

Patty, William F.

From: Britton Bonner <Britton.Bonner@arlaw.com>
Sent: Friday, August 19, 2022 2:35 PM
To: Gwathney, Curt
Cc: Patty, William F.; liz.filmore@governor.alabama.gov; Tkennon@orangebeachal.gov; Robert Craft (mayor@gulfshoresal.gov)
Subject: RE: BCBC
Attachments: Letter to ALDOT-BALCH (8-19-22).pdf; BEX - Traffic Management Term Sheet(8-19-2022).pdf

Curt,

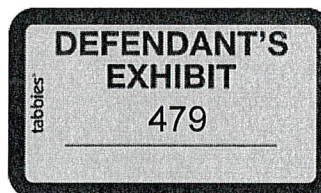
Please find attached a letter and revised Traffic Management document.

Also, please thank Director Cooper for his continued leadership in working to find a solution to this issue while also addressing the traffic needs of coastal Alabama.

As you will see in the letter and the Traffic Management Term Sheet, as a result of Director Cooper's ongoing efforts to resolve this issue and his willingness to work on a solution with the Baldwin County Bridge Company, he has secured the delivery of an additional free bridge option for Baldwin County citizens, has freed up significant state transportation funding resources, and has facilitated a mechanism for future bridge expansions based on the potential future growth of Orange Beach and Gulf Shores.

We are also providing Mayor Kennon and Mayor Craft a copy based on the conversations the Mayors have had with the Director regarding same.

Thanks and please call as needed,
-Britton



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From: Gwathney, Curt <cgwathney@balch.com>
Sent: Thursday, August 11, 2022 2:08 PM
To: Britton Bonner <Britton.Bonner@arlaw.com>
Cc: Patty, Bill <pattyw@dot.state.al.us>
Subject: BCBC

Britton,

As I mentioned in my recent letter, attached is the agreement that Bill and I have prepared at the Director's request. The Director intends to award a contract for ALDOT's proposed bridge in September if this agreement has not

been signed by the end of August. This agreement reflects the Director's terms, so we are not asking for a revised draft or detailed comments from BCBC. We just need to know if BCBC wants to enter into this agreement that the Director has proposed.

If BCBC is willing to enter into an agreement on these terms, the Director has asked that the parties meet in Montgomery either during the week of August 15th or the week of August 22nd. If the BCBC team wants to schedule such a meeting, let me know a few proposed dates/times so we can confirm the Director's availability.

Let me know if you have any questions.

Best regards,
Curt



Curt Gwathney, Partner, Balch & Bingham LLP
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t: (205) 226-3446 f: (205) 488-5851 e: cgwathney@balch.com
www.balch.com

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ADAMS AND REESE LLP



August 19, 2022

VIA EMAIL

Curt Gwathney
1901 Sixth Avenue North
Suite 1500
Birmingham, Alabama 35203

Re: Orange Beach Bridge

Curt:

The Baldwin County Bridge Company (“BCBC”) is providing the attached in response to the proposed Traffic Management Agreement it received on August 11, 2020. BCBC agrees with the August 31, 2022 deadline proposed by the Alabama Department of Transportation, and if the attached cannot be executed by ALDOT by that date, then these negotiations have no point in continuing.

To meet the needs and expectations as articulated by Director Cooper and the Mayors of Orange Beach and Gulf Shores, BCBC agrees to and proposes the following:

1. BCBC will construct all the improvements as contemplated. Those improvements include the construction of a new span, road alignment and signage improvements, construction of an expanded plaza with multiple lanes for continual flow of traffic for pass-holders, and other related infrastructure needs solely at BCBC’s cost.
2. BCBC will begin construction by April 30, 2023 and complete construction by April 30, 2026, if not sooner.
3. Use of the new expanded bridge will be **free** for Baldwin County citizens. Baldwin County citizens will not be charged to use this bridge. Based on the data provided by the City of Gulf Shores and ALDOT’s traffic consultants, this should ensure the highest utilization rates of any bridge options available in order to reduce congestion over the Holmes bridge in Gulf Shores.

Attorneys at Law

Alabama
Florida
Georgia
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

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4. In addition to providing a free bridge option for Baldwin County, BCBC will also provide:
 - \$3,000,000 to ALDOT for improvements to the intersection of Canal Road and the Beach Express;
 - \$10,000,000 to ALDOT to be used for road and infrastructure projects to be funded at the discretion of Gulf Shores;
 - \$10,000,000 to Orange Beach for projects to be funded at the discretion of Orange Beach; and
 - \$50,000,000 to Orange Beach to be paid out at \$1,000,000 per year over the 50-year term of the agreement.

5. At the conclusion of the 50 year term the bridge will be conveyed to ALDOT or its designee.

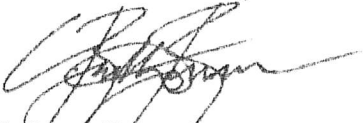
6. Finally, to address the concerns raised by the Mayors regarding the long term growth needs of the island during the term of this agreement, BCBC agrees to further amend the existing Orange Beach agreement, and to provide additional lanes over the ICW, solely at BCBC's cost and consistent with the methodology containing in the existing Orange Beach Agreement, when certain traffic count thresholds are met. When traffic counts during June, July and August reach 3 million, and 9 million for the calendar year, another expansion of the Foley Beach Express Bridge will be automatically triggered.

By accepting this agreement ALDOT will be delivering a free bridge for Baldwin County and saving the State over \$100,000,000 in construction costs plus over \$50,000,000 for maintenance over the life of the bridge that can be used for other projects in coastal Alabama.

I look forward to your reply and moving this project to completion. I am,

Very truly yours,

ADAMS AND REESE, LLP



C. Britton Bonner

CBB/vc

Page 3
Curt Gwathney
August 19, 2022

cc: Liz Filmore
William Patty
Honorable Tony Kennon
Honorable Robert Craft

TRAFFIC MANAGEMENT TERM SHEET

This TRAFFIC MANAGEMENT TERM SHEET (this "Term Sheet") is made and entered into as of the ____ day of August, 2022, by and between the State of Alabama, acting by and through the ALABAMA DEPARTMENT OF TRANSPORTATION ("ALDOT"), and THE BALDWIN COUNTY BRIDGE COMPANY, LLC, an Alabama limited liability company ("BCBC"). ALDOT and BCBC are sometimes referred to herein individually as a "Party" and collectively as the "Parties." It is the intent of the Parties that this Term Sheet set forth certain proposed terms of agreement between the parties, and will form the basis for the execution of definitive agreements formalizing these terms (the "Agreement").

RECITALS

WHEREAS, on August 7, 1996, Baldwin County, Alabama (the "County") granted a license (pursuant to Resolution 96-48 of the Baldwin County Commission, as supplemented on May 25, 1999, and as supplemented and restated pursuant to Resolution 2006-42 of the Baldwin County Commission on December 19, 2005, (the "License") to BCBC to construct and operate a toll bridge at the location of the Foley Beach Express Bridge, which is owned by BCBC. The Foley Beach Express Bridge in its status as of the date of the Agreement is herein referred to as the "Existing Span";

WHEREAS, because of congestion on Alabama Highway 59 ("SR-59"), ALDOT has made plans and acquired right-of-way to build a new bridge across the Gulf Intracoastal Waterway (the "ICW") connecting the Foley Beach Express to Canal Road ("SR-180") (the "ALDOT Waterways Bridge") west of the toll bridge owned and operated by BCBC. The ALDOT Waterways Bridge would be owned by the State and would not be operated as a toll bridge;

WHEREAS, BCBC has proposed that instead of ALDOT building the ALDOT Waterways Bridge, it is willing to undertake the actions set forth in the Agreement, including, without limitation, the construction of an additional two-lane span (the "New Span") connected to the Existing Span, which BCBC believes will result in a significant reduction of the congestion on SR-59;

WHEREAS, if BCBC satisfies the terms and conditions of the Agreement, the proposed expansion of the Foley Beach Express Bridge would accomplish ALDOT's objective of reducing congestion on SR-59 and would save the State the cost of constructing and maintaining the ALDOT Waterways Bridge, thus freeing up limited State funds for other transportation needs;

WHEREAS, the Parties have agreed in connection with the entry into the Agreement to release and settle all claims they may have in connection with the Condemnation Proceedings or ALDOT seeking to construct the ALDOT Waterways Bridge; and

NOW, THEREFORE, the Parties hereto agree to the following terms which will be included in and form the basis for execution of the definitive Agreement as follows:

ARTICLE ONE DEFINITIONS; TERM; SETTLEMENT OF CLAIMS

1.1 **Definitions.** The capitalized words and phrases used in this Term Sheet will have the meanings given to those terms in Appendix A or as further defined in the Agreement.

1.2 **Term.** The term of the Agreement (the "Term") will begin on the Effective Date as defined in the Agreement and, unless terminated earlier, will continue until the fiftieth (50th) anniversary of the Effective Date.

1.3 **Title to Toll Bridge Property at End of Term.** If the Agreement is not terminated prior to the end of the Term, then at the end of the Term BCBC will convey to ALDOT, or to such other

Governmental Authority as ALDOT may designate in writing, by statutory warranty deed, fee title to the Toll Bridge Property, free and clear of all liens and encumbrances and subject only to the following:

- i. Restrictive covenants and easements of record that do not adversely affect use of the property as a bridge; and
- ii. Standard exceptions of title insurance commitments issued within the State of Alabama.

1.4 Waiver and Release of Claims.

(a) As of the Effective Date, BCBC, on behalf of itself and each of its Affiliates, successors and assigns (the "BCBC Releasing Parties") will release, acquit and forever discharge the State of Alabama, including, without limitation, ALDOT, and any and all of its successors and assigns, together with their respective present and former officials (whether elected, appointed or otherwise serving), employees, and agents (the "BCBC Released Parties"), from any and all manner of Proceedings, damages, demands, rights and liabilities or obligations whatsoever in law or equity whether known or unknown, liquidated or unliquidated, fixed, contingent, direct or indirect, which the BCBC Releasing Parties ever had, has had or may have against the BCBC Released Parties for, upon, or by reason of any matter, transaction, act, omission or thing whatsoever arising under or in connection with the Condemnation Proceedings or ALDOT seeking to construct the ALDOT Waterways Bridge from the beginning of time to and including the Effective Date ("BCBC's Released Claims") relating to the State or ALDOT; provided, however, that BCBC's Released Claims shall not include any claims with respect to obligations of the BCBC Released Parties under the Agreement.

(b) As of the Effective Date, the State of Alabama, acting through ALDOT, on behalf of itself and each of its successors and assigns (the "ALDOT Releasing Parties") will release, acquit and forever discharge BCBC and any and all of its successors and assigns, together with their respective present and former partners, shareholders, members, directors, managers, officers, employees, and agents (the "ALDOT Released Parties"), from any and all manner of Proceedings, damages, demands, rights and liabilities or obligations whatsoever in law or equity whether known or unknown, liquidated or unliquidated, fixed, contingent, direct or indirect, which the ALDOT Releasing Parties ever had, has had or may have against the ALDOT Released Parties for, upon, or by reason of any matter, transaction, act, omission or thing whatsoever arising under or in connection with the Condemnation Proceedings or ALDOT seeking to construct the ALDOT Waterways Bridge from the beginning of time to and including the Effective Date ("ALDOT's Released Claims") relating to BCBC; provided, however, that ALDOT's Released Claims shall not include any claims with respect to obligations of the ALDOT Released Parties under the Agreement.

**ARTICLE TWO
BCBC OBLIGATIONS**

2.1 Construction of the New Span and Expanded Plaza.

(a) On and from the Effective Date, pursuant to the License, BCBC will design, build, finance, toll, operate and maintain a new bridge crossing and connecting roadway located adjacent to the Existing Span in Baldwin County (the "New Span"), the Expanded Plaza (as further described herein), new signage and design improvements for approaching roadway alignments as additionally described below in this Section 2.1(a) at BCBC's cost. The location of the New Span will be adjacent to, and on the eastern side of, the Existing Span. The decking for both spans will be connected to allow four (4) lanes of travel with shoulders in compliance with applicable Law. This 4-lane system will be designed to allow a 3-by-1, reversible lane configuration during peak demand and in hurricane evacuation situations. The New Span and the Expanded Plaza will be constructed in accordance with BCBC's final plans and drawings as

prepared in BCBC's reasonable discretion, and initial drawings are attached hereto as [Schedule 2.1(a)] for illustration purposes only.

(b) Prior to April, 2026, BCBC will, at its cost, renovate and expand the existing toll-booth plaza to an eleven (11) lane toll-booth plaza (the "Expanded Plaza") which will include dedicated "pass-holder" lanes in each direction, and will implement a new advance-reader system which will allow for continuous flow of pass-holder traffic through these dedicated lanes.

(c) BCBC will begin construction of the New Span and the Expanded Plaza by no later than April, 2023, and the construction of the New Span and the Expanded Plaza will be complete, and such facilities will be in operation, by no later than April, 2026.

(d) BCBC will be responsible for the design and construction of the New Span and the Expanded Plaza in accordance with all applicable Laws (including but not limited to safety laws and building code regulations) and any required Authorizations (in each case, in all material respects). BCBC will be responsible for obtaining all Authorizations necessary to perform its obligations hereunder.

2.2 Continuous Operation of the New Span and the Existing Span. BCBC will, at all times during the Term, cause the New Span and the Existing Span to be continuously operational except only for closures or partial closures which are (a) permitted under the Agreement, (b) required by applicable Law; (c) necessary to comply with any requirement of the License; (d) temporary closures required to address Emergencies and other conditions that prevent safe operation or to avoid loss or damage to Toll Bridge Property; (e) temporary closures required for maintenance of, or improvements or renovations to, the New Span, the Existing Span, or the Expanded Plaza, as determined solely in BCBC's reasonable discretion; or (f) necessary in connection with the construction of the New Span or the Expanded Plaza.

2.3 Tolling.

(a) Pursuant to the existing License, BCBC has and shall continue to have the right to set toll rates and collect all toll revenues on both spans at its discretion at all times subject to the provisions set forth herein below.

(b) Full Time Resident Citizens of the County will be entitled to receive a pass allowing unlimited Local Vehicle crossings of the Foley Beach Express Bridge (the "Local Pass"). The Local Pass will effectively make the Foley Beach Express Bridge a free bridge and route for Full Time Resident Citizens of Baldwin County.

BCBC will provide a transponder (or such other subsequent new technology used in place of transponders at such cost to Local Pass holders as reasonably determined by BCBC and accepted by either ALDOT or the mayors of both Gulf Shores and Orange Beach) to all Local Pass holders, subject to a reasonable administrative fee. Each Local Pass transponder will be assigned to a specific vehicle and license plate based on a "User Account" established for each transponder. BCBC will be entitled to (A) assess a \$25 penalty for each crossing where the transponder used does not match the license plate of the owner to whom it is assigned, and (B) revoke a monthly pass transponder if the pass holder has accrued three (3) such transponder use violations within any rolling twelve (12) month period. Eligibility criteria for receiving a Local Pass will be determined in BCBC's reasonable discretion based on criteria established with Orange Beach, Gulf Shores and the County as applicable, and reasonably acceptable to BCBC.

(c) Existing exemptions from tolling set forth in the License will be maintained.

2.4 Contributions to Roadway Projects.

(a) BCBC will provide to ALDOT, on or before April 30, 2023, the sum of Ten Million Dollars (\$10,000,000) to be used to build road structures in Gulf Shores and subject to Gulf Shores' discretion in selecting such road structures in Gulf Shores.

(b) BCBC will provide to Orange Beach pursuant to the terms set forth in an Amended Bridge Option, Annexation and Easement Agreement to be executed with Orange Beach, the sum of Ten Million Dollars (\$10,000,000) to be used in Orange Beach's discretion.

(c) BCBC will provide to ALDOT, on or before April 30, 2023, Three Million Dollars (\$3,000,000) for costs to be incurred in constructing a new intersection where the Foley Beach Express Bridge traffic merges to and from Canal Road. ALDOT will design and construct the intersection, and BCBC and Orange Beach will be provided an opportunity to review the plans and provide any suggestions it may choose to offer.

(d) BCBC will provide to Orange Beach pursuant to the terms set forth in an Amended Bridge Option, Annexation and Easement Agreement to be executed with Orange Beach, the sum of One Million Dollars (\$1,000,000) per year for the next fifty (50) years during the term of the Agreement. This Fifty Million Dollar (\$50,000,000) obligation will be further defined in the Amended Bridge Option, Annexation and Easement Agreement to be executed with Orange Beach.

ARTICLE THREE ALDOT OBLIGATIONS

3.1 **ALDOT's Obligations.** So long as BCBC is in compliance with each of its obligations hereunder, ALDOT will not construct or cause to be constructed the ALDOT Waterways Bridge or any other bridge across the ICW at the planned location or any other location between the existing Holmes Bridge on SR-59 in the west, and the existing BEX bridge, or the planned Wolfe Bay Bridge and the existing BEX bridge in the east, as shown and depicted on the map attached as *Exhibit 3.1*. For avoidance of doubt, the construction of bridges across the ICW by ALDOT at any other location is not in any way limited by the Agreement.

ARTICLE FOUR REPRESENTATIONS AND WARRANTIES

4.1 **Representations and Warranties of ALDOT.** ALDOT hereby represents and warrants to BCBC, as follows:

(a) ALDOT is not prohibited from consummating the transactions contemplated in the Agreement by any Law, agreement, instrument, restriction, order or judgment.

(b) ALDOT has the legal power and authority to enter into the Agreement and to make the respective commitments made in the Agreement.

4.2 **Representations and Warranties of BCBC.** BCBC hereby represents and warrants to ALDOT, as follows:

(a) BCBC is in good standing, licensed and qualified to do business in Alabama.

(b) BCBC is not prohibited from consummating the transactions contemplated in the Agreement by any Law, agreement, instrument, restriction, order or judgment.

(c) BCBC has the legal power and authority to enter into the Agreement and to make the respective commitments made in the Agreement. To the extent that (i) any authorization, approval, resolution or consent of BCBC's board of directors, officers, managers, trustees or any other Persons is required under either BCBC's organizational and/or governing documents or otherwise is required by Law and (ii) that any authorization, approval or consent of any Governmental Authority, body, or agency or third party is required for BCBC to enter into the Agreement and make the commitments contained in the Agreement, such authorizations, approvals and consents have been duly obtained in accordance with

applicable Law and procedures. Upon request by ALDOT, reasonable documentation of the foregoing authority and action will be provided by BCBC.

ARTICLE FIVE DEFAULTS AND TERMINATION

5.1 **BCBC Defaults.** The occurrence of one or more of the following events will constitute an event of default by BCBC of the Agreement (each, a "BCBC Event of Default"):

(a) failure to make any payment required to be made by it pursuant to the terms of the Agreement within 30 days of its receipt of notice from ALDOT that such payment is overdue;

(b) failures to perform or comply with the Agreement (other than any occurrence referred to in paragraph (a) and (b) above) that continue unremedied for 60 days, provided that, if such failure is of a nature that the cure cannot with diligence be completed within such 60-day period, such period will be extended by such additional time, not to exceed an additional 120 days, as is reasonably necessary to diligently effect such cure;

(c) voluntary bankruptcy or the equivalent, or an involuntary bankruptcy or the equivalent which remains undismissed 60 days after the commencement of such proceeding;

(d) a failure to comply with a final court order with respect to a dispute under the Agreement which failure continues unremedied for thirty (30) days or such longer period as may be reasonably necessary to cure;

(e) repudiation in writing of material obligations under the Agreement; and

(f) a final judgment making the Agreement or any material obligation under it unenforceable against BCBC.

5.2 **ALDOT's Remedies Following a BCBC Event of Default.** Following any BCBC Event of Default, except as otherwise provided herein or as further defined in the Agreement, ALDOT may:

(a) terminate the Agreement and have no further obligations to BCBC; and/or

(b) exercise any of its rights or remedies at law or in equity, subject to any limitations set out in the Agreement.

If a BCBC Event of Default occurs on or after the thirtieth (30th) anniversary of the Effective Date and ALDOT elects to terminate the Agreement, then ALDOT may elect by written notice delivered to BCBC within thirty (30) days of the date the Agreement is terminated to acquire the Toll Bridge Property from BCBC for \$1 and BCBC shall convey to ALDOT, or to such other Governmental Authority as ALDOT may designate in writing, within 90 days of the receipt by BCBC of the notice that ALDOT has elected to acquire the Toll Bridge Property, by statutory warranty deed, fee title to the Toll Bridge Property, free and clear of all liens and encumbrances and subject only to the following:

i. Restrictive covenants and easements of record that do not adversely affect use of the property as a bridge; and

ii. Standard exceptions of title insurance commitments issued within the State of Alabama.

5.3 **ALDOT Defaults.** The occurrence of one or more of the following events will constitute an event of default by ALDOT of the Agreement (each, an "ALDOT Event of Default"):

(a) if the Agreement has not been terminated, construction by ALDOT of the ALDOT Waterways Bridge or any other bridge at such location as intended for the ALDOT Waterways Bridge or construction of a competing bridge in the area set forth in Section 3.1 above;

(b) a failure to comply with a final court order with respect to a dispute under the Agreement which failure continues unremedied for thirty (30) days or such longer period as may be reasonably necessary to cure;

(c) repudiation in writing of material obligations under the Agreement; and

(d) a final judgment making the Agreement or any material obligation under it unenforceable against ALDOT.

For avoidance of doubt, the construction of new roadways or bridges (other than the ALDOT Waterways Bridge or another bridge constructed by ALDOT at such location or as otherwise set forth in Section 3.1 above), the improvement or expansion of existing roadways or bridges, and the relocation of existing roadways, whether north or south of the ICW, by ALDOT or any other Governmental Authority is not an ALDOT Event of Default and shall not require, or give rise to any right to require, the modification of any of the provisions of the Agreement.

5.4 **BCBC Remedies Following an ALDOT Event of Default.** Upon the occurrence, and during the continuance, of an ALDOT Event of Default, BCBC may terminate the Agreement and require ALDOT to repay the funds provided by BCBC under Section 2.4(a), 2.4(b), 2.4(d) and as may be further defined in the Agreement, repay the original costs of construction as required under Section 2.1.

ARTICLE SIX GENERAL PROVISIONS

6.1 **Dispute Resolution.** In the event of any dispute between the Parties, senior officials of both Parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a Party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of the Agreement which are not resolved by negotiation, the Parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar.

6.2 **Independent Parties.** By entering the Agreement, BCBC is not becoming an agent of the State and cannot claim any rights, privileges, or immunities of the State in performance of its obligations to the State. Nothing contained in the Agreement, or in its execution, shall be construed to alter or affect the title of the State to its existing right-of-way. BCBC is without authority to reference ALDOT or the Great Seal of Alabama in its continued operation of this toll facility.

6.3 **Indemnification.** BCBC will be responsible at all times for the work it performs in relation to the Agreement and especially BCBC will protect, defend, indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, employees, in both their official and individual capacities, and agents of each, from and against any and all claims, actions, damages, loss, liabilities, including attorney's fees and expenses whatsoever or any amount paid in compromise thereof arising out of or in connection with its performance of the work under the Agreement at any time arising out of or in connection with the performed work in relation hereto.

6.4 **Immigration.** This item is included in the Agreement for compliance with the Beason-Hammond Alabama Taxpayer and Citizen Protection Act, specifically that provision codified at Section 31-13-9(k), Code of Alabama, 1975, as amended, which requires the following clause in all contracts or agreements to which the state, a political subdivision or state-funded entity is a Party:

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

6.5 Amendments and Waivers.

(a) Any provision of the Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party to the Agreement, or in the case of a waiver by the Party against whom the waiver is to be effective.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as provided herein, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

6.6 Successors and Assigns. The provisions of the Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.7 Severability. If any term, provision, covenant or restriction of the Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, then the remainder of the terms, provisions, covenants and restrictions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the parties shall negotiate in good faith to modify the Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

6.8 Entire Agreement. The Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes all prior agreements and understandings, both oral and written, among the Parties with respect to the subject matter of the Agreement.

6.9 No Third-Party Beneficiaries. No provision of the Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.

6.10 Governing Law; Jurisdiction and Venue. The Agreement will be governed by the law of the State of Alabama. The exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, which is permitted to be brought by a party in court arising out of the Agreement will be in the Circuit Court of Montgomery County, Alabama.

6.11 No Other Duties. The only duties and obligations of the Parties under the Agreement are as specifically set forth in the Agreement, and no other duties or obligations shall be implied in fact, law or equity, or under any principle of fiduciary obligation.

6.12 Counterparts. The Agreement may be executed by the Parties hereto by facsimile signature and in one or more counterparts, each of which will be deemed an original and each of which will constitute one and the same instrument.

6.13 Notices. All notices or other communications hereunder or making reference hereto will be delivered as follows (or to such other addresses or email addresses as a Party may have specified by notice given to the other Party pursuant to this Section 6.13):

To BCBC:

DIF Capital Partners
79 Wellington Street West
TD South Tower, Suite 2020,
Toronto, Ontario M5K 1E7
Canada
Attn: Stephen Tuffner (s.tuffner@difamericas.com)

With a copy to:

American Roads
100 E. Jefferson Ave
Detroit, MI 48226
Attn: Neal Belitsky, CFM (nbelitsky@americanroads.com)

With a copy to:

Adams and Reese LLP
11 N Water St, Ste 23200
Mobile, Alabama 36602
(251) 433-3234
Attn: Britton Bonner (britton.bonner@arlaw.com)

To ALDOT:

Alabama Department of Transportation
1409 Coliseum Blvd.
Montgomery, AL 36110
Attn: General Counsel (Bill Patty - pattyw@dot.state.al.us)

With a copy to:

Balch & Bingham LLP
1901 Sixth Ave. N., Suite 1500
Birmingham, AL 35203
Attn: Curt Gwathney (cgwathney@balch.com)

6.14 **Non-Binding Provisions.** This Term Sheet is not binding upon either ALDOT or BCBC and is subject to (i) the negotiation and execution of definitive agreements regarding the proposed transactions set forth herein, including the Agreement and (ii) approval of the terms of the Agreement by the ALDOT and Board of Directors of BCBC. The parties to this Term Sheet understand and agree that (i) this Term Sheet sets forth the parties' current understanding of agreements, which may be set out in a binding fashion in the Agreement, which may be executed at a later date, (ii) this Term Sheet does not create and is not intended to create a duty to negotiate in good faith towards the Agreement and (iii) this Term Sheet does not create and is not intended to create a binding and enforceable contract between the parties and may not be relied upon by either party as the basis for a contract by estoppel or otherwise, but rather evidences a non-binding expression of understanding to endeavor, without obligation, to negotiate the mutually agreeable Agreement. In the event that the parties are unable to execute the Agreement by September 30, 2022, this Term Sheet shall be deemed to be terminated (unless extended by mutual agreement).

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused the Term Sheet to be executed by those officers, officials and persons thereunto duly authorized.

AGREED AND ACCEPTED:

FOR ALDOT:

**STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF
TRANSPORTATION**

John R. Cooper, Transportation Director

The foregoing Term Sheet is hereby approved by the Governor of the State of Alabama this _____ day of _____, 2022.

GOVERNOR OF ALABAMA, KAY IVEY

AGREED AND ACCEPTED:

**THE BALDWIN COUNTY BRIDGE
COMPANY, LLC**

Name: _____

Its: _____

APPENDIX A

Definitions

The following capitalized terms will have the respective meanings assigned below (each such meaning to be equally applicable to the singular and plural forms of the respective terms so defined).

Affiliate when used to indicate a relationship with a specified Person, means (a) any shareholder, member, partner, or joint venture member of such Person; (b) any Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person or any of its shareholders, members, partners, or joint venture members; or (c) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by (i) such Person, (ii) any of such Person's shareholders, members, partners, or joint venture members, or (iii) any Affiliate of such Person under clause (b) of this definition. For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship, or otherwise, and "Affiliated" means having the status of an Affiliate.

Agreement has the meaning given to it in the introduction to the Term Sheet.

ALDOT has the meaning given to it in the introduction to the Term Sheet.

ALDOT Waterways Bridge means ALDOT's currently proposed new bridge over the ICW that would link the Foley Beach Express to SR-180 (Canal Road).

Authorization means any approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization or other requirement of any Person that applies to the New Span the Expanded Plaza or is reasonably required from time to time for the operation and maintenance of the New Span and the Expanded Plaza.

Baldwin Beach Express means the public roadway stretching northward from its intersection with the northernmost portion of the Foley Beach Express to an intersection with Interstate 10.

BCBC has the meaning given to it in the introduction to the Term Sheet.

Canal Road means that portion of State Route 180 stretching westward from East Oak Ridge Drive in Orange Beach to the terminus point of Canal Road/East Canal Drive in Gulf Shores where it, in its current configuration, turns 90 degrees south onto East 2nd Street, or as it may be reconfigured in the future (including the contemplated reconfiguration in which it would terminate at SR-59 in Gulf Shores).

Condemnation Proceedings has the meaning given to it in the Recitals to the Term Sheet, specifically Civil Action Number 05-CV-2018-901118 in the Circuit Court of Baldwin County, Alabama, which was dismissed on June 2, 2021.

County means Baldwin County, Alabama, a political subdivision of the State of Alabama.

Effective Date will have the meaning given to it in the Agreement.

Emergency means any event within the Toll Bridge Property that (i) presents an immediate or imminent threat to the integrity of any part of the infrastructure of the Toll Bridge Property, to the environment, to property adjacent to the Toll Bridge Property or to the safety of workers, BCBC employees or agents, road users or the traveling public; (ii) is reasonably likely to cause a material loss or damage to the Toll Bridge Property or a material threat to health or safety, or (iii) is a declared state of emergency pursuant to State or Federal law.

Foley means the City of Foley, Alabama.

Foley Beach Express means the public roadway from the intersection of SR-59 immediately north of Woerner Road within the corporate limits of the City of Foley, to SR-180 within the corporate limits of

the City of Orange Beach and south of the Foley Beach Express Bridge, but not including the privately-owned Foley Beach Express Bridge.

Foley Beach Express Bridge means the bridge owned by BCBC that is located within the corporate limits of the City of Orange Beach, including the Existing Span and the New Span once the New Span is constructed.

Full Time Resident Citizen means any full time resident of Gulf Shores, Orange Beach or the County, as applicable, who possesses a valid driver's license and whose residential address as printed on such driver's license is located within the boundaries of Gulf Shores, Orange Beach or the County, and whose Local Vehicle and license plate/tag is registered to that same address in Baldwin County, as applicable.

Governmental Authority means the State, municipal or any political subdivision or instrumentality thereof and any court, federal, state, county, local (including all municipalities, municipal authorities and districts) or foreign government, department, commission, board, bureau, agency or instrumentality, or other regulatory, administrative, governmental or quasi-governmental authority.

Gulf Shores means the City of Gulf Shores, Alabama.

ICW means the portion of the Gulf Intracoastal Waterway located in Baldwin County, Alabama, which runs from near the eastern point of Ono Island, Alabama generally in a westerly direction and ending in Bon Secour Bay.

Law means any constitution, order, writ, injunction, decree, judgment, law, directive, rule, regulation, ordinance, decision, principle of common law, opinion, ruling, policy, statute, code, rule or regulation of any Governmental Authority.

Liabilities means, with respect to any Person, any liability, debt or obligation of such Person of any kind, character, description or nature whatsoever, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, secured or unsecured, joint or several, due or to become due, vested or unvested, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of such Person.

License has the meaning given to it in the Recitals to the Term Sheet.

Local Vehicle means any non-commercial vehicle with no more than two (2) axles, and includes any trailer pulled behind such vehicle (e.g., boat trailers).

Orange Beach means the City of Orange Beach, Alabama.

Person means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

Proceeding means any action, suit, investigation, hearing, citation, claim, audit, litigation, arbitration, judicial or administrative proceeding.

State means the State of Alabama.

Toll Bridge Property means all real property, including any fixtures, comprising the New Span, the Existing Span, the toll plazas and all roads, right-of-way and other real property interests owned as of the Effective Date by BCBC or constructed or acquired by it during the Term.

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