

US EPA ARCHIVE DOCUMENT



ATLANTIC STEEL REDEVELOPMENT

PROJECT XL

FINAL PROJECT AGREEMENT

INTRODUCTION

The U.S. Environmental Protection Agency (EPA), with the cooperation of State and local authorities, has initiated Project XL to work with interested companies to develop innovative approaches for addressing environmental issues. Project XL encourages companies and communities to come forward with new approaches that have the potential to advance environmental goals more effectively and efficiently than have been achieved using traditional regulatory tools.

Atlantis 16th, L.L.C. (hereafter referred to as Jacoby), a developer in Atlanta, GA has proposed redevelopment of a 138-acre site currently owned by Atlantic Steel near Atlanta's central business district. The proposed development is a mix of residential and business uses. Project plans include a multi-modal (cars, pedestrians, bicycles, transit linkage) bridge that would cross I-75/85 and provide access ramps as well as connecting the site to a nearby MARTA (the Metropolitan Atlanta Rapid Transit Authority) mass transit station. Jacoby has worked intensively with representatives of EPA, the State of Georgia, the City of Atlanta, other local authorities, and public stakeholders to develop a site-specific Project XL Agreement that will allow implementation of the redevelopment.

What is the Final Project Agreement?

This Final Project Agreement spells out the intentions of Jacoby and EPA related to development and implementation of this project. Due to the complexity of the project and the numerous processes and analyses necessary to implement it, EPA and Jacoby adopted a two-phased approach to the Project XL Agreement. The Phase 1 Project Agreement was made available for public comment on February 24, 1999 and was signed by EPA and Jacoby on April 15, 1999. This Final Project XL Agreement supersedes the Phase I Agreement. The Final Agreement incorporates information and agreements from the Phase I Agreement to the extent they remain current and in effect.

The Phase 1 Agreement was available for a two week public comment period. Comments received on the Phase 1 Agreement during that period and EPA responses are included in Appendix I. EPA and Jacoby do not anticipate making substantive changes to aspects of the project which were contained in the Phase 1 Agreement. Commentors on the Final Project Agreement are encouraged to focus on new information which was not included in the Phase 1 Agreement.

Like all Project XL Agreements, the Final Project Agreement itself is not legally binding -- legally enforceable commitments described in the Agreement will be contained in separate legal documents such as the State Implementation Plan and approved Remediation Plan.

Why Is Project XL Necessary?

The project site currently suffers from poor accessibility due to the lack of a linkage to and across I-75/85 to midtown and to the existing MARTA rapid rail transit system in Atlanta. Construction of an interchange and multi-modal bridge across I-75/85 at 17th Street would improve access to the site. The bridge would also serve as a vital linkage between the Atlantic Steel redevelopment and the MARTA Arts Center station. Completion of the redevelopment proposed by Jacoby is predicated upon improving multi-modal

access to the area. In addition, construction of the 17th Street bridge was one of the City of Atlanta's zoning requirements for the project.

Jacoby is participating in Project XL for the Atlantic Steel redevelopment because neither the 17th Street bridge nor the associated I-75/85 access ramps would be able to proceed without the regulatory flexibility being allowed by EPA under this Project. Atlanta is currently out of compliance with federal air quality conformity requirements because it has failed to demonstrate that its transportation activities will not exacerbate existing air quality problems or create new air quality problems in the region. The Clean Air Act (CAA) generally prohibits construction of new transportation projects that use federal funds or require federal approval in areas where compliance with conformity requirements has lapsed. However, projects which are approved as transportation control measures (TCMs) in a state's air quality plan can proceed -- even during a conformity lapse. EPA approves state air quality plans, including TCMs contained in the plans.

What Flexibility is EPA Granting?

The flexibility Jacoby is seeking through Project XL is to regard the entire brownfield redevelopment project, including the 17th Street bridge, as a TCM. The flexibility under Project XL is necessary because the redevelopment likely would not qualify as a TCM in the traditional sense. Under the Clean Air Act, a "transportation control measure" must actually be a measure -- an activity undertaken, a transportation project built, a program implemented. There are two components to the flexibility.

1. The first part of the flexibility is to consider the entire Atlantic Steel redevelopment to be a TCM. That is, EPA would view Atlantic Steel's location, transit linkage, site design, and other transportation elements (e.g., provisions for bicyclists; participation in a transportation management association) together as the TCM. Under the Clean Air Act, a project must demonstrate an air quality benefit to be considered a TCM. The Clean Air Act lists several types of projects that can be TCMs but its language does not limit TCMs to the measures listed. Those listed in the CAA include: projects that improve public transit; employer-based transportation management plans; projects that limit certain metropolitan areas to non-motorized and pedestrian use; programs to provide both travel and storage facilities for bicycles; and others.
2. The plan for the Atlantic Steel redevelopment incorporates many elements that could be TCMs by themselves, for example, the linkage to transit, the requirement that employers at the site will join or form a transportation management association, restricted access of certain areas of the site for pedestrian use, and paths for bicyclists and pedestrians. EPA believes that the combination of these elements will have a positive effect on reducing emissions.
3. The second aspect of the flexibility sought under Project XL concerns use of an innovative approach to measuring the air quality benefit of the Atlantic Steel redevelopment. EPA will measure Atlantic Steel's air quality benefit relative to an equivalent amount of development at other likely sites in the region. This type of comparison is available only to this particular redevelopment through the Project XL process. The entire Atlantic Steel redevelopment would attract new automobile trips and result in new emissions. Therefore, redevelopment of the site when considered in isolation would not qualify as a TCM in the traditional sense. EPA believes, however, that the Atlanta region will continue to grow, and that redevelopment of the Atlantic Steel site will produce fewer air pollution emissions than an equivalent quantity of development at other sites in the region.

Why is this Flexibility Appropriate?

EPA believes the flexibility described above is appropriate for this project because of the combination of unique attributes of the site and the redevelopment listed below. In the absence of these elements, EPA would be unlikely to approve new transportation projects during a conformity lapse.

1. The site is a brownfield. An accelerated clean-up of the site will occur if this XL Project is implemented. The clean-up and redevelopment of the former industrial site aligns with EPA's general efforts to encourage clean-up and reuse of urban



brownfields. The likely alternative would be an underdeveloped, underused industrial parcel in the middle of midtown Atlanta.

2. The site has a regionally central, urban location. EPA believes it is environmentally beneficial for development to occur where infrastructure and transportation alternatives exist to support it. Redeveloping this property will result in a shift of growth to midtown Atlanta from the outer reaches of the metropolitan area. Because of the site's central location, people taking trips to and from the site will be driving shorter average distances than those taking trips to and from a development on the edge of the city. Shorter driving distances will result in fewer emissions.
3. The redevelopment plans include a linkage to MARTA. This linkage would make it possible for those who work at the site to commute without a car and would serve residents of Atlantic Steel as well as residents of surrounding neighborhoods. In addition, the transit link is valuable for those coming to the site for non-work purposes, such as dining, shopping, and entertainment.
4. The redevelopment plans incorporate many "smart growth" site design principles. These principles include features which promote pedestrian and transit access rather than exclusive reliance on the car. Using these concepts, the redevelopment will avoid creating areas that are abandoned and unsafe in the evening, hotels and offices will be located within walking distance of shops and restaurants, shops that serve local needs will be located within walking distance of both the Atlantic Steel site and the adjacent neighborhoods, and wide sidewalks will encourage walking and retail use. Jacoby has also responded to the adjacent neighborhood's request for public parks, designating public space to central locations rather than relegating it to the edge.
5. The redevelopment incorporates many elements that could qualify as TCMs by themselves. In addition to the linkage to mass transit, the redevelopment will participate in a transportation management association (TMA). The TMA may participate with the City of Atlanta and the developer in monitoring the transportation performance of the redevelopment by collecting travel data annually.

With the exception of the site's accelerated clean-up, all of these elements will have an impact on transportation decisions of people who begin and/or end their trips in the Atlantic Steel site. The combination of the site's location in a central urban area, connection to the existing transit system, design that promotes pedestrian access, participation in a TMA, and provision of bicycle and pedestrian conveniences are expected to work together to reduce growth in auto traffic in the Atlanta region. The redevelopment could demonstrate that the application of smart growth concepts can make a difference in travel patterns, even in Atlanta -- where people drive more per capita than any other city in the country. Therefore, EPA intends to use regulatory flexibility under Project XL to approve the redevelopment and its associated transportation projects as a TCM through the rule-making process.



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FINAL PROJECT AGREEMENT

I. PARTIES

The Parties to this Final Project XL Agreement are the United States Environmental Protection Agency (EPA) and Atlantis 16th L.L.C. (Jacoby).

II. PURPOSE OF THE FINAL PROJECT AGREEMENT

Project XL is a pilot program to test new approaches for meeting environmental goals and responsibilities. This site-specific Agreement will allow EPA to gather data and evaluate experiences that will help the Agency make sound decisions as it considers ways to improve the current regulatory system. While EPA, working with state and local agencies, hopes to transfer flexible new approaches described in this Agreement that are determined to be successful into the current system of environmental protection, careful analysis of the results of the Project is a necessary prerequisite for broader implementation. In this Project, the use of flexibility to allow a major downtown redevelopment with associated transportation improvements to proceed during a conformity lapse raises complex legal, policy, and scientific issues and uncertainties. These issues and uncertainties will require extensive post-implementation analysis before EPA can determine whether such flexibility can or should be offered to other entities in the future. Therefore, as with all XL Projects, the flexibility granted in connection with this Agreement, in and of itself, establishes no precedent with regard to other redevelopment projects. Entities contemplating projects requiring equivalent or similar flexibility to proceed should be aware that EPA does not intend to consider additional requests for flexibility of this nature until the results of this project have been received and analyzed.

The Parties enter into this Final Project Agreement (Agreement) to accomplish five principal purposes. They are:

1. To describe how Jacoby intends to attain measurably Superior Environmental Performance when compared to similar types of real estate developments and to describe related commitments made by Jacoby.
2. To describe EPA commitments regarding the flexibility needed by Jacoby to accomplish the Superior Environmental Performance described in this Agreement.
3. To identify the procedures, processes and approvals necessary to allow this project to go forward.
4. To state that the Parties do not intend to create legal rights or obligations by this Agreement
5. To describe rules, permits, or other mechanisms by which EPA intends to implement the provisions described in this Agreement.



III. DESCRIPTION OF THE PROJECT

Jacoby seeks to construct a mixed-use infill development on approximately 138 acres of property ("Property") in the heart of Midtown Atlanta, Georgia. When the redevelopment is complete, the Property will include a combination of residential, office, retail and entertainment space in a pedestrian oriented environment with linkage to rapid rail mass transit. The Property is currently home to the Atlantic Steel Mill, an industrial steel mill which operated for almost a century and which ceased operations in December, 1998. Construction of the project will allow remediation of the property to occur.

The project site is located on the western boundary of the I-75/85 corridor (a 14-lane interstate highway system), the major downtown thoroughfare. Most existing office and retail development in the area is located on the eastern side of this thoroughfare. As such, the site currently suffers from poor accessibility due to the lack of a linkage to most of the existing development in the area. As part of this Project, construction of a bridge across the thoroughfare to create this linkage is proposed. In addition, the bridge would provide a connection to the existing rapid rail transit system in Atlanta (the Metropolitan Atlanta Rapid Transit Authority or MARTA) and access to and from the Interstate system. Without the bridge, the proposed redevelopment is not economically viable. Moreover, the City of Atlanta made the bridge a condition to the rezoning necessary for the proposed redevelopment.

Jacoby has submitted a conceptual design of the 17th Street bridge and interchange to the Georgia Department of Transportation (GA-DOT). The conceptual design addresses the need and purpose for a cross-interstate connection between Midtown and the Arts Center Transit Station, and the Atlantic Steel Redevelopment. This connection encompasses a multi-modal bridge and a modification of interstate off ramps. Components of the bridge include:

- ❖ two 11' general-use lanes in each direction for vehicular traffic,
- ❖ two 16' dedicated, bicycle and transit lanes separated from general use lanes using a double row of raised pavement markings.
- ❖ 24' of pedestrian facilities organized as a linear park.

The transit lanes on the bridge are designed to accommodate a light rail line to link the site to the Arts Center MARTA station. Submission of the conceptual design to GA-DOT is an initial step in seeking necessary approvals from transportation authorities including GA-DOT and the Federal Highway Administration (FHWA). Jacoby hopes that a final design for the 17th Street bridge and transportation corridor will be approved in 1999.

Current regulatory conditions and Atlanta's nonattainment status prevent construction of the bridge and interchanges unless the entire Atlantic Steel redevelopment project is considered a transportation control measure (TCM). Jacoby has requested and proposed to EPA that the mixed use redevelopment and transportation linkage components of this project, in conjunction with the brownfield remediation which will occur if the project proceeds, be considered as an XL Project for the express purpose of determining whether, considering the totality of circumstances, the Atlantic Steel redevelopment can be considered a TCM. The City of Atlanta has sponsored and submitted an application to include the Atlantic Steel redevelopment in the Interim Transportation Improvement Program as a TCM.

Jacoby and EPA intend to use an innovative approach under Project XL to obtain approval of the Atlantic Steel redevelopment as a TCM and achieve the overall superior environmental benefits which will result from the project. The project could serve as a model of infill land development -- an alternative to what is often referred to as "sprawl." As distinguished from current typical patterns of development, the urban livable community proposed by Jacoby would result in moderate to high concentrations of residential and employment trip ends, a vertical and horizontal integration of land uses, and a highly interconnected vehicular, pedestrian and bicycle circulation system both within the development and to adjacent areas of Midtown and rapid rail transit. It is anticipated that when all components of the redevelopment are collectively considered, the project will qualify and be approved as a TCM and thus may be constructed even though a conformity lapse exists in the Atlanta Metropolitan Area.



IV. STAKEHOLDER INVOLVEMENT PROCESS

Stakeholder involvement is considered essential by both Jacoby and the EPA and has been an important part of the concept development and rezoning processes since the project began in early 1997. It is important to note that prior to EPA's involvement, multiple public meetings, discussion groups, individual contacts, and a full public notice and review process occurred during the rezoning of this property. That process included the City of Atlanta Planning Department, Georgia Department of Transportation, Atlanta Regional Commission, nine neighborhood organizations, and several other groups such as the Midtown Alliance and Georgia Tech. These groups collaborated on the concept, design, and conditions which were placed in the City of Atlanta rezoning document. These changes and conditions replaced the previous land use zoning classification of industrial with a mixed-use classification including residential, retail, office, and hospitality at urban densities. Many measures to be taken by Jacoby as expressed in this Agreement are products of the rezoning process. The City of Atlanta zoning conditions are contained in Appendix A.

After public input and review, the rezoning was approved 9-0 by Neighborhood Planning Unit E which represented each of the nine involved neighborhoods, the City of Atlanta Zoning Review Board 9-0, recommended to the City Council by the Zoning Committee 5-0, and passed by the Atlanta City Council 15-0. The order was signed by the Mayor, Bill Campbell, as soon as it passed through the City Council approval mechanism. The rezoning process began in May 1997 and continues today, as one agreement was that a periodic status report would be given.

The Stakeholder Participation Plan (SPP), Appendix B, is intended to supplement previous activities and describe the basic method by which additional input can continue to be solicited and received throughout the duration of the project. Stakeholder input and community goals have been and will continue to be considered as the Atlantic Steel redevelopment is implemented. Jacoby will maintain and update the SPP to provide for continued stakeholder involvement over the duration of this XL project. Stakeholders who have been identified and asked to participate in the development of this project are listed in Appendix C.

V. IMPLEMENTING THE JACOBY VISION FOR THE ATLANTIC STEEL SITE

Current economic and growth projections for the Atlanta region suggest that the vast majority of new development will continue to occur in suburban “greenfield” areas, as described in the analysis performed by EPA for this project. The proposal to redevelop the Atlantic Steel site represents a significant departure from these trends.

The project constitutes a major reinvestment in the downtown Atlanta area and would use existing infrastructure and provide a critical linkage to existing mass transit. The proposal contains numerous features designed to promote quality of life in a new mixed use urban community. A transportation corridor will span the interstate and reestablish a link from the Atlantic Steel site to existing community areas on the East side of I-75/85 and to the Arts Center MARTA rail station. The primary area of commercial space on the site will be located on the east side, adjacent to the freeway and close to existing large-scale development along the Peachtree Street corridor. The middle portion of the site will be a residential village curving around a manmade lake and within walking distance of a transit link to MARTA, adjacent shopping, entertainment, office and recreation. Two residential towers will flank the residential village to the east and west and complementary shops (coffeehouses, convenience stores, florists, etc.) will dot the streetscape. The western portion of the site is reserved for a technology based office and research village affiliated with the Georgia Institute of Technology. Initial plans for lower office densities and extensive landscaping have been revised to incorporate a greater mix of uses, such as residential and retail components. The goal is to create an active setting for technology-based research, living, and social interaction. The proposed development will provide the opportunity to walk between centers of residential, entertainment, cultural, employment, and recreational uses, thus offsetting vehicular travel and encouraging a “neighborhood” environment. Finally, the development will reconnect existing neighborhoods to the east which were separated with the construction and expansion of the I-75/85 corridor.

The project creates the potential to document the long-term air quality benefits of infill developments, particularly since the project combines improved access to rapid transit with the land use attributes of a centrally-located, compact, interconnected, pedestrian-oriented, mixed use development. Project XL provides the opportunity to compare the proposed development to alternative greenfield developments and thereby link the proposed development and accompanying transportation investments for purposes of an overall air quality analysis.

If this XL Project does not proceed, development of the property as described in this Agreement cannot occur. The City of Atlanta zoning conditions require the bridge as a precondition to construction of the proposed development at the property. Moreover, because of the current poor access to the property, the project cannot be economically justified without the bridge and resulting improved access.

If the Project as described in this Agreement does not occur, greenfield sites would likely absorb much of this growth. Continued industrial use of the site would likely contribute adversely to the overall environmental impact in the area. Should the bridge not be constructed, it is likely that the property would be developed as light industrial warehouse space with a retail tenant which would likely consist of a single story building relying on auto-borne traffic with acres of parking, limited or no mass transit service, and a no-frills site plan with little unique community character or pedestrian amenities. It is the intent of Jacoby instead to attract retailers of all descriptions to a central city redevelopment which is mass transit oriented and pedestrian friendly.

Such a project would contain few, if any, of the features of this XL Project which promote air quality. Moreover, if this XL Project should fail to be implemented, little if any remediation is expected to take place at the site. Without the sale and development of the property, sufficient resources do not exist to undertake a cleanup. Sale of the property and the corresponding Jacoby development is the only existing method by which timely remediation of the property can occur.

The Jacoby vision for Atlantic Steel is outlined below.



A. SITE DESIGN

As part of this XL project, Jacoby and EPA agreed to reexamine the original Atlantic Steel site plan in an attempt to identify design changes which would improve the travel and environmental performance of the redevelopment. Several opportunities for improvement were identified during a design charrette¹ conducted under EPA by the town planning and architectural firm of Duany Plater-Zyberk (DPZ) and subsequent analyses of site designs by EPA (See Appendix G). Based on the results of these activities, Jacoby commissioned Thompson, Ventullet, and Stainback Architects to revise the site plan to incorporate as many potential improvements as possible. EPA and Jacoby believe the revisions will add to the anticipated superior environmental performance of this XL project. Several suggested changes and the corresponding revisions made to the Atlantic Steel site plan are outlined below and drawings reflecting revisions to the site design are contained in Appendix D.

- 1. Comment/Suggestion:** Some streets have high-speed geometries and are auto-oriented reducing the pedestrian-friendliness of the environment. Strategic reductions in travel speeds, reductions in building setbacks, and impediments to alternative transportation are opportunities to reduce auto trips and improve the environmental performance of the site.

Response/Revision: To address the issue of high-speed geometries, the following amendments were made: Block sizes were reduced and the road network was reconfigured to parallel the existing urban grid system. Building setbacks were eliminated where possible. In many cases, buildings start at the right-of-way line.

On-street parking is viewed as a traffic calming device and component integral to an urban pedestrian streetscape. Jacoby has committed to pursuing on-street parking on all streets other than 17th Street within the development. 17th Street is the exception because initial discussions with GA-DOT and traffic engineers have identified the area around the lake and park as the only appropriate section of 17th Street to accommodate on-street parking.

The maximum-posted speed limit on the streets within the Atlantic Steel Redevelopment will be 35 mph. This is in accordance with City of Atlanta requirements and design standards. 16th and 17th Streets are the only streets that will have this maximum posting. All other streets will have a maximum posted speed limit of either 25 or 30 mph.

- 2. Comment/Suggestion:** The best pedestrian environments consist of well-defined spaces, continuous uses and a variety of streetscaping amenities. From this perspective, the site plan, particularly the west side, can be improved by better framing pedestrian areas and creating clear progressions of pedestrian-oriented uses - such as a clear line of pedestrian oriented retail along key pedestrian routes. The current retail is discontinuous in places and, in these places, does not promote a defined pedestrian route or set of routes. Other pedestrian-friendly improvements can also be made such as avoiding uses incompatible with pedestrian activity, such as surface parking lots along pedestrian routes. Increased attention to these important details of the site plan will enhance the attractiveness of pedestrian travel as a viable mode of transportation.

Response/Revision: The site plan, particularly the west side, has been altered to better frame the pedestrian areas by creating clear progressions of pedestrian-oriented uses. Pedestrian-oriented retail has been added to the west side along 16th Street and around a new public plaza at the heart of the technology park (as depicted in the original design), now a reconfigured and newly defined "Tech Village." Independent of the defined pedestrian route system along the community's

¹ A charrette is a community design workshop. The term, based on the French word for cart, is used because the people who served as France's "Town Planners" hundreds of years ago traveled from village to village carrying their plans in a cart.



streets, a secondary pedestrian route system is defined through a series of parks and plazas, not only linking the various uses within the redevelopment, but also linking the adjoining neighborhood to the south.

A particular element represented in the DPZ alternative plan, the park which connects to the neighborhood via a north-south alignment, is represented in the amended site plan along State Street. The alignment delineated by the DPZ plan occurs in land owned by the Georgia Tech Foundation and not under Jacoby control. Jacoby fully expects the Georgia Tech Foundation to develop its land in a manner that complements the overall site plan, but cannot commit to creation of a park on Georgia Tech Foundation property. All surface parking lots along pedestrian routes have been removed, with the exception of on-street or plaza parking.

3. **Suggestion/Comment:** The west side of the site – the tech-focused office park, and its associated hotel – can be better integrated with other uses. The proposed configuration leaves these offices removed from the majority of on-site retail, restaurants, and residences. Studies have shown that pedestrian mode share substantially increases when trip lengths are a quarter mile or less. Increasing the west side offices' proximity to on-site destinations can increase pedestrian mode share.

Response/Revision: The west side of the site has been transformed from a more traditional office park to a mixed-use technology village. In the original design, there were no retail or residential uses in this portion of the site. The revised design includes pedestrian-oriented retail with residential units above. These reconfigured buildings are centered around a new public plaza, which serves as the focal-point of civic activity on the west side of the site. A residential building also shares a new public common area with a mixed-use office building. The common area includes a restaurant and patio that will serve office workers by day and residents by night. This common area will link the secondary pedestrian network connecting the tech village with the residential neighborhoods of the redevelopment. In order to encourage pedestrian activity, different uses across the entire site will be within a quarter mile or less of each other. Technology-based office tenants require, on average, a 20,000-25,000 square foot floor plate. To address this need, Jacoby consolidated several smaller office buildings on the west side of the DPZ plan while maintaining the street-side orientation of the buildings.

4. **Comment/Suggestion:** Parking has a major effect on travel behavior. Recent work cited by DPZ suggests that co-locating hotels and offices allows for shared parking and reductions in needed capacity as high as 25%. By locating the two hotels next to one another this opportunity is precluded. Preserving these and other opportunities for innovative parking arrangements makes sense for future traffic management.

Response/Revision: In the amended site plan, hotels are relocated adjacent to offices to allow shared parking. Parking decks on the western side of the development are located adjacent to the railroad as suggested in the DPZ plan to provide better pedestrian environments along the street.

The revised site plan capitalizes on many of the opportunities outlined in the site analysis (see Appendix G). Although Jacoby is not obligated to construct the revised site plan depicted in Appendix D, the Atlantic Steel TCM application does contain specific site design performance measures which the redevelopment must meet. The site design measures in the TCM application allow flexibility to make changes to the site plan during build-out while guaranteeing that some key site design features will be included regardless of what the final design looks like.

B. PEDESTRIAN FRIENDLY ENVIRONMENT

This project will include unique features to encourage pedestrian friendliness. In consultation with EPA, Jacoby has considered and incorporated into its site design a number of suggestions from the town planning firm, Duany Plater-Zyberk. Pedestrian-friendly site design features of this project include:



- ❖ Construction of walkways and open areas to connect residential, office, retail and entertainment areas within the development.
- ❖ Extra-wide sidewalks throughout the development.
- ❖ Realignment of streets to create direct connectivity between neighborhood centers of interest.
- ❖ Inclusion of a lake/park in the center of the development.
- ❖ The distance from any edge of the development to transit services (e.g., shuttle) will be a reasonable pedestrian walking distance; in most cases, under 1100 feet which is a walk of less than five minutes for the average pedestrian.
- ❖ Installation of sidewalk furniture, lighting and landscaping to encourage pedestrian use of the site.

Jacoby specifically asked the City of Atlanta to include a number of these concepts in the zoning conditions: "Design standards with dimensions for streetscape, pedestrian circulation and bike paths will be indicated on the attached drawing from Thompson, Ventulett and Stainback (TVS), and pedestrian and bicycle elements will be installed concurrently with the street system. These standards are shown in the attached drawings dated February 2, 1998, stamped received by the Bureau of Planning April 3, 1998, and respectively include: (a) a plan drawing of proposed 16th and 17th Streets; (b) a section through 16th Street; and, © a section through 17th Street." Drawings from the original site plan are contained in Appendix D.

One of the most important features of this project from a connectivity standpoint is the creation of the 17th Street bridge and transportation corridor. It is called both a bridge and transportation corridor because the bike paths and sidewalks will continue beyond the bridge in both directions, creating an extended corridor for biking/walking in Midtown Atlanta. The bridge will include generous pedestrian and bike zones, including:

1. A 24' wide pedestrian linear park/thoroughfare, accented with streetscaping such as trees, benches, and signature lampposts. This streetscaping, particularly the trees and lampposts, would serve as a buffer between pedestrians and vehicular traffic and provide the amenities required for a quality walking environment; and
2. Bicycle lanes connecting the project to the east side of Midtown and providing a key link in completing the regional bikeway network.

C. MASS TRANSIT

One of the most important aspects of the 17th Street bridge and transportation corridor is the linkage it provides to mass transit. An integral part of this project's transit orientation is a linkage from the Atlantic Steel site to nearby mass transit at the MARTA's Arts Center Station. Future plans envision a light rail, trolley or people mover spur line from the MARTA Arts Center Station to the Atlantic Steel site. Jacoby will provide MARTA or another acceptable entity with right-of-way on the Atlantic Steel property for such a system as it develops. EPA will also work with MARTA to facilitate the eventual transit linkage. In the interim, Jacoby will provide a shuttle service from the Atlantic Steel site to the MARTA Arts Center Station. The shuttle service would begin operating when the City of Atlanta issues certificates of occupancy for retail components at the site. MARTA has committed to allowing access and providing appropriate interface for the shuttle service.

The Southern Coalition for Advanced Transportation (SCAT) has asked Congress to approve a \$6.7 million request for 27 electric and hybrid buses for Atlanta and Chattanooga. In an innovative partnership to help reduce the region's traffic congestion and improve air quality, Atlantic Steel, Emory University, Buckhead Area Transportation Management Association (BATMA), MARTA, the Southern Company and CARTA, Chattanooga's public transit system, have joined together in support of SCAT's request. Of the 27 vehicles requested, 19 alternative fueled buses would be



used in the Atlanta region. The federal funds would be matched with \$1.5 million in local funds for the project. If approved, the first buses may begin carrying passengers next summer in both Atlanta and Chattanooga. The buses would complement current transit operations and would be used to reduce single-passenger trips and improve transit access in the region.

Jacoby will continue efforts to encourage the development of a transit loop along the western corridor of I-75/85. Central Atlanta Progress, a coalition of prominent businesses (including Coca Cola, Turner Broadcasting, CNN), has, in consultation with MARTA, committed to conduct a feasibility study which will determine the appropriate nature of the future transit connection. To continue advancing these efforts, Jacoby will work with private and public entities to secure funding for and right-of-way commitments related to the proposed western transit loop. A letter from Central Atlanta Progress and a letter from MARTA outlining their commitments are contained in Appendix E.

The Jacoby commitment to a mass transit linkage is also embodied in the City of Atlanta Zoning Conditions: "The developer will incorporate people movers and other alternative forms of public transportation into its plans, subject to the required approvals by federal, state, City of Atlanta, and MARTA, including plans for access to the Marta Arts Center station as well as provision for connection to the rail corridor to the west and will use its best efforts to see that such transportation is provided."

D. BROWNFIELD REMEDIATION

The Property has operated for approximately 100 years as a steel mill and is currently underused and requires clean-up. While all required environmental permits are currently in place, significant environmental impacts remain as a result of operation of the steel mill. Closing of the industrial complex and development of a highly integrated mixed-use property will reduce substantially and in most instances eliminate impacts on the environment caused by the steel mill. Remediation of the site will occur prior to redevelopment of the property.

After an extensive study of existing environmental conditions conducted by Law Engineering on behalf of Jacoby and Atlantic Steel, the Property will be remediated to acceptable risk-based levels through use of a Remediation Plan which will be approved by the Georgia Environmental Protection Division (EPD). The Remediation Plan will incorporate risk-based cleanup criteria tailored to site-specific future use to assure consistency with U.S. EPA and Georgia EPD requirements for protection of human health and the environment. A work plan approved by Georgia EPD sets forth the methodology for investigation and remediation of the site (Appendix F).

Some major components of the approved work plan include:

1. Excavation and removal to an approved off-site disposal facility of certain areas of impacted soil;
2. Creation of barriers to prevent risk of exposure to impacted soil which remains at the site;
3. Interception of groundwater at the site to prevent migration of groundwater to other sites;
4. Management of surface water runoff; and,
5. Creation of institutional controls (deed restrictions, covenants, etc.) to prevent activities which could result in exposure.

An existing RCRA unit located on a small portion of the property currently has a 20 ft x 20 ft. cap with monitoring wells and a groundwater recovery system. As a part of the remediation of the property, this area will be excavated, the waste will be removed to an approved off-site facility, and "Clean Closure" will be accomplished in accordance with regulatory requirements.



Use of institutional controls (deed restrictions, etc.), combined with engineered solutions consistent with the approved Remediation Plan will allow economically viable redevelopment. Without the currently proposed redevelopment there would be insufficient funds to implement remediation of this brownfield site. The proposed redevelopment will make possible the timely remediation and productive reuse of the site.

E. EROSION/STORMWATER CONTROL

Stormwater runoff from the current Atlantic Steel facility, as well as the drainage area west of Northside Drive and north of 14th Street, currently flows into a combined (sanitary and stormwater) sewer. Jacoby will install separate stormwater and sanitary systems. Such separation is not currently required by law, but Jacoby has agreed to this measure in the interest of reducing future impacts on water quality. The systems will be adequately sized to handle sanitary and stormwater discharges from the proposed project and existing flows in the catchment basin now serviced by the existing combined sewer trunk line. Plans for the Atlantic Steel stormwater sewage system will be submitted for approval to the City of Atlanta. The plan will be approved only if it complies with guidelines in the City of Atlanta Stormwater Management Design Manual.

During construction of the project, all stormwater runoff will be diverted to onsite erosion and sediment control facilities. After construction, stormwater runoff will be diverted to one or more impoundments to be constructed on the property (including a "lake") and then reused as greywater or discharged to the separate stormwater sewer located on the property. Structural best management practices (BMPs) and stormwater controls will operate in accordance with applicable Georgia State Law. Innovative stormwater control structures, such as modified catch basins will also be employed where practical. BMPs including the treatment process described below will be implemented to reduce or eliminate the flow of pollutants from stormwater runoff to receiving waters.

Surface runoff which leaves the site will pass through on-site BMPs and erosion control measures. The use of on-site BMPs assures that all stormwater will receive some level of treatment prior to reaching the Chattahoochee River. The commitment by Jacoby to incorporate BMPs and measures to decrease pollutant loadings and reduce flow from surface water runoff will assist the efforts of EPA, the Georgia EPD, and Atlanta to improve watershed management and achieve water quality standards.

Site design, grading, and drainage will be conducted in accordance with an approved erosion and sedimentation control plan which is required by the Georgia Erosion and Sedimentation Control Act. Surface water currently exits at the southeast corner of the property near Interstate I-85/75. Control devices including collection systems and curbing will be installed to assure that surface runoff from the development flows through treatment facilities. The treatment facilities will include screens, boxes, grates and baffles intended to help remove solid materials and prevent siltation.

The inevitable loss of some existing trees and vegetation will be compensated for by planting additional vegetation, clustering tree areas, and promoting the use of native plants. In addition, Jacoby will clearly specify how community open space will be managed and designate a sustainable legal entity responsible for managing both natural and recreational open space.

Due to characteristics of the brownfield and the steel mill operations which existed for many years on the site, the redevelopment will be designed to minimize groundwater infiltration. To assure that no contamination leaves the brownfield site in the future via groundwater, the remediation of the property will incorporate a groundwater interceptor system to collect groundwater and divert it to on-site pretreatment facilities before discharging the flow to a sanitary sewer. Treatment of the intercepted groundwater will be provided to assure compliance with Atlanta's Sewer Use Ordinance.



F. POLLUTION PREVENTION

Given the nature of the proposed redevelopment, it will be possible to focus on the prevention and reduction of pollution at the source. Jacoby received assistance early in the project from a Pollution Prevention (P2) Team that included stakeholders from Southface Energy Institute, GA Pollution Prevention Assistance Division, Georgia Tech, University of Georgia, EPA and other interested organizations. These stakeholders provided a menu of P2 opportunities that could be considered for incorporation into this agreement. The Southface Energy Institute is a national leader in sustainable building technology and offers training and support in the Atlanta Region. Jacoby has and will continue to work with Georgia Tech, EPA, Southface, and other interested stakeholders on the identification of pollution prevention application solutions for this multi-use project. As part of this XL Project, Jacoby is making a voluntary commitment to work with future tenants and developers to meet these goals.

As part of this project, Jacoby has volunteered to work with builders at the redevelopment to participate in the Green Building Council "Leadership in Energy and Environmental Design" (LEED™) program. This innovative pollution prevention program takes a comprehensive view of resource conservation and management. The Leadership in Energy and Environmental Design program consists of a wide variety of programs. To participate, an applicant must satisfy prerequisites set by the program and earn a certain number of credits to attain different LEED™ Building classifications. A total of 44 Credits, plus 4 Bonus Credits are available under the LEED Building™ rating system with four categories of certification:

1. LEED Building Platinum™: for buildings that earn 81% (36) or more of the available credits
2. LEED Building Gold™: for buildings that earn 71-80% (31-35) of the available credits
3. LEED Building Silver™: for buildings that earn 61-70% (27-30) of the available credits
4. LEED Building Bronze™: for buildings that earn 50-60% (22-26) of the available credits

After meeting the rating system prerequisites, credits and bonus credits are earned by employing "green measures" in a variety of areas, including, but not limited to: use of low VOC building materials, use of local materials, use of recycled materials, construction waste management, energy efficiency (the EPA Green Lights and Energy Star Building Programs are included), indoor air quality, occupant recycling programs, siting, transportation (for example secure bicycle storage areas, shower and changing facilities for cyclists), water conservation and erosion control.

Jacoby has volunteered to work with builders at the Atlantic Steel redevelopment to reach, as a goal, the requirements for LEED Building Bronze™ designation. The ability to achieve a designation in the program is contingent on participation and cooperation by developers, architects and construction companies for various components of the project. Jacoby has committed to serving as a leader in this capacity to reach the LEED Building Bronze™ designation while continuing to work toward the goal of a LEED Building Silver™ or better designation.

As the redevelopment is planned and constructed, progress toward meeting these goals will be reported in the semi-annual and annual Project XL reports. Documentation for the LEED Building™ program is also maintained at the U.S. Green Building Council offices. Documentation requirements include a completed application/certification form (forms are available through the LEED Building™ Design Assistance Manual). Further information about the program is available at the U.S. Green Building Council web site: <http://www.usgbc.org/>.

Below are examples of measures which can be taken to earn LEED Building™ credit in areas of conservation and waste minimization:

1. Energy Conservation

Strategies to prevent and minimize pollution entail the selection of construction materials and sustainable building technologies that minimize energy use. Another goal is to reduce energy consumed by from heating and cooling through the siting and orientating of buildings and landscape materials in such that solar gain is maximized in winter and minimized in summer. As part of this XL Project, Jacoby is making a voluntary commitment to work with EPA, the Southface Energy Institute, Georgia Tech, and other interested stakeholders to identify and encourage future tenants and developers to participate in voluntary energy conservation programs such as EnergyStar and Green Lights. In addition, the LEED Green Building™ program offers points for other measures. Jacoby will work with builders at the redevelopment to determine which measures to apply in order to meet LEED Building Bronze™ requirements.

2. Solid Waste Management

Jacoby will continue to encourage the current owner (Atlantic Steel) to implement a recycling and reuse plan for solid waste generated during the demolition of existing structures on the property. Such opportunities for recycling and reuse include: 1) deconstruction to recover materials for reuse (preferably on-site); 2) requiring inclusion of recovery in demolition contract specifications; and 3) using recovered materials as close as possible to the site. Jacoby will encourage Atlantic Steel to document environmental information for the project by: 1) requiring demolition contractors to maintain records; and 2) including bonuses for contractors who maximize reuse and recycling of materials. Jacoby will also encourage and facilitate aggressive recycling and reuse programs for future developers, tenants, and occupants. In addition, the LEED Green Building™ program offers points for other measures. Jacoby will work with builders at the redevelopment to determine which solid waste management measures to apply in order to meet LEED Building Bronze™ requirements.

3. Water Use Reductions

State laws and building codes require reduced water use in all newly constructed properties. Also, the relatively consolidated nature of this redevelopment (when compared to a greenfield development of comparable square footage which would encompass a much larger land mass) will require significantly less water use. Jacoby will work with builders at the redevelopment to determine which measures to apply in order to meet LEED Building Bronze™ requirements.

Water conservation practices will be developed and promoted to reduce overall pollutant and hydraulic loadings to receiving waters and urban streams, and to the wastewater treatment plant. The use of flow restrictors in office buildings, homes, etc. in the project and general water conservation practices will be promoted. Innovative reuses for "greywater" (reusable but non-potable water) including landscape irrigation in green areas will be encouraged. The use of indigenous plant species will be encouraged to minimize irrigation requirements. In addition, the LEED Green Building™ program offers points for other measures. Jacoby will work with builders at the redevelopment to determine which water conservation measures to apply in order to meet the LEED Building Bronze™ requirements.



VI. PROJECT XL ACCEPTANCE CRITERIA

The Atlantic Steel redevelopment, as described in this Agreement, meets EPA's Project XL criteria. See 60 Fed. Reg. 27,282, et seq. (May 23, 1995). The criteria and the bases for stating that they are met are summarized below.

A. ENVIRONMENTAL RESULTS

To evaluate the environmental impacts of the Atlantic Steel redevelopment, EPA, consulted with stakeholders, including the Federal Highway Administration, the Atlanta Regional Commission and local citizens' organizations, and decided to perform three main analyses: 1) regional transportation and air emissions impacts; 2) local carbon monoxide impacts; and 3) site level travel and multi-media impacts. A description of the analysis methodology and a thorough discussion of the results is contained in Appendix G. The results of these studies are briefly summarized below.

Previous EPA analytical work has quantified the magnitude of potential improvement in the transportation and environmental performance of a development if located to produce regional and transit accessibility. The EPA Office of Policy study "Transportation and Environmental Impacts of Infill and Greenfield Development" found that locating development on regionally central infill sites can produce emissions benefits when compared to locating that same development on greenfield sites on the fringe of the currently developed area. In three EPA case studies, predicted per-capita vehicle miles traveled (VMT) associated with a development site were reduced by as much as 61% at infill sites compared to the greenfields, and NOx emissions were reduced by 27% to 42%. This and related literature suggested that the Atlantic Steel project may reduce future emissions growth in the region.

Based on the case studies described above and related literature, EPA and Jacoby tentatively believed that future emissions reductions from the Atlantic Steel redevelopment would likely result from the site's regionally central location and design when compared to the location and design the growth would have taken absent development of the Atlantic Steel site. Therefore, EPA analyzed the likely environmental performance of the Atlantic Steel site at two levels. First, EPA evaluated the performance of the Atlantic Steel site relative to three other likely regional growth locations. As part of this evaluation, carbon monoxide (CO) emissions associated with the Atlantic Steel site were evaluated for potential "hot spots." Second, EPA investigated the performance of the site design proposed by Jacoby relative to likely design of the greenfields and one other potential design for the Atlantic Steel site.

Regional Location/CO Analysis. To analyze the transportation and air emissions impacts of locating new development at the Atlantic Steel site, EPA used the Atlanta regional transportation and MOBILE 5a emissions models to compare the Atlantic Steel site to three other possible locations for similar-scale development in the Atlanta region. Where appropriate, the Atlantic Steel redevelopment was also compared to the regional average. Two facts were fundamental in the evaluation of the impacts of the Atlantic Steel site. The first was that Atlanta is projected to grow over the next 20 years. The second was that absent the Atlantic Steel redevelopment, more of this growth would likely occur in outlying areas. Analysis of regional transportation and air emissions impacts of the Atlantic Steel development show that absorbing a larger portion of Atlanta's future growth at the Atlantic Steel site would create less vehicle travel and fewer emissions than if the growth were to occur at regional sites that represent likely alternatives.

EPA also analyzed whether, if the Atlantic Steel site were developed, the additional traffic there would cause CO hot spots. Analysis indicates that CO hot spots would not occur.

Site Design Analysis. EPA also analyzed the impacts of site design on transportation and air emissions. EPA compared the site plan originally proposed by Jacoby to site plans for the three greenfield sites, and to a site plan for the Atlantic Steel site created by Duany Plater-Zyberk & Co. (DPZ), a leading town planning firm. The site designs differ substantially in ways that affect travel behavior and thus emissions.



On important measures such as density, mix of use and transit access, Atlantic Steel's design as proposed by Jacoby is superior to designs which would likely occur at the alternative sites. However, the DPZ design of the Atlantic Steel site was found to be superior to Jacoby's in three respects. First, the DPZ design provides better connectivity on and off site. Second, it improves the mix of uses on site by integrating them at a finer scale. Finally, the pedestrian environment is improved through street design, more direct routing and slower traffic speeds. Jacoby has revised the original site design to incorporate many of the transportation-related elements of the DPZ design, improving transportation performance in each of the areas discussed.

Other superior environmental performance associated with the project includes remediation of a century old steel mill and the surrounding property, use of existing or improved water/sewer infrastructure and implementation of erosion and stormwater control measures. Superior environmental performance (SEP) will also result from Jacoby's voluntary commitments to work with builders at the redevelopment to participate in reuse and recycling programs, energy conservation and implementation of pollution prevention processes. If the project is not approved, two likely land-use options exist for the site: 1) no sale and development of the property would occur, industrial use of the site would continue, and remediation of the site would be delayed indefinitely; and/or, 2) the property would be sold and developed for single use (i.e., "big box" style) retail as allowed under prior zoning conditions without the requirement for construction of a bridge or linkage to mass transit. EPA believes that neither of these options would be environmentally preferable to this project.

B. COST SAVINGS/PAPERWORK REDUCTION

Use of existing infrastructure including roads, sewer, utilities and mass transit will result in major cost savings when compared to building this development in an area that lacks access to existing infrastructure. EPA and Jacoby will also work together to identify opportunities to consolidate reporting requirements and reduce the paperwork burden associated with the project. To the extent practicable and consistent with all applicable requirements, all reporting (regulatory and voluntary) for local, State and Federal agencies will be consolidated into an annual report. The reports are discussed in Section VIII.H.1 of this Agreement. The project should also be noted for its positive economic impact on downtown Atlanta.

C. STAKEHOLDER SUPPORT

As described in Unit IV above, there has been extensive stakeholder involvement in and support for this project. Jacoby has committed considerable resources towards seeking out and obtaining the input and support of parties who have a stake in the project. Jacoby has engaged and will continue to involve a wide range of stakeholders. Direct participant stakeholders include GA-EPD, GA-DOT, the Atlanta Regional Commission, the City of Atlanta, MARTA, the Georgia Conservancy and others. Letters from stakeholders expressing support for the project are contained in Appendix E.

D. INNOVATION/MULTI-MEDIA POLLUTION PREVENTION

EPA's pollution prevention criterion expresses EPA's "preference for protecting the environment by preventing the generation of pollution rather than by controlling pollution once it has been created." This project involves an infill redevelopment of property currently occupied by an old steel mill. Ending steel mill operations at the site will eliminate the possibility of future contamination from such operations. Developing this urban site rather than a greenfield site will end any pollution caused by the existing industrial land use while simultaneously preserving green space in the Atlanta region. In addition, the project will participate in the U.S. Green Building Council "Leadership in Energy and Environmental Design" (LEED™) Program as described in Section V.F. above.



E. TRANSFERABILITY

Many aspects of this project may prove to be transferable to other developments in locations like Atlanta where growth patterns have resulted in poor accessibility, traffic congestion, air quality problems and decreasing green space. If properly implemented, this project could serve as a model for redevelopment of infill properties. In addition, the City of Atlanta zoning conditions Jacoby agreed to and assisted in drafting, along with close cooperation from surrounding neighborhoods, environmental groups and other stakeholders provide a potential framework by which similar infill developments can occur. The integrated, mixed-use, mass transit-connected development proposed by Jacoby within the central business district of a major city may serve as a model of smart growth. Jacoby will use reasonable means (e.g., technical publications, conferences and workshops) to disseminate specific lessons about its Atlantic Steel experience to other developers and urban planners, subject to Jacoby's ability to protect proprietary or confidential business information against unauthorized disclosure.

In this Project, the use of flexibility to allow a major downtown redevelopment with associated transportation improvements to proceed during a conformity lapse raises complex legal, policy, and scientific issues and uncertainties. These issues and uncertainties will require extensive post-implementation analysis before EPA can determine whether such flexibility can or should be offered to other entities in the future. Therefore, as with all XL Projects, the flexibility granted in connection with this Final Project Agreement establishes no precedent with regard to other redevelopment projects. Entities contemplating projects requiring equivalent or similar flexibility should be aware that EPA does not intend to consider additional requests for flexibility of this nature until the results of this project have been received and analyzed.

F. FEASIBILITY

Projects of the scope and magnitude of the Atlantic Steel redevelopment require the integration of resources from many sources, both public and private. While no one individual or entity is solely responsible for an undertaking such as this project, Jacoby has demonstrated the ability to secure the financial resources necessary to implement its vision for Atlantic Steel. Entities which have expressed an intent to purchase, lease, sublease, or otherwise financially support the project include The Mills Corporation and Post Properties, Inc. Jacoby and EPA believe that sufficient technical and financial resources exist to meet the goals of the project. Estimates of capital/operating costs associated with the redevelopment and 17th Street bridge and potential funding sources are identified in the TCM summary (See Appendix J).

By signing this Agreement, EPA agrees that it has the authority through the State Implementation Plan approval process to grant the regulatory flexibility requested by Jacoby and described in this Agreement. This flexibility is necessary to consider the redevelopment a TCM, thus allowing for its construction once it is included in an approved State Implementation Plan.

G. MONITORING, REPORTING AND EVALUATION

EPA's monitoring, reporting and evaluation criterion articulates EPA's expectation that Project XL sponsors will make project information, including performance data, available to Stakeholders in a form that is easy to understand. Information about this project can be found on the Project XL web site, <http://www.epa.gov/projectxl>; and on the Atlantic Steel redevelopment web site, <http://www.crbrealty.com/>.

This Agreement provides for monitoring, reporting to the Agencies and Stakeholders, and periodic performance evaluation. The means of reporting and an annual meeting near the project site (with advance notice) and the availability of backup data on request should make information regarding the project accessible. Moreover, many of the measures Jacoby intends to implement as discussed in this document are City of Atlanta zoning conditions and are therefore required before the project can be developed. Regulated activities not addressed by this Agreement should adhere to the appropriate reporting requirements.



The proposed TCM will be monitored annually, beginning in the year following the opening of the 17th Street bridge to single occupancy vehicle traffic in order to assess its effectiveness in reducing VMT and mobile source emissions. At a minimum, the City of Atlanta will be responsible for collecting and maintaining data for the following three performance measures: 1) average daily VMT; 2) average daily VMT per employee working at the site; and 3) the percent of all trips made to and from the site by residents and employees by mode. Jacoby through its own contractor or through the TMA, will collect these data and provide them to the City of Atlanta for submittal to the ARC and EPD annually beginning one year from the opening of the bridge to single occupancy vehicle traffic consistent with the terms of the TCM. At any time, the City of Atlanta may choose to solicit other transportation information (i.e. travel cost, transit ridership) that may be beneficial for devising strategies to reduce VMT and single occupant automobile travel.

A transportation management association (TMA), which Jacoby has committed to support and participate in, will conduct an annual commute mode survey and monitor transportation-related issues at the redevelopment. EPA, Jacoby, ARC, the City of Atlanta, the Midtown Alliance and other stakeholders are currently investigating options for participation of the Atlantic Steel development in a larger transportation management district (TMD) which may include other relevant areas of Midtown.

If at any time after the project is two-thirds built out or six years after the 17th street bridge opens to single occupancy vehicle traffic (whichever comes first) the site falls below the enforceable performance measures (described in Section VII.C.), Jacoby will be required to fund or identify funding for a TMA for the Atlantic Steel redevelopment (if one doesn't already exist), consistent with the terms of the TCM. The TMA will consult with the City of Atlanta concerning implementation of additional alternative transportation programs that achieve the performance measures.

H. SHIFTING THE RISK BURDEN

Jacoby and EPA have analyzed Executive Order No. 12898 on Environmental Justice, and do not expect the Project to result in unjust or disproportionate environmental impacts. Jacoby will follow applicable state and federal requirements (including OSHA standards) to ensure worker safety during its construction and implementation of the Project.

The environmental benefits EPA and Jacoby expect from this project will accrue to the region as a whole (with the exception of the site clean-up). However, the possibility of increased traffic volumes and congestion in the immediate vicinity of the Atlantic Steel site raised the concern that carbon monoxide (CO) "hot spots" might occur -- thereby creating risk in the immediate area. EPA analyzed predicted traffic patterns to determine if any CO "hot spots" are likely. The results of EPA's analysis demonstrate that implementation of the project and resulting traffic will not produce any new, local-area exceedances of the CO health-based standard. The analysis showed that sections of road which are likely to experience increases in CO currently enjoy relatively low levels. The analysis also showed that roads which currently have relatively high levels of CO would not increase, and in some cases actually experience slight declines.

The Parties expect the project to result in reductions in long term air emissions which benefit all persons working in or living in the Atlanta region and that implementation of this project will have a desirable impact on Atlanta's overall environment and growth. Moreover, any person or organization expressing interest in this project has been welcomed to participate as a stakeholder.



VII. INTENTIONS, PERFORMANCE MEASURES, AND MILESTONES

This section describes the intentions of EPA and Jacoby, performance measures to determine the success of the project, and milestones for project completion.

A. EPA INTENTIONS

- ❖ EPA expects to certify to the Georgia EPD and the Metropolitan Planning Organization that the proposed redevelopment will result in a demonstrable air quality benefit and is entitled to treatment as a Transportation Control Measure under § 108 of the Clean Air Act. This TCM would be included in the Georgia State Implementation Plan so that construction of the project can proceed despite the conformity lapse in the metropolitan Atlanta area.
- ❖ EPA will continue to facilitate, in a timely manner and through use of Project XL and the regulatory flexibility it provides, the development of a TCM.
- ❖ EPA will work with Stakeholders and the appropriate local, regional, state and federal agencies in order to complete the TCM process within the schedule contained in Appendix H.
- ❖ EPA will review the redevelopment project and bridge collectively to determine whether, in combination, they result in superior environmental performance.
- ❖ EPA will work with Jacoby, the City of Atlanta, MARTA, and all interested parties to facilitate improvement of the transit connection (e.g., light rail, trolley) between the Atlantic Steel site and the MARTA Arts Center Station.
- ❖ EPA will work with Jacoby and all interested parties to encourage and facilitate the development of a transit loop on the West side of the I-75/85 corridor.
- ❖ EPA intends to continue to provide resources, subject to appropriations, to maintain the schedules set forth in Appendix H.

B. JACOBY INTENTIONS

1. Enforceable

- ❖ Jacoby expects that the following TCM obligations will be included in an approved SIP which is enforceable under the CAA. EPA expects to approve the SIP if the TCM includes, at a minimum, these obligations:
 - ⌘ Jacoby will provide right-of-way in the development to MARTA or another acceptable entity for the construction of an appropriate transit linkage including a station if necessary, connecting the Atlantic Steel site to the Arts Center MARTA station.
 - ⌘ Jacoby will provide an interim shuttle service to the MARTA Arts Center Station after construction of the 17th Street bridge and after certificates of occupancy are issued for retail components of the development. Jacoby will continue to provide this service for 10 years or until MARTA or another similar entity assumes responsibility for a mass transit linkage, whichever is less. The TCM will include the duration and operating details regarding the shuttle service such as number and location of stops, headways and capacity.
 - ⌘ The TCM will contain a commitment from the appropriate party that the 17th Street bridge will include capacity sufficient to accommodate a mass transit upgrade to light rail, a dedicated bicycle lane, and a pedestrian walkway.
 - ⌘ Jacoby will provide funding or a funding mechanism for the establishment of a Transportation Management Association (TMA).



- ⌘ The TCM will include specific examples of mitigation measures to be undertaken by the TMA if a specified threshold for air quality performance is not met.
 - ⌘ 17th Street will be developed as a mixed-use street.
 - ⌘ Bicycle lanes will, at a minimum be constructed on 17th Street, State Street (including loop north of 17th Street), and Center Street.
 - ⌘ Open space will be created and maintained.
 - ⌘ A transportation management plan for the site will be developed.
 - ⌘ Copies of the site plan, with revisions, will be submitted to the City of Atlanta, ARC, EPD, and EPA Region 4 on an annual basis after the 17th Street bridge opens to traffic and until the project is built-out.
 - ⌘ The final site plan will meet or exceed target values for four criteria set in the SIP TCM: overall density, average transit-oriented density, activity diversity, and external street connectivity.
 - ⌘ At any time after the project is two-thirds built out, or six years after the 17th Street bridge opens to single occupancy vehicle traffic, whichever comes first, the site will meet or exceed the transportation performance targets set in the SIP TCM for average daily VMT per resident, average daily VMT per employee, and percentage of trips made to, from and on the site by non-SOV modes of travel. If the project falls below the performance targets set in the SIP TCM, then the City of Atlanta and/or the TMA will implement transportation programs on-site that encourage trip reductions and travel mode alternatives to single occupancy vehicles.
 - ⌘ Jacoby, through its own contractor or through the TMA, will collect data on VMT per resident, VMT per employee, and mode split and provide it to the City of Atlanta annually, beginning one year after the 17th Street bridge opens to single occupancy vehicle traffic and continuing as long as the TCM is contained in the SIP.
- ❖ Obligations associated with the Remediation Plan are enforceable by Georgia EPD.
 - ❖ Obligations associated with the volume, quality and direction of stormwater runoff and erosion from the site are enforceable by the City of Atlanta and the Georgia EPD.
 - ❖ The zoning conditions (Appendix A) are enforceable under Atlanta's land development code by the City of Atlanta and certain real estate owners who meet the conditions described in Atlanta's land development code. The Atlantic Steel zoning conditions include but are not limited to:
 - ⌘ "The developer will use its best efforts to ensure that residential components are developed in advance of or concurrent with retail/commercial space...";
 - ⌘ incorporation of people movers and other alternative forms of public transportation within the project;
 - ⌘ inclusion of at least seven acres of open space;
 - ⌘ incorporation of streetscape, pedestrian circulation and bike paths concurrent with the street system;
 - ⌘ pedestrian and open space measures must be implemented prior to Certificates of Occupancy being issued;
 - ⌘ implementation of the Remediation Plan;



- ⌘ clearing and grading permits will not be issued before a stormwater drainage plan has been approved by the Department of Public Works;
- ⌘ the residential component of the project will contain the required percentage of residential space; and
- ⌘ submission of a Traffic Management Plan for all nonresidential components employing more than 50 employees.

2. Voluntary

- ❖ Jacoby will install separate stormwater and sanitary sewer systems which will be adequately sized to handle sanitary and stormwater discharges from the proposed project and existing flows in the catchment basin now serviced by the existing combined sewer trunk line.
- ❖ Innovative stormwater control structures, such as modified catch basins will be employed where practical. BMPs including the treatment processes described in section V.E. will be implemented to reduce or eliminate the flow of pollutants from stormwater runoff to receiving waters.
- ❖ Jacoby will work with developers and users of various portions of the property to implement pollution prevention measures into building construction and design;
- ❖ Jacoby will work with builders at the property to participate in the U.S. Green Building Council "Leadership in Energy and Environmental Design" at the LEED Building Bronze level.

3. Aspirational

- ❖ Jacoby will continue efforts to encourage development of a transportation loop on the west side of the I-75/85 corridor; including possible contribution of right-of-way for the transit loop.
- ❖ Jacoby will work with builders at the property to participate in the U.S. Green Building Council "Leadership in Energy and Environmental Design" at the LEED Building Silver level.
- ❖ Jacoby will explore the utilization of Hemphill Water Plant backwash water to reduce irrigation needs at the project site.

C. PROJECT XL PERFORMANCE TARGETS FOR ATLANTIC STEEL

EPA and Jacoby, after discussions with the City of Atlanta, and the State of Georgia have agreed on the following specific criteria to determine the success of this XL Project:

- ❖ The final site design will have $\geq 33\%$ of blocks containing mixed uses.
- ❖ The final site design will accommodate $\geq 12,000$ residents and employees combined.
- ❖ The final site design will average ≥ 180 persons per net acre on site in a 1/4-mile radius surrounding the on-site transit stops.
- ❖ The average separation of ingress/egress streets in the final site design will be $\leq 1,000$ feet, unless the City of Atlanta specifies otherwise.
- ❖ Following two-thirds build-out, or 6 years after the 17th Street bridge opens to single occupancy vehicle traffic, whichever comes first, average daily VMT per resident of the redevelopment will be ≤ 27 . If this target is not met, then the City of Atlanta and/or the TMA will implement transportation programs on-site that encourage trip reductions and travel mode alternatives to single occupancy vehicles.
- ❖ Following two-thirds build-out, or 6 years after the 17th Street bridge opens to single occupancy vehicle traffic, whichever comes first, average daily VMT per employee of the redevelopment will be ≤ 11 . If this target is not met,



then the City of Atlanta and/or the TMA will implement transportation programs on-site that encourage trip reductions and travel mode alternatives to single occupancy vehicles.

- ❖ Following two-thirds build-out, or 6 years after the 17th Street bridge opens to single occupancy vehicle traffic, whichever comes first, the percentage of trips made to, from, and on the site using non-SOV modes of travel will be $\geq 25\%$. If this target is not met, then the City of Atlanta and/or the TMA will implement transportation programs on-site that encourage trip reductions and travel mode alternatives to single occupancy vehicles.
- ❖ Remediation of a century old steel mill site to risk based levels.
- ❖ The site will have a linkage to mass transit.

D. MILESTONES AND PROPOSED SCHEDULE

- ❖ Deconstruction and Remediation will begin in 1999
- ❖ Remediation will be completed in 2000
- ❖ Bridge will be designed in 1999
- ❖ Bridge will be constructed in 2000-2002
- ❖ Project development will occur in phases
- ❖ Infrastructure will be installed in 2000 in conjunction with the remediation process
- ❖ Initial vertical development will begin in 2000 in conjunction with infrastructure installation
- ❖ Shuttle linkage to MARTA will begin when retail establishments are issued certificates of occupancy
- ❖ Remaining development will occur over next several years



VIII. PROJECT IMPLEMENTATION

A. LEGAL BASIS

This Agreement states the intentions of the Parties with respect to Jacoby's Project XL proposal for Atlantic Steel. The Parties have stated their intentions seriously and in good faith, and expect to carry out their stated intentions.

This Agreement does not create legal rights or obligations and is not a contract or a regulatory action such as a permit or a rule and is not legally binding or enforceable against any Party. This Agreement expresses the plans and intentions of the Parties without making those plans and intentions into binding requirements. This applies to the provisions of this Agreement that concern procedural as well as substantive matters. Thus, for example, the Agreement establishes procedures that the parties intend to follow with respect to dispute resolution and termination under the Agreement. However, while the parties fully intend to adhere to these procedures, they are not legally obligated to do so.

Because this Agreement does not create binding legal requirements, EPA intends to propose for public comment any rules, permit modifications or legal mechanisms needed to implement portions of this project. Any rules, permit modifications or legal mechanisms that implement this project will be enforceable as provided for by the applicable statutes.

This Agreement is not an agency "action" by the EPA because this Agreement does not create legal rights or obligations and is not legally enforceable. No action or omission by any Party that is at variance with a provision or provisions of this Agreement, or that is alleged to be at variance with a provision or provisions of this Agreement, can serve as the basis for any claim for damages, compensation or other relief against any Party.

B. NON-PARTY PARTICIPANTS

By entering into this Project XL Agreement, Jacoby and EPA are addressing a major regulatory barrier which would prevent implementation of the proposed Atlantic Steel redevelopment. However, it is important to note that various aspects of the project will remain subject to the approval of other regulatory entities even after this Final Project Agreement is signed. EPA and Jacoby have actively sought input and participation from those entities throughout the development of this Agreement and much progress has been made in clarifying the roles each will play in the ongoing process of making this redevelopment possible. Many of these entities have expressed support for this project in writing. Letters reflecting such support are contained in Appendix E.

The TCM application consists of a package of materials which includes a narrative describing how the TCM will meet the requirements for adoption into the State Implementation Plan (SIP). The complete process is described in the next Section. Appendix J contains the narrative portion of the TCM which was submitted to the Atlanta Regional Commission by the City of Atlanta. The TCM will go through various public comment periods prior to EPA's review and final approval (as appropriate). Any of the contacts listed in Section XIII.B will be able to provide information on the status of the TCM package in the approval process.



C. PROCESS FOR SIP TCM ADOPTION

As described in this Final Project XL Agreement, the regulatory flexibility being granted for this redevelopment involves considering the redevelopment to be a TCM. All other existing requirements would remain in place, allowing for the normal process of TCM approval by the various local, regional, state and federal agencies. Based on the favorable results of the air emissions analyses conducted for the Atlantic Steel XL Project, EPA is agreeing that it should proceed in the TCM process for approval and implementation. EPA's final approval of the TCM is contingent upon inclusion in the State Implementation Plan of the commitments and details regarding implementation that are described in this Final Project Agreement. The TCM process includes reviews by FHWA, FTA, MARTA, GA-DOT, EPA, and GA-EPD, with full public comment as well as approval by the ARC. Chronologically, a summary of the TCM approval process is as follows:

1. Submission of TCM package and description to ARC by the TCM sponsor (City of Atlanta). Review by the ARC Transportation Coordination Committee. With their favorable recommendation, the package would go to the ARC Transportation Air Quality Committee. With a favorable recommendation from that body, the package would go to the full ARC with other recommended projects and be incorporated into the Interim Transportation Improvements Plan (ITIP).
2. ARC submits favorably recommended TCMs to the Georgia Environmental Protection Division. GA-EPD considers the TCMs, solicits public comment, responds to public comments and submits projects to the Governor or appropriate official to be included in the State Implementation Plan.
3. GA-EPD then submits the SIP revision (including the TCM) to the EPA Region 4 office. EPA reviews the project for enforceability, completeness, and technical requirements. The project is then published in the Federal Register for public comment. EPA reviews and responds to comments submitted and proceeds to final action on the TCM. If no adverse comments are received or comments are adequately addressed, EPA approves the TCM as part of the State Implementation Plan. GA-DOT, FHWA and FTA would then complete necessary documentation and processing for the final design and construction of the project.

D. ENFORCEMENT OF TCM SIP PROVISIONS

Commitments contained in the TCM SIP will be enforceable under the Clean Air Act by the State of Georgia, EPA, and citizens.

E. APPLICABILITY OF OTHER LAWS OR REGULATIONS

Except as provided in any rules, compliance orders, permit provisions or other implementation mechanisms that may be adopted to implement the Project, the parties do not intend this Final Project Agreement to modify or otherwise alter the applicability of existing or future laws or regulations to the project sponsor or the redevelopment.

F. AUTHORITY TO ENTER AGREEMENT

By signing this Agreement, EPA and Jacoby acknowledge and agree that they have the respective authorities, discretion, and resources to enter into this Agreement and to implement all of the applicable provisions of this Project through the SIP approval process as described above.

G. RIGHTS TO OTHER LEGAL REMEDIES RETAINED

Except as expressly provided in the legal implementation mechanisms described above in Section VIII.C., nothing in this Agreement affects or limits either Jacoby's legal rights, or EPA's rights to seek legal, equitable, civil, criminal or administrative relief regarding the enforcement of present or future applicable federal and state code, rules, regulations, or permits.

Although Jacoby does not intend to challenge actions implementing the project that are consistent with this Agreement, Jacoby reserves its right otherwise to appeal or challenge an EPA action implementing the project. Nothing in this Agreement is intended to limit Jacoby's right to administrative or judicial appeal or review of modification, withdrawal or termination of those legal mechanisms in accordance with the applicable procedures for such review.

H. REPORTING

For the duration of this Agreement, Jacoby will provide an annual summary report to EPA and, upon request, to stakeholders. Jacoby will make all backup data and reports available to stakeholders on request. Jacoby will also post the annual reports on its Internet web site at <http://www.crbrealty.com>. The first annual report will be due February 15th of the year following the signing of this Agreement. Succeeding annual reports will be due February 15th of each year during the life of this Agreement.

In each annual report Jacoby will provide a summary of environmental performance data and will describe Jacoby's progress toward completing the Atlantic Steel redevelopment as described in this Final Project Agreement. The report should describe progress on all of the enforceable and voluntary commitments contained in section VII.B. of this Agreement as well as information on the status of the schedule goals in section VII.D. Other reports produced as part of the project which address these subjects (such as TMA reports) may be used as appropriate. An annual public meeting will be scheduled during the month of February of each year beginning February 2000. Reasonable advance meeting notice will be provided to the Agencies and stakeholders. Jacoby or its representative will present the report to the stakeholders at the public meeting

1. Report Frequency and Content

EPA, Jacoby, the City of Atlanta, and the State of Georgia will work together to draft a report outline within 90 days of the signature of this agreement. To the extent possible and consistent with applicable regulations, the outline will be structured so that streamlining of reporting on regulatory activities could continue beyond the duration of this Agreement. This outline will be designed to consolidate reporting requirements for the XL project, the City of Atlanta zoning conditions, the SIP TCM, the RCRA cleanup and monitoring of the construction of the redevelopment and the bridge. Items (in addition to those listed above) that will be contained in the report will include but are not limited to: stakeholder activities; milestones achieved; important announcements; progress in incorporating pollution prevention ideals into structure design; TMA participation or formation; and, a schedule for activities through the next reporting period. Inclusion of all relevant information in one report will streamline reporting for the project and make information about progress available on a reliable schedule in a consistent format.

During the early stages of bridge construction and site remediation, Jacoby will also submit a written report at six month intervals. This semi-annual report is intended to keep stakeholders, XL partners, and regulatory agencies well-informed during the early stages of implementation. Reporting on activities such as infrastructure construction, bike and pedestrian path layout, and the identification of development partners will be helpful in assuring that the spirit and intent of this XL project is continued. The semi-annual report will include an update of the status of redevelopment and remediation at the site. The semi-annual report will be provided



by August 30th starting in 2000 for two years, or until the 17th Street Bridge opens, whichever occurs first. Reporting will then be reduced to an annual basis as described above. The semi-annual report will be submitted to: EPA Region IV Administrator; the Director, Georgia Environmental Protection Division; and the Mayor of the City of Atlanta.

2. Regulatory Requirements

One of the Parties' goals is to reduce the burden of unnecessary paperwork and obtain resulting cost savings without compromising the integrity of regulatory controls. In addition, the project is intended to simultaneously enhance Stakeholder ability to understand the environmental benefits of the project and track the project's compliance with regulatory requirements and goals articulated in this Agreement. At this time, no flexibility in regulatory reporting requirements has been specifically identified. However, EPA and Jacoby will work with other regulating entities (City of Atlanta, GA-EPD, etc.) to identify opportunities for consolidation of reporting requirements to move toward attainment of these goals. Any reporting requirements not specifically identified in this Agreement are unaffected.

3. Use of Information

Nothing in this Agreement reduces or affects Jacoby's rights to copyright, patent, or license the use of any proprietary or business confidential information or data contained in or created in the course of the implementation of this project.

I. UNAVOIDABLE DELAY

This section applies to provisions of this Agreement that do not encompass enforceable, regulatory mechanisms. Enforceable mechanisms, such as permit provisions or rules, will be subject to modification or enforcement as provided in applicable law.

"Unavoidable delay" for purposes of the project described in this Agreement is defined as any event arising from causes beyond the control of any Party or Parties that delays or prevents the implementation of the project described in this Agreement despite the Parties' best efforts to put their intentions into effect. An unavoidable delay event includes but is not limited to delay arising from fire, unusual storm events, acts of war, vandalism, or legislative or judicial bars to performance.

When any event occurs that may delay or prevent the implementation of this project, whether or not it is unavoidable, the Party with knowledge of the event will provide verbal notice to the designated representatives of the remaining Parties. Within ten (10) days of the Party providing initial notice of the event a written confirming notice will be provided. The confirming notice will include the reason for the delay, the anticipated duration of the delay, all actions taken to prevent or minimize the delay, and the party's rationale for considering such a delay to be unavoidable. The Party providing notice will include appropriate documentation supporting the claim that the delay was unavoidable.

If the Parties, after reasonable opportunity to confer, agree that the delay is attributable to an unavoidable delay then the time for performance of obligations that are affected will be extended to cover the period lost due to the delay. If the Parties agree the Parties will document their agreement in a written amendment to this Agreement. If the Parties do not agree then the following provisions for Dispute Resolution will be followed.

J. DISPUTE RESOLUTION

Any dispute which arises under or with respect to this Agreement will in the first instance be subject to informal negotiations between the Parties to the dispute. The period of informal negotiations will not exceed twenty (20) calendar days from the time the dispute arises unless that period is extended by a written agreement of the Parties to the dispute. The dispute will be considered to have arisen when one Party sends to the other Parties a written Notice of Dispute.

In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may invoke non-binding mediation by setting forth the nature of the dispute with a proposal for resolution in a letter submitted to the Regional Administrator for EPA Region IV. Prior to issuance of an opinion the Regional Administrator may request an additional, informal mediation meeting. If so requested, the Regional Administrator will attempt to resolve the dispute by issuing a written opinion. Any opinion, verbal or written, expressed by the Regional Administrator will be non-binding.

K. DURATION

This Agreement will be in effect for the period of 10 years from the date it is signed, unless it is terminated earlier. This Agreement does not affect the term of any permit or rule or other enforceable regulatory mechanism.

IX. WITHDRAWAL OR TERMINATION

A. EXPECTATIONS CONCERNING WITHDRAWAL OR TERMINATION

This Agreement is not a legally binding document and any Party may withdraw from the Agreement at any time. However, it is the desire of the Parties that this Agreement should remain in effect through the expected duration, and be implemented as fully as possible. Accordingly, it is the intent of the Parties that they will not withdraw and that this project will not be terminated unilaterally during its expected duration of 10 years unless one of the conditions set forth below occurs:

1. Failure (taking into account its nature and duration) by any Party to (a) comply with the provisions of the implementation mechanisms for this project, or (b) act in accordance with the provisions of this Agreement.
2. Discovery of the failure of any Party to disclose material facts during development of the Agreement.
3. Failure of the project to provide superior environmental performance consistent with the provisions of this Agreement.
4. Enactment or promulgation of any environmental, health or safety law or regulation after execution of the Agreement which renders the project legally, technically or economically impracticable.
5. Decision by an agency to reject the proposed assumption of Jacoby's benefits and commitments under the project by a future owner or operator of the facility.

In addition, EPA does not intend to withdraw from the Agreement based on non-compliance by Jacoby with this Agreement or the implementation mechanisms, unless such non-compliance constitutes a substantial failure to comply with intentions expressed in this Agreement and the implementation mechanisms, taking into account its nature and duration. Jacoby will be given notice and a reasonable opportunity to remedy any non-compliance prior to an EPA withdrawal. If there is a disagreement between the Parties over whether a "substantial failure to comply" exists, the Parties will use the



dispute resolution mechanism identified in section VIII.J. of this Agreement. EPA retains discretion to address non-compliance through existing enforcement authorities, including withdrawal or termination of this project, as appropriate.

B. WITHDRAWAL OR TERMINATION PROCEDURES

The Parties agree that the following procedures will be used to withdraw from or terminate the Project prior to the minimum project term, and further that the implementation mechanism(s) will provide for withdrawal or termination consistent with these procedures:

1. Any Party desiring to terminate or withdraw from the Project is expected to provide written notice of its intent to withdraw or terminate to the other Parties at least sixty (60) days prior to withdrawal or termination.
2. If requested by any Party during the sixty (60) day period noted above, the dispute resolution proceedings provided in this Agreement may be initiated to resolve any dispute relating to the intent to withdraw or terminate. If, following any dispute resolution or informal discussion, the Party still desires to withdraw or terminate, the withdrawing or terminating Party will provide written notice of final withdrawal or termination to the other Parties.
3. The withdrawal or termination procedures set forth in this Section apply to the decision to withdraw or terminate participation in the Agreement. Procedures to be used in modifying or rescinding the legal mechanisms used to implement the Project will be governed by the terms of those legal mechanisms and applicable law.

X. FAILURE TO ACHIEVE EXPECTED RESULTS

Most Project XL Agreements include a section describing steps which would be taken if the project fails to achieve the anticipated environmental performance despite good faith efforts. In most cases, failure to achieve anticipated environmental performance would result in an orderly return to compliance with regulatory requirements which would have been in effect absent the flexibility provided through Project XL. This XL Project is unique in that once the TCM determination is approved via the SIP revision and the 17th Street bridge and transportation corridor are constructed, a return to the status quo ante would not be feasible.

The possibility exists that, despite good faith efforts, the Atlantic Steel project may not achieve the long-term reductions in emissions in the Atlanta Region anticipated by the Parties in the TCM determination and supporting modeling. In such a case, contingency measures identified as part of the TCM or those recommended by the Transportation Management Association would be implemented. If the contingency measures also failed to achieve the anticipated reductions, neither Jacoby nor the State of Georgia could continue characterizing the development as a TCM. EPA would not be able to order improvements to the development or changes to the underlying SIP provision. However, the State would be required to amend the overall SIP to seek other, offsetting emissions reductions if the SIP is unable to continue to demonstrate attainment or maintenance of the relevant air quality standards. CAA § 110(k)(5). If this situation were to arise, the State would identify offsetting emissions reductions.

It should be noted that the City of Atlanta zoning conditions require that certain actions be taken should specified performance measures not be obtained. These requirements are intended to mitigate or eliminate possible negative impacts of the project. Among the zoning condition obligations is the requirement that businesses with 50 or more employees create a Transportation Management Plan (TMP). The strategies contained in the TMP are specified in the City of Atlanta zoning conditions and must be implemented if single occupancy vehicle trips generated by the project exceed 5,366 peak period a.m. trips. The TMP strategies would be designed to reduce the number of such trips by 25% during a five year period. The TMP would further include information regarding mass transit schedules and stops and how such information will be displayed throughout the project. The TMP would also include development of a program to promote employee participation in car pooling and employee use of mass transit.

XI. TRANSFER OF PROJECT BENEFITS AND COMMITMENTS

Due to the nature of developing a large tract of land such as the Atlantic Steel site, EPA and Jacoby are aware that there will likely be transfers of ownership for various parcels within the site during the life of this Agreement. Legal mechanisms associated with this project such as the State Implementation Plan, the City of Atlanta zoning requirements, and the Remediation Plan may apply to future tenants or developers regardless of whether they are Parties to this Agreement. However, some benefits and commitments (such as the voluntary commitments) contained in this Agreement are not addressed in legal mechanisms. Neither EPA nor Jacoby believe it would be practical or desirable to expect all future tenants or developers to become parties to this Agreement. Therefore, the voluntary commitments are structured such that Jacoby would remain the responsible party for attempting to ensure that they are met by future tenants or developers at the site.

However, if Jacoby were to transfer its role and responsibilities as primary developer for all or any substantial portion of the Atlantic Steel site, both parties believe it might be appropriate to provide for transfer of Jacoby's benefits and commitments under this project. Therefore, this Agreement allows for the transfer of Jacoby's benefits and commitments under this project to a future primary developer of all or a substantial portion of the site upon request of Jacoby and such owner/operator, provided that the following conditions are met:

- A. Jacoby will provide written notice of any such proposed transfer to EPA at least ninety (90) days prior to the effective date of the transfer. The notice is expected to include identification of the proposed transferee, a description of the proposed transferee's financial and technical capability to carry out the project, and a statement of the transferee's intention to sign the Agreement as an additional party.
- B. Within forty-five (45) days of receipt of the written notice, EPA, in consultation with stakeholders, will determine whether the transferee has demonstrated adequate financial and technical capability to carry out the project and a willingness to sign the Agreement, and is otherwise an appropriate Project XL Partner. Upon EPA's consent to such a requested transfer (which will not be unreasonably withheld), the Agreement will be modified to allow the proposed transferee to assume Jacoby's benefits and commitments. In the event that transfer is disapproved by EPA, withdrawal or termination may be initiated.
- C. Upon approval of transfer under this section, it may be necessary for EPA to work with stakeholders, including the State of Georgia and the City of Atlanta, to amend any appropriate rules, permits, or other implementing mechanisms to transfer Jacoby's legal rights and obligations under this project to the proposed transferee.



XII. PERIODIC REVIEW

The Parties will confer, on a periodic basis, to assess their progress in implementing this project. Unless it is agreed otherwise, the date for Periodic Performance Review Conferences will occur concurrently with the annual Stakeholder meeting. No later than thirty (30) days following a Periodic Performance Review Conference, Jacoby will provide a summary of the minutes of that conference to all direct Stakeholders. Any additional comments of participating Stakeholders will be reported to EPA.

XIII. AMENDMENTS

This Project is an experiment designed to test new approaches to environmental protection and there is a degree of uncertainty regarding the environmental benefits and costs associated with activities to be undertaken in this Project. Therefore, it may be appropriate to amend this Agreement at some point during its duration.

This FPA may be amended by mutual agreement of all parties at any time during the duration of the project. The parties recognize that amendments to this Agreement may also necessitate modification of legal implementation mechanisms (such as the SIP TCM) or may require development of new implementation mechanisms. If the Agreement is amended, EPA and Jacoby expect to work together with other regulatory bodies (such as the City of Atlanta, ARC and GA-DOT) and stakeholders to identify and pursue any necessary modifications or additions to the implementation mechanisms in accordance with applicable procedures. If the parties agree to make a material amendment to this Agreement, notice of the amendment and an opportunity to participate in the process will be provided to the general public as appropriate.

In determining whether to amend the Agreement, the parties will evaluate whether the proposed amendment meets Project XL criteria and any other relevant considerations agreed on by the parties. All parties to the FPA will meet within ninety (90) days following submission of any amendment proposal (or within a shorter or longer period if all parties agree) to discuss evaluation of the proposed amendment. If all parties support the proposed amendment, the parties will (after appropriate stakeholder involvement) amend the FPA.



XIV. SIGNATORIES AND EFFECTIVE DATE

- A. The signatories to this Final Project Agreement will be the EPA Regional Administrator for Region IV and the Manager of Jacoby Management, Inc., a Georgia corporation.
- B. Each party has designated a representative to serve as its contact person for inquiries concerning the Project. These representatives are as follows:

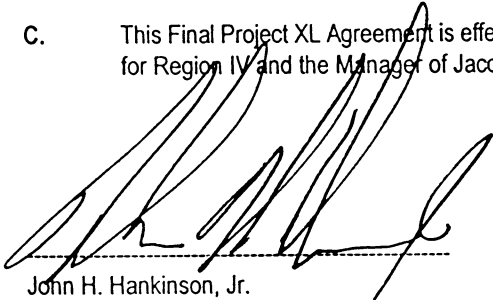
1. For Jacoby:

Brian Leary
CRB Realty Associates
P.O. Box 2246
Duluth, GA 30096
Phone: 770-622-7797
Fax: 770-232-6045
Email: bleary@crbrealty.com

2. For EPA:

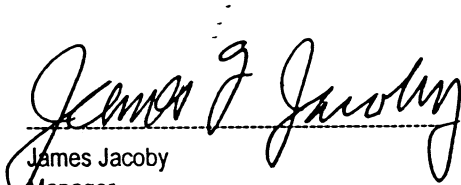
Michelle Glenn
U.S. EPA, Region IV
61 Forsyth Street
Atlanta, GA 30303
Phone: 404-562-8674
Fax: 404-562-8628
Email: glenn.michelle@epa.gov

- C. This Final Project XL Agreement is effective on the date it is dated and signed by EPA's Regional Administrator for Region IV and the Manager of Jacoby Management, Inc., a Georgia corporation.



John H. Hankinson, Jr.
United States Environmental Protection Agency
Region 4

ATLANTIS 16th, L.L.C.
a Georgia limited liability company



James Jacoby
Manager
Jacoby Management, Inc.,
A Georgia Corporation

Date:



Supporting Signatories

The Atlantic Steel XL Project enjoys the support of a broad range of public and private organizations and individuals. The redevelopment contemplated by the project will allow for clean-up of an urban brownfield property impacted by nearly a century of steelmaking operations. Pursuant to this redevelopment, an outdated, under-used industrial facility will be transformed into a vibrant, transit-oriented, mixed-use community. The combination of the site's location, design elements and connection to public transportation systems will work together to reduce growth in auto traffic in the Atlanta region. The project incorporates both public/private and federal/local partnerships and will serve as an example of smart growth that will benefit the economy, the community, and the environment.

The Atlantic Steel XL Project demonstrates that economic growth and environmental protection are not mutually exclusive. Our signatures below express our support for this project and the contribution it will make to the environment and the community.

Signed: *Carol M. Brown*

Affiliation: *EPA*
Signed: *Bill Campbell*

Affiliation: *Atlanta*
Signed: *Bob Johnson*

Affiliation: *Intergas, Inc.*

Signed: *Kevin A. Stone*

Affiliation: *ADA*

Signed: *David Miller*

Affiliation: *GA EPA*

Signed: *W. Dale Dull*

Affiliation: *Post Properties*



Signed: *[Handwritten Signature]*
Affiliation: ATLANTA REGIONAL COMMISSION

Signed: *[Handwritten Signature]*
Affiliation: Atlantic States

Signed: *[Handwritten Signature]*
Affiliation: Georgia Tech

Signed: _____

Affiliation:

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