



**PROJECT AGREEMENT  
FOR  
THE GEORGIA NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE  
DEPLOYMENT PROGRAM (ROUND 1)**

**P.I. No. 0019829**

**Between**

**Georgia Department of Transportation,**

**State of Georgia**

**and**

**Francis Energy Charging, LLC**

**RFP Issued: July 25, 2023**

**Amendment #1: September 28, 2023**

**Amendment #2: October 11, 2023**

**Amendment #3: October 20, 2023**

**Amendment #4: October 25, 2023**

**Final RFP: November 8, 2023**

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## LIST OF EXHIBITS

- Exhibit 1 Definitions, Interpretation, Order of Precedence, and RIDs Disclaimer
- Exhibit 2** Representations and Warranties
- Exhibit 3** Technical Requirements
- Exhibit 4 Proposal Commitments
- Exhibit 5** Performance Deductions
- Exhibit 6 Performance Reports
- Exhibit 7** Required Insurances
- Exhibit 8 Form of Performance Bond and Payment Bond
- Exhibit 9 Form of GDOT License
- Exhibit 10 Federal and State Certifications

## PROJECT AGREEMENT

This public-private partnership project agreement, part of the Georgia Electric Vehicle Infrastructure Deployment Program Round 1, is entered into as of 8/15/2024:

### BETWEEN:

- (1) The Georgia Department of Transportation, an agency of the State of Georgia ("**GDOT**"); and
- (2) Francis Energy Charging, LLC (the "**Developer**").

### RECITALS:

- (A) Pursuant to the O.C.G.A. § 32-2-80, GDOT is authorized to undertake certain "project[s]", approved by the State Transportation Board.
- (B) Pursuant to O.C.G.A. § 32-2-63, GDOT is permitted to execute "contracts and authority lease agreements."
- (C) O.C.G.A. § 32-2-2(a)(7) further authorizes GDOT to accept and use federal funds and to do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid acts and programs.
- (D) Further, pursuant to O.C.G.A. § 32-2-74(b), GDOT is authorized to take the necessary steps to secure the full benefit of the federal-aid program and to meet any contingencies not provided for in O.C.G.A. § 32-2-60 through § 32-2-73.
- (E) The State desires to facilitate private sector investment and participation in the development of the State's transportation system via public-private partnership agreements, and the Georgia General Assembly has enacted O.C.G.A. §§ 32-2-78 et seq., and GDOT has adopted Chapter 672-17 of the Rules and Regulations of GDOT ("**Rules**"), to accomplish that purpose.
- (F) The Infrastructure Investment and Jobs Act, enacted November 15, 2021, includes a National Electric Vehicle Infrastructure ("**NEVI**") Formula Program to provide dedicated funding to strategically deploy electric vehicle charging infrastructure. The Georgia National Electric Vehicle Infrastructure Deployment Plan (August 2022) ("**Georgia NEVI Deployment Plan**") sets forth the State of Georgia's approach to utilizing its apportionment of the NEVI Formula Program.
- (G) As part of GDOT's program to achieve the Georgia NEVI Deployment Plan's vision and goals (the "**Georgia NEVI Deployment Program**"), GDOT wishes to procure from the Developer the design, construction, financing, testing, commissioning, provisioning, operation, and maintenance of the electric vehicle charging station, including all EVSE, located at a site within the Fort Valley Georgia NEVI Location, as further described in this Agreement (collectively, the "**Project**").

- (H) On July 25, 2023, and pursuant to the provisions of O.C.G.A. § 32-2-78 through O.C.G.A. § 32-2-80 and Chapter 672-17 of the Rules, GDOT issued a Request for Proposals ("**RFP**") from respondents desiring to undertake the Project.
- (I) On November 27, 2023, GDOT received six responses to the RFP in relation to Fort Valley Georgia NEVI Location, including the response of Francis Energy Charging, LLC on behalf of the Developer ("**Proposal**"), which proposed development of the Project at Wendy's Calhoun-Byron restaurant located at 318 GA-49, Byron, GA 31008 (the "**Project Site**").
- (J) As part of the RFP, GDOT required that Proposers commit to entering into this Agreement to design, build, finance, operate and maintain the Project.
- (K) On February 15, 2024, pursuant to the evaluation process outlined in the RFP, GDOT selected Francis Energy Charging, LLC's proposal on behalf of the Developer for the Project Site.

**THE PARTIES AGREE** as follows:

## **PART A – PRELIMINARY**

### **1. AGREEMENT TERM**

This Agreement (and all of the rights and obligations under this Agreement) will come into effect on and from the Effective Date and continue until the earlier of:

- (a) the Expiry Date; or
  - (b) the Early Termination Date,
- (the "**Term**").

### **2. DEFINITIONS, INTERPRETATION, ORDER OF PRECEDENCE AND RIDS**

Regarding Exhibit 1 (*Definitions, Interpretation, Order of Precedence, and RIDs Disclaimer*), the Parties acknowledge and agree that:

- (a) capitalized terms and acronyms used in this Agreement shall have the meanings given in Exhibit 1, Part A (*Definitions and Abbreviations*);
- (b) this Agreement shall be interpreted in accordance with Exhibit 1, Part B (*Interpretation*);
- (c) the order of precedence for this Agreement is established under Exhibit 1, Part C (*Order of Precedence*); and
- (d) GDOT's disclosure of the Reference Information Documents ("**RIDs**") to the Developer is for reference purposes only, and the RIDs are not mandatory or binding on the Parties. The Developer acknowledges that the disclaimer under Exhibit 1, Part D (*RIDs Disclaimer*) applies to the RIDs.

### 3. **CONDITIONS PRECEDENT TO EFFECTIVE DATE**

The occurrence of the Effective Date is subject to the satisfaction (or waiver by the Party benefiting) of each of the following conditions on or prior to the date of this Agreement ("**Effective Date Conditions Precedent**"):

#### (a) **Effective Date Documents**

The Developer has delivered to GDOT each of the following documents executed by the relevant parties (other than GDOT where GDOT is a party):

- (i) this Agreement;
- (ii) the GDOT License;
- (iii) the Performance Bond and the Payment Bond; and
- (iv) the Host Site Agreement, incorporating all HSA Key Terms,

(the documents listed in clauses (i) to (iv), collectively, the "**Effective Date Documents**").

#### (b) **Corporate Documents**

The Developer has delivered to GDOT documents and certificates evidencing:

- (i) the organization, existence, and good standing of the Developer; and
- (ii) the authorization of the entry by the Developer into this Agreement and each of the other Effective Date Documents.

#### (c) **Qualification to do Business**

The Developer has provided to GDOT evidence reasonably acceptable to GDOT that the Developer is qualified to do business in Georgia.

#### (d) **Licensing Requirements**

The Developer has provided evidence reasonably acceptable to GDOT that the Developer has obtained all licenses that are required as of the Effective Date under Applicable Law in order to undertake the Work and carry out its obligations under this Agreement following the Effective Date.

#### (e) **Certificates and Affidavits**

The Developer has delivered to GDOT each of the certificates and affidavits required to be signed by the Developer, as set out in Exhibit 10 (*Federal and State Certifications*).

(f) **Insurance**

The Developer has provided to GDOT evidence that it has obtained the Developer Required Insurance, in the form of an updated ACORD certificate of insurance.

(g) **GDOT Documents**

GDOT has executed and delivered to the Developer the Project Agreement and the GDOT License.

(h) **Project Schedule**

The Developer has submitted the Project Schedule to be incorporated in Exhibit 4 (Proposal Commitments), Part B (Project Schedule). The Project Schedule shall reflect the Proposal Schedule, with updates limited to the incorporation of the confirmed Effective Date and corresponding updates to each milestone (but without amending the timeframes between each milestone, which shall remain consistent with the Proposal Schedule).

4. **NOTICES TO PROCEED**

4.1 **Notice to Proceed (Design and Materials)**

- (a) GDOT anticipates issuing a notice to commence Design Work ("**NTP (Design and Materials)**") promptly following the Effective Date and shall in any case issue NTP (Design and Materials) within three (3) Business Days after the Effective Date.
- (b) Subject to Section 4.1(c), issuance of NTP (Design and Materials) authorizes the Developer to:
  - (i) commence Design Work;
  - (ii) commence any preliminary site survey work;
  - (iii) commence acquisition of materials for the D&C Work;
  - (iv) engage in the other activities anticipated to be performed after NTP (Design and Materials); and
  - (v) satisfy the conditions to issuance of NTP (Construction) under Section 4.2 (Notice to Proceed (Construction)).
- (c) Notwithstanding any provision to the contrary in this Agreement or any Notice to Proceed issued in accordance with this Article 4 (Notices to Proceed), the Developer shall not perform, and is not obligated to perform, any portion of the Work prior to issuance of the NEPA Approval, except for Work authorized under 23 CFR § 636.109 and directed by GDOT.

## 4.2 Notice to Proceed (Construction)

- (a) Upon satisfaction of the conditions precedent set out in Section 2(a) (*Project Management, Reporting, and Submittals*) of the GDOT Standards and Requirements ("**NTP (Construction) Conditions Precedent**"), GDOT shall issue notice to commence Construction Work ("**NTP (Construction)**") to the Developer.
- (b) Issuance of NTP (Construction) authorizes and requires the Developer to commence the Construction Work, subject to complying with all relevant provisions of this Agreement.
- (c) The Developer shall not commence or permit commencement of the Construction Work unless GDOT has issued NTP (Construction) to the Developer.

## PART B – PROJECT DEVELOPMENT

### 5. GENERAL REQUIREMENTS

#### 5.1 NEVI Federal Standards and Requirements

- (a) The Developer shall design, construct, finance, operate, and maintain the Project in accordance with the NEVI Federal Standards and Requirements, including the NEVI federal standards and requirements (23 CFR 680) as set out in Exhibit 3, Part A (*NEVI Federal Standards and Requirements*).
- (b) The Developer acknowledges and agrees that any FHWA guidance in respect of the NEVI Federal Standards and Requirements, and any form of decision, determination, interpretation or administration made by FHWA in respect of the NEVI Federal Standards and Requirements will be applicable to the Project.

#### 5.2 GDOT Standards and Requirements

The Developer shall design, construct, finance, operate, and maintain the Project in accordance with all state standards and requirements applicable to the Georgia NEVI Deployment Program under Exhibit 3, Part B (*GDOT Standards and Requirements*) ("**GDOT Standards and Requirements**").

### 6. PROJECT SITE ARRANGEMENTS

#### 6.1 Property Interest

- (a) The Developer shall maintain sufficient interest in the Project Site necessary to carry out the Work for the Term.
- (b) The Developer shall ensure that the GDOT License remains in effect for the duration of the Term.
- (c) The Developer shall:

- (i) ensure that the Host Site Agreement remains in effect for the duration of the Term; and
  - (ii) comply with its obligations and enforce its rights under the provisions of the Host Site Agreement to the extent necessary to enable the Developer to comply with its obligations under this Agreement.
- (d) The Developer shall not:
- (i) assign, transfer, pledge, mortgage or otherwise encumber any of its rights or obligations under the Host Site Agreement, unless GDOT has agreed to corresponding assignment, transfer, pledge, mortgage or encumbrance of the Developer's rights and obligations under this Agreement to the same assignee in accordance with Section 35.1 (Assignment by the Developer); or
  - (ii) enter into any amendment, supplement, waiver or other modification of the Host Site Agreement that would have a material adverse effect on the ability of the Developer to perform its obligations under this Agreement, without GDOT's prior written consent.

## 6.2 Project Site Expiry Date Obligations

- (a) Six (6) months prior to the end of the Operating Period, the Developer shall elect by written notice to GDOT:
- (i) to continue operating the Project, or sell or transfer ownership of the Project to a replacement developer for ongoing operation, following the end of the Term, without any ongoing payment from GDOT ("**Expiration Option A**"); or
  - (ii) to cease operating the Project at the end of the Term and decommission the Project consistent with Section 6.2(b)(ii) ("**Expiration Option B**").
- (b) If the Developer's election under Section 6.2(a) is:
- (i) Expiration Option A, then the Developer shall (a) demonstrate to GDOT's reasonable satisfaction its plan to continue operations, including evidence that it has an agreement with the Host Site Owner necessary to continue operations at the Project Site following end of the Term, or (b) provide evidence of an agreement to sell or transfer ownership to a replacement developer with a commitment for ongoing operations; or
  - (ii) Expiration Option B, then within thirty (30) days of the end of the Operating Period, the Developer must perform all decommissioning activities in accordance with Section 13(b) (Decommissioning Activities) of the GDOT Standards and Requirements and as required by the HSA Key Terms following the end of the Term.

- (c) If the Developer has not completed the decommissioning activities in accordance with Section 6.2(b)(ii), GDOT shall have the right to call or draw on the O&M Performance Security for the amount of GDOT's reasonable estimate of the cost for GDOT to ensure that the decommissioning activities are completed.
- (d) Subject to any requirements under Applicable Law, GDOT will not have any ownership interest in the EVSE and other Project Site assets following the end of the Term.

## **7. GOVERNMENTAL APPROVALS**

### **7.1 Compliance with Governmental Approvals**

The Developer shall at all times perform its obligations under this Agreement in compliance with all Governmental Approvals.

### **7.2 Responsibility for Governmental Approvals**

The Developer is solely responsible for obtaining all Governmental Approvals (including any application, revision, modification, amendment, supplement, renewal, or extension) required in connection with its performance of this Agreement.

### **7.3 Cooperation with Respect to Governmental Approvals**

- (a) If requested by the Developer, GDOT shall reasonably cooperate with the Developer in relation to any application by the Developer for a Governmental Approval and shall, at the reasonable request of the Developer, and where necessary to obtain, revise, modify, amend, supplement, or renew any Governmental Approval:
  - (i) execute any documents that can only be executed by GDOT;
  - (ii) make any applications as required by Applicable Law, either in its own name or jointly with the Developer, that can only be made by GDOT or in joint names of the Developer and GDOT, as applicable; and
  - (iii) attend meetings with appropriately qualified staff and cooperate with relevant Governmental Entities as reasonably requested by the Developer,

in each case, within a reasonable period of time of being requested to do so by the Developer.
- (b) If GDOT provides any assistance to the Developer pursuant to Section 7.3(a), the Developer shall reimburse GDOT for its reasonable third-party costs associated with the provision of such assistance no later than thirty (30) days after receiving an invoice from GDOT with respect to such costs.

#### 7.4 Copies of Governmental Approvals

The Developer shall promptly (and in any event within five (5) Business Days after submitting an application or obtaining a Governmental Approval) deliver to GDOT true and complete copies of:

- (a) any application for a Governmental Approval submitted by the Developer (including any application to amend an existing Governmental Approval); and
- (b) any new or amended Governmental Approval obtained by the Developer.

#### 7.5 NEPA Approval

- (a) The Developer shall:
  - (i) perform the Work in accordance with the permissible activities identified by the NEPA Approval; and
  - (ii) avoid all non-permissible ground disturbance or construction activities identified by the NEPA Approval in the performance of the Work.
- (b) The Developer acknowledges that:
  - (i) non-permissible ground disturbance or construction activities may require re-evaluation of the NEPA Approval, involving detailed analysis based on the GDOT NEPA re-evaluation procedure, including but not limited to additional environmental field studies and technical reporting; and
  - (ii) any such re-evaluation of the NEPA Approval is reserved for special circumstances where the Developer's avoidance of the non-permissible activity is not possible.
- (c) GDOT may elect, in its sole discretion, to conduct a re-evaluation of the NEPA Approval in accordance with Section 7.5(b)(ii). The Developer shall comply with all directions from GDOT regarding the re-evaluation process, which may include additional state or federal agency consultation and environmental permitting processes. The Developer shall be responsible for preparing all required documentation at GDOT's direction, and all costs associated with NEPA re-evaluation. GDOT shall have ultimate responsibility for finalizing the required documents and obtaining any re-evaluation. In the event that GDOT is unable to obtain any re-evaluation of the NEPA Approval for any non-permissible ground disturbance or construction activities, the Developer shall design and construct the Project in compliance with the requirements of the NEPA Approval applicable without the re-evaluation.
- (d) The Developer acknowledges that if the NEPA Approval has not been approved by the Effective Date, the Project alternative is not "selected" and the "no-build" alternative is still available to GDOT. In the event that:

- (i) the NEPA Approval has not been provided by the Anticipated NEPA Approval Date, the Developer shall have the right to terminate this Agreement with immediate effect by written notice to GDOT; or
- (ii) the "no-build" alternative is selected by GDOT due to the inability to obtain the NEPA Approval, GDOT will be deemed to have terminated this Agreement with immediate effect.
- (e) If this Agreement is terminated in accordance with Section 7.5(d), neither Party shall be liable to pay compensation to the other Party, subject to any accrued liabilities of the Developer that arose prior to the Early Termination Date, including in respect of any indemnity claims under Section 23.1 (Indemnity) and any Performance Deductions assessed in accordance with Section 18.3 (Performance Deductions Assessment Process).

## 8. OTHER PROJECT DEVELOPMENT REQUIREMENTS

### 8.1 Submittal and Oversight

- (a) Except as expressly set out elsewhere in this Agreement, whenever GDOT is entitled to review and comment or approve a Submittal, GDOT shall promptly respond or act upon such Submittal no later than thirty (30) days after the date it receives from the Developer an accurate and complete Submittal, and all necessary information and documentation concerning the subject matter. GDOT shall be precluded from any comment or approval rights following the expiry of such thirty (30) day period.
- (b) Subject to Article 4 (Notices to Proceed), the Developer may proceed with the Work at its election and risk pending review and comment or approval by GDOT of a Submittal.

### 8.2 Key Personnel

- (a) The Developer shall retain, make available, and utilize the individuals specifically listed as filling each Key Personnel position in its Proposal, or, subject to Section 8.2(d), any replacement individuals filling a Key Personnel position throughout the D&C Period or Operating Period, as applicable.
- (b) Each individual filling a Key Personnel position shall fulfill the "Role" and satisfy or exceed the "Minimum Qualifications" of such Key Personnel position listed in the Key Personnel Requirements.
- (c) The Developer shall ensure, and cause any Contractor employing Key Personnel to ensure, that each individual filling a Key Personnel position has the authority to fulfill the applicable "Role" identified in the Key Personnel Requirements.
- (d) The Developer shall not remove or replace any individual filling a Key Personnel position except with prior written notice to GDOT. The Developer shall ensure

that any replacement meets or exceeds the "Minimum Qualifications" listed in the Key Personnel Requirements for that position.

### 8.3 Key Contractors

- (a) The Developer shall retain, make available, and utilize each Key Contractor, or, subject to Section 8.3(b), any replacement Key Contractors.
- (b) The Developer shall not remove or replace any Key Contractor except with prior written notice to GDOT. To the extent that the Developer has relied on the EVSE installation experience of a Key Contractor, the Developer shall ensure that any replacement has an equivalent level of EVSE installation experience.

## PART C – DESIGN AND CONSTRUCTION

### 9. D&C WORK GENERAL OBLIGATIONS

- (a) The Developer shall perform the D&C Work in accordance with:
  - (i) Good Industry Practice;
  - (ii) Applicable Law, including the NEVI Federal Standards and Requirements;
  - (iii) the requirements of all Governmental Approvals;
  - (iv) the Developer Commitments; and
  - (v) the Technical Requirements and all other requirements of this Agreement.
- (b) The Developer, through appropriately qualified and licensed professionals, shall prepare all designs, plans and specifications in accordance with this Agreement.

### 10. PROPOSED MODIFICATIONS TO TECHNICAL REQUIREMENTS

This Agreement includes Technical Requirements that are compliant with the NEVI Federal Standards and Requirements. The Developer may only deviate from the Technical Requirements with the prior written consent of GDOT in its sole discretion.

### 11. PROJECT SCHEDULE AND D&C PERIOD REPORTING

#### 11.1 Project Schedule

The Developer hereby commits, and GDOT is relying upon the Developer's commitment, to develop the Project in accordance with the milestones and time periods set out in this Agreement, including the Technical Requirements and the Project Schedule, subject only to any rights to extensions of time under Article 20 (Relief Events). The Developer shall comply with progress schedule requirements detailed in Section 108.03 (Prosecution and Progress) of the GDOT Standard Specifications.

## 11.2 D&C Period Reporting

- (a) For each month during the D&C Period, the Developer shall submit a D&C Period Progress Report to GDOT.
- (b) The Developer shall submit to GDOT a final D&C Period Progress Report on the Services Commencement Date.

## 12. SERVICES COMMENCEMENT

- (a) The Developer shall provide GDOT with not less than 30 days' prior notice of the date the Developer determines it will achieve Services Commencement. During such period, the Developer and GDOT shall meet and confer and exchange information on a regular cooperative basis (no less frequently than twice per week) with the goal being GDOT's orderly, timely inspection and review of the Project, and GDOT's issuance of a written certificate of Services Commencement (the "**Services Commencement Certificate**").
- (b) GDOT will issue the Services Commencement Certificate at such time as the following conditions have been satisfied or waived by GDOT in its sole discretion (the "**Services Commencement Conditions**"):
  - (i) the D&C Work is completed in accordance with Article 9 (Design and Construction);
  - (ii) the Project Site and all EVSE are installed, functional, operational, and compliant with the requirements of the Agreement and Applicable Law, including the NEVI Federal Standards and Requirements;
  - (iii) all EVSE has passed all inspections and tests required under the Agreement and Applicable Law (including the NEVI Federal Standards and Requirements), including in accordance with Section 11(a) (Equipment Certification and Testing Requirements) of the GDOT Standards and Requirements;
  - (iv) all commitments related to the Work as required pursuant to all Governmental Approvals have been completed in accordance with the Governmental Approvals and this Agreement;
  - (v) the Project can be used for its intended purpose;
  - (vi) the Developer has replaced any disturbed pavement, hardscape, landscape per associated Project Site Layout or restored it to its original condition;
  - (vii) the Developer has submitted, and GDOT has accepted, the draft Cybersecurity Plan and updates thereto;

- (viii) the Developer has submitted to GDOT, and GDOT has accepted, all Submittals (including all reports, data and documentation relating to any tests) required by this Agreement to be submitted to GDOT prior to Services Commencement, including the Submittals under Section 2(b) (Project Management, Reporting, and Submittals) of the GDOT Standards and Requirements;
- (ix) the Developer has delivered the O&M Performance Security in accordance with Section 22.2(a) (Performance Security During Operating Period);
- (x) the Developer has delivered the One-Time Data Submittal in accordance with Section 16.1(a)(i) (Data Reporting); and
- (xi) the Developer has made available an API meeting the requirements of Section 16.1(b) (Data Reporting).

## **PART D – OPERATION AND MAINTENANCE**

### **13. O&M WORK GENERAL OBLIGATIONS**

- (a) During the Operating Period, the Developer shall carry out the O&M Work in accordance with:
  - (i) Good Industry Practice;
  - (ii) all Applicable Laws, including the NEVI Federal Standards and Requirements;
  - (iii) the requirements of all Governmental Approvals;
  - (iv) the Developer Commitments; and
  - (v) the Technical Requirements and all other requirements of this Agreement.
- (b) The Developer shall at all times undertake sufficient O&M Work to ensure ongoing compliance with the O&M Performance Requirements.

### **14. REVENUE**

All revenue generated at the Project Site in the performance of the O&M Work shall be retained by the Developer consistent with the NEVI Federal Standards and Requirements. Revenue may be used only for the purposes listed in Section 1(m) (Use of Program Income) of the NEVI Federal Standards and Requirements.

### **15. PRICING**

The Developer shall set end user pricing for use of the EVSE, subject to Applicable Law (including the NEVI Federal Standards and Requirements).

## 16. DATA, PRIVACY AND CYBERSECURITY

### 16.1 Data Reporting

- (a) The Developer shall provide to GDOT and EV-ChART:
  - (i) a one-time report that includes all data required in the NEVI Federal Rule ("**One-time Data Submittal**") as set out under Section 4 (Data Submittal) of the NEVI Federal Standards and Requirements and Section 8 (Data Requirements) of the GDOT Standards and Requirements, as a condition to achieving Services Commencement (unless an extension is approved in writing by GDOT);
  - (ii) a quarterly report that includes all data required in the NEVI Federal Rule ("**Quarterly Data Submittal**") as set out under Section 4 (Data Submittal) of the NEVI Federal Standards and Requirements and Section 8 (Data Requirements) of the GDOT Standards and Requirements, within ten (10) Business Days after the end of each Calendar Quarter (unless an extension is approved in writing by GDOT); and
  - (iii) an annual report that includes an updated Data Interface Control Document, along with all data required in the NEVI Federal Rule ("**Annual Data Submittal**") as set out under Section 4 (Data Submittal) of the NEVI Federal Standards and Requirements and Section 8 (Data Requirements) of the GDOT Standards and Requirements, within ten (10) Business Days after the end of each calendar year (unless an extension is approved in writing by GDOT).
- (b) The Developer shall develop as a condition to achieving Services Commencement, and maintain during the Operating Period, an API to share applicable data ("**Third-Party Data Sharing**") in a machine-readable format with federal partners, third-party software developers, GDOT, and other requesting parties free of charge as set out under Section 6(c) (Third-Party Data Sharing) of the NEVI Federal Standards and Requirements and Section 8 (Data Requirements) of the GDOT Standards and Requirements.

### 16.2 Data Audits

GDOT reserves the right to audit any and all data submitted by the Developer in accordance with Section 16.1 (Data Reporting) and other data submitted as part of the Quarterly Performance Report.

### 16.3 Privacy and Cybersecurity

The Developer shall be responsible for cybersecurity as it relates to owning, operating, maintaining, and data sharing for the Project. The Developer shall comply at all times with the NEVI Federal Standards and Requirements as they relate to privacy and cybersecurity, including as set out under the NEVI Federal Standards and

Requirements and the GDOT Standards and Requirements, including through the implementation of the Cybersecurity Plan.

## **PART E – PAYMENTS, NONCOMPLIANCE AND PERFORMANCE REPORTING**

### **17. PAYMENTS**

#### **17.1 Services Commencement Payment**

- (a) GDOT will pay the Developer the Services Commencement Payment Amount in consideration for D&C Work properly performed in accordance with the following procedures.
- (b) The Services Commencement Payment Amount shall be calculated as follows:
  - (i) \$709,584.33 ("**Services Commencement Payment**"); *less*
  - (ii) Performance Deductions in respect of the D&C Period determined in accordance with Section 18.3 (Performance Deductions Assessment Process); *less*
  - (iii) any other undisputed amounts owed by the Developer to GDOT under this Agreement, including in respect of any indemnity claim under Section 23.1 (Indemnity),

provided, that the sum of the aggregate amount above may not exceed 80% of the Eligible Costs incurred during the D&C Period in performing the D&C Work ("**Services Commencement Payment Amount**").

- (c) Following Services Commencement, the Developer may include with the final D&C Period Progress Report delivered in accordance with Section 11.2 (D&C Period Reporting), an invoice for the Services Commencement Payment Amount ("**Services Commencement Payment Invoice**").
- (d) Within five (5) Business Days after receipt of the Services Commencement Payment Invoice and the supporting final D&C Period Progress Report, GDOT shall review the Eligible Cost information, and either:
  - (i) approve the Services Commencement Payment Invoice as submitted by the Developer; or
  - (ii) adjust the Services Commencement Payment Amount claimed by the Developer, and return the adjusted Services Commencement Payment Invoice to the Developer for countersignature.
- (e) Following approval or adjustment of the Services Commencement Payment Invoice in accordance with Section 17.1(d), and subject to Section 17.4 (Reimbursement Principle), GDOT shall pay the Developer the agreed Services Commencement Payment Amount within ten (10) Business Days.

- (f) The Parties acknowledge and agree that the Services Commencement Payment paid by GDOT to the Developer under this Agreement shall not exceed the Capital Payment Cap, subject to deduction of any Performance Deductions and accrued Developer liabilities pursuant to this Agreement.

## 17.2 Availability Payments

- (a) The Adjusted Availability Payment included in the Quarterly Payment Amount for each Calendar Quarter shall be calculated as follows (each amount pro-rated for the first and final Calendar Quarters if they include less than three (3) full months):
  - (i) \$28,000.00 ("**Availability Payment**"); *plus*
  - (ii) any Availability Payment Carry-Over Amount,

provided that the sum of (A) the aggregate amount above, (B) all prior Adjusted Availability Payments, and (C) the Services Commencement Payment may not exceed 80% of the Eligible Costs incurred up to and including the relevant Calendar Quarter ("**Adjusted Availability Payment**").
- (b) In the event that the Developer is not entitled to claim any portion of the amount referred to in Section 17.2(a)(i) or 17.2(a)(ii) due to not incurring sufficient Eligible Costs, the remaining portion of such amount ("**Availability Payment Carry-Over Amount**") shall be carried forward and added to the Availability Payment for any subsequent Calendar Quarter in accordance with Section 17.2(a)(ii).
- (c) The Quarterly Payment payable by GDOT to the Developer each Calendar Quarter shall be calculated as follows:
  - (i) the Adjusted Availability Payment in respect of the Calendar Quarter determined in accordance with Section 17.2(a); *less*
  - (ii) Performance Deductions in respect of the Calendar Quarter (or any prior Calendar Quarter to the extent not already deducted in accordance with this Section 17.2(c)(ii)) determined in accordance Section 18.3 (Performance Deductions Assessment Process); *less*
  - (iii) any other undisputed amounts owed by the Developer to GDOT under this Agreement, including in respect of any indemnity claim under Section 23.1 (Indemnity),

("Quarterly Payment Amount").
- (d) Following Services Commencement, the Developer may include, in a Quarterly Performance Report delivered to GDOT in accordance with Section 19.1 (Quarterly Performance Report), a request for a Quarterly Payment Amount for the relevant Calendar Quarter.

- (e) Subject to Section 17.4 (Reimbursement Principle), GDOT shall pay to the Developer:
  - (i) any undisputed portion of the Quarterly Payment Amount for the relevant Calendar Quarter within ten (10) Business Days after the expiry of the period referred to in Section 19.2(a) (GDOT Right to Dispute Quarterly Performance Report); and
  - (ii) any disputed portion of the Quarterly Payment Amount for the relevant Calendar Quarter within ten (10) Business Days after the Parties agree that any amount in respect of such portion is correct in accordance with Section 19.2(b) (GDOT Right to Dispute Quarterly Performance Report).
- (f) Performance Deductions not deducted in a Calendar Quarter shall remain due and payable by the Developer, and shall be deducted in a subsequent Calendar Quarter in accordance with Section 17.2(c)(ii) or paid on Early Termination in accordance with Article 27 (Compensation on Termination).
- (g) The Parties acknowledge and agree that the aggregate total of all Availability Payments paid by GDOT to the Developer under this Agreement shall not exceed the O&M Payment Cap, subject to deduction of any Performance Deductions and accrued Developer liabilities pursuant to this Agreement.

### 17.3 Project Payment Cap

The Parties acknowledge and agree that the aggregate total of:

- (a) the Services Commencement Payment; and
- (b) all Availability Payments,

paid by GDOT to the Developer under this Agreement shall not exceed the Project Payment Cap, subject to deduction of any Performance Deductions and accrued Developer liabilities pursuant to this Agreement.

### 17.4 Reimbursement Principle

The Developer acknowledges that:

- (a) Developer costs submitted for reimbursement in accordance with Section 17.1(c) (Services Commencement Payment) and Section 17.2(d) (Availability Payments) will be reviewed for eligibility in accordance with Section 5.1 (NEVI Federal Standards and Requirements); and
- (b) reimbursement by GDOT of the Developer's costs in accordance with Section 17.1(c) (Services Commencement Payment) and Section 17.2(d) (Availability Payments) is subject to receipt of corresponding funds from FHWA.

## 18. NONCOMPLIANCE EVENTS AND PERFORMANCE DEDUCTIONS

### 18.1 Noncompliance Event for Failure to Report

- (a) In the event that the Developer fails to comply with the reporting obligations under Section 11.2 (D&C Period Reporting) or Article 19 (Quarterly Performance Reporting), GDOT may provide the Developer with ten (10) Business Days advance notice from the date of such failure that GDOT intends to assess a Performance Deduction, and directing remedy of the Noncompliance Event.
- (b) The Developer shall remedy the Noncompliance Event promptly, and in any event, no later than ten (10) Business Days after receipt of notice from GDOT in accordance with Section 18.1(a). If the Developer fails to rectify the Noncompliance Event within the required timeframe, GDOT shall assess Performance Deductions in accordance with Section 18.3 (Performance Deductions Assessment Process).

### 18.2 Noncompliance Event for Failure to Adhere to the Minimum Quarterly Uptime Requirement

In the event that the Developer fails to adhere to the Minimum Quarterly Uptime Requirement in a Calendar Quarter, no GDOT notice shall be required and GDOT shall assess Performance Deductions in respect of such Calendar Quarter in accordance with Section 18.3 (Performance Deductions Assessment Process).

### 18.3 Performance Deductions Assessment Process

- (a) The Developer's liability to GDOT for the applicable Performance Deductions shall be calculated in accordance with Exhibit 5 (Performance Deductions).
- (b) The Developer acknowledges that the Developer shall be liable for and pay Performance Deductions to GDOT at the time specified in Section 18.1 (Noncompliance Event for Failure to Report) or Section 18.2 (Noncompliance Event for Failure to Adhere to the Minimum Quarterly Uptime Requirement), as applicable, even though cure or remedy occurs at a later date.
- (c) Performance Deductions in respect of the Developer's failure to:
  - (i) comply with the reporting obligations under Section 11.2 (D&C Period Reporting), shall be deducted by the Developer from the Services Commencement Payment in accordance with Section 17.1(b)(ii) (Services Commencement Payment); or
  - (ii) comply with the reporting obligations under Article 19 (Quarterly Performance Reporting), or adhere to the Minimum Quarterly Uptime Requirement in a Calendar Quarter, shall, in each case, be deducted by the Developer from the Adjusted Availability Payment for the relevant Calendar Quarter in accordance with Section 17.2(c)(ii) (Availability Payments).

#### 18.4 **Noncompliance Default Trigger**

Without prejudice to any other rights GDOT may have under this Agreement, if the Noncompliance Default Trigger occurs, GDOT may terminate this Agreement in accordance with Article 26 (Termination for Developer Default).

#### 18.5 **Acknowledgements Regarding Performance Deductions**

The Parties agree that:

- (a) as of the Effective Date, the amount of Performance Deductions represent Good Faith estimates and evaluations by the Parties as to the actual potential damages that GDOT would incur as a result of a Noncompliance Event, and do not constitute a penalty or otherwise operate as a deterrent to the breach of any obligations of the Developer under this Agreement;
- (b) they have agreed to such Performance Deductions in order to fix and limit the Developer's costs and to avoid later disputes about what amounts of damages are properly chargeable to the Developer;
- (c) such sums are reasonable in light of the anticipated or actual harm caused by a Noncompliance Event, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy;
- (d) such Performance Deductions are reasonable, as determined as of the Effective Date, in light of the respective injuries and damages that may be caused by Noncompliance Event, which include public inconvenience, increased administration and oversight by GDOT (and any other related agencies), and other damages to the general public and GDOT (and other related agencies); and
- (e) such Performance Deductions are not intended to, and do not, liquidate the Developer's liability under any indemnity provided by the Developer under this Agreement, even though Third-Party Claims against Indemnified Parties may arise out of the same event or breach or failure that gives rise to such Performance Deductions.

### 19. **QUARTERLY PERFORMANCE REPORTING**

#### 19.1 **Quarterly Performance Report**

- (a) No later than ten (10) Business Days after the end of each Calendar Quarter following the Services Commencement Date, the Developer shall submit to GDOT a Quarterly Performance Report for the prior Calendar Quarter.
- (b) The Quarterly Performance Report shall contain the information required by Exhibit 6 (Performance Reports), Part B (*Quarterly Performance Report*).

## 19.2 **GDOT Right to Dispute Quarterly Performance Report**

- (a) Within ten (10) Business Days of receipt of the Quarterly Performance Report, GDOT shall notify the Developer in writing if there is any part of the Quarterly Performance Report which GDOT disputes as inaccurate or noncompliant with the terms of this Agreement and GDOT shall submit to the Developer such supporting evidence as GDOT may have in respect of any such disputed part.
- (b) If GDOT provides a notice pursuant to Section 19.2(a), the Developer shall either:
  - (i) update the Quarterly Payment Report to take into account GDOT's comments provided pursuant to Section 19.2(a) and deliver such revised report to GDOT; or
  - (ii) notify GDOT that it disagrees with such notice, in which case the Parties shall conduct Good Faith negotiations to resolve the disagreement.

## **PART F – SUPERVENING EVENTS**

### 20. **RELIEF EVENTS**

#### 20.1 **Entitlement to Claim**

If a Relief Event directly causes, or is likely to directly cause, the Developer to do any one or more of the following:

- (a) fail to achieve Services Commencement by the Planned Services Commencement Date;
- (b) fail to perform any of its obligations during the Operating Period; or
- (c) otherwise fail to comply with any of its obligations or exercise any of its rights under this Agreement,

the Developer may claim one or more of the following in accordance with this Article 20:

- (i) an extension to the Planned Services Commencement Date;
- (ii) relief from Performance Deductions; or
- (iii) relief from any rights of GDOT under Article 26 (Termination for Developer Default).

#### 20.2 **Notice and Information**

- (a) The Developer shall comply with the procedures in this Section 20.2 to claim an extension of time or relief from its obligations with respect to a Relief Event.
- (b) The Developer shall submit a notice that complies with Section 20.2(c) (a "**Relief Event Notice**") to GDOT promptly (and in any event within thirty (30) days) after

the date that the Developer first became aware that the relevant Relief Event had occurred and would have the effect that is the subject of the Developer's claim.

- (c) A Relief Event Notice must include:
- (i) full details of the relevant Relief Event (as available to the Developer having made due inquiry);
  - (ii) full details of the extension of time or relief from any rights of GDOT claimed or reasonably likely to be claimed (as applicable) under this Article 20;
  - (iii) a time impact analysis (based on the then current Project Schedule) demonstrating that the relevant Relief Event will result in an identifiable and measurable disruption to the D&C Work, which will extend the time required to achieve Services Commencement; and
  - (iv) details of any steps that the Developer has taken or will take to mitigate the effect of the Relief Event in accordance with Section 20.3 (Mitigation).

### 20.3 Mitigation

The Developer shall use Reasonable Efforts to mitigate the delay and any other consequences of any Relief Event that is the subject of a notice pursuant to Section 20.2 (Notice and Information).

### 20.4 Failure to Provide Required Notice or Information

If any notice or information is not provided to GDOT in accordance with the requirements of Section 20.2 (Notice and Information), then for the relevant Relief Event and without prejudice to any other rights or remedies of GDOT under this Agreement:

- (a) the Developer will not be entitled to any extension of time or relief from its obligations under this Agreement to the extent that the quantum thereof was increased or the ability to mitigate was adversely affected as a result of such notice or information not being provided to GDOT in accordance with the requirements of Section 20.2 (Notice and Information); and
- (b) if the delay in providing such notice or information in accordance with the requirements of Section 20.2 (Notice and Information) is twelve (12) months or more, the rights of the Developer with respect to such Relief Event will be of no further force or effect.

### 20.5 Grant of Relief

- (a) The Developer will be entitled to an extension of time or other relief from obligations (as applicable) in accordance with Section 20.5(b) only if the Developer has satisfied all of the following:

- (i) complied with its obligations under Section 20.2 (Notice and Information) and Section 20.3 (Mitigation);
- (ii) demonstrated to the reasonable satisfaction of GDOT that a Relief Event has occurred; and
- (iii) demonstrated to the reasonable satisfaction of GDOT that the Relief Event was the direct cause or is reasonably likely to be the direct cause of:
  - (A) a delay in achieving Services Commencement by the Planned Services Commencement Date;
  - (B) failure to perform any of its obligations during the Operating Period; or
  - (C) the Developer's inability to comply with its obligations under this Agreement.
- (b) If the Developer satisfies the conditions set out in Section 20.5(a), the Developer will be entitled to an extension of time or other relief from obligations (as applicable), as follows:
  - (i) in the case of a delay demonstrated pursuant to Section 20.2 (Notice and Information), the Planned Services Commencement Date will be extended by such time as is reasonable for such a Relief Event;
  - (ii) any Performance Deductions that would not have been assessed by GDOT but for the occurrence of the Relief Event will be deemed to not have occurred for the purposes of this Agreement; and
  - (iii) if any Developer Default or breach of this Agreement would not have occurred but for the occurrence of the Relief Event, such Developer Default or breach will be deemed to have not occurred for the purposes of this Agreement.
- (c) Within thirty (30) days after receipt of any final Relief Event Notice, GDOT shall notify the Developer of its determination as to the Developer's entitlement to any extension of time or other relief under this Section 20.5.

## 20.6 Sole Remedy

The Developer's sole remedy in relation to any Relief Event will be the operation of this Article 20.

## PART G – INSURANCE, PERFORMANCE AND PAYMENT SECURITY, AND INDEMNITY

### 21. INSURANCE

- (a) The Developer shall:

- (i) at its own expense maintain, or cause to be obtained and maintained, with the Developer as a named insured, at a minimum, each of the insurance policies set out in Exhibit 7 (Required Insurances), Part A (Developer Required Insurance) (the "**Developer Required Insurance**"); and
  - (ii) cause each Contractor to maintain, with the Contractor as a named insured, each of the insurance policies set out in Exhibit 7 (Required Insurances), Part B (Contractor Required Insurance) (the "**Contractor Required Insurance**", together with the Developer Required Insurance, the "**Required Insurances**").
- (b) The Required Insurances shall each include a waiver of subrogation in favor of GDOT and the Indemnified Parties. Each policy with insureds in addition to the Developer shall also provide that coverage for any other insured is primary and non-contributory with regard to other insurance.
  - (c) Notice of cancellation to GDOT shall be provided by all insurers writing the Developer Required Insurance policies for any cancellation, material reduction in coverage or limit, or termination initiated by the insurer with at least 30 days' notice (10 days' notice for non-payment).
  - (d) The Developer shall provide evidence of compliant coverage, in the form of an updated ACORD certificate of insurance, prior to starting any Work and at each anniversary at least seven (7) days prior to expiration. GDOT retains the right to request copies of the actual insurance policies and endorsements and the Developer agrees to provide same within ten (10) days of such request.
  - (e) Coverage need not be project-specific unless otherwise noted above. The coverage requirements required under this Article 21 are minimums and the Developer may purchase additional coverage and/or limits. GDOT shall not be responsible for any premiums, deductibles, self-insured retentions or co-insurance amounts associated with any Required Insurances. The Developer may be subject to additional insurance requirements from lenders and/or landlords and those shall supersede these requirements provided all such insurance shall also comply with the requirements herein.

## 22. **PERFORMANCE AND PAYMENT SECURITY**

### 22.1 **Performance Bond and Payment Bond during D&C Period**

- (a) As a condition to the occurrence of the Effective Date, the Developer shall furnish, or cause the Contractor with primary responsibility for performance of the D&C Work to furnish, the following:
  - (i) a performance bond in the form set out in Exhibit 8 (Form of Performance Bond and Payment Bond), Part A (Performance Bond) in an amount equal to \$886,980.00 ("**Performance Bond**"); and

- (ii) a payment bond in the form set out in Exhibit 8 (Form of Performance Bond and Payment Bond), Part B (Payment Bond) in an amount equal to \$886,980.00 ("**Payment Bond**").
- (b) Each of the Performance Bond and the Payment Bond must be issued by a surety which is an Eligible Security Issuer.
- (c) The Developer shall maintain, or cause the relevant Contractor to maintain, each of the Performance Bond and the Payment Bond until the first (1st) anniversary of the Services Commencement Date.
- (d) In the event the Performance Bond and the Payment Bond required under this Section 22.1 (Performance Bond and Payment Bond during D&C Period) are furnished by a Contractor, the bond forms included in Exhibit 8 (Form of Performance Bond and Payment Bond) shall be modified to designate the Contractor as the "Principal" and Developer as the "Obligee". GDOT may be added as an additional obligee to the Performance Bond and the Payment Bond via rider.

## 22.2 Performance Security during Operating Period

- (a) As a condition to the occurrence of the Services Commencement Date, the Developer shall furnish a bond or letter of credit in an amount equal to \$1,009,584.33 ("**O&M Performance Security**"), in a form and substance reasonably approved by GDOT, as security for the obligations of the Developer to pay any Termination Sum in accordance with Article 27 (Compensation on Termination) or for the cost for GDOT to ensure that the decommissioning activities are completed in accordance with Section 6.2 (Project Site Expiry Date Obligations).
- (b) The O&M Performance Security must be issued by an Eligible Security Issuer.
- (c) The Developer shall maintain the O&M Performance Security until the date thirty (30) days following the end of the Term. The O&M Performance Security may be on terms which provide for the incremental reduction of the secured amount by twenty per cent (20%) of the amount of the Services Commencement Payment on each of the first through fifth anniversary of the Services Commencement Date, and based on the corresponding reductions in the termination sum calculated in accordance with Section 27(b)(i) (Compensation on Termination).
- (d) If, at any time during the period required to maintain the O&M Performance Security in accordance with Section 22.2(c), the issuer of the O&M Performance Security ceases to be an Eligible Security Issuer, then the Developer shall promptly furnish a replacement O&M Performance Security from an Eligible Security Issuer. GDOT shall have the right to call or draw on the original O&M Performance Security (and to hold the resultant funds in escrow during the Term) in the event that it is not promptly replaced.

## 23. INDEMNITY FROM THE DEVELOPER

### 23.1 Indemnity

Subject to Section 23.2 (*Exclusions from Indemnity*), to the fullest extent permitted by Applicable Law, the Developer shall release, protect, defend, indemnify and hold harmless GDOT and each Indemnified Party on demand from and against any and all Third-Party Claims arising out of, relating to or resulting from:

- (a) the breach or alleged breach of any of the Developer's obligations under this Agreement, including as a result of the performance of the Work at the Project Site;
- (b) the failure or alleged failure by the Developer or any Developer-Related Entity to comply with the Governmental Approvals, the NEPA Approval, or other Applicable Law;
- (c) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Developer or any Developer-Related Entity in performance of the Work;
- (d) the actual or alleged act or omission, error or misconduct of the Developer or any Developer-Related Entity in or associated with performance of the Work;
- (e) any and all claims by any Governmental Entity claiming taxes based on gross receipts, purchases or sales, the use of any property or income of the Developer or any Developer-Related Entity with respect to any payment for the Work made to or earned by the Developer or any Developer-Related Entity;
- (f) any and all claims by Contractors for non-payment of any sums due for their work, services, materials, goods, equipment or supplies, including in relation to any stop notices, liens and claims filed by such Contractors in connection with the Work;
- (g) the Developer's or any Developer-Related Entity's failure to perform an obligation that GDOT or any Indemnified Party owes to a Person, including, any Governmental Entities, under Applicable Law or under any agreement, where the Developer is required to perform such obligation pursuant to the terms of this Agreement;
- (h) inverse condemnation, trespass, nuisance, interference with use and enjoyment of real property or similar taking of or harm to real property by reason of:
  - (i) the failure of the Developer or any Developer-Related Entity to comply with the requirements of this Agreement, Governmental Approvals or the NEPA Approval;

- (ii) the intentional misconduct or negligence of the Developer or any Developer-Related Entity; or
- (iii) the entry onto or encroachment upon another's property by the Developer or any Developer-Related Entity;
- (i) any violation of any federal or state securities or similar law by the Developer or any Developer-Related Entity; and
- (j) cybersecurity breaches to the EVSE or the Project.

### 23.2 Exclusions from Indemnity

Subject to the releases and disclaimers set out in this Agreement, the Developer shall not be responsible or be obliged to release, protect, defend, indemnify or hold harmless GDOT with respect to any liability or Losses under Section 23.1 (Indemnity) to the extent such Losses are caused by:

- (a) the sole negligence, recklessness or willful misconduct, bad faith or fraud of GDOT or any Indemnified Party;
- (b) GDOT's breach of any of its obligations under this Agreement;
- (c) GDOT's or any Indemnified Party's violation of any Applicable Laws or Governmental Approvals;
- (d) any Relief Event;
- (e) any Losses suffered by GDOT or any Indemnified Party, with respect to use of any other information, documents, or data acquired or brought into existence or used by the Developer or any Developer-Related Entity in relation to the Work or this Agreement; in each case, other than any use specifically for the Project.

### 23.3 Limitation on Indemnity

With respect to claims by an employee of the Developer or a Developer-Related Entity, the indemnification obligation under Section 23.1 (Indemnity) shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by the Developer or a Developer-Related Entity under workers' compensation, disability benefit or other employee benefits laws.

### 23.4 Defense and Indemnification Procedures

- (a) If GDOT or any Indemnified Party becomes aware of a claim that it believes is within the scope of the indemnities under this Agreement, GDOT shall as soon as practicable:
  - (i) notify the Developer in writing of the claim;

- (ii) send to the Developer a copy of all written materials GDOT has received in relation to such claim; and
  - (iii) notify the Developer in writing that GDOT or the Indemnified Party will conduct its own defense unless an insurer accepts defense of the claim or the Developer accepts the tender of the claim.
- (b) As soon as practicable after the Developer receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable Required Insurances. GDOT and each Indemnified Party shall also have the right to tender such claims to such insurers.
- (c) The Developer acknowledges that the Attorney General is the only counsel authorized to represent GDOT or any State affiliated agencies or departments. The Developer may, at the option of the Attorney General, have the right to participate in the defense of GDOT or any Indemnified Party. In the event of litigation, any settlement on behalf of GDOT or any Indemnified Party must be expressly approved by the Attorney General. The foregoing shall not relieve any obligation of the Developer under Section 23.1 (Indemnity) to bear the fees and costs of defending and settling such claim.
- (d) If a suit or proceeding based on a claimed infringement of a patent or copyright is brought against GDOT or any Indemnified Party, the Developer shall, at its own expense, defend or settle any such suit or proceeding if authorized to do so in writing by the Attorney General subject to the obligations of indemnification set out in this Agreement.
- (e) The Developer, subject to this Section 23.4 (Defense and Indemnification Procedures), may settle the claim without the consent or agreement of GDOT or the relevant Indemnified Party, unless the settlement:
  - (i) would result in injunctive relief or other equitable remedies or otherwise require GDOT or the relevant Indemnified Party to comply with restrictions or limitations that adversely affect or materially impair the reputation and standing of GDOT or the relevant Indemnified Party (as applicable);
  - (ii) would require GDOT or the relevant Indemnified Party (as applicable) to pay amounts that the Developer or its insurer does not fund in full; or
  - (iii) would not result in GDOT's or the relevant Indemnified Party's (as applicable) full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

## 23.5 Reimbursement of State Funds

The Developer shall be responsible for prompt reimbursement of the amount of any disbursements from the State Tort Claims Trust Fund in satisfaction of any liability

under this Agreement, whether established by judgment or settlement in accordance with O.C.G.A. § 50-21-37(a).

## **PART H – TERMINATION FOR DEVELOPER DEFAULT**

### **24. DEVELOPER DEFAULT**

The occurrence of any one or more of the following will constitute a "**Developer Default**":

- (a) the Developer Abandons the Project;
- (b) rights to use the Project Site under the Host Site Agreement are terminated for any reason, or the Developer assigns such rights in breach of its obligations under Section 6.1(d) (Property Interest);
- (c) the Developer fails to achieve Services Commencement by the Services Commencement Long Stop Date;
- (d) a Noncompliance Default Trigger occurs;
- (e) the Developer fails to pay any amount due to GDOT under this Agreement when due, except to the extent such payment is subject to a Good Faith dispute;
- (f) the Developer fails to comply with any Governmental Approval or Applicable Law in any material respect;
- (g) the Developer is in breach of its obligations under Section 35.1 (Assignment by the Developer);
- (h) reserved;
- (i) the Developer is in breach of its obligations under Article 32 (Prompt Payment and Retainage);
- (j) an Insolvency Event arises with respect to the Developer;
- (k) any representation or warranty made by the Developer in this Agreement or any certificate, schedule, report, instrument or other document delivered to GDOT pursuant to this Agreement is false or materially misleading or inaccurate when made, in each case in any material respect, or omits material information when made;
- (l) the Developer fails to obtain, procure, provide and keep in effect the Developer Required Insurance, or fails to cause each Contractor to maintain the Contractor Required Insurance, in accordance with the requirements set out in Article 21 (Insurance) and Exhibit 7 (Required Insurances);

- (m) the Developer fails to obtain and maintain the Performance Security in accordance with the requirements of Article 22 (Performance and Payment Security); or
- (n) after exhaustion of all rights of appeal, the Developer or any Contractor (at all tiers), other than any Contractor whose work in respect of the Project is complete, is or becomes a Prohibited Person.

## 25. NOTICE AND CURE PERIODS

- (a) GDOT shall provide written notice ("**Developer Default Notice**") to the Developer upon the occurrence of a Developer Default.
- (b) Upon receipt of a Developer Default Notice, the Developer will have the following cure periods:
  - (i) for a Developer Default under Section 24(a) (Abandonment), Section 24(e) (Non-Payment), Section 24(h) (Prompt Payment and Retainage), Section 24(l) (Insurance), and Section 24(m) (Performance Security), a period of thirty (30) days after the Developer receives the Developer Default Notice;
  - (ii) for a Developer Default under Section 24(f) (Governmental Approvals) and Section 24(k) (Representations and Warranties) (subject to Section 25(c)),
    - (A) a period of thirty (30) days after the Developer receives the Developer Default Notice; or
    - (B) if, despite the Developer's commencement of meaningful steps to cure immediately after receiving the Developer Default Notice, the Developer Default cannot be cured within such thirty (30) day period, the Developer will have such additional period of time, up to a maximum cure period of ninety (90) days, as is reasonably necessary to cure the Developer Default; and
  - (iii) for a Developer Default under Section 24(b) (Host Site Agreement Termination), Section 24(c) (Services Commencement Long Stop Date), Section 24(d) (Noncompliance Default Trigger), Section 24(g) (Assignment), Section 24(i) (Insolvency Event) and Section 24(n) (Prohibited Person) (except as provided for under Section 25(d)), there is no cure period.
- (c) A Developer Default under Section 24(k) (Representations and Warranties) will be regarded as cured when the adverse effects of such Developer Default are resolved.
- (d) In respect of a Developer Default under Section 24(n) (Prohibited Person), if the Prohibited Person is:
  - (i) a managing member, general partner or controlling investor of the Developer, cure will be regarded as complete when the Developer proves it

has removed such Person from any position or ability to manage, direct or control the decisions of the Developer or to perform Work; or

- (ii) a Contractor, cure will be regarded as complete when the Developer or any employing Contractor replaces such Contractor.

## 26. TERMINATION FOR DEVELOPER DEFAULT

- (a) If a Developer Default occurs and the Developer Default has not been cured within any relevant cure period set out in Article 25 (Notice and Cure Periods), GDOT may serve a termination notice ("**GDOT Termination Notice**") on the Developer at any time during the continuance of that the Developer Default.
- (b) A GDOT Termination Notice must specify the Developer Default that has occurred entitling GDOT to terminate.
- (c) This Agreement will terminate on the date that is thirty (30) days after the date the Developer receives a GDOT Termination Notice.
- (d) Prior to the Early Termination Date under this Article 26 (Termination for Developer Default), the Developer shall carry out all decommissioning activities in accordance with Section 13(b) (Decommissioning Activities) of the GDOT Standards and Requirements.

## 27. COMPENSATION ON TERMINATION

- (a) If this Agreement is terminated pursuant to Article 26 (Termination for Developer Default) during the D&C Period, the Developer shall pay compensation to GDOT calculated as follows:
  - (i) if the Developer has not completed the decommissioning activities in accordance with Section 26(d) (Termination) prior to the Early Termination Date, GDOT's reasonable estimate of the cost for GDOT to ensure that the decommissioning activities are completed; *plus*
  - (ii) \$200,000, representing a lump sum liquidated damage for GDOT's anticipated costs for procuring a replacement Electric Vehicle charging station under the Georgia NEVI Deployment Plan; *plus*
  - (iii) any accrued liabilities of the Developer that arose prior to the Early Termination Date, including in respect of any indemnity claims under Section 23.1 (Indemnity) and any Performance Deductions assessed in accordance with Section 18.3 (Performance Deductions Assessment Process) (to the extent not already deducted from any Adjusted Availability Payment prior to the Early Termination Date).
- (b) If this Agreement is terminated pursuant to Article 26 (Termination for Developer Default) during the Operating Period, the Developer shall pay compensation to GDOT calculated as follows:

- (i) reimbursement of a portion of the Services Commencement Payment determined in accordance with the following table:

Date of Occurrence of Early Termination Date	% of Services Commencement Payment	Amount Payable
Prior to first (1st) anniversary of Services Commencement Date	100%	\$709,584.33
Prior to second (2nd) anniversary of Services Commencement Date	80%	\$567,667.46
Prior to third (3rd) anniversary of Services Commencement Date	60%	\$425,750.60
Prior to fourth (4th) anniversary of Services Commencement Date	40%	\$283,833.73
Prior to fifth (5th) anniversary of Services Commencement Date	20%	\$141,916.87

; *plus*

- (ii) if the Developer has not completed the decommissioning activities in accordance with Section 26(d) (Termination for Developer Default) prior to the Early Termination Date, GDOT's reasonable estimate of the cost for GDOT to ensure that the decommissioning activities are completed; *plus*
- (iii) \$200,000, representing a lump sum liquidated damage for GDOT's anticipated costs for procuring a replacement Electric Vehicle charging station under the Georgia NEVI Deployment Plan; *plus*
- (iv) any accrued liabilities of the Developer that arose prior to the Early Termination Date, including in respect of any indemnity claims under Section 23.1 (Indemnity) and any Performance Deductions assessed in accordance with Section 18.3 (Performance Deductions Assessment Process) (to the extent not already deducted from any Adjusted Availability Payment prior to the Early Termination Date).
- (c) The Developer shall pay the Termination Sum calculated in accordance with Section 27(a) or Section 27(b), as applicable, by no later than the date of termination in accordance with Section 26(c) (Termination for Developer Default).

- (d) If the Developer has not paid the Termination Sum in accordance with Section 27(c), GDOT shall have the right to call or draw on the O&M Performance Security for the amount of the Termination Sum.
- (e) The Parties acknowledge and agree that the provisions for the calculation of the Termination Sum represent Good Faith estimates and evaluations as to the actual potential damages GDOT would incur as a result of the Early Termination of this Agreement due to Developer Default, and do not constitute a penalty.

## **PART I – CONTRACTING AND LABOR PRACTICES**

### **28. LABOR STANDARDS**

- (a) The Developer shall at all times in carrying out the Work comply, and cause each Contractor to comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations, and federal and State orders.
- (b) The Developer shall ensure that any individual performing the Work has the skill and experience and any licenses or certifications required in order to perform the Work assigned to such individual.

The Developer and its Contractors shall comply with the Georgia Immigration & Compliance Act ("**Immigration Act**"), O.C.G.A. §§ 13-10-90 *et seq.* The Developer shall cause the Contractors to file, with GDOT, all certificates and affidavits required in connection with the Immigration Act in respect of each Contractor prior to such Contractor commencing any Work in respect of the Project.

- (c) The Developer acknowledges and agrees that State officials, including officials of the Georgia Department of Labor and GDOT, retain the right to inspect and audit the Project and employment records of the Developer and all Contractors without notice during normal working hours until the Work under this Agreement is complete, and as otherwise specified by Applicable Law.

### **29. NON-DISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY**

- (a) GDOT is committed to compliance with Title VI of the Civil Rights Act of 1964 and all related regulations and directives. GDOT assures that no person shall, on the ground of race, color, national origin, as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L.00.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. GDOT further assures every effort will be made to ensure nondiscrimination in all of its programs and activities whether or not those programs and activities are federally funded. The Developer shall not, and shall ensure that each Contractor does not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the Work.

- (b) The Developer shall carry out, and shall cause each Contractor to carry out, applicable requirements of 49 CFR. §§ 26 et seq. in the award and administration of USDOT assisted contracts.
- (c) Failure by the Developer to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as GDOT deems appropriate.
- (d) The Developer shall include, and shall ensure that each Contractor includes, in every Contract the following:

The contractor, and/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 USDOT assisted contracts. Failure by the contractor to carry out these requirements is (breach) of this Agreement which may result in the termination of this Agreement or such other remedy as GDOT deems appropriate.

### 30. **CONTRACTING WITH SMALL, MINORITY AND WOMEN-OWNED BUSINESSES**

- (a) The Developer shall take all necessary affirmative steps to assure that small and minority businesses, and women-owned businesses are used when possible, including:
  - (i) placing qualified small and minority businesses and women-owned businesses on solicitation lists;
  - (ii) assuring that small and minority businesses, and women-owned businesses are solicited whenever they are potential sources;
  - (iii) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women-owned businesses;
  - (iv) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women-owned businesses;
  - (v) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (vi) including the substance of this Section 30(a) in any Contract.
- (b) The Developer shall include, if applicable, any affirmative action steps taken to assure that small and minority businesses, and women-owned businesses are used for the Project. The provision of such information is not mandatory but is encouraged.

### 31. PREVAILING WAGES

- (a) The Developer shall:
  - (i) pay or cause to be paid to all applicable workers employed by it or its Contractors to perform the Work not less than the prevailing rates of wages, as provided in Applicable Law in respect of public work contracts, including the Davis-Bacon Act, and as provided in Exhibit 10 (Federal and State Certifications), Federal Certifications, Part C (Federal Prevailing Wage Rate); and
  - (i) comply and cause its Contractors to comply with all Applicable Law pertaining to prevailing wages.
- (b) For the purpose of applying the Applicable Law the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project).
- (c) The provisions of Exhibit 10 (Federal and State Certifications), Federal Certifications, Part C (Federal Prevailing Wage Rate) shall apply to the entire Project during both the D&C Period and Operating Period and to all covered classifications of employees regardless of the contractual relationship between the Developer or the Contractors and laborers, mechanics or field surveyors.
- (d) It is the Developer's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Agreement is in effect, the Developer shall bear the cost of such changes and shall have no claim against GDOT or the State on account of such changes.
- (e) The Developer shall comply, and cause its Contractors to comply, with all Applicable Law regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.
- (f) This Article 31 shall not apply to Contracts with any Governmental Entity, if any.

### 32. PROMPT PAYMENT AND RETAINAGE

- (a) The Developer shall comply, and require its Contractors to comply with:
  - (i) the Georgia Prompt Payment Act, O.C.G.A. §§ 13-11-1 *et seq*; and
  - (ii) Exhibit 10 (Federal and State Certifications), Federal Certifications, Part H (GDOT Special Provision – Prompt Payment).
- (b) The Developer shall ensure that neither it nor any Contractor shall impose retainage upon any consultant, laborer, subcontractor, vendor, materialman or supplier at any tier with whom any of them have contracted.

- (c) A breach by the Developer of this Article 32 will constitute a Developer Default pursuant to Article 24 (Developer Default).

### 33. **SUSPENSION AND DEBARMENT CERTIFICATIONS**

- (a) The Developer shall deliver to GDOT:
- (i) no later than January 31 of each year during the Term; and
  - (iii) upon the Termination Date,
- signed certifications substantially in the form of:
- Exhibit 10 (Federal and State Certifications), Federal Certifications, Part F (Suspension and Debarment Certification) from:
- (ii) the Developer; and
  - (iii) each affiliate of the Developer (where for the purposes of this clause (bb) only, "affiliate" is defined in 2 CFR. § 180.905 or successor regulation of similar import).
- (b) The Developer shall provide immediate written notice to GDOT and provide all relevant information to GDOT, if at any time the Developer learns that a certification provided in accordance with this Article 33 was erroneous when submitted or has become erroneous by reason of changed circumstances.

## **PART J – MISCELLANEOUS**

### 34. **REPRESENTATIONS AND WARRANTIES**

#### 34.1 **Developer Representations and Warranties**

As at Effective Date, the Developer provides GDOT with the representation and warranties set out under Exhibit 2, Part A (Developer Representations and Warranties).

#### 34.2 **GDOT Representations and Warranties**

As at Effective Date, GDOT provides the Developer with the representation and warranties set out under Exhibit 2, Part B (GDOT Representations and Warranties).

### 35. **ASSIGNMENT AND TRANSFER**

#### 35.1 **Assignment by the Developer**

The Developer shall not assign, transfer, pledge, mortgage or otherwise encumber any of its rights or obligations under this Agreement without the written consent of GDOT.

## 35.2 **Assignment by GDOT**

GDOT may, without the Developer's consent, assign all or any portion of its rights, title, and interests in and to this Agreement, the GDOT License and the Performance Security (if applicable) to any other Governmental Entity that succeeds to the governmental powers and authority of GDOT.

## 36. **RESERVED**

## 37. **RECORDS AND AUDIT**

### 37.1 **Maintenance and Inspection of Records**

- (a) The Developer shall:
  - (i) keep and maintain Books and Records, including copies of all original documents delivered to GDOT in accordance with the applicable provisions of this Agreement and in accordance with Good Industry Practice; and
  - (ii) notify GDOT where such books, records and documents are kept.
- (b) The Developer shall make all of its Books and Records available for inspection by GDOT at all times during normal business hours, without charge. GDOT may conduct any such inspection upon forty-eight (48) hours' prior written notice, or unannounced and without prior notice where there is Good Faith suspicion of fraud or criminal activity. When conducting any inspection, GDOT may make extracts and take notes.
- (c) The Developer shall provide copies of the Books and Records to GDOT as and when reasonably requested by GDOT.
- (d) Pursuant to 49 CFR. § 200.333, the Developer shall (i) retain all of its Books and Records until the end of the Term and (ii) retain all of its books, records and documents it produces or receives (if any) regarding the Project for three (3) years following the end of the Term. If any provision of this Agreement specifies any longer time period for retention of particular records, such time period will prevail.

### 37.2 **Audits**

In addition to any other specific audit rights that GDOT may have under this Agreement, GDOT will have such rights to review and audit the Books and Records, as GDOT deems necessary for the purposes of verifying compliance with this Agreement, Applicable Law, and Governmental Approvals.

## 38. **OPEN RECORDS AND FREEDOM OF INFORMATION ACT**

- (a) The Developer acknowledges and agrees that all Books and Records and other materials in GDOT's possession, as well as in the Developer's or any Developer-

Related Entity's possession or control, are subject to the provisions of the Open Records Act, subject only to certain exceptions and exemptions contained therein. Developer shall comply with the Open Records Act, to include specifically to respond to public requests for information consistent with the Open Records Act.

- (b) The Developer acknowledges and agrees that in accordance with the Open Records Act, Developer's rights relating to any potential limit on public disclosure of Project materials in GDOT's possession:
  - (i) apply only to trade secrets, as defined in O.C.G.A. § 10-1-761(4); and
  - (ii) specifically exclude the right to limit public disclosure by GDOT of any commercial, financial, or otherwise proprietary Project information that does not constitute trade secrets.
- (c) If the Developer believes information or materials is/are not subject to the Open Records Act or is excepted from disclosure as "trade secrets" under the Open Records Act, the Developer shall be solely responsible for specifically and conspicuously designating that information by placing "TRADE SECRET" in the center header of each such document or page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the Developer's claimed exception from the legal obligation to disclose.
- (d) Nothing contained in this Article 38 (Open Records Act and Freedom of Information Act) shall modify or amend requirements and obligations imposed on GDOT by the Open Records Act or other Applicable Law, and the provisions of the Open Records Act or other Laws shall control in the event of a conflict between the procedures described above and the Applicable Law.
- (e) In the event of any proceeding or litigation concerning the disclosure of any material submitted by the Developer to GDOT, the Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the Attorney General shall represent GDOT who will participate in the litigation in such manner as they each may deem necessary or desirable, in its sole discretion. Except in the case of GDOT's voluntary intervention in litigation, the Developer shall pay and reimburse GDOT within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, GDOT incurs in connection with any litigation, proceeding or request for disclosure.
- (f) The Developer further acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications, and other materials in FHWA's possession may also be subject to disclosure under federal law, including the

Freedom of Information Act. The Developer's rights and obligations with respect to such disclosure shall be in accordance with such federal law.

### 39. **GOVERNING LAW AND JURISDICTION**

#### 39.1 **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of Georgia.

#### 39.2 **Jurisdiction**

Litigation between the Parties arising out of or pertaining to this Agreement or their breach must be filed, heard and decided in the Superior Court of Fulton County, Georgia, which shall have exclusive jurisdiction and venue pursuant to O.C.G.A. § 50-21-1. Each Party shall bear its own attorney's fees and costs in any dispute or litigation arising out of or pertaining to this Agreement, and no Party shall seek or accept an award of attorney's fees or costs.

### 40. **OTHER**

#### 40.1 **Indirect Losses**

- (a) Except as otherwise expressly provided in this Agreement, and to the fullest extent permissible under Applicable Law, neither Party will have the right to claim damages, including punitive and incidental damages, against the other Party for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is for Indirect Losses.
- (b) The Parties agree that the limitation in Section 40.1(a) will not apply to or limit either Party's right to recover from the other Party:
  - (i) any Losses (excluding defense costs) to the extent that they are either covered by the proceeds of insurance carried by the relevant Party or are required to be insured against pursuant to Article 21 (Insurance);
  - (ii) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the relevant Party;
  - (iii) amounts payable by the Developer to GDOT under an indemnity set out in this Agreement;
  - (iv) any Performance Deductions; or
  - (v) interest, late charges, fees, transaction fees and charges, penalties, and similar charges that this Agreement expressly states are due from the relevant Party.

## 40.2 Amendments

- (a) No amendment of this Agreement shall be valid unless it is in writing and signed by:
  - (i) the person or persons with due authority to act for GDOT in respect of such matter; and
  - (ii) the person or persons with due authority to act for the Developer in respect of such matter,

or each Party's respective successors and assigns.
- (b) For the purposes of Section 40.2(a), both Parties acknowledge and agree that email communication sent to or by the person or persons with due authority to act the GDOT in respect of such matter cannot be a valid signed writing unless such person or persons expressly state it as being such and reference this Section 40.2.

## 40.3 Waiver

- (a) No waiver of any term, covenant or condition of this Agreement will be valid unless in writing and executed by the obligee Party.
- (b) Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time will not in any way limit or waive that Party's right to subsequently enforce or compel strict compliance with every term, covenant, condition or other provision of this Agreement, despite any course of dealing or custom of the trade (other than the waived breach or failure in accordance with the terms of such waiver).

## 40.4 No Personal Liability

No officer, agent, representative or employee of GDOT will be personally liable under any provision of this Agreement, or because of the execution or attempted execution of this Agreement, or because of any breach of this Agreement.

## 40.5 Taxes

The Developer is solely responsible for the payment of taxes accrued or arising out of the performance of its obligations pursuant to this Agreement.

## 40.6 Successors and Assigns

This Agreement is binding upon and will inure to the benefit of GDOT and the Developer and their respective successors and permitted assigns.

## 40.7 Survival

The following shall survive the Expiry Date or Early Termination Date of this Agreement:

- (a) any obligation of the Developer to perform decommissioning work under Section 6.1 (Project Site Expiry Date Obligations);
- (b) any ongoing reporting, privacy and cybersecurity obligations under Article 16 (Data, Privacy and Cybersecurity);
- (c) any GDOT right to claim the Performance Security under Article 22 (Performance and Payment Security);
- (d) Article 23 (Indemnity from the Developer);
- (e) any obligations of the Developer to pay compensation under Article 27 (Compensation on Termination);
- (f) Article 34 (Representations and Warranties);
- (g) Article 36 (Records and Audit);
- (h) Article 38 (Open Records and Freedom of Information Act);
- (i) Article 40 (Other);
- (j) the express obligations of the Parties following the Termination Date; any obligations to pay amounts under this Agreement; and
- (k) all other provisions which by their inherent character should survive the Expiry Date or Early Termination of, or completion of the Work under, this Agreement.

#### 40.8 **Severability**

- (a) If any article, section, subsection, clause, part, exhibit, schedule, form or appendix of this Agreement is ruled invalid by a court having proper jurisdiction, the Parties shall:
  - (i) promptly (and in any event within ten (10) Business Days) after such ruling, meet and negotiate a substitute for such article, section, subsection, clause, part, exhibit, schedule, form or appendix, which shall, to the greatest extent legally permissible, effect the original intent of the Parties; and
  - (ii) 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.
- (b) The invalidity or unenforceability of any article, section, subsection, clause, part, exhibit, schedule, form or appendix of this Agreement shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable article, section, subsection, clause, exhibit, schedule, form or appendix.

#### 40.9 Entire Agreement

This Agreement contains the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter.

#### 40.10 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### 40.11 Limitation on Third-Party Beneficiaries

Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of the Parties toward, any Person not a party to this Agreement, except rights expressly contained in this Agreement for the benefit of the Indemnified Parties.

#### 40.12 Notices and Communications

- (a) Notices under this Agreement must be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by email communication followed by a hard copy, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

- (i) If to the Developer:

Francis Energy Charging, LLC

Attn: Ashton Valente  
General Counsel  
15 E. 5th Street, Suite 821  
Tulsa, OK 74103

Tel: 918-236-1785

Email: AValente@francisenergy.com

with a copy to:

Francis Energy Charging, LLC

Attn: Seth Christ  
Project Manager  
15 E. 5th Street, Suite 821  
Tulsa, OK 74103

Tel: 918-236-5047

Email: schrist@francisenergy.com

(ii) If to GDOT:

Georgia Department of Transportation

Attn: Christina Barry, PE  
Assistant State Traffic Engineer  
Office of Traffic Operations  
935 United Avenue, Building 24  
Atlanta, GA 30316

Tel: 404-635-2838

Email: cbarry@dot.ga.gov

with a copy to:

Georgia Department of Transportation

Attn: Matthew Cline, Director  
General Counsel  
One Georgia Center, 23rd Floor  
600 West Peachtree Street, NW  
Atlanta, Georgia 30308

Tel: 404-631-1499

Email: mcline@dot.ga.gov

(b) Subject to Section 40.12(c), all Notices shall be deemed received:

- (i) if delivered personally, upon receipt;
- (ii) if sent by certified mail, recognized overnight mail or courier service, when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery at the appropriate address is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery; or
- (iii) if sent by email communication, on the date of receipt as shown on the received email transmission (provided the hard copy is also delivered pursuant to Section 40.12(a)).

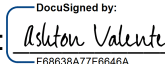
(c) All notices (including by email communication) delivered after 5:00 p.m. shall be deemed delivered on the first Business Day following delivery.

[signature page follows]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have set their hands and affixed their seals, and have executed this Project Agreement as of the date first above written:

**FRANCIS ENERGY CHARGING, LLC**


**Seal**

By:  (SEAL)  
DocuSigned by:  
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Name: **Ashton Valente**

Title: **General Counsel**

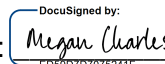
**GEORGIA DEPARTMENT OF  
TRANSPORTATION**

By:  (SEAL)  
DocuSigned by:  
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Name: **Russell R McMurry**

Title: **Commissioner**

**Attest:**

By:    
DocuSigned by:  
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Name: **Megan Charles**

Title: **Chief of Staff**

**Attest**

By:    
DocuSigned by:  
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Name: **Angela O. Whitworth**

Title: **Treasurer**

## EXHIBIT 1

### DEFINITIONS, INTERPRETATION, ORDER OF PRECEDENCE AND RIDS

#### PART A: Definitions and Abbreviations

Capitalized terms and acronyms used in this Agreement shall have the following meanings:

"**ADA**" means the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101), as amended from time to time.

"**Abandon**" means to abandon all or a material part of the Project, which abandonment will be deemed to have occurred if:

- (a) the Developer demonstrates through statements, acts or omissions an intent not to continue (for any reason other than a Relief Event that materially interferes with its ability to continue) to design, construct, operate or maintain all or a material part of the Project; or
- (b) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event) on the Project is performed for a continuous period of more than sixty (60) days.

"**Adjusted Availability Payment**" is defined in Section 17.2(a) (Availability Payments).

"**Agreement**" means this agreement (including all its Exhibits), as amended from time to time.

"**Alternative Fuel Corridor**" or "**AFC**" shall have the meaning given to such term in 23 CFR 680.

"**Annual Data Submittal**" is defined in Section 16.1(a)(iii) (Data Reporting).

"**Anticipated NEPA Approval Date**" means 120 days from the Effective Date.

"**API**" means application programming interface.

"**Applicable Law**" means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity which is applicable to the Project, Work or any relevant Person, whether taking effect before or after the date of this Agreement. Applicable Law excludes Governmental Approvals.

"**Attorney General**" means the Attorney General of the State of Georgia.

"**Availability Payment**" is defined in Section 17.2(a)(i) (Availability Payments).

"**Availability Payment Carry-over Amount**" is defined in Section 17.2(b) (Availability Payments).

**"Books and Records"** means any and all documents, books, records, papers, letters/correspondence, maps, plans, tapes, photographs, exhibits, computer- or other electronic-based, -stored, or -generated information, or other information or materials, whether prepared and maintained or received, of the Developer or any Developer-Related Entity relating to the Project, including:

- (a) all design and construction documents, and all operations and maintenance documents (including Submittals, Contracts, invoices, schedules, meeting minutes, budgets, forecasts and change orders);
- (b) all budgets, certificates, claims, correspondence, data, data fields, documents, analyses (including expert analyses), facts, files, investigations, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, vehicular traffic information analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Developer or any Developer-Related Entity in connection with the Project;
- (c) any other sketches, charts, calculations, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, and other documents, information, materials, or other work product created or collected under the terms of, or otherwise under this Agreement;
- (d) any other "Books and Records" or words of similar effect as specifically required or identified under Applicable Law or Governmental Approval; and
- (e) any of the foregoing that disclose or embody Intellectual Property.

**"Business Day"** means any day that is not a Saturday, a Sunday, a state public holiday, or a federal public holiday.

**"Calendar Quarter"** means each three (3) month period ending on March 31, June 30, September 30 and December 31, or, if applicable, those periods less than three (3) months at the beginning and end of the Operating Period.

**"Capital Payment Cap"** means \$709,584.33.

**"Charger"** shall have the meaning given to such term in 23 CFR 680.

**"Charging Network"** shall have the meaning given to such term in 23 CFR 680.

**"Charging Network Provider"** shall have the meaning given to such term in 23 CFR 680.

**"Charging Port"** shall have the meaning given to such term in 23 CFR 680.

**"Charging Station"** shall have the meaning given to such term in 23 CFR 680.

**"Combined Charging System"** or **"CCS"** shall have the meaning given to such term in 23 CFR 680.

**"Connector"** shall have the meaning given to such term in 23 CFR 680.

**"Construction Work"** means all Work and activities (including associated administrative work) necessary to build or construct, reconstruct, rehabilitate, make, form, manufacture, furnish, install, integrate, supply, deliver or equip the Project.

**"Contactless Payment Methods"** shall have the meaning given to such term in 23 CFR 680.

**"Contract"** means any contract, subcontract, or other form of agreement to perform any part of the Work or provide any materials, equipment or supplies for any part of the 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.

**"Contractor"** means any Person with whom the Developer has entered into any Contract to perform any part of the Work or provide any materials, equipment or supplies for the Project, on behalf of the Developer, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

**"Contractor Required Insurance"** is defined in Section 21(a)(ii) (Insurance).

**"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 the ownership of voting securities, by contract (including in the case of a limited partnership, limited liability company or managed fund the appointment of the general partner or manager (as applicable)) or otherwise; provided that the exercise or establishment of minority voting rights or minority veto rights (whether provided by Applicable Law, organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of the Developer shall not be regarded as a change in "Control".

**"Cryptographic Agility"** shall have the meaning given to such term in 23 CFR 680.

**"Cybersecurity Plan"** the plan provided by Developer addressing the charging infrastructure virtual security and protection including data transmission, storage, and any integrated connections documenting all potential risks and mitigation actions through the Term in accordance with Section 7(a) (Cybersecurity Plan) of the GDOT Standards and Requirements.

**"D&C Period"** means the period commencing on the Effective Date and ending on the Services Commencement Date.

**"D&C Period Progress Report"** means each report to be delivered by the Developer in accordance with Section 11.2 (D&C Period Reporting) complying with the requirements of Exhibit 6 (Performance Reports), Part A (*D&C Period Progress Report*).

**"D&C Relief Event"** means:

- (a) any failure of GDOT to obtain NEPA Approval by the Anticipated NEPA Approval Date;
- (b) any utility interconnection delays caused by a Utility Owner past the date for "Power Utility Service Connection" specified in row 4 of the Project Schedule;

- (c) any Force Majeure Event; and
- (d) natural disasters, including:
  - (i) any flood (as "flood" is defined in 44 CFR § 59.1);
  - (ii) any fire, explosion or earthquakes; and
  - (iii) any hurricane, tornado or named windstorm and ensuing storm surges;

except, in each case, to the extent attributable to any breach of this Agreement, Applicable Law or any Governmental Approval by, or any negligent act or negligent omission of, the Developer or a Developer-Related Entity.

**"D&C Work"** means the Design Work and the Construction Work.

**"Data Interface Control Document"** means the document describing the technical details for satisfying all data interface requirements based on the specifications, including all data submission requirements outlined in Section 8(c) (Data Interface Control Document (ICD) Requirements) of the GDOT Standards and Requirements.

**"day"** means a calendar day.

**"Debarment Regulations"** means:

- (a) Federal Executive Order no. 12549 (February 18, 1986);
- (b) Federal Executive Order no. 12689 (August 16, 1989);
- (c) 31 U.S.C. § 6101 note (Section 2455, Pub. L. 103-355, 108 Stat. 3327); and
- (d) 49 CFR Part 29 "Government-wide Debarment and Suspension (Nonprocurement)".

**"Design Work"** means all Work related to the design, redesign, engineering or architecture for the Project.

**"Developer"** means Francis Energy Charging, LLC.

**"Developer Commitment"** means the proposal and commitments made by the Developer, as set out in Exhibit 4 (Proposal Commitments).

**"Developer Default"** is defined in Article 24 (Developer Default).

**"Developer Default Notice"** is defined in Section 25(a) (Notice and Cure Periods).

**"Developer-Related Entity"** means:

- (a) any Contractor;
- (b) any other Persons performing any of the Work for or on behalf of the Developer;

- (c) any other Persons for whom the Developer may be legally or contractually responsible; and
- (d) the employees, officers, directors, agents, representatives, consultants, successors and assigns of any of the foregoing.

**"Developer Required Insurance"** is defined in Section 21(a) (Insurance).

**"Direct Current Fast Charger"** or **"DCFC"** shall have the meaning given to such term in 23 CFR 680.

**"Distributed Energy Resource"** shall have the meaning given to such term in 23 CFR 680.

**"Early Termination"** means the termination of this Agreement for any reason prior to the Expiry Date.

**"Early Termination Date"** means the effective date of Early Termination, as specified in Section 7.5(d) (NEPA Approval) or Article 26 (Termination for Developer Default).

**"Effective Date"** means the date on which this Agreement is executed by both Parties and on or prior to which each of the Effective Date Conditions Precedent have been satisfied or otherwise waived in accordance with Article 2 (Conditions Precedent to Effective Date).

**"Effective Date Conditions Precedent"** is defined in Article 2 (Conditions Precedent to Effective Date).

**"Effective Date Documents"** is defined in Section 3(a) (Closing Documents).

**"Electric Vehicle"** or **"EV"** shall have the meaning given to such term in 23 CFR 680.

**"Electric Vehicle Charging Analytics and Reporting Tool"** or **"EV-ChART"** is defined in Exhibit 3, Attachment 3-3 (Data Requirements).

**"Electric Vehicle Infrastructure Training Program"** or **"EVITP"** shall have the meaning given to such term in 23 CFR 680.

**"Electric Vehicle Supply Equipment"** or **"EVSE"** shall have the meaning given to such term in 23 CFR 680.

**"Eligible Costs"** means, subject to Section 17.4 (Reimbursement Principle):

- (a) costs for pre-Construction Work, including environmental documents and studies, permitting, preliminary engineering, and related work;
- (b) costs for construction project management directly related to the Project;
- (c) construction costs (as defined under 23 U.S.C. 101(a)(4)), including site restoration after installation, directly related to the Project;

- (d) costs for planning, permitting, acquisition, and installation of on-site Distributed Energy Resource equipment (e.g., solar arrays, stationary batteries) provided that the energy generation or storage only transfers power to and from the Project;
- (e) costs to acquire and install on-site electric service equipment (e.g., power meter, transformer, switch gear), including shipping fees and applicable taxes;
- (f) costs of Minor Utility Upgrades (work necessary to connect the Project to the electric grid distribution network like extending power lines or upgrading existing power lines);
- (g) costs to install signage at site that is compliant with the Manual on Uniform Traffic Control Devices and 23 CFR 750;
- (h) costs for workforce development activities;
- (i) costs to procure and install, repair, upgrade, and/or replace existing EVSE to meet the minimum standards and requirements of the NEVI Federal Standards and Requirements;
- (j) costs to procure and setup EVSE related hardware and software;
- (k) reserved;
- (l) fixed operating and maintenance costs for the Operating Period including:
  - (i) EVSE lease fees (if the Developer chooses lease option for charging equipment rather than purchase option);
  - (ii) cellular network fees, internet service fees, or similar fees; and
  - (iii) hardware and software maintenance and repair costs, including service agreements with third-party contractors and charging equipment manufacturers or warrantors are acceptable to GDOT;
- (m) variable operating and maintenance costs, including costs for electricity, insurance, rent or real property under a ground lease, and other recurrent business costs such as staffing; and
- (n) costs for Project data sharing, including, to the extent practicable, costs related to the specific data sharing requirements of the Georgia NEVI Deployment Program as well as costs of data sharing on all chargers and charging activities on the EV network.

**"Eligible Security Issuer"** means:

- (a) in respect of a letter of credit, any Person that has: (i) a long-term unsecured debt rating of at least the following, from at least one of the following Rating Agencies: (1) "A-" by Standard & Poor's Rating Services; (2) "A3" by Moody's Investor Services, Inc.; or (3) "A-" by Fitch Investor Services, Inc.; and (ii) an office in the State at which the letter of credit can be presented for payment, unless presentment by facsimile or by electronic means is permitted without the requirement to subsequently present in person; and

- (b) a bond, any surety bond provider licensed to do business in the State that has: (i) a long-term unsecured debt rating of at "A-" or better and "Class VIII" or better by A.M. Best and Company and is listed on Treasury Department Circular 570; and (ii) an office in the State at which the demand guarantee can be presented for payment.

**"EV-ChART Data Format and Preparation Guidance"** is defined in Exhibit 3, Attachment 3-3 (Data Requirements).

**"Expiration Option A"** is defined in Section 6.2(a)(i) (Project Site Expiry Date Obligations).

**"Expiration Option B"** is defined in Section 6.2(a)(ii) (Project Site Expiry Date Obligations).

**"Expiry Date"** means the date five (5) years following the Services Commencement Date.

**"FHWA"** means the U.S. Federal Highway Administration.

**"Force Majeure Event"** means the occurrence of any of the following events after the date of this Agreement that directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement:

- (a) war, civil war, invasion, violent act of foreign enemy or armed conflict;
- (b) nuclear, chemical or biological contamination, or ionizing radiation, unless the source or cause of the contamination is brought to or near the Project Site by the Developer or a Developer-Related Entity, or is a result of any breach by the Developer of the terms of this Agreement; or
- (c) an act of Terrorism.

**"Full-Time"** means to dedicate no less than the greatest of 40 hours per week, those times/dates and durations required under this Agreement, and otherwise the full amount of time necessary for the proper performance of assigned responsibilities, in each case, on the Project Site.

**"Full-Time On-Call"** means Full-Time and accessible to GDOT 24- hours per day, seven (7) days per week, but not necessarily on the Project Site. If located off the Project Site, then available to be on the Project Site within forty-five (45) minutes of notification by GDOT.

**"GDOT"** means the Georgia Department of Transportation.

**"GDOT License"** means the license between GDOT and the Developer, in the form set out in Exhibit 9 (Form of GDOT License), dated on or about the Effective Date.

**"GDOT Standards and Requirements"** means all state standards and requirements applicable to the Georgia NEVI Deployment Program under Exhibit 3, Part B (GDOT Standards and Requirements).

**"GDOT Standard Specifications"** means the 2021 GDOT Standard Specifications – Construction of Transportation Systems, as may be updated from time to time.

**"Georgia NEVI Deployment Plan"** is defined in Recital (F).

**"Georgia NEVI Deployment Program"** is defined in Recital (G).

**"Good Faith"** means observance of reasonable commercial standards of fair dealing in a given trade or business.

**"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 designer, engineer, constructor, maintenance contractor or operator or developer seeking in Good Faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals, using accepted design, construction and repair standards and criteria normally used on similar projects in the state of Georgia, and engaged in the same type of undertaking in the United States under similar circumstances and conditions, including environmental conditions.

**"Governmental Approval"** means all approvals, permits, permissions, consents, licenses, certificates (including sales tax exemption certificates) and authorizations (whether statutory or otherwise) which are required from time to time in connection with the Project to be issued by GDOT or any Governmental Entity. "Governmental Approval" excludes the NEPA Approval.

**"Governmental Entity"** means the government of the United States, the states, the cities and counties within the states and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the states or the cities and counties within the states. "Governmental Entity" does not include GDOT.

**"GPR"** means the Georgia Procurement Registry website.

**"Host Site Agreement"** means the agreement for Wendy's Calhoun-Byron restaurant located at 318 GA-49, Byron, GA 31008, in respect of the Project Site between the Host Site Owner and the Developer, dated July 7, 2022.

**"Host Site Owner"** means the owner of the Project Site and counterparty to the Host Site Agreement.

**"HSA Key Terms"** means:

- (a) An acknowledgement by the Host Site Owner of the Developer's obligation to comply with the NEVI Federal Standards and Requirements.
- (b) A prohibition on the Host Site Owner continuing Electric Vehicle charging operations at the Project Site following early termination of the Host Site Agreement unless the Host Site Owner (or a substitute developer) has entered into an agreement with GDOT including the obligation to comply with the NEVI Federal Standards and Requirements until the end of the Term of this Agreement.

- (c) In the event that the Developer elects Expiration Option B, or in an Early Termination scenario where there is no replacement developer, the requirement for the Developer to perform certain minimum decommissioning requirements that are equal to or greater than those required by Section 13(b) (*Decommissioning Activities*) of the GDOT Standards and Requirements.
- (d) A restriction on the Developer assigning the Host Site Agreement, unless there is GDOT agreement to an assignment under this Agreement.
- (e) Unless otherwise provided pursuant to a separate legal instrument, the grant by the Host Site Owner of the legal authority for the Developer to grant GDOT the GDOT License.

**"Indemnified Parties"** means GDOT, the State, the State Transportation Board, and their respective successors, assigns, officers, employees, directors, commissioners, agents, and representatives.

**"Indirect Losses"** means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature.

**"Ineligible Costs"** means any costs which are not Eligible Costs, including:

- (a) costs incurred prior to the fully executed Agreement;
- (b) costs not directly related to charging of vehicles;
- (c) costs for purchase of real estate;
- (d) costs attributable to the Developer's overheads;
- (e) costs for construction or general maintenance of building and parking facilities (if not directly related to charging of vehicles);
- (f) project equipment costs associated solely with installing network-connected direct current fast Charging Ports beyond the minimum four required by the NEVI Federal Rule;
- (g) costs of Major Utility Upgrades (longer line extension or upgrades, improvements to offsite power generation, bulk power transmission, or substations);
- (h) operation and maintenance costs for EVSE beyond the four required network-connected DCFC ports;
- (i) any Project costs covered by the utility including utility service upgrade costs; and
- (j) costs for studies or research projects.

**"Insolvency Event"** means with respect to any Person:

- (a) any involuntary bankruptcy, insolvency, liquidation, company reorganization, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for

winding-up or similar proceeding, under any Applicable Law, in any jurisdiction, except if the same has been dismissed within sixty (60) days;

- (b) any voluntary bankruptcy, insolvency, liquidation, company reorganization, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up or similar proceeding, under any Applicable Law, in any jurisdiction; or
- (c) any general inability on the part of that Person to pay its debts as they fall due.

**"Instructions to Proposers"** or **"ITP"** means the instructions to proposers included in the RFP, containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

**"Intellectual Property"** means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United States or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Developer or any Developer-Related Entity for the purposes of carrying out the Work or otherwise for the purposes of this Agreement.

**"Key Contractor"** means each Non-Exclusive Entity (as defined in the ITP), and each subconsultant or subcontractor(s) that is not a Non-Exclusive Entity (as defined in the ITP) that was listed in Form TECH-A (Organizational Experience Form) of the Proposal.

**"Key Personnel"** means each of the positions listed in the Key Personnel Requirements.

**"Key Personnel Requirements"** means Attachment 3-1 (Key Personnel Requirements) to the GDOT Standards and Requirements.

**"Loss" or "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 this Agreement)), fee, charge, judgment, penalty or fine. Losses include injury to or death of Persons, damage or loss of property, and harm or damage to natural resources.

**"Major Utility Upgrade"** means upgrades to the electrical utility grid with an aggregate cost of over \$250,000 including but not limited to longer line extension or upgrades, improvements to offsite power generation, bulk power transmission, or substations covered by the utility. Instances also include those where utility poles or transformers are within a distance only accessible by longer line extensions to the Project Site and Developer needs network upgrades and build-out by electrical utility provider to connect to the distribution utility. The cost of Major Utility Upgrades is an Ineligible Cost.

**"Minimum Quarterly Uptime Requirement"** means the 97% minimum EVSE uptime requirement for each Calendar Quarter, calculated in accordance with Section 9(a) (Minimum Quarterly Uptime) of the GDOT Standards and Requirements.

**"Minor Utility Upgrade"** means upgrades to the electrical utility with an aggregate cost of under \$250,000 including those to acquire, install or upgrade on-site electric service equipment including power meter, transformer, and switch gear provided that the work is necessitated solely by the construction or upgrading of the Project Site. Work also includes upgrades necessary to connect a charging station to the electric grid distribution network including but not limited to extending power lines or upgrading existing power lines. Instances also include where an existing utility pole and transformer is located adjacent to the Project Site or an existing point of connection already exists on the Project Site and Developer requires additional switchgear or lines to connect to the grid. The cost of Minor Utility Upgrades is an Eligible Cost.

**"NEC"** means the National Electric Code.

**"NEPA"** means The National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, as amended and as it may be amended from time to time.

**"NEPA Approval"** means the GDOT provided and agency approved NEPA document, as may be modified by any supplements and re-evaluations pertaining to the Project.

**"NEVI"** is defined in Recital (F).

**"NEVI Federal Rule"** means 23 CFR 680, which establishes regulations setting minimum standards and requirements for projects funded under the NEVI Formula Program, as restated in Exhibit 3, Part A (NEVI Federal Standards and Requirements), as updated and amended from time to time

**"NEVI Federal Standards and Requirements"** means the provisions of the NEVI Federal Rule, and all federal statutory requirements applicable to the Project, as updated and amended from time to time.

**"NEVI Federal Uptime Requirement"** means the 97% minimum EVSE uptime requirement, calculated in accordance with the NEVI Federal Rule (23 CFR 680.116(b)) and as set out in Section 6(b) (Minimum Uptime) of the NEVI Federal Standards and Requirements.

**"NFPA"** means the National Fire Protection Association.

**"NIST"** means the National Institute of Standards and Technology.

**"Noncompliance Default Trigger"** means, unless in dispute under the terms of the Agreement, failure by the Developer to achieve 80% minimum EVSE uptime (calculated in accordance with Section 9(a) (Minimum Quarterly Uptime) of the GDOT Standards and Requirements) in three (3) consecutive Calendar Quarters.

**"Noncompliance Event"** means each event identified as a "Noncompliance Event" in Exhibit 5 (Performance Deductions).

**"Noncompliance Event Start Date"** means for any Noncompliance Event, the earlier of the date that:

(a) GDOT first obtains knowledge of the Noncompliance Event; or

- (b) the Developer should have reasonably known of the occurrence of the Noncompliance Event.

**"Notice to Proceed"** means either NTP (Design and Materials) or NTP (Construction).

**"NTP (Construction)"** is defined in Section 4.2(a) (Notice to Proceed (Construction)).

**"NTP (Construction) Conditions Precedent"** is defined in Section 4.2(a) (Notice to Proceed (Construction)).

**"NTP (Design and Materials)"** is defined in Section 4.1(a) (Notice to Proceed (Design and Materials)).

**"O&M Payment Cap"** means \$140,000.00.

**"O&M Performance Requirements"** means the minimum performance requirements for the O&M Work set out in the Technical Requirements.

**"O&M Performance Security"** is defined in Section 22.2(a) (Performance Security during Operating Period).

**"O&M Relief Event"** means:

- (a) any Force Majeure Event;
- (b) any excusable events related to the NEVI Federal Uptime Requirement covered by the NEVI Federal Standards and Requirements, including the following under 23 CFR 680.116(b):
  - (i) electric utility interruption;
  - (ii) failure to charge or meet the EV charging customer's expectation for power delivery due to the fault of the vehicle;
  - (iii) scheduled maintenance;
  - (iv) vandalism; and
  - (v) natural disasters, including:
    - (A) any flood (as "flood" is defined in 44 CFR § 59.1);
    - (B) any fire, explosion or earthquakes; and
    - (C) any hurricane, tornado or named windstorm and ensuing storm surges;

except, in each case, to the extent attributable to any breach of this Agreement, Applicable Law or any Governmental Approval by, or any negligent act or negligent omission of, the Developer or a Developer-Related Entity.

**"O&M Work"** means the operation and use, and ongoing routine, preventative and emergency maintenance of the Project during the Term.

**"One-time Data Submittal"** is defined in Section 16.1 (Data Reporting).

**"Open Charge Point Interface"** or **"OCPI"** shall have the meaning given to such term in 23 CFR 680.

**"Open Charge Point Protocol"** or **"OCPP"** shall have the meaning given to such term in 23 CFR 680.

**"Open Records Act"** means the Georgia Open Records Act, O.C.G.A. §§ 50-18-70 et seq., as amended from time to time.

**"Operating Period"** means the period commencing on the Services Commencement Date and ending on the last day of the Term.

**"Party"** means GDOT or the Developer, as the context may require, and **"Parties"** means GDOT and the Developer, collectively.

**"Payment Bond"** is defined in Section 22.1(a)(ii) (Performance Bond and Payment Bond during D&C Period).

**"PCIDSS"** means the Payment Card Industry Data Security Standard.

**"Performance Bond"** is defined in Section 22.1(a)(i) (Performance Bond and Payment Bond during D&C Period).

**"Performance Deductions"** means performance deductions calculated in accordance with Exhibit 5 (Performance Deductions).

**"Performance Security"** means, during the D&C Period, the Performance Bond and the Payment Bond, and during the Operating Period, the O&M Performance Security.

**"Person"** means an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, or a governmental authority.

**"Planned Services Commencement Date"** means the "Planned Services Commencement Date" specified in row 9 of the Project Schedule, as such date may be extended in accordance with this Agreement following any D&C Relief Events.

**"Plug and Charge"** shall have the meaning given to such term in 23 CFR 680.

**"Power Sharing"** shall have the meaning given to such term in 23 CFR 680.

**"Prohibited Person"** means any Person who is:

- (a) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from participating in procurement or nonprocurement

transactions with the federal government or any department, agency or instrumentality of the federal government pursuant to any of the Debarment Regulations;

- (b) indicted, convicted or had a civil or administrative judgment rendered against such Person for any of the offenses listed in any of the Debarment Regulations and no event has occurred and no condition exists that is likely to result in the debarment or suspension of such Person from contracting with the federal government or any department, agency or instrumentality of the federal government;
- (c) listed on the "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs" issued by the U.S. General Services Administration;
- (d) located within, or doing business or operating from, a country or other territory subject to a general embargo administered by the United States Office of Foreign Assets Control ("OFAC");
- (e) designated on the OFAC list of "Specially Designated Nationals";
- (f) otherwise targeted under economic or financial sanctions administered by the United Nations, OFAC or any other U.S. federal economic sanctions authority or any divestment or sanctions program of the State of Georgia;
- (g) a banking institution chartered or licensed in a jurisdiction against which the United States Secretary of the Treasury has imposed special measures under Section 311 of the USA PATRIOT Act ("**Section 311**");
- (h) located within or is operating from a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles by the Financial Action Task Force on Money Laundering;
- (i) a financial institution against which the United States Secretary of the Treasury has imposed special measures under Section 311; or
- (j) a senior foreign political figure or a prohibited foreign shell bank within the meaning of 31 CFR 103.175.

"**Project**" is defined in Recital (G).

"**Project Schedule of Values**" or "**Project SOV**" means the Developer's baseline schedule of values submitted with the Proposal as the "Proposal SOV" (ITP Form FIN-B, Table 1), as is set forth in Exhibit 4 (Proposal Commitments), Part 3 (*Project Schedule of Values*).

"**Project Documents**" is defined in Section 37.1 (Maintenance and Inspection of Records).

"**Project Payment Cap**" means \$849,584.00.

"**Project Schedule**" means the Developer's plan to complete performance of the D&C Work, as is set forth in Exhibit 4 (Proposal Commitments), Part B (*Project Schedule*).

"**Project Site**" is defined in Recital (I).

"**Project Site Layout**" the detailed plan sets, diagrams, maps, or schematic plans provided by Developer in accordance with Section 2(a) (Prior to NTP (Construction)) of the GDOT Standards and Requirements.

"**Proposal**" is defined in Recital (I).

"**Proposal Due Date**" is defined in the ITP.

"**Proposal Schedule**" means the schedule provided in response to ITP Form TECH-D, Part B, Question 10 of the Proposal.

"**Quarterly Data Submittal**" is defined in Section 16.1(a)(ii) (Data and Cybersecurity Reporting).

"**Quarterly Payment Amount**" is defined in Section 17.2(a) (Availability Payments).

"**Quarterly Performance Report**" means each quarterly report to be delivered by the Developer in accordance with Section 19.1 (Quarterly Performance Reports) in the form of and complying with the requirements of Exhibit 6 (Performance Reports), Part B (Quarterly Performance Report).

"**Reasonable Efforts**" means all those steps (if any) in the power of the relevant Party that are capable of producing the desired result, being steps which a prudent, determined and commercially reasonable Person desiring to achieve that result would take. Reasonable Efforts does not mean that, subject to its other express obligations under this Agreement, the relevant Party is required to expend funds, except for those necessary to meet the reasonable costs reasonably incidental or ancillary to the steps to be taken by the relevant Party (including its reasonable travel expenses, correspondence costs and general overhead expenses).

"**Reference Information Documents**" or "**RIDs**" means the collection of information, data, documents and other materials that GDOT has provided to the Developer for general or reference information only, including the RFP and its contents, and all information made available at <https://app-us3.e-builder.net/public/PublicFolderFiles.aspx?noSplitter=1&FolderID={5f20590c-6415-4908-82b1-5a5fc0713ca6}>.

"**Relief Event**" means any D&C Relief Event or any O&M Relief Event, as applicable in the circumstances.

"**Relief Event Notice**" is defined in Section 20.2(b) (Notice and Information).

"**Request for Proposals**" or "**RFP**" is defined in Recital (H).

"**Required Insurances**" is defined in Section 21(a)(ii) (Insurance).

"**Rules**" is defined in Recital (C).

"**Secure Payment Method**" shall have the meaning given to such term in 23 CFR 680.

**"Services Commencement"** means the satisfaction of the Services Commencement Conditions.

**"Services Commencement Certificate"** is defined in Section 12(a) (Services Commencement).

**"Services Commencement Conditions"** is defined in Section 12(b) (Services Commencement).

**"Services Commencement Date"** means the date on which written certification that the Developer has achieved Services Commencement is issued in accordance with Section 12(b) (Services Commencement).

**"Services Commencement Long Stop Date"** means the day that is three hundred and sixty-five (365) days after the Planned Services Commencement Date, as such period may be extended in accordance with the terms of this Agreement.

**"Services Commencement Payment"** is defined in Section 17.1(b)(i) (Services Commencement Payment).

**"Services Commencement Payment Amount"** is defined in Section 17.1(b) (Services Commencement Payment).

**"Services Commencement Payment Invoice"** is defined in Section 17.1(c) (Services Commencement Payment Procedures).

**"Smart Charge Management"** shall have the meaning given to such term in 23 CFR 680.

**"State"** means the State of Georgia.

**"State Transportation Board"** means the board of GDOT.

**"Submittal"** means any document, work product or other written or electronic product or item required under the Agreement to be delivered or submitted to GDOT for approval, review, comment or otherwise. "Submittal" does not include any of the One-time Data Submittal, Quarterly Data Submittal or Annual Data Submittal.

**"Technical Requirements"** means the technical requirements set out in Exhibit 3, Part A (NEVI Federal Standards and Requirements) and Exhibit 3, Part B (GDOT Standards and Requirements).

**"Term"** is defined in Article 1 (Agreement Term).

**"Termination Date"** means:

- (a) the Expiry Date; or
- (b) if applicable, the Early Termination Date.

**"Termination Sum"** means, in respect of any Early Termination of this Agreement during:

- (a) the D&C Period, the amount calculated in accordance with Section 27(a) (Compensation on Termination); or
- (b) the Operating Period, the amount calculated in accordance with Section 27(b) (Compensation on Termination).

**"Terrorism"** means activities against Persons or property of any nature:

- (a) that involve the following or preparation for the following:
  - (i) use or threat of force or violence; or
  - (ii) commission or threat of an act that interferes with or disrupts an electronic, communication, information or mechanical system; and
- (b) when one or both of the following applies:
  - (i) it appears that the intent is to intimidate or coerce GDOT, a Governmental Entity or the civilian population or any segment of the civilian population, or to disrupt any segment of the economy;
  - (ii) it appears that the intent is to intimidate or coerce GDOT or a Governmental Entity, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology; and
- (c) that are criminally defined as terrorism for purposes of State, federal or international Applicable Law.

**"Third-Party Claim"** means any claim, dispute, disagreement, cause of action, demand, suit, action, investigation or administrative proceeding brought by a Person that is not an Indemnified Party or the Developer with respect to Losses sustained or incurred by such Person (including in relation to any damage caused during the performance of the Work), in respect of matters for which the Developer is responsible under the Agreement.

**"Third-Party Data Sharing"** is defined in Section 16.1(b) (Data Reporting).

**"UL"** means Underwriters Lab or Underwriters Laboratories.

**"USDOT"** means the United States Department of Transportation.

**"Utility Owner"** means any utility company identified as relevant to the Project in the Proposal.

**"Work"** means the D&C Work and the O&M Work, and all other work, services and obligations required to be furnished, performed, and provided by the Developer under this Agreement.

## **PART B: Interpretation**

- (a) In this Agreement, unless otherwise stated:
  - (i) headings are for convenience only and do not affect interpretation;

- (ii) a reference to any agreement, instrument or other document is to such agreement, instrument or other document as amended or supplemented from time to time;
  - (iii) a reference to this Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments or other documents attached to or otherwise expressly incorporated in this Agreement or any such other agreement (as applicable);
  - (iv) a reference to any Applicable Law includes all consolidations, amendments, extensions or replacements, unless otherwise indicated;
  - (v) a reference to a Person includes such Person's permitted successors and assigns;
  - (vi) a reference to a singular word includes the plural and vice versa (as the context may require);
  - (vii) the words "including", "includes" and "include" mean "including, without limitation", "includes, without limitation" and "include, without limitation", respectively;
  - (viii) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay;
  - (ix) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including"; and
  - (x) if on an obligation to do something falls on a day which is not a Business Day, such thing may be done on the immediately following Business Day.
- (b) This Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Agreement or some provision of it, or because that Party relies on a provision of this Agreement to protect itself.
- (c) The Parties acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation, that each Party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the Party preparing it simply as a consequence of their preparing it.

## **PART C: Order Of Precedence**

(a) Except as otherwise expressly provided in this Exhibit 1, Part C, if there is any conflict, ambiguity, or inconsistency between the provisions of this Agreement (including all Exhibits), the order of precedence will be as follows, from highest to lowest:

- (i) the provisions of the main body of this Agreement;
- (ii) the provisions of Exhibit 3, Part A (*NEVI Federal Standards and Requirements*);
- (iii) the provisions of the Exhibits to this Agreement, other than Exhibit 3 (*Technical Requirements*), Part B (*GDOT Standards and Requirements*) and Exhibit 4 (*Proposal Commitments; Project Schedule; Project SOV*);
- (iv) the provisions of Exhibit 3, Part B (*GDOT Standards and Requirements*); and
- (v) the provisions of the Exhibit 4 (*Project Commitments, Project Schedule, Project SOV*),

in each case, as amended or supplemented from time to time in accordance with this Agreement.

(b) If there is any conflict, ambiguity, or inconsistency between:

- (i) any of the provisions in this Agreement and the NEVI Federal Standards and Requirements, the NEVI Federal Standards and Requirements will prevail; or
- (ii) any of the provisions in this Agreement having the same order of precedence (including all Exhibits), the provision establishing a higher standard of safety, reliability, durability, performance, or service will prevail.

(c) If the Developer Commitment includes statements, provisions, concepts, or designs that can reasonably be interpreted as offering to:

- (i) provide higher (but not lower) quality items than otherwise required by the main body of this Agreement or the other Exhibits to this Agreement; or
- (ii) perform services or meet standards in addition to or better than those otherwise required,

the Developer's obligations under this Agreement include compliance with all such statements, provisions, concepts, and designs as set out in the Developer Commitment.

(d) If a provision to this Agreement with lower priority under this Part C contains details or requirements which are additional or supplemental to any provision of this Agreement with higher priority, then the Parties shall be required to comply with such additional or supplemental details or requirements, except to the extent that they irreconcilably conflict with any provision of this Agreement with higher priority.

#### **PART D: RIDs Disclaimer**

- (a) The Developer may not rely on the Reference Information Documents as accurately describing existing conditions, presenting design, engineering, construction, operating or maintenance solutions, or presenting other directions, means or methods for complying with the requirements of this Agreement, the Governmental Approvals or Applicable Law.
- (b) GDOT makes no representation or warranty with respect to the relevance, completeness, accuracy or fitness for any purpose of any of the information contained in the Reference Information Documents or that such information conforms with the requirements of this Agreement, Governmental Approvals or Applicable Law.
- (c) GDOT shall not have any liability to the Developer in respect of Reference Information Documents.

## EXHIBIT 2

### REPRESENTATIONS AND WARRANTIES

#### PART A: Developer Representations and Warranties

As at Effective Date, the Developer provides GDOT with the following representations and warranties:

(a) **Existence and Good Standing**

The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) **Qualification**

The Developer is qualified to do business in the State of Georgia.

(c) **Power and Authority**

The Developer has the power and authority to execute, deliver and perform its obligations under this Agreement and the other Effective Date Documents.

(d) **Authorization**

The execution, delivery and performance of this Agreement and the other Effective Date Documents has been duly authorized by all necessary limited liability company action of the Developer.

Each Person executing this Agreement and the other Effective Date Documents on behalf of the Developer has been duly authorized to execute and deliver such document on behalf of the Developer.

(e) **Execution**

The Agreement and the other Effective Date Documents have been duly executed and delivered by the Developer.

(f) **Enforceability**

This Agreement and the other Effective Date Documents constitutes a legal, valid, and binding obligation of the Developer, enforceable against it and in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(g) **No Contravention**

The execution, delivery and performance by the Developer of this Agreement and the other Effective Date Documents does not conflict with or result in a default under or a violation of:

- (i) the Developer's organizational documents;
- (ii) any other material agreement or instrument to which the Developer is a party or which is binding on the Developer or any of its assets; or
- (iii) any Applicable Law.

(h) **No Litigation**

There is no action, suit, proceeding, investigation, or litigation pending or, to the Developer's knowledge, threatened that:

- (i) could reasonably be expected to have a material adverse effect on the ability of the Developer to perform its obligations under this Agreement or any other Effective Date Document;
- (ii) challenges either the Developer's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement or any other Effective Date Document; or
- (iii) challenges the authority of the Developer's representative executing this Agreement or any other Effective Date Document.

(i) **Licenses, Skill, and Expertise**

The Developer and Contractors have all required authority, license status, professional ability, skills, and capacity (as applicable) to perform the Work.

(j) **Applicable Law**

The Developer has familiarized itself with the requirements of all Applicable Law (including the NEVI Federal Standards and Requirements) and the conditions of any required Governmental Approvals. The Developer has no reason to believe that any Governmental Approval required to be obtained by the Developer will not be granted in due course and remain in effect so as to enable the Work to proceed in accordance with this Agreement and the other applicable Effective Date Documents.

## **PART B: GDOT Representations and Warranties**

As at Effective Date, GDOT provides the Developer with the following representations and warranties:

(a) **Existence**

GDOT is an instrumentality of and is validly existing in the State of Georgia, and has the requisite authority to carry on its present activities and those proposed under the Agreement and the other Effective Date Documents.

(b) **Power and Authority**

GDOT has the power and authority to execute, deliver and perform its obligations under this Agreement and the other Effective Date Documents.

(c) **Authorization**

- (i) The execution, delivery and performance of this Agreement and the other Effective Date Documents has been duly authorized by all necessary action of GDOT; and
- (ii) Each Person executing this Agreement and the other Effective Date Documents on behalf of GDOT has been duly authorized to execute and deliver each such document on behalf of GDOT.

(d) **Execution**

This Agreement and each other Effective Date Document has been duly executed and delivered by GDOT.

(e) **Enforceability**

This Agreement and each other Effective Date Document constitutes a legal, valid, and binding obligation of GDOT, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(f) **No Contravention**

The execution, delivery, and performance by GDOT of this Agreement and the other Effective Date Documents do not conflict with or result in a default under or a violation of:

- (i) any other material agreement or instrument to which GDOT is a party or which is binding on GDOT or any of its assets; or
- (ii) any Applicable Law.

(g) **No Litigation**

There is no action, suit, proceeding, investigation, or litigation pending or, to GDOT's knowledge threatened, that:

- (i) could reasonably be expected to have a material adverse effect on the ability of GDOT to perform its obligations under this Agreement or any other Effective Date Document;
- (ii) challenges GDOT's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement or any other Effective Date Document; or
- (iii) challenges the authority of the GDOT official executing this Agreement or any other Effective Date Document.

**EXHIBIT 3**  
**TECHNICAL REQUIREMENTS**  
(Attached)

### Part A: NEVI Federal Standards and Requirements

The Developer acknowledges that this Part A of Exhibit 3 is a restatement of the standards and requirements of the NEVI Federal Rule, and has been updated for implementation of the Agreement. Nothing in this Part A of Exhibit 3 shall override the obligation of the Developer to comply with the NEVI Federal Standards and Requirements.

Section No. (23 CFR Ref)	Section Title	Sub No.	Sub Title	Requirements
1. (§ 680.106)	Installation, operation, and maintenance by qualified technicians of Electric Vehicle charging infrastructure	(b)	Number of Charging Ports	Direct Current Fast Chargers (DCFCs) located along and designed to serve users of designated Alternative Fuel Corridors (AFCs), charging stations must have at least four network-connected DCFC Charging Ports and be capable of simultaneously charging at least four Electric Vehicles (EVs).
		(c)	Connector Type	All charging Connectors must meet applicable industry standards. Each DCFC Charging Port must be capable of charging any CCS-compliant vehicle and each DCFC Charging Port must have at least one permanently attached CCS Type 1 Connector.
		(d)	Power Level	DCFC Charging Ports must support output voltages between 250 volts DC and 920 volts DC. DCFCs located along and designed to serve users of designated AFCs must have a continuous power delivery rating of at least 150 kilowatt (kW) and supply power according to an EV's power delivery request up to 150 kW, simultaneously from each Charging Port at a charging station. These corridor-serving DCFC charging stations may conduct Power Sharing so long as each Charging Port continues to meet an EV's request for power up to 150 kW.
		(e)	Availability	Charging stations located along and designed to serve users of designated AFCs must be available for use and sited at locations physically accessible to the public 24 hours per day, 7 days per week, year-round. This section does not prohibit isolated or temporary interruptions in service or access because of maintenance or repairs or due to the exclusions outlined in <u>Section 6(b)(3) (Minimum Uptime)</u> of the NEVI Federal Standards and Requirements or the Project Agreement.
		(f)	Payment Methods	Unless charging is permanently provided free of charge to customers, charging stations must:  (1) Provide for Secure Payment Methods, accessible to persons with disabilities, which at a minimum shall include a Contactless Payment Method that accepts major debit and credit cards, and either an automated toll-free phone number or a short message/messaging system (SMS) that provides the EV charging customer with the option to initiate a charging session and submit payment;  (2) Not require a membership for use;

Section No. (23 CFR Ref)	Section Title	Sub No.	Sub Title	Requirements
				<p>(3) Not delay, limit, or curtail power flow to vehicles on the basis of payment method or membership; and</p> <p>(4) Provide access for users that are limited English proficient and accessibility for people with disabilities. Automated toll-free phone numbers and SMS payment options must clearly identify payment access for these populations.</p>
		(g)	Equipment Certification	All DCFC chargers shall be certified by an Occupational Safety and Health Administration Nationally Recognized Testing Laboratory and all chargers should be certified to the appropriate Underwriters Laboratories (UL) standards for EVSE.
		(h)	Security	<p>The Developer shall implement physical and cybersecurity strategies consistent with the Georgia Electric Vehicle Infrastructure Deployment Plan to ensure charging station operations protect consumer data and protect against the risk of harm to, or disruption of, charging infrastructure and the grid.</p> <p>(1) Physical security strategies may include lighting; siting and station design to ensure visibility from onlookers; driver and vehicle safety; video surveillance; emergency call boxes; fire prevention; charger locks; and strategies to prevent tampering and illegal surveillance of payment devices.</p> <p>(2) Cybersecurity strategies may include the following topics: user identity and access management; Cryptographic Agility and support of multiple PKIs; monitoring and detection; incident prevention and handling; configuration, vulnerability, and software update management; third-party cybersecurity testing and certification; and continuity of operation when communication between the charger and Charging Network is disrupted.</p> <p>Refer to <u>Section 7 (Security)</u> of the GDOT Standards and Requirements for additional requirements.</p>
		(i)	Long-Term Stewardship	Developer must ensure that chargers are maintained and operational in compliance with the Federal Rule for the Term, being a period of not less than 5 years from the Services Commencement Date.
		(j)	Qualified Technician	<p>All workforce installing, maintaining, and operating chargers shall have appropriate licenses, certifications, and training to ensure that the installation and maintenance of chargers is performed safely by a qualified and increasingly diverse workforce of licensed technicians and other laborers. Further</p> <p>(1) Except as provided in paragraph (j)(2) of this section, all electricians installing, operating, or maintaining EVSE must meet one of the following requirements:</p>

Section No. (23 CFR Ref)	Section Title	Sub No.	Sub Title	Requirements
				<ul style="list-style-type: none"> <li>i. Certification from the EVITP;</li> <li>ii. Graduation or a continuing education certificate from a registered apprenticeship program for electricians that includes charger-specific training and is developed as a part of a national guideline standard approved by the U.S. Department of Labor in consultation with the U.S. Department of Transportation.</li> </ul> <p>(2) For projects requiring more than one electrician, at least one electrician must meet the requirements above, and at least one electrician must be enrolled in an electrical registered apprenticeship program.</p> <p>(3) All other onsite, non-electrical workers directly involved in the installation, operation, and maintenance of chargers must have graduated from a registered apprenticeship program or have appropriate licenses, certifications, and training as required by the State.</p>
		(k)	Customer Service	Developer must ensure that EV charging customers have mechanisms to reports, malfunctions, and other issues with charging infrastructure. The Developer must enable access to accessible platforms that provide multilingual services. Developer must comply with the American with Disabilities Act of 1990 requirements and multilingual access when creating reporting mechanisms.
		(l)	Customer Data Privacy	The Developer must collect, process, and retain only that personal information strictly necessary to provide the charging service to a consumer, including information to complete the charging transaction and to provide the location of charging stations to the consumer. Chargers and Charging Networks should be compliant with appropriate Payment Card Industry Data Security Standards (PCIDSS) for the processing, transmission, and storage of cardholder data. The Developer must also take reasonable measures to safeguard consumer data.
		(m)	Use of Program Income	<p>(1) Any net income from revenue from the sale, use, lease, or lease renewal of real property acquired shall be used for Title 23, United States Code, eligible projects.</p> <p>(2) For purposes of program income or revenue earned from the operation of the Project, the State or other direct recipient should ensure that all revenues received from operation of the Project are used only for:</p> <ul style="list-style-type: none"> <li>i. Debt service with respect to the Project, including funding of reasonable reserves and debt service on refinancing;</li> </ul>

Section No. (23 CFR Ref)	Section Title	Sub No.	Sub Title	Requirements
				<ul style="list-style-type: none"> <li>ii. A reasonable return on investment of any private person financing the Project, as determined by the State or other direct recipient;</li> <li>iii. Any costs necessary for the improvement and proper operation and maintenance of the Project, including reconstruction, resurfacing, restoration, and rehabilitation;</li> <li>iv. If the Project is subject to a public-private partnership agreement, payments that the party holding the right to the revenues owes to the other party under the public-private partnership agreement; and</li> <li>v. Any other purpose for which Federal funds may be obligated under Title 23, United States Code.</li> </ul>
<b>2.</b> (§ 680.108)	Interoperability of Electric Vehicle charging infrastructure	(a)	Charger-to-EV Communication	Chargers must conform to ISO 15118-3 and must have hardware capable of implementing both ISO 15118-2 and ISO 15118-20. Charger software must conform to ISO 15118-2 and be capable of Plug and Charge. Conformance testing for charger software and hardware should follow ISO 15118-4 and ISO 15118-5, respectively.
		(b)	Charger-to- Charger-Network Communication	Chargers must conform to Open Charge Point Protocol (OCPP) 2.0.1 or higher.
		(c)	Charging-Network- to-Charging- Network Communication	Charging Networks must be capable of communicating with other Charging Networks in accordance with Open Charge Point Interface (OCPI) 2.2.1.
		(d)	Network Switching Capability	Chargers must be designed to securely switch Charging Network Providers without any changes to hardware.
<b>3.</b> (§ 680.110)	Traffic control devices or on- premises signs acquired, installed, or operated	(a)	Manual on Uniform Traffic Control Devices for Streets and Highways	All traffic control devices must comply with 23 CFR 655 (Traffic Operations).
		(b)	On-Premises Signs	On-property or on-premise advertising signs must comply with 23 CFR 650 (Highway Beautification). Refer to <u>Section 3(d) (Signage, Marking, Striping)</u> of the GDOT Standards and Requirements for additional requirements.
<b>4.</b>	Data Submittal	(a)	Quarterly Data Submittal	The Developer must ensure the following data are submitted on a quarterly basis in a manner prescribed by the FHWA. Any quarterly data provided to GDOT or

Section No. (23 CFR Ref)	Section Title	Sub No.	Sub Title	Requirements
(§ 680.112)				<p>made public shall be aggregated and anonymized to protect confidential business information.</p> <p>(1) Charging station identifier that the following data can be associated with. This must be the same charging station name or identifier used to identify the charging station in data made available to third-parties in <u>Section 6(c)(1) (<i>Third-Party Data Sharing</i>)</u> of the NEVI Federal Standards and Requirements;</p> <p>(2) Charging Port identifier. This must be the same Charging Port identifier used to identify the Charging Port in data made available to third-parties in <u>Section 6(c)(8)(ii) (<i>Third-Party Data Sharing</i>)</u> of the NEVI Federal Standards and Requirements;</p> <p>(3) Charging session start time, end time, and any error codes associated with an unsuccessful charging session by port;</p> <p>(4) Energy (kWh) dispensed to EVs per charging session by port;</p> <p>(5) Peak session power (kW) by port;</p> <p>(6) Payment method associated with each charging session;</p> <p>(7) Charging station port uptime, T_outage, and T_excluded calculated in accordance with the equation in <u>Section 6(b) (<i>Minimum Uptime</i>)</u> of the NEVI Federal Standards and Requirements for each of the previous 3 months;</p> <p>(8) Duration (minutes) of each outage.</p>
		(b)	Annual Data Submittal	<p>Developer must ensure the following data are submitted on an annual basis, on or before March 1, in a manner prescribed by FHWA. Any annual data provided to GDOT or made public shall be aggregated and anonymized to protect confidential business information.</p> <p>(1) Maintenance and repair cost per charging station for the previous year.</p> <p>(2) For private entities identified in <u>Section 4(c) (<i>One-time Data Submittal</i>)</u> of the NEVI Federal Standards and Requirements, identification of and participation in any State or local business opportunity certification programs including but not limited to minority-owned businesses, Veteran-owned businesses, woman-owned businesses, and businesses owned by economically disadvantaged individuals.</p>

Section No. (23 CFR Ref)	Section Title	Sub No.	Sub Title	Requirements
		(c)	One-time Data Submittal	<p>This section applies only to both the NEVI Formula Program projects and grants awarded under 23 U.S.C. 151(f) for projects that are for EV charging stations located along and designed to serve the users of designated AFCs. Developer must ensure the following data are collected and submitted once for Project Site, on or before March 1 of each year, in a manner prescribed by the FHWA. Any one-time data provided to GDOT or made public shall be aggregated and anonymized to protect confidential business information.</p> <ol style="list-style-type: none"> <li>(1) The name and address of the private entity(ies) involved in the operation and maintenance of chargers.</li> <li>(2) Distributed Energy Resource installed capacity, in kW or kWh as appropriate, of asset by type (e.g., stationary battery, solar, etc.) per charging station;</li> <li>(3) Charging station real property acquisition cost, charging equipment acquisition and installation cost, and distributed energy resource acquisition and installation cost; and</li> <li>(4) Aggregate grid connection and upgrade costs paid to the electric utility as part of the project, separated into: <ol style="list-style-type: none"> <li>i. Total distribution and system costs, such as extensions to overhead/underground lines, and upgrades from single-phase to three-phase lines; and</li> <li>ii. Total service costs, such as the cost of including poles, transformers, meters, and on-service connection equipment.</li> </ol> </li> </ol>
5. (\$ 680.114)	Charging Network connectivity of Electric Vehicle charging infrastructure	(a)	Charger-to-Charger-Network Communication	<ol style="list-style-type: none"> <li>(1) Chargers must communicate with a Charging Network via a secure communication method. See <u>Section 2 (Interoperability of Electric Vehicle charging infrastructure)</u> of the NEVI Federal Standards and Requirements for more information about OCPP requirements.</li> <li>(2) Chargers must have the ability to receive and implement secure, remote software updates and conduct real-time protocol translation, encryption and decryption, authentication, and authorization in their communication with Charging Networks.</li> <li>(3) Charging Networks must perform and chargers must support remote charger monitoring, diagnostics, control, and smart charge management.</li> </ol>

Section No. (23 CFR Ref)	Section Title	Sub No.	Sub Title	Requirements
				(4) Chargers and Charging Networks must securely measure, communicate, store, and report energy and power dispensed, real-time charging-port status, real-time price to the customer, and historical charging-port uptime."
		(b)	Interoperability	See <u>Section 2 (<i>Interoperability of Electric Vehicle charging infrastructure</i>)</u> of the NEVI Federal Standards and Requirements for interoperability requirements.
		(c)	Charging-Network-to-Charging-Network Communication	A Charging Network must be capable of communicating with other Charging Networks to enable an EV driver to use a single method of identification to charge at Charging Stations that are a part of multiple Charging Networks. See <u>Section 2 (<i>Interoperability of Electric Vehicle charging infrastructure</i>)</u> of the NEVI Federal Standards and Requirements for more information about OCPI requirements.
		(d)	Charging-Network-to-Grid Communication	Charging Networks must be capable of secure communication with electric utilities, other energy providers, or local energy management systems.
6. (\$ 680.116)	Information on EV Charging Infrastructure locations, pricing, real time availability, and accessibility through mapping	(a)	Communication of Price	<p>(1) The price for charging must be displayed prior to initiating a charging transaction and be based on the price for electricity to charge in \$/kWh.</p> <p>(2) The price for charging displayed and communicated via the Charging Network must be the real-time price (i.e., price at that moment in time). The price at the start of the session cannot change during the session.</p> <p>(3) Price structure including any other fees in addition to the price for electricity to charge must be clearly displayed and explained."</p>
		(b)	Minimum Uptime	<p>Each Charging Port shall have an average annual uptime of greater than 97%, subject to the following requirements:</p> <p>(1) A Charging Port is considered "up" when its hardware and software are both online and available for use, or in use, and the Charging Port successfully dispenses electricity in accordance with requirements for minimum power level (see <u>Section 1(d) (<i>Power Level</i>)</u> of the NEVI Federal Standards and Requirements).</p> <p>(2) Charging Port uptime must be calculated on a monthly basis for the previous twelve months.</p> <p>(3) Charging Port uptime percentage must be calculated using the following equation:</p> $\mu = ((525,600 - (\text{Outage} - \text{Excluded})) / 525,600) \times 100$

Section No. (23 CFR Ref)	Section Title	Sub No.	Sub Title	Requirements
				<p>where:</p> <p><math>\mu</math> = port uptime percentage;</p> <p>Outage = total minutes of outage in the preceding 12 months; and</p> <p>Excluded = total minutes of outage in the preceding 12 months caused by the following reasons outside the Developer's control, provided that the Developer can demonstrate that the Charging Port would otherwise be operational: electric utility service interruptions, failure to charge or meet the EV charging customer's expectation for power delivery due to the fault of the vehicle, scheduled maintenance, vandalism, or natural disasters.</p>
		(c)	Third-Party Data Sharing	<p>The following data fields shall be made available, free of charge, to third-party software developers, via application programming interface:</p> <ol style="list-style-type: none"> <li>(1) Unique charging station name or identifier;</li> <li>(2) Address (street address, city, State, and zip code) of the property where the charging station is located;</li> <li>(3) Geographic coordinates in decimal degrees of exact charging station location;</li> <li>(4) Developer name;</li> <li>(5) Charging Network Provider name;</li> <li>(6) Charging station status (operational, under construction, planned, or decommissioned);</li> <li>(7) Charging station access information: <ol style="list-style-type: none"> <li>i. Charging station access type (public or limited to commercial vehicles);</li> <li>ii. Charging station access days/times (hours of operation for the charging station);</li> </ol> </li> <li>(8) Charging Port information: <ol style="list-style-type: none"> <li>i. Number of Charging Ports;</li> <li>ii. Unique port identifier;</li> <li>iii. Connector types available by port;</li> </ol> </li> </ol>

Section No. (23 CFR Ref)	Section Title	Sub No.	Sub Title	Requirements
				<ul style="list-style-type: none"> <li>iv. Charging level by port (DCFC, AC Level 2, etc.);</li> <li>v. Power delivery rating in kilowatts by port;</li> <li>vi. Accessibility by vehicle with trailer (pull-through stall) by port (yes/no);</li> <li>vii. Real-time status by port in terms defined by Open Charge Point Interface 2.2.1;</li> </ul> <p>(9) Pricing and payment information:</p> <ul style="list-style-type: none"> <li>i. Pricing structure;</li> <li>ii. Real-time price to charge at each Charging Port, in terms defined by Open Charge Point Interface 2.2.1; and</li> <li>iii. Payment methods accepted at charging station.</li> </ul>

### Part B: GDOT Standards and Requirements

Section No.	Section Title	Sub No.	Sub Title	Requirements
1.	General Requirements	(a)	Standards	<p>The following standards shall apply to the Work:</p> <ul style="list-style-type: none"> <li>American Association of State Highway and Transportation Officials (AASHTO) Roadway Lighting Design Guide</li> <li>Federal Risk and Authorization Management Program, PS-3, SA-9 (4), and SA-9 (5)</li> <li>International Organization for Standardization (ISO) 15118-2: Road vehicles — Vehicle-to-Grid Communication Interface — Part 2: Network and application protocol requirements</li> <li>ISO 15118-3: Road vehicles — Vehicle to grid communication interface — Part 3: Physical and data link layer requirements</li> <li>ISO 15118-4: Road vehicles — Vehicle to grid communication interface — Part 4: Network and application protocol conformance test</li> <li>ISO 15118-5: Road vehicles — Vehicle to grid communication interface — Part 5: Physical layer and data link layer conformance test</li> <li>National Electrical Safety Code ANSI C2 (NESC)</li> <li>National Fire Protection Association (NFPA) 70® (National Electrical Code)</li> <li>NFPA 30A®, Code for Motor Fuel Dispensing Facilities and Repair Garages</li> <li>Open Automated Demand Response 2.0b (latest or equivalent) protocol</li> <li>Open Charge Point Protocol (OCPP) 2.0.1</li> <li>Payment Card Industry Data Security Standard (PCIDSS)</li> <li>Section 107.23 (Environmental Considerations) of the GDOT Standard Specifications</li> <li>Underwriters Lab (UL) - Standard 2231</li> </ul>
2.	Project Management, Reporting, and Submittals	(a)	Prior to NTP (Construction)	<p>As a condition to NTP (Construction), the Developer shall submit to GDOT for review, comment, or acceptance, as applicable the following list of Submittals, which shall remain in effect until the Services Commencement Date:</p> <ul style="list-style-type: none"> <li><b>Organizational Chart:</b> An organization chart of all the members of the Developer organization along with contact names, phone numbers, and email addresses of all individuals involved in design, permitting, EVSE procurement, installation, and construction of the Project.</li> <li><b>Project Schedule:</b> An updated Project Schedule, outlining any updates to the major activities and their associated timeframes from the Proposal. No update shall be made to the Planned Services Commencement Date other than for D&amp;C Relief Events (if any).</li> </ul>

				<ul style="list-style-type: none"> <li>• <b>Project Site Layout:</b> A detailed plan sets using a diagram, map, or schematic showing locations of the following items and any additional items useful for understanding the Project Site Layout: <ul style="list-style-type: none"> <li>○ all existing buildings, structures, amenities,</li> <li>○ existing and proposed designated charging parking spaces,</li> <li>○ EVSE,</li> <li>○ electric service distribution lines and utility connection build-out to the Project Site,</li> <li>○ utility connection equipment (power meter, transformer, switch gear, etc.),</li> <li>○ signage, marking, striping,</li> <li>○ vehicle and pedestrian points of access,</li> <li>○ space (if any) available for future use,</li> <li>○ Americans with Disabilities Act (ADA) access,</li> <li>○ lighting and security features; and</li> <li>○ all other planned and/or proposed amenities.</li> </ul> </li> <li>• <b>Equipment Specifications:</b> Detailed manufacturer and/or supplier equipment specifications, manuals, or guides for the EVSE.</li> </ul>
		(b)	Prior to Services Commencement	<p>As a condition to achieving Services Commencement, the Developer shall submit to GDOT for review, comment, or acceptance, as applicable the following list of Submittals, which shall remain in effect during the Term:</p> <ul style="list-style-type: none"> <li>• <b>Utility Owner Certification:</b> Provide Utility Owner's certification or commissioning report indicating that all electrical systems and components are properly installed and that the Project Site has the power capacity to operate per requirements outlined in <u>Sections 1(d) (Power Level)</u> of the NEVI Federal Standards and Requirements.</li> <li>• <b>Cybersecurity Plan:</b> Provide a narrative describing the Developer's method for satisfying all cybersecurity requirements outlined in <u>Section 7(a) (Cybersecurity Plan)</u> of the GDOT Standards and Requirements.</li> <li>• <b>Data Interface Control Document (ICD):</b> Provide a Data Interface Control Document (ICD) describing the technical details for satisfying all data interface requirements based on the specifications, including all data submission requirements outlined in <u>Sections 4 (Data Submittal), 5 (Charging Network connectivity of Electric Vehicle charging infrastructure) and 6 (Information on EV Charging Infrastructure locations, pricing, real time availability, and accessibility through mapping)</u> of the NEVI Federal Standards and Requirements and <u>Section 8(c) (Data Interface Control Document (ICD) Requirements)</u> of the GDOT Standards and Requirements.</li> <li>• <b>Safety Training:</b> Narrative and description of the Developer's approach to safety training processes and hours of training to be provided at each Project Site. A</li> </ul>

				<p>minimum of 4 hours of safety training shall be provided to the HSO at each Project Site.</p> <ul style="list-style-type: none"> <li>• <b>Emergency Responders Training:</b> Narrative and description of Emergency Responders training processes and hours of training at each Project Site. The Developer shall provide training to the local emergency responders at each Project Site. This training shall include electrical safety, shutdown procedures, and firefighting methods for dealing with emergencies that occur with EVs. A minimum of 4 hours of training shall be provided at each Project Site.</li> </ul>
3.	Site Planning and Design	(a)	Lighting	Adequate lighting shall be considered during site planning. LED lighting may be implemented when placing the lighting. All Project Site lighting shall be consistent with existing and surrounding lighting features. New lighting in Project Site without any existing and surrounding lighting features is recommended to follow AASHTO Roadway Lighting Design Guide.
		(b)	Landscape and Curbside	As a condition to Services Commencement, the Developer shall replace any disturbed pavement, hardscape, landscape per associated Project Site Layout or replaced to its original conditions.
		(c)	Parking Spaces	Developers may elect to delineate parking spaces at the Project Site. Any stenciled or designated parking spaces shall comply with Attachment 3-2 requirements.
		(d)	Signage, Marking, Striping	Developers may elect to deploy signage at the Project Site. All signage deployed at the Project Site shall comply with FHWA Manual on Uniform Traffic Control Devices and Attachment 3-2 requirements clearly identifying the locations of the Charging Ports within the charging site.
		(e)	ADA Requirement	<p>Project Site shall comply with ADA requirements and shall have at least 1 (one) ADA compliant parking space with access to an EVSE. The site shall provide ADA accessible path to any facilities, amenities or other features.</p> <p>An EVSE that is accessible from an ADA parking space shall be positioned such that it can also be accessed from a non-ADA parking space that doesn't otherwise have access to an EVSE. The ADA parking space shall adhere to the requirements of the US Access Board: <a href="https://www.access-board.gov/ta/tad/ev/#accessible-mobility-features">https://www.access-board.gov/ta/tad/ev/#accessible-mobility-features</a>.</p>
		(f)	Project Site Access	Project Site shall be accessible from a public roadway with defined traffic control measures (signs, striping, or traffic signals). Project Site shall be physically accessible to the public 24 hours per day, seven days per week, year-round.

4.	Electrical Safety	(a)		<p>The Developer must ensure that electrical safety standards are met at all times according to Good Industry Practice including but not limited to the following:</p> <ul style="list-style-type: none"> <li>• EVSE shall have a Charge Circuit Interrupting Device (CCID) or Ground Fault Circuit Interrupter (GFCI) to shut off flow of electric power to reduce risk of electric shock (see Underwriters Lab (UL) - Standard 2231).</li> <li>• EVSE shall have over-current protection rated for the application. All components, including electrical equipment shall have to withstand current rating and other ratings appropriate for the application so as not to reduce the required safe power output capabilities of the chargers.</li> <li>• EVSE and any external accessories (if applicable) shall have outdoor-rated enclosure - NEMA 4X or greater</li> <li>• Ensure conduits and other electrical apparatus follow all applicable state and local electrical and fire codes, protecting cable and other equipment from inadvertent damage by vehicles moving into place. Use cable management systems or other means to prevent cable insulation, wiring, and cooling systems from being damaged.</li> <li>• Contractors shall not modify components of existing or new equipment or structure in any way that will jeopardize UL or other safety ratings of the equipment or facility.</li> <li>• For placement of distribution cabinets and EVSE ensure local codes are followed. Rather than wall-mounted (unit-strut) applications, consider commercial pedestals to house equipment including the meter, distribution panel, potential transformers, current transformers, etc.</li> </ul>
5.	Fire Prevention and Safety	(a)		<p>The Developer must ensure that fire prevention and safety standards are met at all times according to industry best practices including but not limited to the following:</p> <ul style="list-style-type: none"> <li>• At a minimum, EVSE must be installed per the latest National Electric Code (NFPA 70 or NEC) and National Fire Protection Association (NFPA 30A) standards, however all applicable state and local codes will also apply.</li> <li>• A fire department emergency power disconnect shall be provided within 50 feet of the EVSE installed at the Project Site, but no closer than 10 feet to any charger or cabinet. A Phenolic plaque with red background and 2" white lettering stating "FD Emergency Shutoff – Electric Vehicle Charging Station" shall be installed at each disconnect.</li> <li>• Construction and placement of hydrants, standpipe systems, and other means to extinguish a fire event shall adhere to all local building codes and NFPA standards.</li> <li>• A 24-hour call-in number must be provided by the Developer for customers, site hosts, and all other stakeholders to contact in case of issues. Matters involving need for police, fire, and emergency medical services shall be directed to 911 operators.</li> </ul>

6.	Utility Connection, Load Management, and Demand Response	(a)		<p>The Developer will be responsible for coordination utility service providers and utility power connection and data communication network availability at the Project Site.</p> <p>The Developer shall coordinate with Utilities for applicable permitting requirements and any utility build-out required to provide power connection and data communication to the Project Site. Utility build-out may involve both Minor Utility Upgrade and Major Utility Upgrade, in each case the Developer shall coordinate with Utilities for applicable permitting. The Developer shall not be reimbursed for Major Utility Upgrade or any other Ineligible Costs. Utility build-out shall avoid all non-permissible activities under the NEPA Approval that may trigger a NEPA reevaluation. Refer to <u>Section 7.5 (NEPA Approval)</u> of the Agreement</p> <p>The Developer must coordinate with the local utility provider to confirm that expected power demand will remain within the capacity of the designed electrical system.</p> <p>The Developer shall ensure that the network communications, controls, and back-office support service shall have the ability to monitor energy usage (kWh) and energy demand (kW) of the EVSE at all times. Where applicable, network communications, controls, and back-office support service shall have the ability to respond to utility provided demand response signals via the Open Automated Demand Response 2.0b (latest or equivalent) protocol.</p>
7.	Security	(a)	Cybersecurity Plan	The Developer shall adhere to the Cybersecurity Plan requirements outlined in <u>Attachment 3-4 (Cybersecurity Standards and Requirements), Section 2 (Cybersecurity Plan)</u> .
		(b)	Cybersecurity Standards	The Developer shall ensure that all elements of the Project including charging, payment, data storage, data dissemination, and communication infrastructure meet the cyber security standards outlined in <u>Attachment 3-4 (Cybersecurity Standards and Requirements), Section 3 (Cybersecurity Standards)</u> .
		(c)	Cybersecurity Audits	The Developer shall ensure that Cybersecurity Audits are performed in accordance with the approved Cybersecurity Plan and requirements outlined in <u>Attachment 3-4 (Cybersecurity Standards and Requirements), Section 4 (Cybersecurity Audit Requirements)</u> .
		(d)	Physical Security	<p>The Developer must ensure that physical security standards are met at all times according to Good Industry Practice including but not limited to the following:</p> <ul style="list-style-type: none"> <li>Project Site shall include security design features to remain tamper-resistant and vandalism resistant, such as tamper-resistant screws, anti-vandalism hardware,</li> </ul>

				<p>locked enclosures, and graffiti-resistant coating or paint. Vandal resistance is intended mostly to prevent, deter, and detect unauthorized physical access. Developer must submit IK impact rating in joules for touch screens and ensure they are rated for the application.</p> <ul style="list-style-type: none"> <li>Unexpected or unauthorized accesses must be immediately communicated in writing to GDOT and all affected individuals.</li> </ul>
8.	Data Requirements	(a)	Data Submittal Requirements	In addition to the federal requirements outlined in in <u>Section 4 (Data Submittal)</u> of the NEVI Federal Standards and Requirements, the Developer shall adhere to the data submittal requirements outlined within <u>Attachment 3-3 (Data Requirements)</u> , <u>Section 2 (Data Submittal Requirements)</u> .
		(b)	Data Sharing Requirements	In addition to the federal requirements outlined in in <u>Section 6(c) (Third-Party Data Sharing)</u> of the NEVI Federal Standards and Requirements, the Developer shall adhere to the data sharing requirements outlined within <u>Attachment 3-3 (Data Requirements)</u> , <u>Section 3 (Data Sharing Requirements)</u> .
		(c)	Data Interface Control Document (ICD) Requirements	In addition to the federal requirements outlined in in <u>Section 4 (Data Submittal)</u> of the NEVI Federal Standards and Requirements, the Developer shall adhere to the data ICD requirements outlined within <u>Attachment 3-3 (Data Requirements)</u> , <u>Section 4 (Interface Control Document Requirements)</u> .
9.	Minimum Quarterly Uptime	(a)	-	<p>Each Charging Port shall have an average annual uptime of greater than 97%, subject to the following requirements:</p> <ol style="list-style-type: none"> <li>(1) A Charging Port is considered "up" when its hardware and software are both online and available for use, or in use, and the Charging Port successfully dispenses electricity in accordance with requirements for minimum power level (see <u>Section 1(d) (Power Level)</u> of the NEVI Federal Standards and Requirements).</li> <li>(2) Charging Port uptime must be calculated on a monthly basis for the previous Calendar Quarter. "Quarterly Uptime" equals the average port uptime for the months in the Calendar Quarter.</li> <li>(3) Charging Port uptime percentage must be calculated on a trailing 12-month average basis for each of the months included in the Quarterly Payment Report using the following equation: <math display="block">\mu = ((X - (\text{Outage} - \text{Excluded})) / X) \times 100</math> <p>where:</p> <math display="block">\mu = \text{port uptime percentage};</math> </li> </ol>

				<p><i>X = total minutes in the preceding 12 months</i></p> <p><i>Outage = total minutes of Outage in the preceding 12 months caused by the following instances of inoperability:</i></p> <ul style="list-style-type: none"> <li>i. Charging Port is unable to accept all payment types;</li> <li>ii. Charging Port is not providing at least 80 percent of the power requested by the EV; and</li> <li>iii. Charging Port is not communicating with the EV connected to it.</li> </ul> <p><i>Excluded = total minutes of Outage in the preceding 12 months caused by an O&amp;M Relief Event, including following reasons outside the charging Developer's control, provided that the Developer can demonstrate that the Charging Port would otherwise be operational:</i></p> <ul style="list-style-type: none"> <li>i. electric utility service interruptions,</li> <li>ii. failure to charge or meet the EV charging customer's expectation for power delivery due to the fault of the vehicle,</li> <li>iii. scheduled maintenance,</li> <li>iv. vandalism, or</li> <li>v. natural disasters.</li> </ul>
10.	Specifications, and Installation Guides	(a)	-	<p>The Developer must provide to GDOT complete manufacturers' and/or suppliers' specifications and installation guides for all EVSE. This information must also include any infrastructure required for the installation of a charger, including placement of bollards and curb stops.</p>
11.	Equipment Certification and Testing Requirements	(a)	-	<p>The Developer shall be responsible for conducting both standard factory testing and post installation system testing for each Charger to verify functionality and access to provide the data required under the NEVI Federal Rule, as further outlined in <u>Sections 4 (Data Submittal)</u> and <u>6 (Information on EV charging infrastructure locations, pricing, real time availability, and accessibility through mapping)</u> of the NEVI Federal Standards and Requirements.</p> <p>EVSE and other equipment certification and testing results shall be provided to GDOT for review and approval in accordance with <u>Article 12 (Services Commencement)</u> of the Agreement. GDOT (or its designee) will perform independent testing and verification for conformance to the NEVI Federal Standards and Requirements and the Agreement.</p>

12.	Customer Service	(a)	-	<p>The Developer shall establish and maintain a customer service phone line and online support (web-based or smartphone application-based) that is available 24 hours per day, 7 days a week. The Developer shall use the customer service phone line to provide support and responses to all inquiries and comments from EVSE users who are using or attempting to use the EVSE.</p> <p>The Developer shall ensure that customer service meets the minimum NEVI Federal Standards and Requirements as outlined in <u>Section 1 (Installation, operation, and maintenance by qualified technicians of Electric Vehicle charging infrastructure)</u> of the NEVI Federal Standards and Requirements.</p>
13.	Additional Requirements	(a)	EVSE	<p>The Developer must ensure that all equipment installed at the Project Site as part of the D&amp;C Work meets the following minimum requirements:</p> <ul style="list-style-type: none"> <li>• Project Site and all EVSE shall be capable of operating in an ambient temperature range and relative humidity suited for the environment they will be installed to prevent corrosion, rust, and other issues related to extreme temperatures and condensation.</li> <li>• Project Site and all EVSE shall be able to withstand extreme weather conditions including minor flooding, heavy rains, high winds, snow, and ice, and is protected from malfunctions due to condensation. Cabinets and above ground structures shall be designed to withstand a 90 MPH wind load.</li> <li>• Any form of graphics including branding, logos, and/or art, included on or in the vicinity of the charging stations within the public ROW are subject to the rules and regulations as directed by GDOT. Vendors shall not use or post any GDOT branding, logos, or signs including GDOT branding or logos.</li> <li>• Project Site and all EVSE screen displays shall be LCD, LED or equivalent or better, user friendly, easy to operate, daylight and night viewable, and UV-protected with human-machine interface capability and operable with gloves.</li> <li>• Project Site and all EVSE shall be accessible by GDOT, Georgia Department of Agriculture, or authorized agency representative, upon request for inspection, testing, etc. during the Term.</li> </ul>
		(b)	Decommissioning Activities	<p>Developer must perform general restoration landscaping and hardscaping activities to replace any disturbed pavement, hardscape, landscape to its original conditions. General restoration activities include:</p> <ul style="list-style-type: none"> <li>• Removal of all EVSE charging infrastructure including: EV charging pedestals and ports, aerial or ground wires, physical security hardware and features, and all other related hardware.</li> <li>• Shallow grading, tilling, and planting to smooth surface and/or bring in soil prior to planting.</li> </ul>



### Attachment 3-1: Key Personnel Requirements

**Table 1: Key Personnel**

Position	Role	Minimum Qualifications	Commitment
Project Manager (PM)	Responsible to lead the Developer's team during the D&C Period. This person serves as the single point of contact for all contract administration and correspondence with GDOT.	Experience in a management role for projects of similar size and complexity as the Project.	Full-Time On-Call upon NTP (Design and Materials) to Services Commencement.
Construction Manager (CM)	Responsible for overseeing the day-to-day construction including EVSE installation, quality control, supervising construction activities and tasks, ensuring compliance with design and construction specifications, standards, and requirements for the Project, ensuring safety and environmental compliance during the D&C Period. Responsible for proactive utility coordination and responsive to public sensitivities.	Experience in the same or similar role for projects of similar size and complexity as the Project.	Full-Time On-Call upon NTP (Design and Materials) to Services Commencement.
Electrician	Responsible for all electrical matters including EVSE installation, quality control, and ensuring compliance with design and construction specifications, standards, and requirements for the applicable Project(s). Responsible for proactive utility coordination and responsive to public sensitivities.	Experience in the same or similar role for projects of similar size and complexity as the applicable Project(s).  Must be Electric Vehicle Infrastructure Training Program (EVITP) certified.	Full-Time On-Call upon NTP (Design and Materials) to Services Commencement.

Operations and Maintenance Manager	Responsible to lead the Developer's team during the Operating Period. Serves as the single point of contact for all issues related to O&M Work.	Experience in the same or similar role for projects of similar size and complexity as the Project.	Full-Time On-Call upon Services Commencement until end of the Term.
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## Attachment 3-2: On-Premise Signing and Marking Requirements

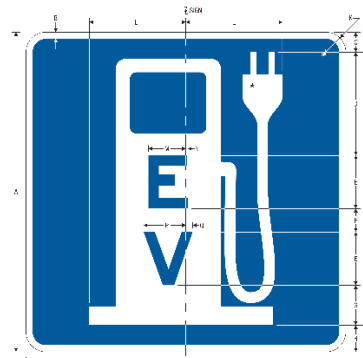
### 1. Signing

#### 1.1. Charging Space

Project Site shall have vertical signage (on same post). A Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) D9-11b (Alternate) (symbol) or D9-11bP (text) shall be used to identify the space.



D9-11bp



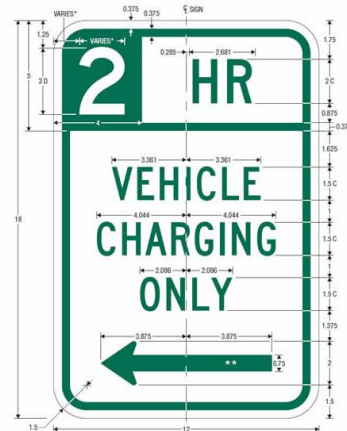
D9-11b

An additional plaque may be above the D9 sign to denote a particular space has fast charging capability.

A R7-11 sign may be used to indicate space is only for Electric Vehicle (EV) charging. A supplemental sign, R7-114, may be added to indicate specific charging time requirements.

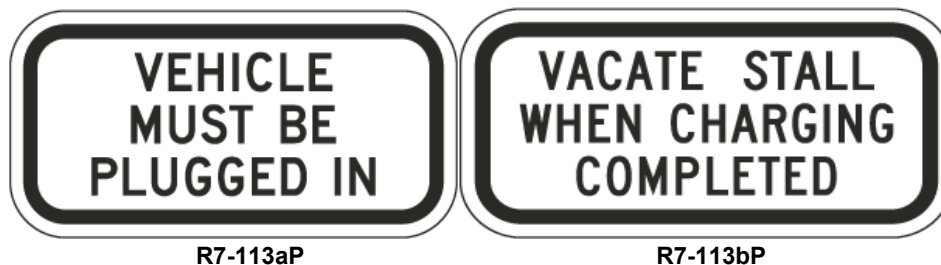


R7-11



R7-114

A R7-113aP and/or R7-113bP sign may be used to indicate vehicle must be plugged in to use the parking space and to vacate the space once charging is complete.



R7-113aP

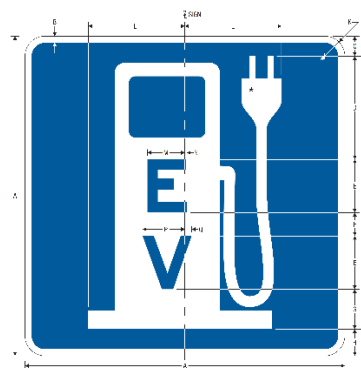
R7-113bP

## 1.2. Wayfinding

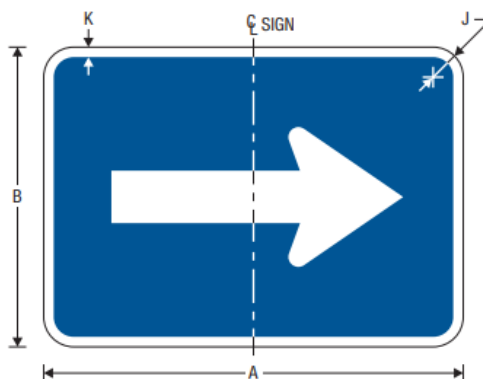
D9-11b (Alternate) or D9-11bP with M series arrow may be added to direct drivers to the charging space(s) as necessary.



D9-11bp



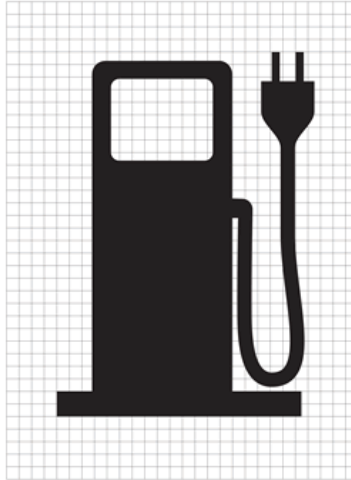
D9-11b



M6-1

## 2. Pavement Marking

5" Solid Green (Pantone Number 354) pavement marking shall be used to delineate charging space. "EV CHARGING ONLY" and/or symbol should be centered in charging space.



## Attachment 3-3: Data Requirements

### 1. Introduction

GDOT is responsible for ensuring EV charging infrastructure data is submitted to the Joint Office of Energy and Transportation under 23 CFR 680.112 and ensuring the Developer shares Electric Vehicle (EV) charging infrastructure data with other parties under 23 CFR 680.116.

The Joint Office of Energy and Transportation is developing the Electric Vehicle Charging Analytics and Reporting Tool (EV-ChART), which will provide a web-based centralized hub for collecting EV charging infrastructure data.

This attachment details the requirements for the Developer to submit EV charging infrastructure data to GDOT and sharing data with other parties as prescribed below.

### 2. Data Submittal Requirements

The Joint Office has published an EV-ChART Data Format and Preparation Guidance document (for data required under 23 CFR 680.112) which defines the field name, definition, accepted values (i.e., format), and reporting frequency requirements for each EV charging infrastructure data attribute. The data attributes prescribed by the EV-ChART Data Format and Preparation Guidance document, including the reporting frequency, data format, and distribution requirements, are subject to change.

The Developer will gather the data necessary to report to GDOT and EV-ChART.

The EV-ChART Data Format and Preparation Guidance document can be found at <https://driveelectric.gov/resources/> which includes the reporting standards for data to be submitted.

#### 2.1. General Data Submittal Requirements

The Developer shall ensure all required data attributes, prescribed by the EV-ChART Data Format and Preparation Guidance document, are collected, and submitted to GDOT and EV-ChART based on the defined reporting frequency and data format in the EV-ChART Data Format and Preparation Guidance document and template.

The Developer shall ensure any data submitted to GDOT and EV-ChART is aggregated and anonymized to protect confidential business and Personally Identifiable Information while also providing the data attributes required in Section 2.2 (*Quarterly Data Submittal Requirements*), Section 2.3 (*Annual Data Submittal Requirements*), and Section 2.4 (*One-Time Data Submittal Requirements*) of this Attachment 3-3 (*Data Requirements*).

The Developer shall transmit data to GDOT and EV-ChART via an agreed upon secure communication mechanism in an agreed upon machine-readable format (e.g., .JSON, .XML) that can be readily ingested by GDOT and EV-ChART.

## **2.2. Quarterly Data Submittal Requirements**

Developer shall ensure the following data attributes are collected and submitted to GDOT and EV-ChART as part of the Quarterly Data Submittal in accordance with Section 16.1(a)(ii) (*Data Reporting*), and in the manner prescribed by the EV-ChART Data Format and Preparation Guidance document:

- 1) Energy Charged
- 2) Outage Duration
- 3) Outage ID
- 4) Payment Method
- 5) Peak Power
- 6) Port ID
- 7) Session End
- 8) Session Error
- 9) Session ID
- 10) Session Start
- 11) Station ID
- 12) Total Excluded Outage
- 13) Total Outage
- 14) Uptime
- 15) Uptime Reporting End Date
- 16) Uptime Reporting Start Date

## **2.3. Annual Data Submittal Requirements**

Developer shall ensure the following required data attributes are collected and submitted to GDOT and EV-ChART as part of the Annual Data Submittal in accordance with Section 16.1(a)(iii) (*Data Reporting*), in a manner prescribed by the EV-ChART Data Format and Preparation Guidance document:

- 1) Opportunity Program Participation
- 2) Opportunity Program Reporting Year
- 3) Federal Maintenance and Repair Cost
- 4) Maintenance and Repair Cost Reporting End Date
- 5) Maintenance and Repair Cost Reporting Start Date
- 6) Station ID
- 7) Total Maintenance and Repair Cost

## **2.4. One-Time Data Submittal Requirements**

Developer shall ensure the following data attributes are collected and submitted to GDOT and EV-ChART as part of the One-time Data Submittal in accordance with Section 16.1(a)(i) (*Data Reporting*), and in a manner prescribed by the Joint Office of Energy and Transportation EV-ChART Data Format and Preparation Guidance document:

- 1) DER Asset Type
- 2) Distributed Energy Resource On-Site
- 3) Energy Storage Capacity
- 4) Federal Charging Equipment Acquisition Cost
- 5) Federal Charging Equipment Installation Cost
- 6) Federal Distributed Energy Acquisition Cost

- 7) Federal Distributed Energy Installation Cost
- 8) Federal Distribution Cost
- 9) Federal Real Property Acquisition Cost
- 10) Federal Service Cost
- 11) Federal System Cost
- 12) Power Output Capacity
- 13) Station ID
- 14) Station Operator Address
- 15) Station Operator City
- 16) Station Operator Name
- 17) Station Operator State
- 18) Station Operator ZIP
- 19) Total Charging Equipment Acquisition Cost
- 20) Total Charging Equipment Installation Cost
- 21) Total Distributed Energy Acquisition Cost
- 22) Total Distributed Energy Installation Cost
- 23) Total Distribution Cost
- 24) Total Real Property Acquisition Cost
- 25) Total Service Cost
- 26) Total System Cost

### **3. Data Sharing Requirements**

The Developer shall develop an application programming interface (API) to share data in a machine-readable format (e.g., .JSON, .XML) with federal partners, third-party software developers, GDOT, and other interested parties.

#### **3.1. General Data Sharing Requirements**

The Developer shall utilize an industry standard API specification agreed upon by GDOT (e.g., OpenAPI).

The Developer shall ensure any data shared via an API is aggregated and anonymized to protect confidential business and Personally Identifiable Information while also providing the data attributes required in Section 3.2.

The Developer shall make the API accessible to federal partners, third-party software developers, GDOT, and any requesting party free of charge.

The Developer shall ensure data made available via the API is:

- 1) Formatted to align with the EV-ChART Data Format and Preparation Guidance document when applicable; and
- 2) Formatted based upon an agreed upon data format when not defined in the EV-ChART Data Format and Preparation Guidance document.

The Developer shall allow GDOT to consume data from the Developer's API and make it available to other parties.

### **3.2. Third-Party Data Sharing Requirements**

Developer shall collect and make the following data attributes available, free of charge via an API:

#### Defined in EV-ChART Data Format and Preparation Guidance document:

- 1) Station ID
- 2) Station Address
- 3) Station City
- 4) Station State
- 5) Station ZIP
- 6) Station Latitude
- 7) Station Longitude
- 8) Station Operator Name

#### Not Defined in EV-ChART Data Format and Preparation Guidance document:

- 1) Charging Network Provider Name
- 2) Charging station status (operational, under construction, planned, or decommissioned)
- 3) Charging station access information:
  - a. Charging station access type (public or limited to commercial vehicles)
  - b. Charging station access days/times (hours of operation for the charging station)
- 4) Charging Port information:
  - a. Number of Charging Ports
  - b. Unique port identifier (defined in EV-ChART Data Format and Preparation Guidance document as Port ID)
  - c. Connector types available by port
  - d. Charging level by port (DCFC, AC Level 2, etc.)
  - e. Power delivery rating in kilowatts by port
  - f. Accessibility by vehicle with trailer (pull-through stall) by port (yes/no)
  - g. Real-time status by port in terms defined by Open Charge Point Interface 2.2.1
- 5) Pricing and payment information:
  - a. Pricing structure
  - b. Real-time price to charge at each Charging Port, in terms defined by Open Charge Point Interface 2.2.1
  - c. Payment methods accepted at charging station

### **4. Interface Control Document Requirements**

The Developer shall provide a comprehensive Interface Control Document (ICD).

#### **4.1. General ICD Requirements**

The ICD shall provide the technical details for:

- 1) Submitting data to GDOT and EV-ChART; and

- 2) Sharing data with the federal partners, third-party software developers, GDOT, and any requesting party through the Developer's API.

The ICD shall provide all the API information necessary to help federal partners, third-party software developers, GDOT, and any requesting party use the API including:

- 1) The industry standard API specification;
- 2) Data field names, definitions, and accepted values (i.e., format) (similar to that defined in EV-ChART Data Format and Preparation Guidance);
- 3) Reporting frequency of data;
- 4) A description of the API functionality;
- 5) References (i.e., endpoints of the API); and
- 6) User guides and use-cases.

The Developer shall make the ICD easily available to federal partners, third-party software developers, GDOT, and any requesting party who wishes to use the API.

The Developer shall allow GDOT to share the Developer's ICD with other parties.

The ICD shall be formatted for 8.5" x 11" printing.

The ICD shall be delivered in Microsoft Word and PDF format.

## **Attachment 3-4: Cybersecurity Standards and Requirements**

### **1. Introduction**

GDOT is responsible for ensuring cybersecurity strategies are implemented under 23 CFR 680.106 to protect consumer data and protect against the risk of harm to, or disruption of, charging infrastructure and the grid.

GDOT understands that there are cybersecurity risks and challenges related to various aspects of the payment information and other data information being collected and exchanged as part of the deployment and operation of EV charging infrastructure.

To mitigate the risks and challenges, GDOT is requiring the Developer to produce a Cybersecurity Plan, adhere to certain cybersecurity requirements and standards, and perform periodic audits to ensure the network, data, and customers are protected.

### **2. Cybersecurity Plan**

The Developer shall provide a comprehensive Cybersecurity Plan that addresses electric vehicle charging infrastructure security and shall document potential risks and protections throughout the lifetime.

#### **2.1. General Cybersecurity Plan Requirements**

The Developer may utilize the applicable sections of the NIST SP 800-171 and Georgia's Enterprise IT Security Policy for System Security Plans (SS-08-028) (refer to <https://gta-psg.georgia.gov/psg/system-security-plans-ss-08-028>) as the foundation for developing the Cybersecurity Plan for the Project.

The Cybersecurity Plan shall provide the following:

- 1) Goals and objectives.
- 2) Risk assessment and mitigation plan.
- 3) Communication plan that includes the proposed protocols of notifying GDOT and all affected individuals of any cybersecurity events.
- 4) Data management plan to include who has access to data and under what circumstances.
- 5) Security breach remediation plan.
- 6) Plan to adhere to Federal and State of Georgia's Security Policies.
- 7) Proposed metrics to measure the effectiveness of the implemented security controls.
- 8) Plan to adhere to the Cybersecurity Requirements stated in Section 3.
- 9) Independent Cybersecurity Audit and Reporting plan as required in Section 4.
- 10) Service Organization Control (SOC) 2 Type 2 audit report showing how the Developer handles sensitive information (for further information refer to <https://us.aicpa.org/interestareas/frc/assuranceadvisoryservices/aicpasoc2report>).

The Developer's subcontractors shall adhere to the same cybersecurity protections, as established for the Developer. The Developer shall provide the Cybersecurity Plan prior to Services Commencement and GDOT must provide written acceptance of the

Cybersecurity Plan prior to Services Commencement. Upon GDOT's review, comment, or acceptance, of the Cybersecurity Plan and updates thereto, it shall remain in effect during the Term.

The Developer shall revise the Cybersecurity Plan annually to accommodate new risks, requirements, and standards and provide an updated copy to GDOT within 30 days of annual update.

The Cybersecurity Plan shall be formatted for 8.5" x 11" printing and shall be delivered in Microsoft Word and .PDF format.

### **3. Cybersecurity Standards**

The Developer may use the applicable sections of the NIST SP 800-53 as the foundation for adhering to and addressing the Cybersecurity Standards listed in this section. The Developer shall be responsible for all cybersecurity features including owning, operating, maintaining, reporting, and sharing all data required for the Project.

#### **3.1. General Cybersecurity Standards**

The Developer shall ensure that all elements of the Project including but not limited to charging, payment, data storage, data dissemination, and communication infrastructure meet the following cybersecurity requirements:

- 1) The Developer shall ensure access is authenticated and authorized.
- 2) The Developer shall have centralized capabilities that authenticate, authorize, log, and monitor access.
- 3) The Developer shall employ multi-factor authentication.
- 4) The Developer shall ensure the authenticity and integrity of applied updates, report any violations, and shall have a formal patch management plan that includes procedures for identifying, testing, approving, and deploying patches and updates in a timely manner.
- 5) The update management process shall be automated for timely and consistent deployment of security patches across all systems.
- 6) Payment systems shall comply with current payment card industry security standards.
- 7) The Developer shall ensure payment systems comply with current PCI DDS requirements.
- 8) The Developer shall ensure payment terminals are EMVCo L1 certified.
- 9) The Developer shall employ standardized secure communication protocols utilizing modern encryption and design for cryptographic agility.
- 10) The Developer shall ensure Personally Identifiable Information is minimally collected and shall be protected throughout the Term and afterwards.
- 11) The Developer shall ensure all data resides in the United States throughout its life cycle and is administrated by those who have undergone background screening in a manner consistent with Cloud Security Alliance and Federal Risk and Authorization Management Program, PS-3, SA-9 (4), and SA-9 (5).
- 12) The Developer shall comply with all local, state, or federal laws as they relate to cybersecurity and privacy.
- 13) Security incidents shall be reported to GDOT within 24 hours of discovery.

- 14) The Developer shall provide written notification to GDOT of the mitigation measures that will be implemented, including approach to notification of all affected individuals, as a result of a data security breach within 48 hours of discovery of a data security breach.
- 15) The Developer shall configure accounts to limit user permissions to the minimum level necessary to perform authorized tasks (e.g., Developer, EV driver, charging station management system, and EV).
- 16) The Developer shall limit personal data collection to those strictly necessary for purposes of EV charging and protect it throughout its life cycle.

#### **4. Cybersecurity Audit Requirements**

The Developer shall ensure that Cybersecurity Audits are performed, and the results of the audits presented to GDOT.

##### **4.1. General Cybersecurity Audit Requirements**

The Developer shall ensure Cybersecurity Audits are performed in accordance with the approved Cybersecurity Plan (refer to Section 2); utilize standard industry best-practices; and conform to the following requirements:

- 1) The Developer shall utilize a third-party qualified cybersecurity assessor, approved by GDOT, to perform and document periodic Cybersecurity Audits.
- 2) The Developer shall cause Cybersecurity Audits to be performed annually by a third-party qualified cybersecurity assessor on or before January 1 of every calendar year.
- 3) The Developer shall cause Cybersecurity Audits to be performed by a third-party qualified cybersecurity assessor following:
  - a. A major software system update is set to be implemented or installed;
  - b. A change to a different provider's software or system is set to be implemented or installed; or
  - c. A written request for a Cybersecurity Audit is submitted by GDOT.
- 4) The Developer shall provide an annual self-assessment and/or third-party assessment to GDOT that includes evidence of updates and adherence to the Cybersecurity Plan within 30 days of annual assessment.

**EXHIBIT 4****PROPOSAL COMMITMENTS****PART A: Developer Commitments****1. Proposal Commitments**

<b>Commitment No.</b>	<b>Proposal Reference</b>	<b>Proposal Commitment</b>
1	Technical Proposal, Vol 2.2 Form TECH-G, Part B, Page 2	Developer will incorporate security and safety measures as part of the design process. This includes security cameras, automatic shutdown buttons for electrical safety, bollards and parking lot striping for drivers' safety, lighting to help with nighttime charging, and our electrical panels include surge protection devices and grounding to avoid any electrical hazards from EVSE.
2	Technical Proposal, Vol 2.2 Form TECH-G, Part B Page 2	Developer will implement zoned areas that allow the driver to safely operate the EVSE away from the parking lane.
3	Technical Proposal, Vol 2.2 Form TECH-G, Part C Page 3	Developer will install an additional 24/7 security camera for added customer safety.

**2. Key Personnel Commitments**

<b>Key Personnel Role</b>	<b>Key Personnel Name</b>
Project Manager (PM)	Seth Christ
Construction Manager (CM)	Jeremy Howard
Electrician	Mark Colwell
Operations and Maintenance Manager	Keesha Cashmore

**3. Key Contractor Commitments**

N/A

**PART B: Project Schedule**

No.	Milestone	Completion Date
1	Effective Date	8/15/2024
2	Assumed NTP (Design and Materials)	06/19/2024
3	Design and Permitting Completion	11/15/2024
4	Power Utility Service Connection	06/21/2025
5	Communication/Data Utility Service Connection	06/23/2025
6	Project Site Preparation	12/01/2024
7	EVSE and Associated Hardware Delivery	12/12/2024
8	EVSE Installation	12/14/2024
9	Planned Services Commencement Date	06/25/2025
10	Services Commencement Long Stop Date	06/25/2026

**PART C: Project Schedule of Values**

(Attached)

Georgia Department of Transportation  
P.I. Nos. 0019828, 0019829, 0019830, 0019831, 0019832 – Georgia NEVI  
Deployment Program: Round 1

Instructions to Proposers  
Final RFP:  
November 8, 2023

**NAME OF PROPOSER:** Francis Energy Charging, LLC

Applicable Georgia NEVI Location (check one): ☐ Brunswick ☐ Dublin ☒ Fort Valley ☐ Metter ☐ Tifton

Proposed Project Site Number: #1

**Table 1: Proposal Schedule of Values**

Row No.	Category	Total Eligible Costs	Total Ineligible Costs	Total costs	Total labor costs <sup>1</sup>
1	<i>General conditions (includes insurance &amp; bonds, administration, mobilization, overhead, and project management)</i>	\$42,777	\$-		
2	<i>Project Site acquisition</i>		N/A		
3	<i>Design and permitting</i>	\$21,927	\$-		
4	<i>Major Utility Upgrade<sup>2</sup></i>		N/A		
5	<i>Minor Utility Upgrade</i>	\$50,000	\$-		
6	<i>Onsite distributed energy resources</i>	\$-	\$-		
7	<i>Site preparation</i>	\$25,538	\$-		
8	<i>Construction (excluding row 7 costs)</i>	\$400,090	\$-		
9	<i>Amenities and enhancements</i>		N/A		
10	<i>EVSE hardware</i>	\$334,149	\$-		
11	<i>EVSE software</i>	\$12,500	\$-		
12	<i>Total capital (sum of above rows 1-11)</i>	\$886,980	\$-		
13	<i>Minimum electric charge (driven by kW demand)"/"Demand charges" (i.e., over 5-year operational period)</i>	\$-	\$-		
14	<i>Other electric charges (i.e., over 5-year operational period)</i>	\$-	\$-		
15	<i>Other operating (i.e., over 5-year operational period)</i>	\$43,750	\$-		
16	<i>Total operations (sum of rows 13, 14 and 15)</i>	\$43,750	\$-		

<sup>1</sup> For each row, include the total of all labor costs included in the corresponding calculation of Eligible Costs and Ineligible Costs.

<sup>2</sup> Regarding Rows 4 and 5, see the definitions of Major Utility Upgrade and Minor Utility Upgrade in the Project Agreement for more information.

Georgia Department of Transportation  
P.I. Nos. 0019828, 0019829, 0019830, 0019831, 0019832 – Georgia NEVI  
Deployment Program: Round 1

Instructions to Proposers  
Final RFP:  
November 8, 2023

Row No.	Category	Total Eligible Costs	Total Ineligible Costs	Total costs	Total labor costs <sup>1</sup>
17	Total maintenance (i.e., over 5-year operational period)	\$131,250	\$-		
18	Total O&M (sum of rows 16 and 17)	\$175,000	\$-		
19	Total capital, operations, and maintenance (sum of above rows 12 and 18)	\$1,061,980	\$-		
20	<b>CAPITAL PAYMENT CAP (80% of row 12)</b>	\$709,584			
21	<b>O&amp;M PAYMENT CAP (80% of row 18)</b>	\$140,000			
22	<b>PROJECT PAYMENT CAP (sum of row 20 and 21)</b>	\$849,584			

**Table 2: Services Commencement Payment**

Capital Payment Cap <sup>3</sup>	Services Commencement Payment <sup>4</sup>
\$709,584.33	\$709,584.33

**Table 3: Availability Payments**

O&M Payment Cap <sup>5</sup>	Year 1 Availability Payment (20%)	Year 2 Availability Payment (20%)	Year 3 Availability Payment (20%)	Year 4 Availability Payment (20%)	Year 5 Availability Payment (20%)
\$140,000	\$28,000.0	\$28,000.00	\$28,000.00	\$28,000.00	\$28,000.00

<sup>3</sup> The value for this column should match row 20 of [Table 1](#).

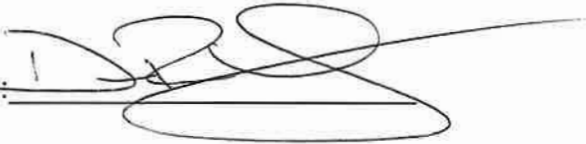
<sup>4</sup> This will be the same value as the Capital Payment Cap.

<sup>5</sup> The value for this column should match row 21 of [Table 1](#).

Georgia Department of Transportation  
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Deployment Program: Round 1

Instructions to Proposers  
Final RFP:  
November 8, 2023

IN WITNESS WHEREOF, the undersigned is the [*Chief Financial Officer, Treasurer or officer with equivalent knowledge of the Company's financials and authority to sign*] of the entity to which this form relates, and has duly reviewed and confirmed the submission of this binding Price Proposal.

By: 

Print Name: David Jankowsky

Title: CEO

**EXHIBIT 5**  
**PERFORMANCE DEDUCTIONS**

	<b>Noncompliance Event</b>	<b>Threshold</b>	<b>Performance Deduction Amount</b>
1.	Failure to comply with the reporting obligations under <u>Section 11.2 (D&amp;C Period Reporting)</u> and Article 19 ( <u>Quarterly Performance Reporting</u> ).	N/A	\$250 per day for the D&C Period and Operating Period (as applicable)
2.	Failure to adhere to the Minimum Quarterly Uptime Requirement in the applicable Calendar Quarter	Where the EVSE uptime for a Charging Port in a Calendar Quarter is: (a) equal to or greater than 97%; (b) between 97% and equal to or greater than 90%; (c) between 90% and equal to greater to or greater than 80%; (d) between 80% and equal to or greater than 50%; or (e) less than 50%.	Then, for each Charging Port, the Performance Deduction Amount is: (a) \$0; (b) 0.08% of the Project Payment Cap; (c) 0.16% of the Project Payment Cap; (d) 0.31% of the Project Payment Cap; or (e) 0.625% of the Project Payment Cap.

## EXHIBIT 6

### PERFORMANCE REPORTS

#### PART A: D&C Period Progress Report

##### Instructions:

The Developer shall include the following components as part of each D&C Period Progress Report delivered in accordance with Section 11.2 (D&C Period Reporting):

1. Project Schedule Tracker in a tabular format such as MS Word or MS Excel using the Project Schedule, and identifying progress made against the Project Schedule using actual completion dates.
2. Project Schedule Narrative describing any risks, issues, or problems encountered or anticipated since the Effective Date and in the upcoming reporting periods, inclusive of any unusual labor, shift, equipment or material conditions, or restrictions encountered. The Developer shall include proposed and recommended solutions to each item identified.
3. Project Schedule of Values Tracker in MS Excel (.xlsx or equivalent) and PDF using the Project Schedule of Values, and identifying actual incurred costs. The Developer shall retain all records, bills of sale, and invoices related to all materials and labor through Services Commencement Date and provide these records to GDOT upon request.

**1. Project Schedule Tracker:**

No.	Milestone	Actual Completion Date	Comments
1	Effective Date	[XX/XX/20XX]	N/A
2	Assumed NTP (Design and Materials)	[XX/XX/20XX]	
3	Design and Permitting Completion	[XX/XX/20XX]	
4	Power Utility Service Connection	[XX/XX/20XX]	
5	Communication/Data Utility Service Connection	[XX/XX/20XX]	
6	Project Site Preparation	[XX/XX/20XX]	
7	EVSE and Associated Hardware Delivery	[XX/XX/20XX]	
8	EVSE Installation	[XX/XX/20XX]	
9	Planned Services Commencement Date	[XX/XX/20XX]	
10	Services Commencement Long Stop Date	[XX/XX/20XX]	N/A

**2. Project Schedule Narrative:**

a. Description of any risks, issues, or problems encountered since the Effective Date:

b. Description of any risks, issues, or problems anticipated in the upcoming reporting periods:

### 3. Project Schedule of Values Tracker:

Row No.	Category	Total Eligible Costs (incurred to date)
1	General conditions (includes insurance & bonds, administration, mobilization, overhead, and project management)	
2	Project Site acquisition	
3	Design and permitting	
4	Major Utility Upgrade	
5	Minor Utility Upgrade	
6	Onsite distributed energy resources	
7	Site preparation	
8	Construction (excluding row 7 costs)	
9	Amenities and enhancements	
10	EVSE hardware	
11	EVSE software	
12	Total capital (sum of above rows 1-11)	
13	Minimum electric charge (driven by kW demand)/"Demand charges" (i.e., over 5-year operational period)	
14	Other electric charges (i.e., over 5-year operational period)	
15	Other operating (i.e., over 5-year operational period)	
16	Total operations (sum of rows 13, 14 and 15)	
17	Total maintenance (i.e., over 5-year operational period)	
18	Total O&M (sum of rows 16 and 17)	
19	Total capital, operations, and maintenance (sum of above rows 12 and 18)	
<b>20</b>	<b>CAPITAL PAYMENT CAP (80% of row 12)</b>	
<b>21</b>	<b>O&amp;M PAYMENT CAP (80% of row 18)</b>	
<b>22</b>	<b>PROJECT PAYMENT CAP (sum of rows 20 and 21)</b>	

Submitted this \_\_\_\_\_ [***Date***] by:

[ \_\_\_\_\_ ] [***Developer***]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved this \_\_\_\_\_ [***Date***] by:

Georgia Department of Transportation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **PART B: Quarterly Performance Reports**

All sections of the Quarterly Performance Report listed below should be provided as both an Excel workbook that follows the template in "MMYY\_Georgia NEVI Quarterly Performance Report\_Fort-Valley-Location.xlsx" and a pdf including all sheets of that Excel workbook. The file names should be revised and submitted to reflect the correct month of submission in the MMYY. All data fields in each section should be filled using the data formats provided in brackets in the template Excel workbook.

### **Section 1: Session information**

For each charging session that occurred in the prior Calendar Quarter, each Quarterly Performance Report shall include:

1. The unique session identifier.
2. The Charging Station identifier with which the following data can be associated. This must be the same Charging Station name or identifier used to identify the Charging Station in data made available to third-parties in § 680.116(c)(1) of the Federal Requirements.
3. The Charging Port identifier. This must be the same Charging Port identifier used to identify the Charging Port in data made available to third-parties in § 680.116(c)(8)(ii) of the Federal Requirements.
4. The charging session start time and date.
5. The charging session end time and date.
6. Any error codes associated with an unsuccessful charging session by port.
7. Energy (kWh) dispensed to EVs per charging session by port.
8. Peak session power (kW) by port.
9. Payment method associated with each charging session (plug-and-charge, app-base, card reader, toll-free phone).
10. Duration (minutes) of any Outage during the session.

Note that only the above information should be included, and no personal identifying information should be included in the above elements.

### **Section 2: Annual maintenance and repair costs**

For the Calendar Quarter ending on December 31, the Quarterly Performance Report shall include the total maintenance and repair costs incurred for each Charging Station.

### **Section 3: Quarterly small, minority and women-owned business participation**

Each Quarterly Performance Report shall include, if applicable, the information requested under Section 30 (*Contracting with Small, Minority and Women-Owned Businesses*).

### **Section 4: Annual state and local business opportunity certification program participation**

For the Calendar Quarter ending on December 31, the Quarterly Performance Report shall list of all state and local business opportunity certification programs in which the entity has participated.

## **Section 5: Minimum Quarterly Uptime Requirement**

Each Quarterly Performance Report shall include the Developer's calculation of the Minimum Quarterly Uptime Requirement, calculated in accordance with Section 9(a) (Minimum Quarterly Uptime) of the GDOT Standards and Requirements.

## **Section 6: Request for Quarterly Payment Amount**

Each Quarterly Performance Report shall include a request for payment of the Quarterly Payment Amount. Such request shall include:

1. The Developer name, contact name, phone number, email address, and physical address
2. Instructions (as applicable) for submission of payment
3. Calculations below, conducted in accordance with Section 17.2 (Availability Payments) of the Agreement. Calculation operations are included in the "Reference/calculation" column of the sheet
4. Availability Payment (pro-rated for the first and final Calendar Quarters if they include less than three (3) full months)
5. Availability Payment Carry-Over Amount
6. Total overall Eligible Costs incurred to date
7. 80% of the total overall Eligible Costs incurred to date
8. Total Adjusted Availability Payments paid to date
9. Total Performance Deductions incurred prior to Calendar Quarter
10. Services Commencement Payment paid to date
11. Adjusted Availability Payment
12. Performance Deductions during Calendar Quarter (or any prior Calendar Quarter to the extent not already deducted)
13. Any other undisputed amounts owed by the Developer to GDOT
14. Quarterly Payment Amount

**Section 1: Session Information**

Unique charging session identifier	Charging station identifier	Charging port identifier	Charging session start time and date	Charging session end time and date	Error codes	Energy (kWh) dispensed during session	Peak session power (kW)	Payment method used for the charging session	Duration (minutes) of any Outage during the session
[string]	[string]	[string]	[MM/DD/YY hh:mm:ss]	[MM/DD/YY hh:mm:ss]	[string]	[0.0]	[0.0]	[string]	[0.0]

**Section 2: Annual maintenance and repair costs**

Calendar Year	Annual maintenance costs	Annual repair costs
[YYYY]	[\$0.00]	[\$0.00]

**Section 3: Quarterly small, minority and women-owned business participation**

Name	Address	Category	Description of work	Value of work
		[Small business, minority business, women-owned business]		[\$0.00]

**Section 4: Annual state and local business opportunity certification program participation**

Calendar Year	Program name
[YYYY]	[string]

Section 5: Minimum Quarterly Uptime Requirement

Port 1						
Charging station identifier	Charging port identifier	Month and year	Total minutes	Outage	Excluded	Uptime percentage
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
Simple average of uptime:						[0.0%]
Port 2						
Charging station identifier	Charging port identifier	Month and year	Total minutes	Outage	Excluded	Uptime percentage
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
Simple average of uptime:						[0.0%]
Port 3						
Charging station identifier	Charging port identifier	Month and year	Total minutes	Outage	Excluded	Uptime percentage
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
Simple average of uptime:						[0.0%]
Port 4						
Charging station identifier	Charging port identifier	Month and year	Total minutes	Outage	Excluded	Uptime percentage
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
[string]	[string]	[MMYY]	[0.0]	[0.0]	[0.0]	[0.0%]
Simple average of uptime:						[0.0%]

**Section 6: Request for Quarterly Payment Amount****Contact information**

Requestor firm name: [string]  
 Requestor contact name: [string]  
 [###-###-####]  
 Phone number: [string]  
 Email address: [string]  
 Physical address: [Number and Street or PO Box]  
 [City, State,  
 Zip]

**Payment instructions**

Instructions: [string]

**Calculations**

		Reference/calculation
Availability Payment	[\$0.00]	A
Availability Payment Carry-Over Amount	[\$0.00]	B
Total overall Eligible Costs incurred to date	[\$0.00]	C = S
80% of the total overall Eligible Costs incurred to date	[\$0.00]	D = C * 80%
Total Adjusted Availability Payments paid to date	[\$0.00]	E
Total Performance Deductions incurred prior to Calendar Quarter	[\$0.00]	F
Services Commencement Payment paid	[\$0.00]	G
<b>Adjusted Availability Payment</b>	<b>[\$0.00]</b>	H = min((D - E - F - G), (A + B))
Performance Deductions during Calendar Quarter (or any prior Calendar Quarter to the extent not already deducted)	[\$0.00]	I = (T + U), (T (outstanding) + U (outstanding))
Any other undisputed amounts owed by the Developer to GDOT	[\$0.00]	J
<b>Quarterly Payment Amount</b>	<b>[\$0.00]</b>	K = H - I - J

**Itemized costs incurred to date**

	Total	
General conditions	[\$0.00]	1
Project Site acquisition	[\$0.00]	2
Design and permitting	[\$0.00]	3
Utility Infrastructure Improvements	[\$0.00]	4
Onsite distributed energy resources	[\$0.00]	5
Site preparation	[\$0.00]	6
Construction	[\$0.00]	7
EVSE hardware	[\$0.00]	8
EVSE software	[\$0.00]	9
Total capital costs	[\$0.00]	L = sum (items 1-9)
Minimum electric charge (driven by kW demand)/"Demand charges"	[\$0.00]	M
Other electric charges	[\$0.00]	N
Other operating costs	[\$0.00]	O
Total operations costs	[\$0.00]	P = M + N + O
Total maintenance costs	[\$0.00]	Q
Total overall costs	[\$0.00]	R = L + P + Q
Total overall Eligible Costs	[\$0.00]	S

**Itemized performance deductions**

	Totals	
Performance Deductions from NCE #1 during Calendar Quarter	[\$0.00]	T
Performance Deductions from NCE #2 during Calendar Quarter	[\$0.00]	U
Total Performance Deductions during Calendar Quarter	[\$0.00]	V = T + U

## EXHIBIT 7

### REQUIRED INSURANCES

#### PART A: Developer Required Insurance

- (a) **Workers Compensation and Employer's Liability Insurance** with statutory workers compensation coverage and employer's liability limits of not less than \$1,000,000 each accident and \$1,000,000 bodily injury by disease applicable to employee and in the aggregate. If applicable, coverage shall be extended to include claims under the United States Longshoremen's and Harbor Workers Act, the Federal Employers Liability Act and the Jones Act.
  
- (b) **Commercial General Liability Insurance** Commercial general liability insurance (CGL) with limits not less than \$1,000,000 each occurrence and \$2,000,000 general and completed operations aggregate (aggregate limit to apply on a per project or per location basis). Coverage shall include premises and operations, independent contractors, personal injury, products and completed operations, broad form property damage, and contractual liability. There shall be no endorsement or modification of the CGL coverage limiting the scope of coverage for liability arising from explosion, collapse, and underground property damage or for work within 50' of a railroad and there shall be a standard separation of insureds/cross-liability clause. GDOT and the Indemnified Parties shall be named as additional insureds on a primary and non-contributory basis.
  
- (c) **Automobile Liability Insurance** with a limit of not less than \$1,000,000 combined single limit. Such insurance shall cover liability, including bodily injury or death and property damage, arising out of any auto (including owned, hired, and non-owned autos) and GDOT and the Indemnified Parties shall be added as additional insureds on a primary, non-contributory basis. If no owned/leased vehicles, this coverage can be provided as part of the Commercial General Liability policy noted above (i.e., include hired and non-owned auto coverage).

Such policy must be endorsed as required to include Motor Carrier Act Endorsement-Hazardous Materials Clean-up (MCS-90) for those contractors who will at any time transport Hazardous Materials.

- (d) **Commercial Umbrella/Excess Liability Insurance** in excess of the above-noted limits for commercial general liability, automobile liability and employer's liability with a limit of no less than \$3,000,000 per occurrence and in the aggregate. GDOT and the Indemnified Parties shall be added as additional insureds on a primary, non-contributory basis.
  
- (e) **Pollution Legal Liability Insurance** with a limit not less than \$1,000,000 encompassing all locations that are part of the Project. Such coverage may be written on either an occurrence or claim-made basis, however, if written on a claims-made basis, coverage shall continue to be carried for a period of three years following the end of the period. Coverage shall, at a minimum, be extended to cover any transportation

and non-owned off-site disposal and shall include all claims related to bodily injury, property damage (including diminution of value), and clean-up and remediation costs. GDOT and the Indemnified Parties shall be added as additional insureds on the policy on a primary and non-contributory basis.

- (f) **Property Insurance** covering all risks of physical loss or damage to the project assets including but not limited to fire, lightning, explosion, collapse, wind, flood, named storm, resulting damage from faulty workmanship or design error, and earth movement/earthquake. Such coverage shall only be required once construction and installation is complete at any given location. The policy limit shall be written on a replacement cost basis and shall include extensions of coverage typical for a project of the nature of the Project. Coverage shall include, on a commercially-reasonable sublimited basis, demolition and debris removal, soft costs and increased costs for building code compliance. Business income interruption/loss of revenue to include extra expense, must also be included with a minimum limit of one year's loss of revenue. GDOT shall be added as an insured, as its interests may appear.
- (g) **Network Security/Privacy Liability Insurance** with a minimum limit of \$1,000,000 providing coverage for third-party network security or privacy liability claims as well as first-party insurance coverages for losses related to notification, credit monitoring, breach management and regulatory/legal compliance, as well as business income interruption, extra expense, and ransomware/extortion. Such coverage shall only be required once any charging station is operational and information is being gathered and shared. GDOT and the Indemnified Parties shall be additional insureds with regard to Third-Party Claims arising from network security or privacy liability.

## **PART B: Contractor Required Insurance**

- (a) **Commercial General Liability insurance** with minimum limits of \$1.0 million per occurrence and \$1.0 million in the aggregate. Coverage shall include, at a minimum, premises, operations, completed operations/products liability, broad form property damage and contractual liability. GDOT and the Indemnified Parties shall be named as additional insureds on a primary and non-contributory basis.
- (b) **Automobile Liability insurance** with minimum limits of \$500,000.
- (c) **Workers Compensation/Employer's Liability** insurance as required by law.
- (d) For those Contractors providing professional services (e.g., engineering, architecture, inspection, testing), Professional Liability insurance with minimum limits of \$1,000,000 per claim and in the aggregate. Coverage shall continue for one (1) year after completion of all professional services.

## EXHIBIT 8

### FORM OF PERFORMANCE BOND AND PAYMENT BOND

#### PART A: Form of Performance Bond

Bond No. 0859660

#### PERFORMANCE BOND

WHEREAS, the Georgia Department of Transportation ("Obligee"), has entered into a written contract ("Contract", as may be amended and supplemented) dated 8/15/2024 with Francis Energy Charging, LLC, a Limited Liability corporation ("Principal") on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, the Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations under the Contract with respect to the D&C Work during the D&C Period.

NOW, THEREFORE, the Principal and Harco National Insurance Company, a Illinois corporation ("Surety"), an authorized surety insurer in the State of Georgia, are held and firmly bound unto Obligee in the just and aggregate full sum of Eight Hundred Eighty Six Thousand Nine Hundred Eighty Dollars (\$886,980.00) under the Contract, for payment of which sum the Principal and Surety hereby bind themselves and their respective successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if the Principal shall faithfully perform the D&C Work as required by the Contract, including in respect of any payment obligations following a default by the Principal, and shall fully indemnify and save harmless the Obligee from all cost, expense damage, injury or loss which is recoverable under the provisions of the Contract with respect to the D&C Work and which the Obligee may suffer by reason of failure so to do and shall fully reimburse and repay the Obligee all cost and expense which the Obligee may incur in making good any such default, then the obligation shall be null and void, otherwise it shall remain in full force and effect.

PROVIDED, however, it shall be a condition precedent to any right of recovery hereunder that, in the event of any default on the part of the Principal, a written statement of the particular facts showing date and nature of such default shall be immediately given by the Obligee to the Surety, and in any event, no later than fifteen (15) days following the Developer Default Notice, and shall be forwarded by registered and electronic mail to the Surety to the address shown in paragraph 3 below.

AND PROVIDED FURTHER, that no action, suit or proceeding, except as hereinafter set forth shall be had or maintained against the Surety on this instrument unless the same be brought or instituted and process served upon the Surety within twelve (12) months after termination of this Bond.

AND PROVIDED FURTHER, that the following terms and conditions shall apply with respect to this Bond:

1. The Contract is incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. The Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the D&C Work to be performed with respect to the Project, 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 rescission or attempted rescission of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of the Obligatee, or any fraud practiced by any other person other than the Obligatee seeking to recover from this Bond, shall in any way affect the obligations of the Surety on this Bond, and the Surety hereby waives notice of such changes, extensions of time, alterations, additions, omissions or other modifications. The Surety agrees that payments made under the Payment Bond do not reduce the Surety's legal obligations under this Bond.

3. Correspondence or claims relating to this Bond should be sent to the Surety at the following address:

Harco National Insurance Company  
4200 Six Forks Rd., Suite 1400  
Raleigh, NC 27609

4. This Bond shall be deemed released by the Obligatee upon the first (1st) anniversary of the Services Commencement Date.

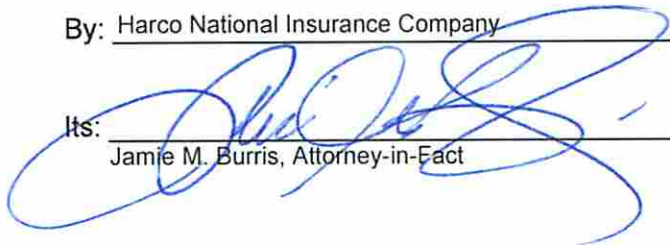
*[signature page follows]*

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument  
this 19th day of July, 2024.

Principal: By: Francis Energy Charging, LLC

Its:  Seal  
(Seal)

Surety: By: Harco National Insurance Company

Its:  (Seal)  
Jamie M. Burris, Attorney-in-Fact



**PART B: Form of Payment Bond**

Bond No. 0859660

**PAYMENT BOND**

WHEREAS, the Georgia Department of Transportation ("Obligee"), has entered into a written contract (the "Contract", as may be amended and supplemented) dated 8/15/2024 with Francis Energy Charging, LLC, a Limited Liability corporation ("Principal"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the Contract, the Principal is required to furnish a bond (this "Bond") guaranteeing payment of claims by Subcontractors and Suppliers with respect to the D&C Work during the D&C Period.

NOW, THEREFORE, the Principal and Harco National Insurance Company, a Illinois corporation ("Surety"), an authorized surety insurer in the State of Georgia, are held and firmly bound unto Obligee in the amount of \$ 886,980.00 under the Contract (the "Bonded Sum"), for payment of which sum the Principal and Surety firmly bind themselves and their respective successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the D&C Work, then the Surety shall pay for the same in an amount not to exceed the Bonded Sum.

PROVIDED, however, that the following terms and conditions shall apply with respect to this Bond:

1. The Contract is incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.
2. The Surety agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the D&C Work to be performed with respect to the Project, 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 rescission or attempted rescission of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of the Obligee, or any fraud practiced by any other person other than the Obligee seeking to recover from this Bond, shall in any way affect the obligations of the Surety on this Bond, and the Surety hereby waives notice of such changes, extensions of time, alterations, additions, omissions or other modifications. The Surety agrees that payments made under the Performance Bond do not reduce the Surety's legal obligations under this Bond.
3. Correspondence or claims relating to this Bond should be sent to the Surety at the following address:


Harco National Insurance Company  
4200 Six Forks Rd., Suite 1400  
Raleigh, NC 27609

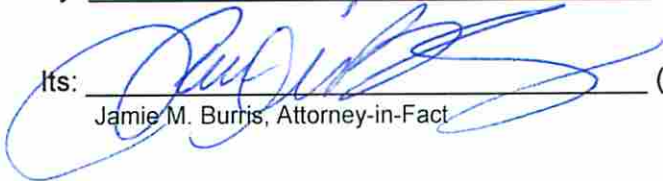
**4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the D&C Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.**

**This Bond shall be deemed released by the Obligee upon the first (1st) anniversary of the Services Commencement Date.**

***[signature page follows]***

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument  
this 19th day of July, 2024.

Principal: By: Francis Energy Charging, LLC  
Its:  Seal  
(Seal)

Surety: By: Harco National Insurance Company  
Its:  Seal  
Jamie M. Burris, Attorney-in-Fact (Seal)



**POWER OF ATTORNEY**  
**HARCO NATIONAL INSURANCE COMPANY**  
**INTERNATIONAL FIDELITY INSURANCE COMPANY**  
 Member companies of IAT Insurance Group, Headquartered: 4200 Six Forks Rd, Suite 1400, Raleigh, NC 27609

**KNOW ALL MEN BY THESE PRESENTS:** That **HARCO NATIONAL INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of Illinois, and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of New Jersey, and having their principal offices located respectively in the cities of Rolling Meadows, Illinois and Newark, New Jersey, do hereby constitute and appoint

VAUGHN GRAHAM, JR., VAUGHN P. GRAHAM, CAREY KENNEMER, SHELLI R. SAMSEL, TOM PERRAULT, BECKY KILLMAN, KRISTIN LEWIS, FAITH BURLESON, STEPHEN M. POLEMAN, VICKI WILSON, TRAVIS E. BROWN, DWIGHT A. PILGRIM, J. KELLY DEER, DEBORAH L. RAPER, AUSTIN K. GREENHAW, JAMIE M. BURRIS, RYAN MATTHEW SANDERS, JOSHUA BRYAN

Tulsa, OK

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** and is granted under and by authority of the following resolution adopted by the Board of Directors of **INTERNATIONAL FIDELITY INSURANCE COMPANY** at a meeting duly held on the 13th day of December, 2018 and by the Board of Directors of **HARCO NATIONAL INSURANCE COMPANY** at a meeting held on the 13th day of December, 2018.

**"RESOLVED**, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** have each executed and attested these presents on this 31st day of December, 2023



STATE OF NEW JERSEY  
County of Essex

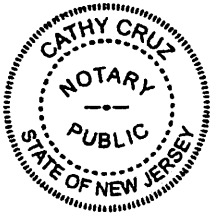
Michael F. Zurcher

Executive Vice President, Harco National Insurance Company  
and International Fidelity Insurance Company

STATE OF ILLINOIS  
County of Cook



On this 31st day of December, 2023, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.



IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

Cathy Cruz a Notary Public of New Jersey  
My Commission Expires April 16, 2029

**CERTIFICATION**

I, the undersigned officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, July 19, 2024

Irene Martins, Assistant Secretary

EXHIBIT 9

FORM OF GDOT LICENSE

LICENSE AGREEMENT

This Agreement ("**Agreement**") is made as of the \_\_\_\_ day of 8/15/2024 (the "**Effective Date**"), by and between Francis Energy Charging, LLC (hereinafter "**Licensor**"), whose principal place of business is 15 East 5th Street, Suite 821, Tulsa, OK 74103 and **THE GEORGIA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Georgia (hereinafter "**Licensee**"), whose principal office is located at 600 West Peachtree Street, Atlanta, Georgia 30308.

WITNESSETH:

**WHEREAS**, the Bipartisan Infrastructure Act specifically 23 U.S.C. 680 provides dedicated funding to U.S. states for the strategic placement of electric charging stations and associated infrastructure and the establishment of an interconnected network to facilitate data collection, access, and reliability (the "**Program**");

**WHEREAS**, under the Program, Licensee has awarded Licensor a contract as part of the Georgia Department of Transportation's implementation of the Georgia National Electric Vehicle Infrastructure ("**NEVI**") Deployment Program;

**WHEREAS**, the Licensor will be required to install, construct, operate and maintain electric vehicle infrastructure ("**EV Charging Infrastructure**") along the Alternative Fuel Corridors for the traveling public and Licensee will reimburse a certain percentage of Licensor's cost and pursuant to an agreement between the Licensee and the Licensor dated on or about the date of this Agreement ("**Project Agreement**");

**WHEREAS**, Licensor owns and/or has obtained an interest in real property located in the City of Byron, Peach County, Georgia, and more particularly described by Exhibit A attached hereto (the "**Property**") and incorporated herein by reference;

**WHEREAS**, Licensor will install, construct, operate and maintain EV Charging Infrastructure at the Property pursuant to an agreement between the Licensor and the Property owner dated on or about the date of this Agreement ("**Host Site Agreement**");

**WHEREAS**, Licensee is responsible for administering funding to Licensor under the Program; and

**WHEREAS**, to ensure Licensor's compliance with the Program, Licensor has agreed to grant access to the Property to Licensee for the purposes of inspecting the Property and inspection of EV Charging Infrastructure, subject to the limitations set forth herein.

**NOW, THEREFORE**, for and in consideration of the foregoing premises, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Licensor and Licensee, intending to be legally bound, do hereby covenant and agree as follows:

1. Grant of License. Subject to and in accordance with the terms and conditions set forth herein, Licensors has the legal authority to and does hereby grant to Licensee (including Licensee's employees, agents, contractors and invitees) a non-exclusive right to enter the Property for the purposes of inspection of the EV Charging Infrastructure (the "License").

2. Term of License. This License shall commence on Effective Date and remain in effect until the end of the five (5) year Operating Period (as defined and pursuant to the Project Agreement), unless terminated earlier by the parties (the "Term").

3. Assurances

(a) The Property may be utilized solely by Licensee, and its invitees, for the purposes of inspection of the EV Charging Infrastructure. If Licensee wishes to use the Property for a use not described in this Section 3(a), Licensee shall obtain prior written approval from Licensors.

(b) Licensee shall not undertake any construction activities or construct any new improvements to the Property or alter existing improvements to the Property, regardless of whether the intended use of said improvements is consistent with the approved uses listed in Section 3(a), without prior written approval from Licensors.

(c) Licensee shall not dispose of, or temporarily store, any wastes of any kind, whether hazardous or not, on the Property, and Licensee shall not conduct any activity on the Property which may or does require a hazardous waste treatment, storage or disposal facility permit from any federal or state agency.

(d) The Licensors has the legal authority, pursuant to the Host Site Agreement or other legal instrument, to grant the Licensee this License.

4. Termination of Agreement. This License shall automatically terminate at the expiration of the Term unless renewed by the parties. This License may also be terminated immediately at any time by Licensee upon written notice to the Licensors for any reason including Licensors's failure to comply with the Project Agreement. Licensors may only terminate this License at the expiration of the Term or by written notice to Licensee in the event that the Host Site Agreement is terminated.

5. Responsibilities. Subject to Section 7, Licensee shall be responsible for its own actions, errors, and omissions as it relates to the terms and conditions set forth in this Agreement. Licensors shall be responsible for its own actions, errors, and omissions as it relates to the terms and conditions set forth in this Agreement.

6. Insurance. The Licensee shall, at all times during the term of this Agreement, maintain insurance policies that are consistent and in full compliance with the requirements of Georgia Department of Administrative Services and the Georgia Tort Claims Trust Fund.

7. Indemnity. The Licensors shall indemnify, defend and hold harmless the Licensee (including Licensee's employees, agents, contractors and invitees) from and against all liabilities, claims, damages, costs and expenses (including reasonable attorney's fees and

expenses) imposed on or incurred by the Licensee (or Licensee's employees, agents, contractors or invitees), whether or not arising from third party claims, by reason of any exercise by the Licensee (or Licensee's employees, agents, contractors or invitees) of the Licensee's inspection rights pursuant to Section 1.

8. Assignability. The License is for the sole use of Licensee and its invitees, but Licensee may assign the License or this Agreement and any rights granted herein to any other person or party whomsoever, if first approved by Licensor in writing in Licensor's sole reasonable discretion. Any assignment of this License and Agreement by Licensee without such prior written approval shall be void and of no force or effect.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to the successors and assigns of Licensor. No rights of Licensee under this Agreement shall inure to the benefit of any successor, assignee or successor-in-title of Licensee.

10. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter above, and no representations, promises, inducements or agreements, oral or otherwise, between the parties and not expressly stated herein, shall be of any force or effect.

11. Time of Essence. Time is of the essence of this Agreement.

12. Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Georgia.

13. Notice. All notices, demands and all other communications that may be given to or made by either party to the other in connection with this Agreement shall be in writing and shall be deemed to have been properly given if delivered in person or sent by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier service, to the addresses set forth at the beginning of this Agreement for Licensor and Licensee as such addresses subsequently may be amended by written notice to the other parties. For purposes of this Agreement, the time of actual delivery, if made in person or by overnight courier, or three (3) business days after the date of postmark, if by mail, shall be deemed the date of any notice, demand or other communication.

If to Licensor:

Ashton Valente  
General Counsel  
15 E 5th Street, Ste 821  
Tulsa, OK 74103  
Phone: (918) 236-5008  
Email: legal@francisenergy.com

If to Licensee:

Georgia Department of Transportation  
600 West Peachtree Street  
Atlanta, Georgia 30308  
Phone: (404) 631-1499  
Attention: General Counsel

With a copy to:

Georgia Department of Transportation  
600 West Peachtree Street  
Atlanta, Georgia 30308  
Phone: (404) 347-0227  
Attention: State Right of Way Administrator

and

Georgia Department of Transportation  
935 United Avenue SE  
Building 24  
Atlanta, GA 30316  
Phone: (404) 694-6578  
Attention: State Traffic Engineer

14. Counterparts. This Agreement may be signed in one or more counterparts with the same force and effect as if all signatures were contained in a single original instrument.

15. Confidentiality. Subject to any provisions in O.C.G.A. Section 50-18-70, et seq. (the "Georgia Open Records Act") or other applicable provisions of Georgia law, it is hereby agreed by Licensee and Licensor that all work and materials prepared in connection with the Services provided under this Agreement are confidential.

16. Venue. All of the parties hereby consent to the jurisdiction of any court within Fulton County, Georgia or any federal court located within the Northern District of the State of Georgia for any proceeding or dispute arising out of this Agreement.

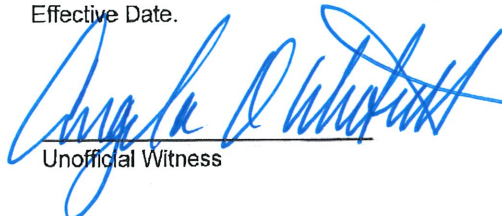
17. Authorization. Each of the signatories to this Agreement hereby represents that it has the authority to bind their respective entities and that they have undertaken to accomplish any and all actions required by their respective boards, or they have been granted the authority previously by their respective boards to enter into this Agreement.

18. No Recording. Licensor and Licensee agree that this Agreement shall not be recorded in any court in the State of Georgia, and any such recording shall render this Agreement null and void, and of no force or effect.

19. Sovereign Immunity. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions under the Georgia Constitution or the United States Constitution.

**(REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.  
SIGNATURES CONTAINED ON FOLLOWING PAGE)**

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the Effective Date.

  
Unofficial Witness

LICENSEE:

GEORGIA DEPARTMENT OF  
TRANSPORTATION

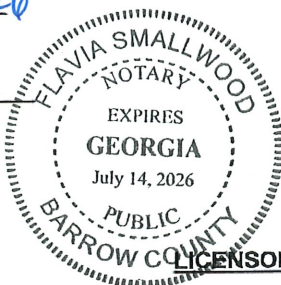
Sworn to and subscribed before me

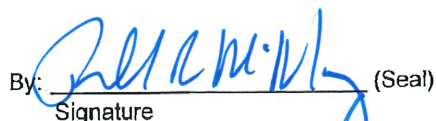
this 1<sup>st</sup> day of May, 2024

My commission expires: 7/14/26

  
Notary Public

(Notary Seal)



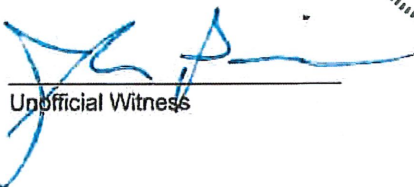
By:  (Seal)  
Signature

Russell R. McMurry, Commissioner



LICENSOR:

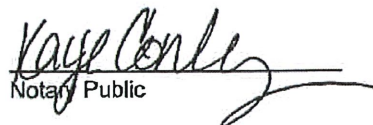
Francis Energy Charging, LLC

  
Unofficial Witness

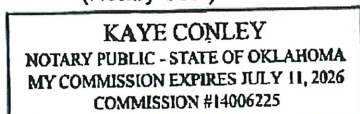
Sworn to and subscribed before me

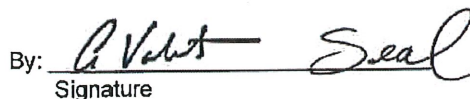
this 15<sup>th</sup> day of March 2024

My commission expires: 7-11-2026

  
Notary Public

(Notary Seal)



By:  Seal  
Signature

Printed

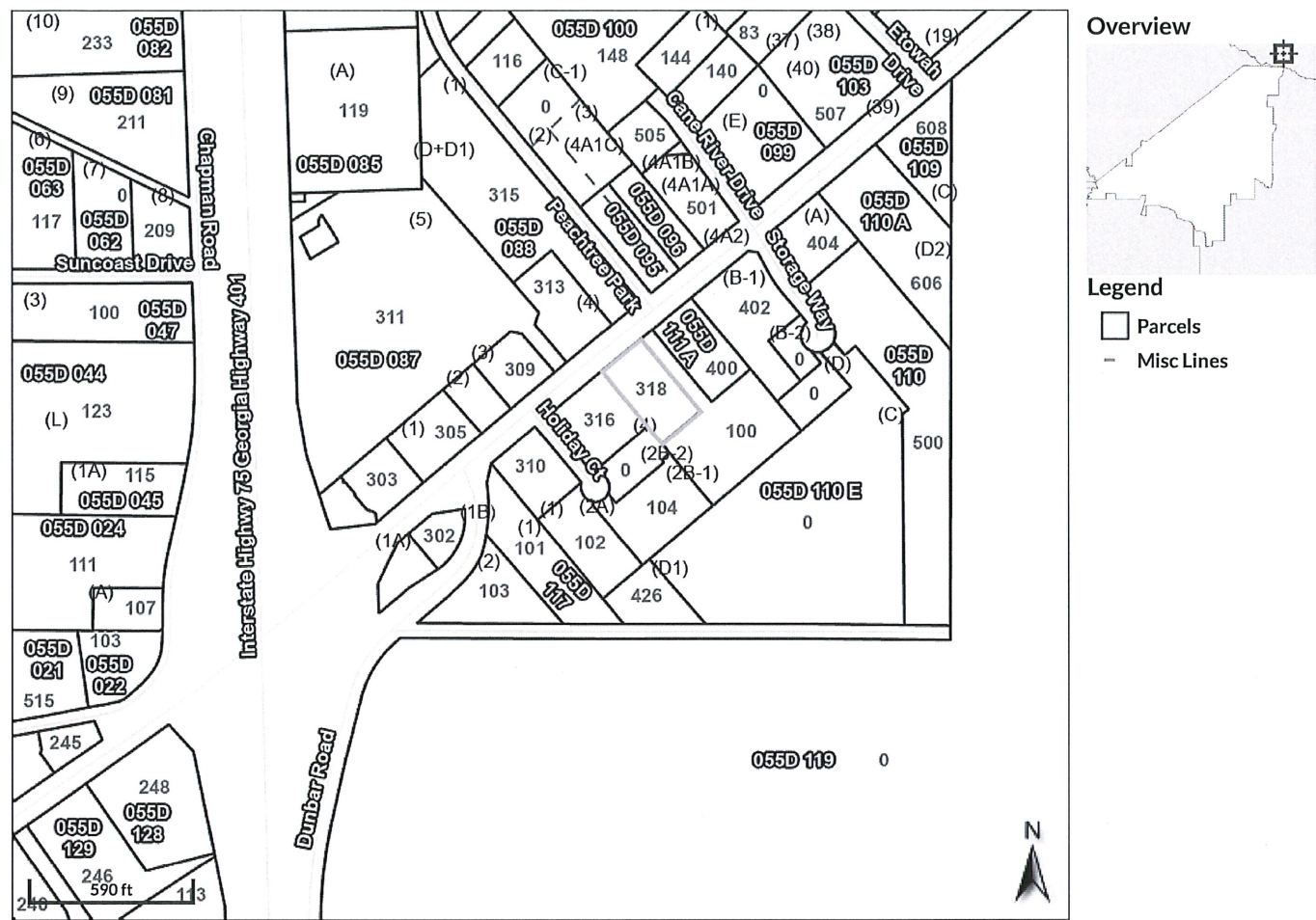
Name: Ashton Valente

Title: General Counsel

(CORPORATE SEAL)

EXHIBIT A  
THE PROPERTY

318 Highway 49 N  
Byron, GA 31008



Parcel ID	055D 112	Owner	WECAL LLC	Last 2 Sales			
Class Code	Commercial		P O BOX 1767	Date	Price	Reason	Qual
Taxing District	Byron		CLEMSON, SC 29633	11/8/2021	\$1848244	UE	U
Acres	1.3	Physical Address	318 N HWY 49	6/10/2004	\$289000	UE	U
		Assessed Value	Value \$997000				

(Note: Not to be used on legal documents)

[Click here to view the](#)

# Peach County Tax Map

Date created: 4/18/2024

Last Data Uploaded: 4/17/2024 9:29:36 PM

Developed by  Schneider  
GEOSPATIAL

## **EXHIBIT 10**

### **FEDERAL AND STATE CERTIFICATIONS**

#### **FEDERAL CERTIFICATIONS**

- |               |  |
|---------------|--|
| <b>PART A</b> | Federal Requirements for Federal-Aid Construction Facilities                       |
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**STATE CERTIFICATIONS**

**PART A**

**PART A**            Immigration and Compliance Act Certification

**PART B**            Certification of Compliance with the State of Georgia's Sexual  
Harassment Prevention Policy

**PART C**            Drug-Free Workplace

## **FEDERAL CERTIFICATIONS**

### **PART A**

#### **FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION FACILITIES**

GENERAL. — The work herein proposed will be financed in whole or in part with federal funds, and therefore all of the statutes, rules and regulations promulgated by the federal government and applicable to work financed in whole or in part with federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA-1273," are included in this Exhibit 10.

Whenever in said required contract provisions references are made to:

- (a) "contracting officer," or "authorized representative," such references shall be construed to mean GDOT or a duly appointed GDOT representative;
- (b) "contractor," "prime contractor," "bidder" or "prospective primary participant," such references shall be construed to mean the Developer or its authorized representative, as may be appropriate under the circumstances;
- (c) "contract" or "prime contract," such references shall be construed to mean the Project Agreement;
- (d) "subcontractor," "supplier," "vendor," "prospective lower tier participant" or "lower tier subcontractor," such references shall be construed to mean, as appropriate, contractors other than the Developer; and
- (e) "department," "agency" or "department or agency entering into this transaction," such references shall be construed to mean GDOT, except where a different department or agency is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "NONDISCRIMINATION," and Section VI, "SUBLETTING OR ASSIGNING THE CONTRACT," of the Form FHWA-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 Section VI 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. The statement shall either be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States as permitted by 28 U.S.C. § 1746. A form to make the non-collusion affidavit statement required by 23 U.S.C. § 112 as a certification

under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C. § 1746, is included in the Proposal.

#### CONVICT PRODUCED MATERIALS

- (a) FHWA Federal-aid projects are subject to 23 C.F.R. § 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 project 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 project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

#### ACCESS TO RECORDS

- (a) As required by 49 C.F.R. 18.36(i)(10), Developer and its Contractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Developer and Contractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 C.F.R. 18.36(i)(11), Developer and its Contractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.
- (b) Developer agrees to include this section in each Contract at each tier, without modification except as appropriate to identify the Contractor—who will be subject to its provisions.

## PART B

### Required Contract Provisions, Federal-Aid Construction Contracts - FHWA Form 1273

#### FHWA-1273

Revised October 23, 2023

#### REQUIRED CONTRACT PROVISIONS

##### FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated 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. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

##### 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, United States Code, as required in 23 CFR 633.102(b) (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). 23 CFR 633.102(e).

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. 23 CFR 633.102(e).

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) in accordance with 23 CFR 633.102. 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 solicitation-for-bids or request-for-proposals 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). 23 CFR 633.102(b).

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. 23 CFR 633.102(d).

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

##### II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A 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 Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 230, Subpart A, 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 (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 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 Part 35 and 29 CFR Part 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. 23 CFR 230.409 (g)(4) & (5).

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, sexual orientation, gender identity, 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 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 or other knowledgeable company official.

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, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure 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. 23 CFR 230.409. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 thereunder. 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, sexual orientation, gender identity, 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, 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. Assurances Required:

a. Reserved.

b. Reserved.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**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 nonminority 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 nonminority 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 more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, 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, sexual orientation, gender identity, 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), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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 FHWA1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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 classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must 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. Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

*c. Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to DBAconformance@dol.gov. 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.

(4) 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 will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The 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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

*d. Fringe benefits not expressed as an hourly rate.*

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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

*e. Unfunded plans.*

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, in accordance with the criteria set forth in § 5.28, 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.

*f. Interest.*

In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

*a. Withholding requirements.*

The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

*b. Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph 2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its procurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

## 3. Records and certified payrolls (29 CFR 5.5)

*a. Basic record requirements (1) Length of record retention.*

All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

*(2) Information required.*

Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

*(3) Additional records relating to fringe benefits.*

Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must 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.

*(4) Additional records relating to apprenticeship.*

Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

*b. Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts covered work is performed, certified payrolls to the

contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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 29 CFR part 3; and

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or

person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### **4. Apprentices and equal employment opportunity (29 CFR 5.5)**

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. *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. 23 CFR 230.111(e)(2). 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 journeyworkers 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 as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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 as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, 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 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 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

## **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Pursuant to 29 CFR 5.5(b), 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 watchpersons 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. 29 CFR 5.5.

**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 and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* 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.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

## **3. Withholding for unpaid wages and liquidated damages**

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its procurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

**4. Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

**5. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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" in paragraph 1 of Section VI 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: (based on longstanding interpretation)

(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. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), 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. Pursuant to 23 CFR 635.116(c), 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. (based on longstanding interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

## **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 Part 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. 23 CFR 635.108.

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 Part 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). 29 CFR 1926.10.

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 Part 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 11, 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 (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

## **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. 2 CFR 180.220 and 1200.220.

# **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. 2 CFR 180.320.

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. 2 CFR 180.325.

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. 2 CFR 180.345 and 180.350.

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, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient 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 recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to 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. 2 CFR 180.330.

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. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. 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 System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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 CFR 180.325.

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## **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 CFR 180.335;.

(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, 2 CFR 180.800;

(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, 2 CFR 180.700 and 180.800; 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. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.  
\* \* \* \* \*

### **3. 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). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant 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. 2 CFR 180.365.

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, Subpart I, 180.900 – 180.1020, 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 recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 1200.220 and 1200.332.

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. 2 CFR 180.220 and 1200.220.

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 System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

\* \* \* \* \*

#### **4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should 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 Part 20, App. A.

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.

#### **XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract. When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B)  
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.

**PART C**

**FEDERAL PREVAILING WAGE RATE**

**(Subject to change)**

(Attached)

DEPARTMENT OF TRANSPORTATION  
STATE OF GEORGIA

U. S. Department of Labor

"General Decision Number: GA20240273 01/05/2024

Superseded General Decision Number: GA20230273

State: Georgia

Construction Type: Highway

County: Peach County in Georgia.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered   into on or after January 30,   2022, or the contract is   renewed or extended (e.g., an   option is exercised) on or   after January 30, 2022:             	. Executive Order 14026   generally applies to the   contract.   . The contractor must pay   all covered workers at   least \$17.20 per hour (or   the applicable wage rate   listed on this wage   determination, if it is   higher) for all hours   spent performing on the   contract in 2024. 
If the contract was awarded on   or between January 1, 2015 and   January 29, 2022, and the   contract is not renewed or   extended on or after January   30, 2022:	. Executive Order 13658   generally applies to the   contract.   . The contractor must pay all   covered workers at least   \$12.90 per hour (or the

	applicable wage rate listed
	on this wage determination,
	if it is higher) for all
	hours spent performing on
	that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024

SUGA2014-107 10/03/2016

	Rates	Fringes
CARPENTER, Excludes Form Work.....	\$ 15.30 **	0.00
CEMENT MASON/CONCRETE FINISHER....	\$ 14.70 **	0.00
FORM WORKER.....	\$ 13.01 **	0.00
HIGHWAY/PARKING LOT STRIPING:		
Operator (Striping Machine).....	\$ 15.76 **	1.45
IRONWORKER, REINFORCING.....	\$ 17.17 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 15.14 **	0.00
LABORER: Grade Checker.....	\$ 11.45 **	0.00
LABORER: Mason Tender -		
Cement/Concrete.....	\$ 11.75 **	0.00

LABORER: Pipelayer.....	\$ 12.79 **	0.00
LABORER: Asphalt (Includes Distributor, Raker, Screed, Shoveler, and Spreader).....	\$ 11.00 **	0.30
LABORER: Common or General, Includes Erosion Control.....	\$ 10.45 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 16.96 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 12.22 **	0.00
OPERATOR: Broom/Sweeper.....	\$ 11.58 **	0.00
OPERATOR: Bulldozer.....	\$ 15.61 **	2.21
OPERATOR: Compactor.....	\$ 12.60 **	2.17
OPERATOR: Concrete Saw.....	\$ 18.47	0.00
OPERATOR: Crane.....	\$ 20.75	3.13
OPERATOR: Grader/Blade.....	\$ 18.09	4.16
OPERATOR: Hydroseeder.....	\$ 11.68 **	0.00
OPERATOR: Loader.....	\$ 13.64 **	2.24
OPERATOR: Mechanic.....	\$ 18.21	0.00
OPERATOR: Milling Machine.....	\$ 15.16 **	2.52
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 15.31 **	3.38
OPERATOR: Piledriver.....	\$ 16.70 **	0.00
OPERATOR: Roller.....	\$ 13.78 **	1.48
OPERATOR: Scraper.....	\$ 12.64 **	0.00

OPERATOR:   Screed.....	\$ 14.22 **	0.00
PAINTER:    Spray.....	\$ 23.30	0.00
TRAFFIC CONTROL:    Flagger.....	\$ 12.22 **	0.00
TRAFFIC CONTROL:		
Laborer-Cones/		
Barricades/Barrels -		
Setter/Mover/Sweeper.....	\$ 12.25 **	0.00
TRUCK DRIVER:   Dump Truck.....	\$ 15.76 **	1.20
TRUCK DRIVER:   Flatbed Truck.....	\$ 14.96 **	1.19
TRUCK DRIVER:   Hydroseeder		
Truck.....	\$ 14.92 **	0.00
TRUCK DRIVER:   Lowboy Truck.....	\$ 16.40 **	0.00
TRUCK DRIVER:   Off the Road		
Truck.....	\$ 12.38 **	0.00
TRUCK DRIVER:   Water Truck.....	\$ 12.82 **	1.61
TRUCK DRIVER:   Semi/Trailer		
Truck.....	\$ 16.13 **	0.00

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave

for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this

classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor

200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

## **PART D**

### **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246) (41 CFR 60-4.3)**

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 Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
  - e. "Contractor" includes the Developer and each Contractor.
2. Reserved.
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 Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the 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 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 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 Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications.
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. Reserved.

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 minorities 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 minority 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 company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company'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 the 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 work force.

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 EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated 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. Reserved.

9. The Contractor 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.

10. The Contractor shall not use the affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Contract or 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. Reserved.

14. Reserved.

15. Reserved.

## PART E

### CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the Agreement, the Developer and Contractors (at all tiers) shall be deemed to have signed and delivered the following:

1. The Developer and Contractor 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 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, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Contract.
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. Developer/Contractor 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.]

**NOTE: DEVELOPER AND EACH CONTRACTOR IS REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN CONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH CONTRACTOR BEING PAID \$100,000 OR MORE.**

## PART F

### SUSPENSION AND DEBARMENT CERTIFICATION

By signing and submitting its proposal or bid, and by executing the Agreement, the Developer and Contractors (at all tiers) shall be deemed to have signed and delivered the following certification:

1. 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 certification 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;
  - 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;
  - e. Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and
  - f. Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).
2. Where the Developer or a Contractor is unable to certify to any of the statements in this certification, the Developer or Contractor shall submit a certificate that it is unable to provide the certification and explaining the reasons for such inability.

## PART G

### COMPLIANCE WITH BUY AMERICA AND BUILD AMERICA, BUY AMERICA REQUIREMENTS

Developer shall comply with the requirements of 23 U.S.C. § 313 as amended by the Build America, Buy America Act (under the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law, Pub. L. 117-58, Nov. 15, 2021), and the federal regulations under 23 C.F.R. § 635.410, 2 C.F.R. § 200.322(c) and 2 C.F.R. § 184.

23 C.F.R. § 635.410 permits federal financial assistance in the Project Agreement only if (a) all iron and steel used in the Project be produced in the United States (i.e., all manufacturing processes, from the initial melting stage through the application of coatings, to occur in the United States); (b) all manufactured products<sup>1</sup> used in the Project are produced in the United States (i.e., the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product<sup>2</sup>, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation); and (c) all construction materials<sup>3</sup> are manufactured in the United States (i.e., all manufacturing processes for the construction material occurred in the United States and satisfy the material-specific requirements set forth in 2 C.F.R. § 184.6); provided, however, that the following exceptions shall apply:<sup>4</sup>

- (i) iron and steel where all manufacturing processes did not occur in the United States may be used so long as the cumulative cost of such steel and iron materials as they are delivered to the Project does not exceed 0.1% of the total contract amount, or \$2,500, whichever is greater;
- (ii) construction materials and manufactured products<sup>5</sup> not meeting the requirements set forth in subsections (b) and (c) above may be used so long as no more than the lesser of (A) \$1,000,000, or (B) 5% of total applicable costs for the Project (defined as the total cost of iron and steel, manufactured products, and construction materials used in the Project, whether or not within the scope of an existing waiver); and
- (iii) no domestic preference requirements under the statutes and regulations covered by this certification shall be applicable where the total amount of Federal financial

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<sup>1</sup> "Manufactured products" is as defined in 2 C.F.R. § 184.3.

<sup>2</sup> To be calculated in accordance with 2 C.F.R. § 184.5.

<sup>3</sup> "Construction materials" is defined in 2 C.F.R. § 184.3 (as affected by section 70917(c)(1) of the Infrastructure Investment and Jobs Act).

<sup>4</sup> A waiver is currently in place for steel, iron, manufactured products, and construction materials in electric vehicle chargers manufactured prior to July 1, 2024 (see: FHWA "Waiver of Buy America Requirements for Electric Vehicle Chargers": <https://www.federalregister.gov/documents/2023/02/21/2023-03498/waiver-of-buy-america-requirements-for-electric-vehicle-chargers>).

<sup>5</sup> A nationwide Buy America waiver that supersedes Build America, Buy America requirements is currently in effect for manufactured products. Manufactured products that are not predominantly steel or iron fall under this waiver and are allowable for use without regard to country of origin. "Predominantly steel or iron" is defined as greater than or equal to 50 percent of the total cost of the manufactured product.

assistance applied to the project, through awards or subawards, is below \$500,000.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure Project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure Project, but are not an integral part of the structure or permanently affixed to the infrastructure Project.

Concurrently with execution, Developer has completed and submitted, or shall complete and submit, to GDOT a Buy America Certificate and a Build America, Buy America Certificate, each in the format below. After submittal, Developer is bound by its original certifications.

A false certification is a criminal act in violation of 18 U.S.C. § 1001. Should the Developer be investigated, Developer has the burden of proof to establish that it is in compliance.

At Developer's request, GDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist pursuant to 23 C.F.R. § 635.410(c), as amended by the Build America, Buy America Act (under the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law, Pub. L. 117-58, Nov. 15, 2021) and 2 C.F.R. § 184.7. However, Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by GDOT.

Capitalized terms used, but not otherwise defined in this Part G of Exhibit 10 (*Other Legal Requirements*) have the meanings ascribed in PA Exhibit 1 (Definitions).

**BUY AMERICA CERTIFICATE**

**Certificate of Compliance**

Developer hereby certifies that it is in compliance with the requirements of 23 U.S.C. § 313 as amended by the Build America, Buy America Act (under the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law, Pub. L. 117-58, Nov. 15, 2021), and the Federal regulations under 23 C.F.R. § 635.410, 2 C.F.R. § 200.322(c), and 2 C.F.R. § 184 for the following project:

P.I. No. 0019829

PEACH COUNTY

Developer further certifies that as required, Developer will maintain all records and documents pertinent to the Buy America requirement, for not less than 3 years from the date of Final Acceptance. These files will be available for inspection and verification by the Department and/or the Federal Highway Administration.


Date: March 15, 2024

Signature: 

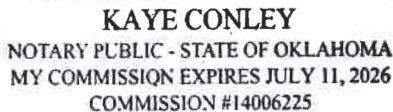
Developer's Name: Francis Energy Charging, LLC

Title: General Counsel

Subscribed and sworn to before me this 15th day of March, 2024.

  
\_\_\_\_\_  
Notary Public/Justice of the Peace

My Commission Expires: 7/11/2026

or  


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

Developer certifies that it is in compliance with the "BUILD AMERICA, BUY AMERICA" ("BABA") requirements of the Infrastructure Investment and Jobs Act ("IIJA"), as set forth under Pub. L. No. 117-58, §§ 70901-52, and that all construction materials as defined under BABA furnished for the Project will have been produced in the United States of America.

P.I. No. 0019829

PEACH COUNTY

Developer further certifies that as required, Developer will maintain all records and documents pertinent to the BABA requirements, at the address given below, for not less than 3 years from the date of Final Acceptance. These files will be available for inspection and verification by the Department and/or FHWA.


Date: March 15, 2024

Signature: 

Developer's Name: Francis Energy Charging, LLC

Title: General Counsel

Subscribed and sworn to before me this 15th day of March, 2024.

  
Notary Public/Justice of the Peace

My Commission Expires: 7/11/2026

**KAYE CONLEY**  
NOTARY PUBLIC - STATE OF OKLAHOMA  
MY COMMISSION EXPIRES JULY 11, 2026  
COMMISSION #14006225

## **PART H**

### **GDOT SPECIAL PROVISION – PROMPT PAYMENT**

#### **DEPARTMENT OF TRANSPORTATION STATE OF GEORGIA**

First Use 2013 Specifications: November 01, 2013  
Updated July 01, 2018

#### **SPECIAL PROVISION**

##### **PROMPT PAYMENT:**

Prime Contractors, who sublet a portion of their work, shall pay their subcontractors for satisfactory performance of their contracts no later than 10 calendar days from receipt of each payment made to them. Any delay or postponement of payment among the parties may take place only for good cause with prior written approval from the Department. If the contractor is found to be in noncompliance with these provisions, it shall constitute a breach of contract and further payments for any work performed may be withheld until corrective action is taken. If corrective action is not taken, it may result in termination of the contract.

Prime Contractors, who sublet a portion of their work, shall pay their subcontractors for Prime contractors must maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years after the Services Commencement Date. These records shall be made available for inspection upon request by any authorized representative of the Georgia Department of Transportation or USDOT.

All subcontract agreements shall contain this requirement.

# PART I

## FORM 1391 – FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT

<b>1. MARK APPROPRIATE BLOCK</b>  <input type="checkbox"/> Contractor  <input type="checkbox"/> Subcontractor	<b>2. COMPANY NAME, CITY, STATE:</b>  	<b>3. PROJECT NUMBER:</b>  	<b>4. DOLLAR AMOUNT OF CONTRACT:</b>  	<b>5. PROJECT LOCATION: (County and State)</b>  
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This collection of information is required by law and regulation 23 U.S.C. 140a and 23 CFR Part 230. The OMB control number for this collection is 2125-0019 expiring in August, 2019.

**6. WORKFORCE ON FEDERAL-AID AND CONSTRUCTION SITE(S) DURING LAST FULL PAY PERIOD ENDING IN JULY 20\_\_ (INSERT YEAR)**

TABLE A																	TABLE B					
JOB CATEGORIES	TOTAL EMPLOYED		TOTAL RACIAL/ ETHNIC MINORITY		BLACK or AFRICAN AMERICAN		HISPANIC OR LATINO		AMERICAN INDIAN OR ALASKA NATIVE		ASIAN		NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER		TWO OR MORE RACES		WHITE		APPRENTICES		ON THE JOB TRAINEES	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OFFICIALS	0	0	0	0																		
SUPERVISORS	0	0	0	0																		
FOREMEN/WOMEN	0	0	0	0																		
CLERICAL	0	0	0	0																		
EQUIPMENT OPERATORS	0	0	0	0																		
MECHANICS	0	0	0	0																		
TRUCK DRIVERS	0	0	0	0																		
IRONWORKERS	0	0	0	0																		
CARPENTERS	0	0	0	0																		
CEMENT MASONS	0	0	0	0																		

ELECTRICIANS	0	0	0	0																			
PIPEFITTER/PLUMBERS	0	0	0	0																			
PAINTERS	0	0	0	0																			
LABORERS-SEMI SKILLED	0	0	0	0																			
LABORERS-UNSKILLED	0	0	0	0																			
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TABLE C (Table B data by racial status)																							
APPRENTICES	0	0	0	0																			
OJT TRAINEES	0	0	0	0																			
8. PREPARED BY:										9. DATE		10. REVIEWED BY: (Signature and Title of State Highway Official)										11. DATE	
(Signature and Title of Contractors Representative)																							

Form FHWA- 1391 (Rev. 09-13)

PREVIOUS EDITIONS ARE OBSOLETE

**PART J**  
**FORM 1494 – LABOR COMPLIANCE ENFORCEMENT REPORT**

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION <b>SEMIANNUAL LABOR COMPLIANCE ENFORCEMENT REPORT</b> (Pursuant to 29 C.F.R. 5.7 (b))		STATE OR DIVISION  DATE
<b>FOR PROJECTS SUBJECT TO THE DAVIS-BACON AND RELATED ACTS</b>		
ITEM		NUMBER/AMOUNT
1. Period From: To: Covered		
2. Number of Prime Contracts Awarded		
3. Total Dollar Amount of Prime Contracts Awarded		
4. Number of Contractors/Subcontractors Against Whom Complaints Were Received		
5. Number of Investigations Completed		
6. Number of Contractors/Subcontractors Found in Violation		
7. Amount of Wages found DUE	(a) Davis-Bacon and Related Acts	
	(b) Contract Work Hours and Safety Standards Act	
8. Amount of Back Wages Paid	(a) Davis-Bacon and Related Acts	
	(b) Contract Work Hours and Safety Standards Act	
9. Number of Employees Due Wage Restitution Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act		
10. Amount of Liquidated Damages Assessed Under the Contract Work Hours and Safety Standards Act		

11. REMARKS	
RESPONSIBLE OFFICER	<p>Send To:</p> <p>DOL - Wage and Hour Division</p> <p>Office of Enforcement Policy</p> <p>Branch of Government Contracts, Room S-3006</p> <p>200 Constitution Ave., NW</p> <p>Washington DC 20210</p> <p>Or Via Email:  <a href="mailto:SemiAnnualReport@DOL.gov">SemiAnnualReport@DOL.gov</a></p>
TITLE	
SIGNATURE	

**Form FHWA-1494** (Rev. 12-18)

PREVIOUS EDITIONS ARE OBSOLETE

*(See next page for instructions)*

## INSTRUCTIONS

### General:

1. Reports shall be submitted to the Department of Labor by each Division Administrator. The report is due on or before April 30 and October 30 of each year.
2. Violations of the Fair Labor Standards Act shall not be included in the reports.

one act or because more than one contract is included in the investigation.

7. Enter the total dollar amount of wages found to be due employees of the contractors/subcontractors reported in item 6. Separate the dollar amounts according to (a) violations of the Davis-Bacon and Related Acts and (b) violations of the Contract Work Hours and Safety Standards Act.

### Comments on Report Items:

1. Enter the beginning and ending dates (either October 1 through March 31 or April 1 through September 30) of the period covered by each semi-annual report.
2. Enter the total number of contracts awarded by FHWA and/or the State departments of transportation which are subject to the Davis Bacon and Related Acts and the Contract Work Hours and Safety Standards Act.
3. Enter the total dollar amount of the contracts from item 2.
4. Enter the total number of contractors/subcontractors against whom complaints were received.
5. Enter the total number of full scale investigations completed. A full scale investigation is a complete and detailed investigation into the administration of labor standards provisions. Do not include routine payroll checks. However, a full scale investigation may be one limited to some portion of a contractor's/subcontractor's operation such as a single paving operation.
6. Enter the number of contractors/subcontractors found to be in violation as a result of the investigations reported in item 5. Do not count a contractor/subcontractor more than once in a single investigation because he/she has violated more than

8. Enter the total dollar amounts of back wages paid to employees of the contractor/subcontractor reported in item 6. Separate the dollar amount according to (a) violations of the Davis-Bacon and Related Acts and (b) violations of the Contract Work Hours and Safety Standards Act.
9. Enter the number of employees to whom the wages were paid in item 8. This figure is the unduplicated count, i.e., an employee paid wages as a result of an investigation shall be counted only once regardless of the fact that he/she may have been paid under both Davis-Bacon and Related Acts and the Contract Work Hours and Safety Standards Act.
10. Enter the total dollar amount of liquidated damages assessed as a result of violations of the Contract Work Hours and Safety Standards Act.
11. Enter any explanation or comment considered necessary to a proper understanding of the report. A separate sheet—may be attached if necessary.

**STATE CERTIFICATIONS**

**PART A**

**GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT  
(Developer / Contractor)**

Developer / Contractor(s) Name: Francis Energy Charging, LLC

Letting: Georgia NEVI Deployment Program Round 1

Call No.: 0019829

By executing this affidavit, the undersigned verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the Georgia Department of Transportation has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify™,\* in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.


The undersigned further agrees that it will continue to use the federal work authorization program throughout the contract period, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the undersigned with the information required by O.C.G.A. § 13-10-91(b).

The undersigned further agrees to maintain records of such compliance and provide a copy of each such verification to the Georgia Department of Transportation at the time the subcontractor(s) is/are retained to perform such service.

**\* or any subsequent replacement** operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

*[signature page follows]*

18229861  
EEV / E-Verify™ Company Identification Number

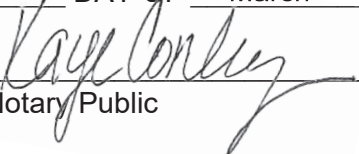
  
BY: Authorized Officer or Agent  
(Name of Person or Entity)

General Counsel  
Title of Authorized Officer or Agent

Ashton Valente  
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN  
BEFORE ME ON THE

15th DAY OF March, 2024

  
Notary Public

My Commission Expires: 7/11/2026

05/04/2022  
Date of Authorization

03/15/2024  
Date

[NOTARY SEAL]  
**KAYE CONLEY**  
NOTARY PUBLIC - STATE OF OKLAHOMA  
MY COMMISSION EXPIRES JULY 11, 2026  
COMMISSION #14006225

## PART B

### CERTIFICATION OF COMPLIANCE WITH THE STATE OF GEORGIA'S SEXUAL HARASSMENT PREVENTION POLICY

The State of Georgia promotes respect and dignity and does not tolerate sexual harassment in the workplace. The State is committed to providing a workplace and environment free from sexual harassment for its employees and for all persons who interact with state government. All State of Georgia employees are expected and required to interact with all persons including other employees, contractors, and customers in a professional manner that contributes to a respectful work environment free from sexual harassment. Furthermore, the State of Georgia maintains an expectation that its contractors and their employees and subcontractors will interact with entities of the State of Georgia, their customers, and other contractors of the State in a professional manner that contributes to a respectful work environment free from sexual harassment.

Pursuant to the State of Georgia's Statewide Sexual Harassment Prevention Policy (the "Policy"), all contractors who are regularly on State premises or who regularly interact with State personnel must complete sexual harassment prevention training on an annual basis.

A contractor, including its employees and subcontractors, who have violated the Policy, including but not limited to engaging in sexual harassment and/or retaliation may be subject to appropriate corrective action. Such action may include, but is not limited to, notification to the employer, removal from State premises, restricted access to State premises and/or personnel, termination of contract, and/or other corrective action(s) deemed necessary by the State.

- (i) If [the Developer / Contractor] is an individual who is regularly on State premises or who will regularly interact with State personnel, [the Developer / Contractor] certifies that:
  - (a) [the Developer / Contractor] has received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <https://doas.ga.gov/human-resources-administration/sexual-harassment-prevention/Statewide-Sexual-Harassment-Prevention-Policy>;
  - (b) [the Developer / Contractor] has completed sexual harassment prevention training in the last year; or will complete the Georgia Department of Administrative Services' sexual harassment prevention training located at <https://doas.ga.gov/human-resources-administration/employee-training> (scroll down to section for entities without a LMS section) or this direct link <https://www.youtube.com/embed/NjVt0DDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and,
  - (c) upon request by GDOT, the [Developer / Contractor] will provide documentation substantiating the completion of sexual harassment training.
- (ii) If [the Developer / Contractor] has employees and subcontractors that are regularly on State premises or who will regularly interact with State personnel, [the Developer / Contractor] certifies that:

- (a) [the Developer / Contractor] will ensure that such employees and subcontractors have received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <https://doas.ga.gov/human-resources-administration/sexual-harassment-prevention/Statewide-Sexual-Harassment-Prevention-Policy>;
- (b) [the Developer / Contractor] has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis; or Contractor will ensure that such employees and subcontractors complete the Georgia Department of Administrative Services' sexual harassment prevention training located at <https://doas.ga.gov/human-resources-administration/employee-training> (scroll down to section for entities without a LMS section) or this direct link <https://www.youtube.com/embed/NjVt0DDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and
- (c) upon request of GDOT, [the Developer / Contractor] will provide documentation substantiating such employees and subcontractors' acknowledgment of the State of Georgia's Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

Date:

7/29/2024

[Developer / Contractor]:

Francis Energy Charging, LLC

Signature:

DocuSigned by:  
Ashton Valente  
F68638A77F664BA...

Title:

General Counsel

**PART C**  
**DRUG-FREE WORKPLACE**

STATE OF OKLAHOMA

SS:

COUNTY OF TULSA

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

FRE Construction, LLC (a wholly-owned subsidiary of Francis Renewable Energy, LLC), which entity is the the subcontractor of Francis Energy Charging, LLC, (a wholly-owned subsidiary of Francis Renewable Energy, LLC), the entity performing the Agreement.

The undersigned certifies that the provisions of O.C.G.A. §§ 50-24-1 through 50-24-6, relating to the "Drug-free Workplace Act", have been complied with in full.

The undersigned further certifies that:

- (1) A drug-free workplace will be provided for the contractor's employees during the performance of the contract; and
- (2) Each contractor who hires a subcontractor to work in a drug-free workplace shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with (contractor's name)\_\_\_\_\_, \_\_\_\_\_ (subcontractor's name)\_\_\_\_\_ certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of Code Section § 50-24-3."

The undersigned further certifies that he/she will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Work.

*[signature page follows]*



(Signature)

Ashton Valente

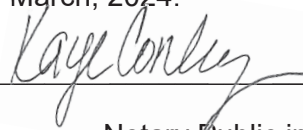
(Name Printed)

General Counsel

(Title)

Subscribed and sworn to before me this 15th day of March, 2024.

**KAYE CONLEY**  
NOTARY PUBLIC - STATE OF OKLAHOMA  
MY COMMISSION EXPIRES JULY 11, 2026  
COMMISSION #14006225



Notary Public in and for  
said County and State

[Seal]

My commission expires: 7/11/2026

**DEPARTMENT OF TRANSPORTATION  
STATE OF GEORGIA  
P.I. Nos. 0019828, 0019829, 0019830, 0019831, 0019832  
Multiple Counties  
  
SPECIAL PROVISION**

**Section 102 BIDDING REQUIREMENTS AND CONDITIONS**

Add the following to subsection 102.19:

D. Electric Vehicle (EV) Charging Station work where the Contractor or Subcontractor supplies the Department with the required letter(s) of reference and any other required information or documentation, the specific requirements of which are to be set forth in more detail in the advertisement. Electric Vehicle Charging Station work is defined to include the Charging Equipment and Charging Station.

1. Charging Equipment includes, but is not limited to: (1) the equipment that encompasses all the components needed to convert, control, and transfer electricity from the grid to the plug-in hybrids and other EVs for purpose of charging batteries; and (2) the equipment and interface used to create a connection between the Charging Equipment and the vehicle for the purpose of recharging a vehicle's batteries, in each case, including as may be required in order to be compliant with the Federal National Electric Vehicle Infrastructure Formula Program. Charging Equipment includes but is not limited to charging hardware and software, charging ports and connectors, switchgear, controllers, couplers, transformers, and ventilation.

2. Charging Station is defined as the area in the immediate vicinity of the Charging Equipment that is connected to a utility's electrical service to provide electricity to a EV's battery system through a charging interface, and includes the Charging Equipment, parking areas adjacent to the Charging Equipment, and lanes for vehicle ingress and egress.

**Certificate Of Completion**

Envelope Id: 8F1F3F50E6E24D21A1FBB8FFF686482D

Status: Completed

Subject: B1OTO2402135-0/FRANCIS ENERGY CHARGING LLC

Source Envelope:

Document Pages: 184

Signatures: 5

Certificate Pages: 5

Initials: 0

AutoNav: Enabled

Envelope Stamping: Enabled

Time Zone: (UTC-05:00) Eastern Time (US &amp; Canada)

Envelope Originator:

GDOT DocuSign Admin

600 W Peachtree St, NW

Atlanta, GA 30308

gdot\_contracts@dot.ga.gov

IP Address: 143.100.53.14

**Record Tracking**

Status: Original

7/29/2024 3:40:39 PM

Holder: GDOT DocuSign Admin

gdot\_contracts@dot.ga.gov

Location: DocuSign

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Georgia Department of Transportation

Location: DocuSign

**Signer Events**

Ashton Valente

AValente@francisenergy.com

General Counsel

Francis Energy Charging, LLC

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:

  
F68638A77F6646A...

Signature Adoption: Pre-selected Style

Using IP Address: 68.129.225.199

**Timestamp**

Sent: 7/29/2024 3:51:03 PM

Viewed: 7/29/2024 4:14:50 PM

Signed: 7/29/2024 4:23:25 PM

**Electronic Record and Signature Disclosure:**

Accepted: 7/29/2024 4:14:50 PM

ID: 7be03ff9-5f14-4e2b-89c8-b39f2eee9331

Megan Charles

mcharles@FrancisEnergy.com

Chief of Staff

Security Level: Email, Account Authentication  
(None)

DocuSigned by:

  
ED59D7D7075241F...

Signature Adoption: Pre-selected Style

Using IP Address: 12.94.86.210

Sent: 7/29/2024 4:23:36 PM

Viewed: 7/30/2024 9:28:19 AM

Signed: 7/30/2024 3:41:02 PM

**Electronic Record and Signature Disclosure:**

Accepted: 7/30/2024 9:28:19 AM

ID: 5c8f47b6-7d8c-494a-b15a-3eeca656a938

Russell R McMurry

rmcmurry@dot.ga.gov

Commissioner


Georgia Department of Transportation

Security Level:

.Email

8/15/2024 9:07:41 PM

DocuSigned by:

  
76D6577D00644FA...

Signature Adoption: Pre-selected Style

Using IP Address: 45.20.183.19

Signed using mobile

Sent: 7/30/2024 3:41:10 PM

Resent: 8/15/2024 9:49:57 AM

Viewed: 8/15/2024 9:07:46 PM

Signed: 8/15/2024 9:07:58 PM

**Electronic Record and Signature Disclosure:**

Accepted: 2/26/2016 9:35:33 AM

ID: cd5459ce-99ae-409c-b25c-b6922ca5a283

Angela O. Whitworth

awhitworth@dot.ga.gov

Treasurer

Security Level:

.Email

ID: b2535cf4-89ff-4a80-a06d-b066193cca07

8/16/2024 9:21:02 AM

DocuSigned by:

  
74085B5B0FAC425...

Signature Adoption: Uploaded Signature Image

Using IP Address: 143.100.55.15

Sent: 8/15/2024 9:08:06 PM

Resent: 8/16/2024 9:20:44 AM

Viewed: 8/16/2024 9:21:12 AM

Signed: 8/16/2024 9:21:28 AM

**Electronic Record and Signature Disclosure:**

Signer Events	Signature	Timestamp
Accepted: 2/26/2016 10:03:38 AM ID: 2a61aae5-fe62-454e-9e47-e070cdbc9d0a		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/29/2024 3:51:03 PM
Envelope Updated	Security Checked	8/15/2024 9:49:58 AM
Envelope Updated	Security Checked	8/15/2024 9:49:58 AM
Envelope Updated	Security Checked	8/15/2024 9:49:58 AM
Envelope Updated	Security Checked	8/15/2024 9:08:59 PM
Envelope Updated	Security Checked	8/16/2024 9:20:45 AM
Envelope Updated	Security Checked	8/16/2024 9:20:45 AM
Certified Delivered	Security Checked	8/16/2024 9:21:12 AM
Signing Complete	Security Checked	8/16/2024 9:21:28 AM
Completed	Security Checked	8/16/2024 9:21:28 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

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