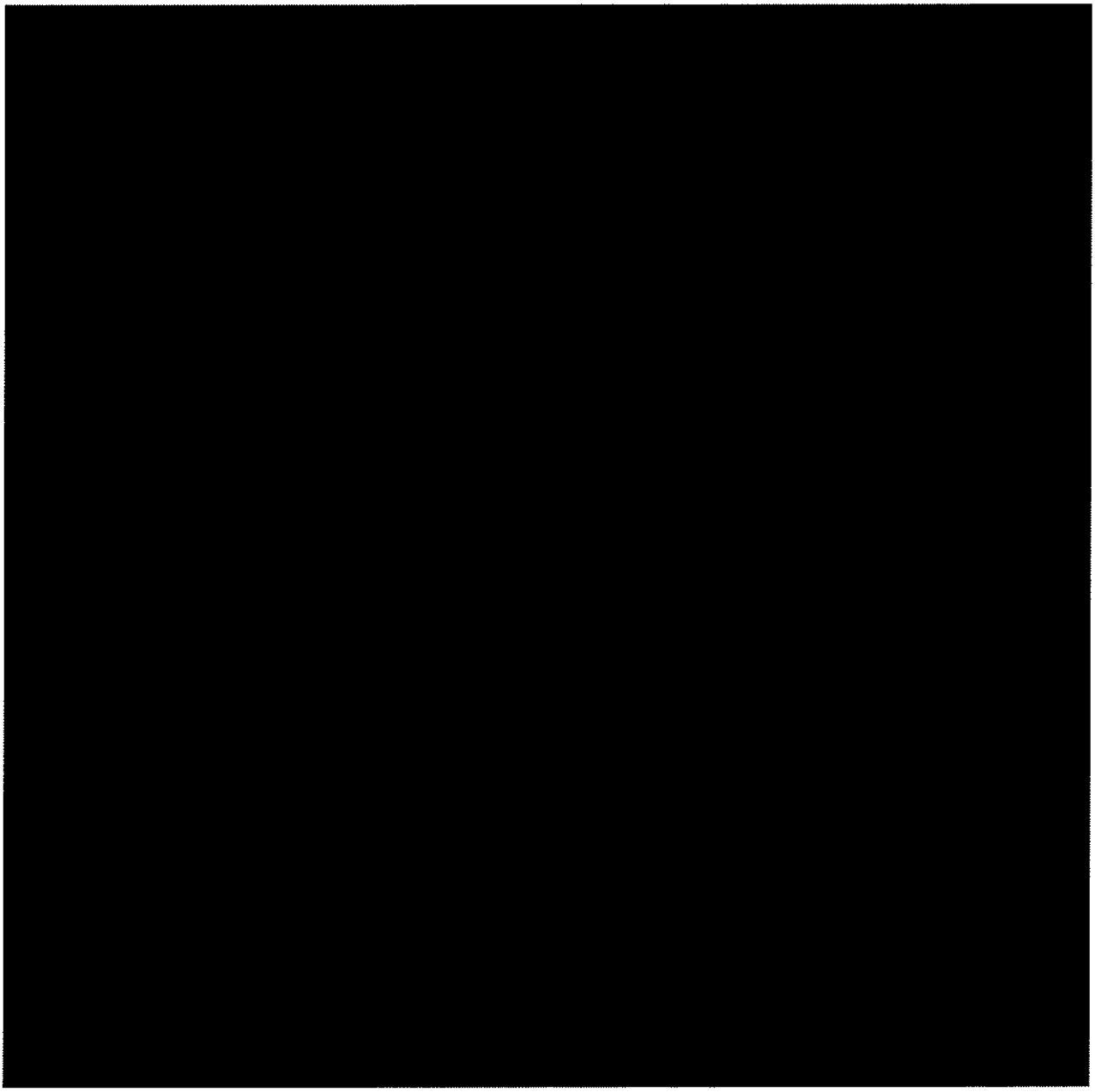
CONTRACTOR AND THE ARCHITECT/ENGINEER entered into this Design Agreement (Phase II) as of the day and year first written above.

CONTRACTOR Walsh Construction Company, Managing Party of Walsh Construction Company / Vinci Construction Grands Projets JV	**ARCHITECT/ENGINEER** Jacobs Engineering Group, Inc.
By: Daniel J. Walsh	By: KEVIN J. McMAHON
Its: President	Its: GROUP VICE PRESIDENT

CONFIDENTIAL

EXHIBIT A
TO
PHASE II AGREEMENT

PAYMENT



Conditions for Payment

1. Subject to the CONDITION PRECEDENT below, invoices will be due within 7 days following Contractor's receipt of payment from Concession. If an invoice is disputed, only that portion so disputed may be withheld from payment, and a statement of the basis for the dispute will be provided upon request of Architect/Engineer.

2. As a condition precedent to any obligation or duty of Contractor to make any subsequent progress payment after the initial progress payment or the final payment to Architect/Engineer, Architect/Engineer shall provide, in the forms agreed upon by the Parties, sworn releases of lien from Architect/Engineer and its Subconsultants and suppliers, acknowledging receipt of payment for all labor, materials, supplies, equipment or any services or goods provided in connection with the Project through the date covered by the previous progress payment . Such releases of lien shall accompany Architect/Engineer's progress payment and final payment applications and shall cover all items for which payment is sought in each application. No payments will be made to Architect/Engineer if the required releases of lien have not been submitted correctly and on the form agreed upon.

3. Contractor's receipt of payment from Concession for each progress payment or final payment, shall be an **ABSOLUTE CONDITION PRECEDENT** to any duty or obligation of Contractor to make any payment to Architect/Engineer pursuant to any application for payment or request for compensation. Such payment by Concession to Contractor is further an **ABSOLUTE CONDITION PRECEDENT** to Architect/Engineer filing or bringing against Contractor any action for nonpayment of any request for payment or compensation by way of arbitration, mediation, Federal or State Court action, or through any other forum for resolution of disputes. In the event any action is asserted by Architect/Engineer against Contractor for nonpayment, this section shall be a complete defense to nonpayment by Contractor pending the occurrence of payment from Concession to Contractor. Contractor and Architect/Engineer hereby expressly acknowledge and agree that Contractor's surety is an intended third party beneficiary of this Section. Provided, however, to the extent that i) Contractor settles any properly submitted claims affecting the Architect/Engineer without written consent of Architect/Engineer; or ii) the lack of actual payment to Contractor is a result of issues for which Contractor is solely responsible, then this ABSOLUTE CONDITION PRECEDENT shall not apply.

Final Payment

1. In addition to the requirements conditions set forth above, the following are absolute conditions precedent to final payment to Architect/Engineer: (1) final completion and acceptance of Architect/Engineer's Services by Concession and the Owner, and Contractor; and (2) Architect/Engineer's furnishing to Contractor satisfactory evidence, as provided below, of fulfillment of Architect/Engineer's obligations in accordance with this Design Agreement (Phase II), including the Design Build Agreement. Thereafter, Contractor shall process Architect/Engineer's application for final payment without delay. [redacted]

2. [redacted]

2. Before Contractor shall be required to process Architect/Engineer's application for final payment, Architect/Engineer shall submit to Contractor the following:

- an affidavit that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with Architect/Engineer's Services for which Owner, Concession, Contractor, or Contractor's surety might in any way be liable, have been paid or otherwise satisfied; and

- satisfaction of required close-out procedures under the Design Build Agreement; and

- Final Waiver and Release in the form agreed by the Parties; and

- releases, in the forms agreed by the Parties, from Architect/Engineer's Subconsultants, suppliers and materialmen, in favor of Owner, Concession, Contractor, and its surety, of all monies due or to become due relating to this Design Agreement (Phase II); and

- other data, if reasonably required by Contractor.

3. Architect/Engineer agrees to accept final payment, as full settlement of its account under the Design Agreement (Phase II) and of all claims in connection therewith, or Architect/Engineer has the option of accepting the balance due with the stipulation that acceptance of such payment shall not constitute any bar, admission or estoppel, or have any effect as to those payments in dispute or the subject of a pending claim between Architect/Engineer and Owner and/or Concession or Operation and Maintenance Contractor, on a pass through basis, or Contractor. The dispute or pending claim must be defined in writing with full and detailed particulars of all items of all issues in dispute, including itemized amounts claimed for all particulars of all items as an absolute condition precedent to payment under this option. Architect/Engineer further agrees, through the use of this option, that any pending or future proceeding, arbitration or litigation of which Architect/Engineer has knowledge at the time of final payment must be limited to those particulars, including the itemized amounts and must be commenced within such time period required by Law.

EXHIBIT B
TO
PHASE II AGREEMENT

ADDITIONAL SERVICES

The Architect/Engineer shall provide these services if authorized and confirmed in writing by Contractor. Contractor shall compensate the Architect/Engineer for Additional Services as per the Schedule of Hourly rates (EXHIBIT C), or as otherwise agreed by Contractor and the Architect/Engineer. Compensation for Additional Services shall be in addition to compensation for Basic Services.

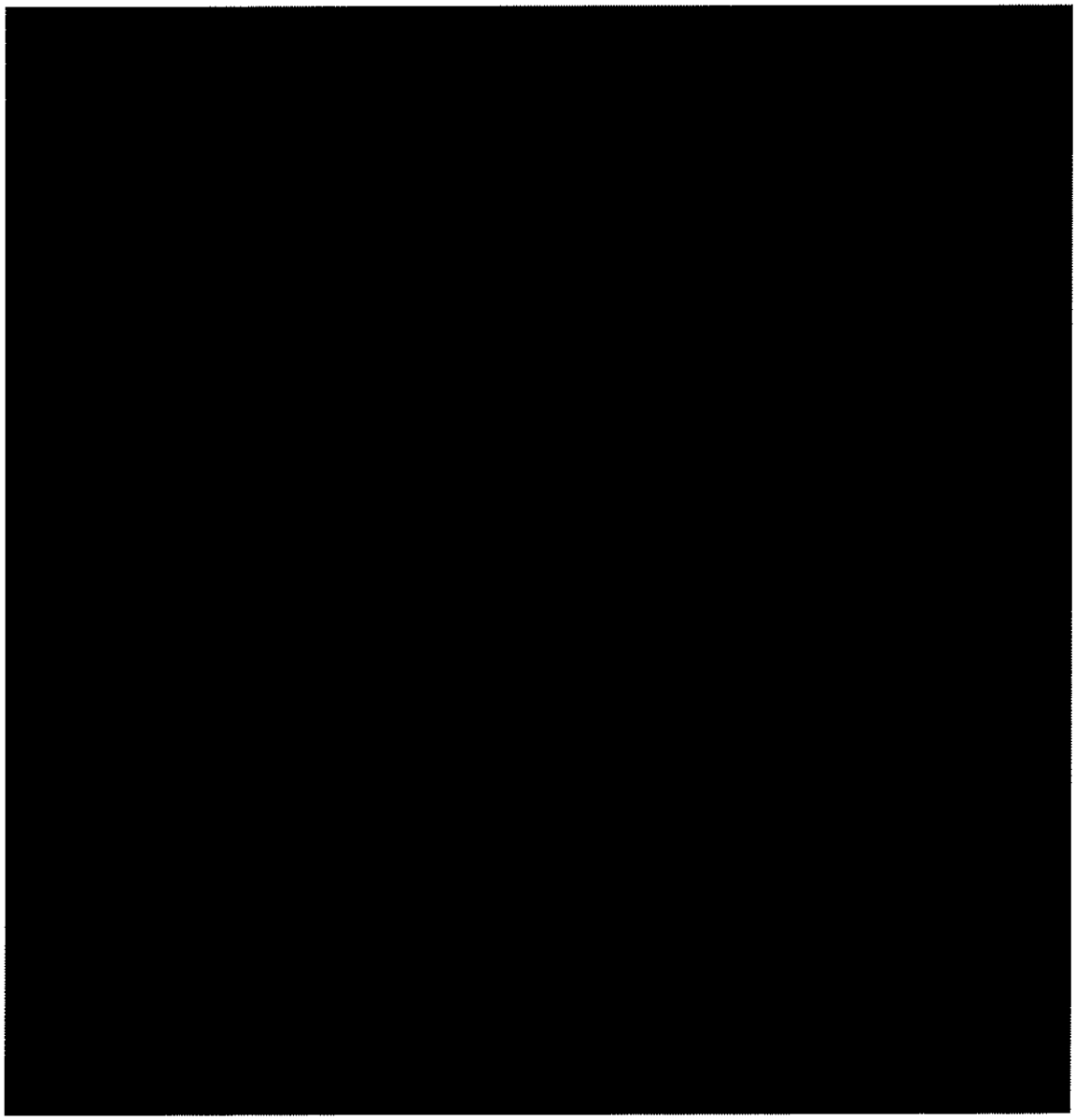
a.

b.

c.

d.

e.



[redacted]

EXHIBIT C
TO
PHASE II AGREEMENT

SCHEDULE OF HOURLY RATES

Rates will be based on multipliers as outlined in provision C.1(h).

EXHIBIT D
TO
PHASE II AGREEMENT

PHASE II DELIVERABLE SCHEDULE

To be determined.

EXHIBIT E
TO
PHASE II AGREEMENT

ARCHITECT/ENGINEER'S DESIGN TEAM

To be determined.

EXHIBIT F
TO
PHASE II AGREEMENT

PHASE II DELIVERABLES

To be determined.

EXHIBIT G
TO
PHASE II AGREEMENT

CONTRACTOR'S MEANS AND METHODS

Not Used.

CERTIFICATE OF AUTHORITY

I, Curtis A. Fisher, do hereby certify that I am the Assistant Secretary of Jacobs Engineering Group Inc., a corporation duly organized under the laws of the State of Delaware, in the United States of America (the "Company"). I do further certify that Kevin J. McMahon is a Group Vice President of the Company and is duly authorized by the By-Laws, Articles of Incorporation, general resolutions and other authority of the Company to execute and deliver contracts and agreements for and on behalf of the Company. I further certify that such authority has not been repealed, rescinded, or amended.

IN WITNESS WHEREOF, I have hereunto set my hand and attached the Corporate Seal of the Company on this 25th day of October, 2012.

Curtis A. Fisher
Assistant Secretary



File: COA
10/25/12