**RATINGS**

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Fitch (Expected)</td>
<td>2016 (A, B, C, D) Bonds: BBB+</td>
</tr>
<tr>
<td>DBRS (Provisional)</td>
<td>2016 (A, B) Bonds: A (low)</td>
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<tr>
<td></td>
<td>2016 (C, D) Bonds: BBB (high)</td>
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**MARYLAND ECONOMIC DEVELOPMENT CORPORATION**

**PURPLE LINE LIGHT RAIL PROJECT**

<table>
<thead>
<tr>
<th>$100,000,000</th>
<th>Private Activity Revenue Bonds (RSA), Series 2016A (Green Bonds)</th>
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<tr>
<td>$23,320,000</td>
<td>Private Activity Revenue Bonds (AP), Series 2016B (Green Bonds)</td>
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<tr>
<td>$27,480,000</td>
<td>Private Activity Revenue Bonds (SLP), Series 2016C (Green Bonds)</td>
</tr>
<tr>
<td>$162,235,000</td>
<td>Private Activity Revenue Bonds (AP), Series 2016D (Green Bonds)</td>
</tr>
</tbody>
</table>

**Dated:** Date of Delivery

Due: as shown on inside cover

The above captioned Maryland Economic Development Corporation Private Activity Revenue Bonds (RSA), Series 2016A, Private Activity Revenue Bonds (FCP), Series 2016B, Private Activity Revenue Bonds (SLP), Series 2016C and Private Activity Revenue Bonds (AP), Series 2016D (Purple Line Light Rail Project) (Green Bonds) (collectively, the “2016 Bonds”) are being issued by the Maryland Economic Development Corporation (the “Bond Issuer”), a body corporate and politic and an instrumentality of the State of Maryland (the “State”), pursuant to an Indenture of Trust, to be dated as of June 1, 2016 (the “Indenture”), between the Bond Issuer and U.S. Bank National Association, as Trustee (the “Trustee”), for the purpose of paying the principal and interest on the 2016 Bonds in accordance with the terms of the Indenture, the 2016 Bonds being issued pursuant to the Indenture as defined herein (the “2016 Bonds”).

The proceeds of the 2016 Bonds are being loaned to Purple Line Transit Partners LLC, a Delaware limited liability company (the “Company”), that was formed to develop and operate the Project (as defined herein) by Meridian Infrastructure Purple Line, LLC, a Delaware limited liability company (“Meridian”), Fluor Enterprises, Inc., a California corporation (“Fluor Enterprises”) and Star America Purple Line, LLC, a Delaware limited liability company (“Star America,” and together with Meridian and Fluor Enterprises, the “Sponsors”). The Sponsors each own membership interests in the Company. The Company will use the proceeds of the 2016 Bonds to (a) finance a portion of the eligible costs of designing and constructing the Purple Line; (b) pay a portion of the interest payment and construction cost of the 2016 Bonds during construction, as to be funded from (i) the Progress Payments (as defined herein) to be paid by the Maryland Department of Transportation (“MDOT”) and the Maryland Transit Administration (“MTA” and with MDOT, the “Contracting Authority”) to the Company pursuant to the Public-Private Partnership Agreement, dated as of April 7, 2016 (the “PPA Agreement”), the proceeds of which are paid or to be paid to the Company in an amount sufficient to pay the amount of the interest to be paid on the 2016 Bonds during construction, (c) to the extent necessary or required, fund the 2016 Bonds Debt Service Reserve Sub-Account of the Debt Service Reserve Account, each as established and created in the name of the Company; and (d) pay certain costs of issuance of the 2016 Bonds. The Costs as defined herein (not funded with proceeds of the 2016 Bonds, including a portion of the interest payable on the 2016 Bonds during construction, are to be funded from (i) the Progress Payments (as defined herein) to be paid by the Maryland Department of Transportation (“MDOT”) and the Maryland Transit Administration (“MTA” and with MDOT, the “Contracting Authority”) to the Company pursuant to the PPA Agreement, dated as of April 7, 2016 (the “PPA Agreement”) between the Contracting Authority and the Company; (ii) equity contributions from the Sponsors; (iii) interest earnings on all amounts held in the Securities Accounts (as defined herein); (iv) the ISA Payment (as defined herein) received by the Company under the ISA Agreement; (v) the Final Completion Payment (as defined herein) received by the Company under the ISA Agreement; (vi) the Availability Payments (as defined herein) to be made by the Contracting Authority to the Company pursuant to the ISA Agreement; (vii) the proceeds of a loan to the Company to be provided by the United States Department of Transportation (acting by and through the Federal Highway Administrator) (the “TIFIA Lender”) pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998, as amended (“TIFIA”); and (viii) other funding sources as described herein. See “FINANCING FOR THE PROJECT.”

The Project is being developed pursuant to the PPA Agreement under which the Contracting Authority has granted to the Company an exclusive concession to, and the Company has agreed to, finance, design, construct, equip, supply light rail vehicles for, operate and maintain the Project in return for payments by the Contracting Authority to the Company primarily in the form of Progress Payments, the ISA Payment, the Final Completion Payment and Availability Payments. The funds for payment of Progress Payments, the ISA Payment, the Final Completion Payment, Availability Payments and, following various relief and termination events, compensation and termination payments to the Company under the PPA Agreement are subject to approval by the Maryland General Assembly (the “General Assembly”). See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally.”

All of the Company’s rights under the PPA Agreement and under the other Material Project Contracts described herein, together with the other Security Interests created under the Security Documents for the benefit of the Collateral Agent on behalf of the registered owners of the 2016 Bonds (“Holders”), form part of the Trust Estate pledged and assigned to the Trustee for the benefit of the Holders (as defined herein) to make payment of the principal and interest on the 2016 Bonds. Payments of debt service on the TIFIA Loan and the Security Interest in Collateral with respect thereto are subordinate to the 2016 Bonds. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Intercreditor Terms Among the Secured Parties” and “—Limited Subordination of the TIFIA Loan” herein for circumstances under which, upon the occurrence of a Company Bankruptcy Related Event, (i) payments of principal of and interest fees on the TIFIA Loan will be on a pari passu with payments of principal of and interest fees on the 2016 Bonds, (ii) the Security Interest in the Collateral pursuant to the Trustee equals to the amounts due on the 2016 Bonds. Payments of debt service on the TIFIA Loan and the Security Interest in Collateral with respect thereto are subordinate to the 2016 Bonds. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Intercreditor Terms Among the Secured Parties” and “—Limited Subordination of the TIFIA Loan” herein for circumstances under which, upon the occurrence of a Company Bankruptcy Related Event, (i) payments of principal of and interest fees on the 2016 Bonds will be on a pari passu with payments of principal of and interest fees on the 2016 Bonds, (ii) the Security Interest in the Collateral pursuant to the Trustee equals to the amounts due on the 2016 Bonds. The 2016 Bonds are not payable from taxes or appropriations made by the General Assembly. See “TAX MATTERS” and APPENDIX L — “FORM OF APPROVING OPINION OF BOND COUNSEL.”

Interest on the 2016 Bonds from their date of delivery is payable semi-annually on each March 31 and September 30, commencing on September 30, 2016, at the rates shown on the inside cover page. The 2016 Bonds are subject to optional, mandatory sinking fund, and/or extraordinary mandatory redemption and purchase in lieu of redemption prior to maturity, as described herein.
MARYLAND ECONOMIC DEVELOPMENT CORPORATION
(PURPLE LINE LIGHT RAIL PROJECT)

$313,035,000

PRIVATE ACTIVITY REVENUE BONDS (RSA),
SERIES 2016A
(GREEN BONDS)

<table>
<thead>
<tr>
<th>MATURITY DATE</th>
<th>PRINCIPAL AMOUNT</th>
<th>INTEREST RATE</th>
<th>YIELD</th>
<th>CUSIP</th>
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</thead>
<tbody>
<tr>
<td>March 31, 2024</td>
<td>$100,000,000</td>
<td>5.000%</td>
<td>1.890%</td>
<td>57422JAA6</td>
</tr>
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PRIVATE ACTIVITY REVENUE BONDS (FCP),
SERIES 2016B
(GREEN BONDS)

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<th>MATURITY DATE</th>
<th>PRINCIPAL AMOUNT</th>
<th>INTEREST RATE</th>
<th>YIELD</th>
<th>CUSIP</th>
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</thead>
<tbody>
<tr>
<td>September 30, 2026</td>
<td>$23,320,000</td>
<td>5.000%</td>
<td>2.100%</td>
<td>57422JAB4</td>
</tr>
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</table>

PRIVATE ACTIVITY REVENUE BONDS (SLP),
SERIES 2016C
(GREEN BONDS)

<table>
<thead>
<tr>
<th>MATURITY DATE</th>
<th>PRINCIPAL AMOUNT</th>
<th>INTEREST RATE</th>
<th>YIELD</th>
<th>CUSIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 31, 2025</td>
<td>$3,435,000</td>
<td>5.000%</td>
<td>2.040%</td>
<td>57422JAC2</td>
</tr>
<tr>
<td>September 30, 2025</td>
<td>$3,435,000</td>
<td>5.000%</td>
<td>2.090%</td>
<td>57422JAG3</td>
</tr>
<tr>
<td>March 31, 2026</td>
<td>$3,435,000</td>
<td>5.000%</td>
<td>2.100%</td>
<td>57422JAD0</td>
</tr>
<tr>
<td>September 30, 2026</td>
<td>$3,435,000</td>
<td>5.000%</td>
<td>2.150%</td>
<td>57422JAH1</td>
</tr>
<tr>
<td>March 31, 2027</td>
<td>$3,435,000</td>
<td>5.000%</td>
<td>2.180%</td>
<td>57422JAE8</td>
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<tr>
<td>September 30, 2027</td>
<td>$3,435,000</td>
<td>5.000%</td>
<td>2.220%</td>
<td>57422JAJ7</td>
</tr>
<tr>
<td>March 31, 2028</td>
<td>$3,435,000</td>
<td>5.000%</td>
<td>2.220%</td>
<td>57422JAF5</td>
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<tr>
<td>September 30, 2028</td>
<td>$3,435,000</td>
<td>5.000%</td>
<td>2.240%</td>
<td>57422JAK4</td>
</tr>
</tbody>
</table>

PRIVATE ACTIVITY REVENUE BONDS (AP),
SERIES 2016D
(GREEN BONDS)

<table>
<thead>
<tr>
<th>MATURITY DATE</th>
<th>PRINCIPAL AMOUNT</th>
<th>INTEREST RATE</th>
<th>YIELD</th>
<th>CUSIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 31, 2024</td>
<td>$162,235,000</td>
<td>5.000%</td>
<td>2.100%</td>
<td>57422JAA6</td>
</tr>
</tbody>
</table>

**MATURITY SCHEDULE**

2016A Bonds (RSA)**+

2016B Bonds (FCP)**+

2016C Bonds (SLP)**+

---

**Yield to November 30, 2021 call date at 100%**

++ The 2016 Bonds will be subject to extraordinary mandatory redemption as described under “THE 2016 BONDS—Extraordinary Mandatory Redemption.”
<table>
<thead>
<tr>
<th>MATURITY DATE</th>
<th>PRINCIPAL AMOUNT</th>
<th>INTEREST RATE</th>
<th>YIELD</th>
<th>CUSIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 31, 2023</td>
<td>$1,315,000</td>
<td>5.000%</td>
<td>1.940%</td>
<td>57422JAL2</td>
</tr>
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<td>September 30, 2024</td>
<td>500,000</td>
<td>5.000%</td>
<td>2.140%</td>
<td>57422JAZ1</td>
</tr>
<tr>
<td>March 31, 2025</td>
<td>500,000</td>
<td>5.000%</td>
<td>2.210%</td>
<td>57422JAM0</td>
</tr>
<tr>
<td>September 30, 2025</td>
<td>500,000</td>
<td>5.000%</td>
<td>2.260%</td>
<td>57422JBA5</td>
</tr>
<tr>
<td>March 31, 2026</td>
<td>500,000</td>
<td>5.000%</td>
<td>2.350%</td>
<td>57422JAN8</td>
</tr>
<tr>
<td>September 30, 2026</td>
<td>500,000</td>
<td>5.000%</td>
<td>2.400%</td>
<td>57422JBB3</td>
</tr>
<tr>
<td>March 31, 2027</td>
<td>500,000</td>
<td>5.000%</td>
<td>2.490%</td>
<td>57422JAP3</td>
</tr>
<tr>
<td>September 30, 2027</td>
<td>500,000</td>
<td>5.000%</td>
<td>2.530%</td>
<td>57422JBC1</td>
</tr>
<tr>
<td>March 31, 2028</td>
<td>500,000</td>
<td>5.000%</td>
<td>2.570%</td>
<td>57422JAJ3</td>
</tr>
<tr>
<td>September 30, 2028</td>
<td>4,090,000</td>
<td>5.000%</td>
<td>2.590%</td>
<td>57422JBD9</td>
</tr>
<tr>
<td>March 31, 2029</td>
<td>4,235,000</td>
<td>5.000%</td>
<td>2.600%</td>
<td>57422JAR9</td>
</tr>
<tr>
<td>September 30, 2029</td>
<td>4,765,000</td>
<td>5.000%</td>
<td>2.620%</td>
<td>57422JBE7</td>
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<tr>
<td>March 31, 2030</td>
<td>5,185,000</td>
<td>5.000%</td>
<td>2.670%</td>
<td>57422JAS7</td>
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<tr>
<td>September 30, 2030</td>
<td>1,905,000</td>
<td>5.000%</td>
<td>2.670%</td>
<td>57422JBF4</td>
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<tr>
<td>March 31, 2031</td>
<td>1,950,000</td>
<td>5.000%</td>
<td>2.730%</td>
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<tr>
<td>September 30, 2031</td>
<td>2,000,000</td>
<td>5.000%</td>
<td>2.730%</td>
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<td>March 31, 2032</td>
<td>2,050,000</td>
<td>5.000%</td>
<td>2.780%</td>
<td>57422JAU2</td>
</tr>
</tbody>
</table>

$18,345,000 5.000% Series 2016D Term Bonds due March 31, 2036 Yield 2.840%\(^b\) CUSIP\(^+\) 57422JAV0

$28,680,000 5.000% Series 2016D Term Bonds due March 31, 2041 Yield 2.870%\(^b\) CUSIP\(^+\) 57422JAW8

$36,590,000 5.000% Series 2016D Term Bonds due March 31, 2046 Yield 2.890%\(^b\) CUSIP\(^+\) 57422JAX6

$47,125,000 5.000% Series 2016D Term Bonds due March 31, 2051 Yield 2.970%\(^b\) CUSIP\(^+\) 57422JAY4

\(^a\) Yield to September 30, 2026 call date at 100%

\(^b\) Copyright, American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by S&P Global on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for CUSIP Global Services. CUSIP numbers are provided for convenience of reference only for the purchasers of the 2016 Bonds. None of the Bond Issuer, the Contracting Authority, the State, the Company nor the Underwriters assume any responsibility for the selection or accuracy of such numbers.

\(^+\) The 2016 Bonds will be subject to extraordinary mandatory redemption as described under “THE 2016 BONDS—Extraordinary Mandatory Redemption.”
No dealer, broker, salesman or other person has been authorized by the Company, the Contracting Authority, the Bond Issuer, the Underwriters or any other person described herein to give any information or to make any representations, other than those contained in this official statement (the “Official Statement”), and, if given or made, such other information or representations must not be relied upon as having been authorized by the Company, the Contracting Authority, the State, the Bond Issuer or the Underwriters or any such other person. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor will there be (i) any sale of the 2016 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale or (ii) any offer, solicitation or sale to any person to whom it is unlawful to make such offer, solicitation or sale. The information set forth herein concerning DTC has been furnished by DTC, and no representation is made by the Company, the Contracting Authority, the Bond Issuer or the Underwriters as to the completeness or accuracy of such information. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sales made hereunder will, under any circumstances, create any implication that there has been no change in the affairs of the Bond Issuer, the Contracting Authority, the Company, the Sponsors or DTC (or any other information) since the date hereof.

The following sentence is provided by the Underwriters for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under federal securities laws as applied to the facts and circumstances of the transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

The Bond Issuer has not prepared or assisted in the preparation of this Official Statement except the statements made under the captions “SUMMARY—THE 2016 BONDS—Bond Issuer,” “PROJECT PARTICIPANTS—The Bond Issuer,” “LITIGATION—The Bond Issuer” herein and except as noted above, the Bond Issuer is not responsible for any statements made in this Official Statement. The Contracting Authority has not prepared or assisted in the preparation of this Official Statement except the statements made under the captions “SUMMARY—PROJECT PARTICIPANTS—The Contracting Authority,” “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—State Budget and Appropriation Processes”, “PROJECT PARTICIPANTS—The Contracting Authority”, “LITIGATION—The Contracting Authority” and APPENDIX A—“AUDITED FINANCIAL STATEMENTS FOR THE MARYLAND DEPARTMENT OF TRANSPORTATION,” herein and except as noted above, the Contracting Authority is not responsible for any statements made in this Official Statement.

Except for the execution and delivery of documents required to effect the issuance of the 2016 Bonds, the Bond Issuer and the Contracting Authority have not otherwise assisted in the public offer, sale or distribution of the 2016 Bonds. Accordingly, except as aforesaid, the Bond Issuer and the Contracting Authority disclaim responsibility for the disclosures set forth in this Official Statement or otherwise made in connection with the offer, sale and distribution of the 2016 Bonds.

The 2016 Bonds have not been registered with the Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933, as amended. Neither the SEC nor any other state securities commission has approved or disapproved of the 2016 Bonds or passed upon the accuracy or adequacy of this Official Statement. Any representation to the contrary is a criminal offense.

In making an investment decision, investors must rely on their own examination of the Company, the Contracting Authority, the Design-Build Contractor, the Design-Build Guarantors, the O&M Contractor, the O&M Guarantors, the Project, the Collateral and the terms of the offering, including the merits and risks involved. None of the Company, the Bond Issuer, the Contracting Authority, the Sponsors or the Underwriters or any of their representatives or affiliates is making any representation regarding the legality of an investment by you under applicable investment or similar laws. You should not construe anything in this Official Statement as legal, business or tax advice and you should consult with your own advisors as to legal, tax, business, financial and related aspects of the 2016 Bonds.

The statements contained in this Official Statement, and in any other information provided by the Company or any consultant, that are not purely historical, are forward-looking statements. Forward looking-statements can be identified by the use of forward-looking words such as “believes,” “expects,” “may,” “will,” “should,” “seeks,” “approximately,” “intends,” “plans,” “estimates” and “anticipates” or the negative terms or other comparable words, or by discussions of strategy, plans or intentions. Examples of forward-looking
statements are statements that concern the Company’s or the Project’s future revenues, costs, projections and liquidity. The forward-looking statements contained herein are based on the Company’s expectations and are necessarily dependent upon assumptions, estimates and data that they believe are reasonable as of the date made but that may be incorrect, incomplete or imprecise or not reflective of actual results. The Company does not undertake to update or revise any of the forward-looking statements contained herein, even if it becomes clear that the forward-looking statements contained herein will not be realized. For a discussion of certain risks relating to the Project and the purchase of the 2016 Bonds, see “RISK FACTORS.”

The order and placement of information in this Official Statement, including appendices, are not an indication of relevance, materiality or relative importance, and this Official Statement, including the appendices, must be read in its entirety. The captions and headings in this Official Statement are for convenience purposes only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provision or section of this Official Statement.

This Official Statement contains summaries of and references to documents that the Company believes to be accurate, however, reference is made to the actual documents for complete information. All such summaries and references are qualified in their entirety by such reference. Copies of such documents may be obtained during the initial offering period from the principal offices of the Underwriters in New York, New York and thereafter, executed copies may be obtained from the principal offices of the Trustee. ALL CAPITALIZED TERMS USED HEREIN BUT NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE RESPECTIVE MEANINGS ASCRIBED TO THEM IN THE DEFINITIONS SET FORTH IN APPENDIX B—“DEFINITIONS OF TERMS.”

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader’s convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, Rule 15c2-12.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOCATE OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE 2016 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.
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SUMMARY

This Summary is not complete and does not contain all of the information that investors should consider before making any investment decision with respect to the 2016 Bonds. Investors should read the more detailed information appearing in this Official Statement and the documents summarized or described herein in their entirety for a more complete understanding of the Project, the offering and the 2016 Bonds. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to them in the definitions set forth in APPENDIX B—“DEFINITIONS OF TERMS.”

THE 2016 BONDS

Bonds Offered ...........................................

Maryland Economic Development Corporation Private Activity Revenue Bonds (RSA), Series 2016A (Purple Line Light Rail Project) (Green Bonds), in aggregate principal amount of $100,000,000 (the “2016A Bonds”). It is expected that the 2016A Bonds will be repaid from sources available to the Company, including Progress Payments (which may be used by the Company to pay the interest on the 2016A Bonds but not to repay the principal of the 2016A Bonds) and the RSA Payment made to the Company by the Contracting Authority under the P3 Agreement, and other available amounts, all as more fully described herein.

Maryland Economic Development Corporation Private Activity Revenue Bonds (FCP), Series 2016B (Purple Line Light Rail Project) (Green Bonds), in aggregate principal amount of $23,320,000 (the “2016B Bonds”). It is expected the 2016B Bonds will be repaid from sources available to the Company, including Progress Payments (which may be used by the Company to pay the interest on the 2016B Bonds but not to repay the principal of the 2016B Bonds) and the Final Completion Payment made to the Company by the Contracting Authority under the P3 Agreement, and other available amounts, all as more fully described herein.

Maryland Economic Development Corporation Private Activity Revenue Bonds (SLP), Series 2016C (Purple Line Light Rail Project) (Green Bonds), in aggregate principal amount of $27,480,000 (the “2016C Bonds”). It is expected the 2016C Bonds will be repaid from sources available to the Company, including Progress Payments (which may be used by the Company to pay the interest on the 2016C Bonds but not to repay the principal of the 2016C Bonds) and the portion of Availability Payments designated as Special Lifecycle Payments made to the Company by the Contracting Authority under the P3 Agreement, and other available amounts, all as more fully described herein.

Maryland Economic Development Corporation Private Activity Revenue Bonds (AP), Series 2016D (Purple Line Light Rail Project) (Green Bonds), in aggregate principal amount of $162,235,000 (the “2016D Bonds” and together with the 2016A Bonds, the 2016B Bonds and the 2016C Bonds, the “2016 Bonds”). It is expected the 2016D Bonds will be repaid from sources available to the Company, including Progress Payments (which may be used by the Company to pay the interest on the 2016D Bonds but not to repay the principal of the 2016D Bonds) and a portion of the
Availability Payments made to the Company by the Contracting Authority under the P3 Agreement, and other available amounts, all as more fully described herein.

The 2016 Bonds are being issued as fully registered bonds in denominations of $5,000 and integral multiples thereof. See “THE 2016 BONDS.”

**Bond Issuer**

Maryland Economic Development Corporation, a body politic and corporate that is constituted as an instrumentality created pursuant to Title 10, Subtitle 1 of the Economic Development Article of the Annotated Code of Maryland, Sections 10-101 through 10-132, inclusive, as amended and supplemented from time to time (the “Act”). See “PROJECT PARTICIPANTS—The Bond Issuer.”

**Interest**

The 2016 Bonds will bear interest at the rates shown on the inside cover page of this Official Statement. Interest on the 2016 Bonds will be calculated on the basis of a three hundred sixty (360)-day year consisting of twelve thirty (30)-day months.

**Interest Payment Dates**

Interest on the 2016 Bonds will be payable semi-annually on March 31 and September 30 of each year, commencing on September 30, 2016.

**Maturity Dates**

The maturity dates are set forth on the inside cover page of this Official Statement.

**Optional Redemption**

On any date prior to November 30, 2021, the 2016A Bonds, the 2016B Bonds and the 2016C Bonds are subject to optional redemption prior to maturity, at the option of the Bond Issuer, at the direction of the Company, in whole or in part (and if in part, in Authorized Denominations) from time to time, at a Redemption Price equal to the Make Whole Redemption Price.

On any date on or after November 30, 2021, the 2016A Bonds, the 2016B Bonds and the 2016C Bonds are subject to optional redemption, prior to maturity, in whole or in part (and if in part, in Authorized Denominations) at the option of the Bond Issuer, at the direction of the Company, at a Redemption Price of 100% of the principal amount thereof plus accrued interest to, but not including, the date fixed for redemption.

On any date prior to September 30, 2026, the 2016D Bonds are subject to redemption prior to maturity, in whole or in part (and if in part, in Authorized Denominations) at the option of the Bond Issuer, at the direction of the Company, from time to time, at a Redemption Price equal to the Make Whole Redemption Price.

On any date on or after September 30, 2026, the 2016D Bonds maturing on or after March 31, 2027 are subject to redemption prior to maturity, in whole or in part (and if in part, in Authorized Denominations) at the option of the Bond Issuer, at the direction of the Company, from time to time, on any date, at a Redemption Price equal to 100% of the principal amount of 2016D Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption.
Mandatory Sinking Fund Redemption

The 2016D Bonds will be subject to mandatory sinking fund redemption prior to maturity on the dates set forth herein, at a redemption price of par plus accrued interest to, but not including, the date fixed for redemption. See “THE 2016 BONDS—Redemption of the 2016 Bonds—Mandatory Sinking Fund Redemption of the 2016 Bonds.”

Extraordinary Mandatory Redemption

The 2016 Bonds are subject to extraordinary mandatory redemption as described under “THE 2016 BONDS—Redemption of the 2016 Bonds—Extraordinary Mandatory Redemption.”

Purchase in Lieu of Redemption

The 2016A, 2016B and 2016C Bonds are subject to purchase prior to maturity, at the election of the Bond Issuer, upon the written request of the Company, on or after November 30, 2021, in any order, in whole or in part at any time, at a purchase price equal to one hundred percent (100%) of the principal of such 2016 Bond, plus accrued interest to but not including the date set for purchase. The 2016D Bonds maturing on or after March 31, 2027 are subject to purchase prior to maturity, at the election of the Bond Issuer, upon the written request of the Company, on or after September 30, 2026, in any order, in whole or in part at any time, at a purchase price equal to one hundred percent (100%) of the principal of such 2016D Bond plus accrued interest to but not including the date set for purchase. See “THE 2016 BONDS—Redemption of the 2016 Bonds—Purchase in Lieu of Redemption.”

Book-Entry-Only System

DTC will act as the securities depositary for the 2016 Bonds. The 2016 Bonds will be issued as fully-registered securities in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered 2016 Bond certificate will be issued for each maturity and each interest rate within a maturity, if applicable, of each series of the 2016 Bonds in the aggregate principal amount of such maturity, and will be deposited with DTC. For more information, see “THE 2016 BONDS—General” and APPENDIX K—“BOOK-ENTRY ONLY SYSTEM.”

Special Limited Obligations issued by the Bond Issuer

The 2016 Bonds and interest thereon are special, limited obligations of the Bond Issuer and the principal or purchase price of, redemption premium, if any, and interest on the 2016 Bonds shall be payable solely from, and secured exclusively by, the Trust Estate or moneys to be received in connection with the financing and refinancing of the Project or from any other moneys made available to the Bond Issuer for such purpose (including amounts paid by the Company pursuant to the relevant Finance Document), and the issuance of the 2016 Bonds shall not be, directly, indirectly or contingently, a moral or other obligation of the State, the Contracting Authority or any other government unit or the Bond Issuer to levy or pledge any tax or to make an appropriation to pay such amounts, and the Bond Issuer shall not be obligated to pay the principal or purchase price of, redemption premium, if any, or interest on the 2016 Bonds except from the Trust Estate or moneys to be received in connection with the financing and refinancing of the
Project or from any other moneys made available to the Bond Issuer for such purpose. Neither the full faith and credit nor the taxing power of the State, the Contracting Authority or any other governmental unit or the Bond Issuer is pledged to the payment of the principal or purchase price of, redemption premium, if any, or interest on the 2016 Bonds. The Bond Issuer and the Contracting Authority have no taxing power. The principal or purchase price of, redemption premium, if any, and interest on the 2016 Bonds are not payable from taxes or appropriations made by the General Assembly. The 2016 Bonds do not constitute an indebtedness, or a pledge of the faith and credit, of the Contracting Authority, the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation. The 2016 Bonds do not constitute a charge against the faith, credit or taxing power of the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation.

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THE PROJECT PARTICIPANTS

**Bond Issuer**.......................... Maryland Economic Development Corporation.

**Contracting Authority**.................. MDOT was established as a principal department of the State in 1971. MDOT has the responsibility for most State-owned transportation facilities and programs, exclusive of toll facilities. MDOT encompasses certain statutorily created transportation administrations, which include the MTA. See “PROJECT PARTICIPANTS—The Contracting Authority—The Maryland Department of Transportation.”

MDOT operates local and commuter buses, light rail, subway, Maryland Area Regional Commuter (“MARC”) train service, and a comprehensive Mobility/Paratransit system. Additionally, MTA directs funding and statewide assistance to locally operated transit systems in each of Maryland’s 23 counties, Baltimore City, Annapolis and Ocean City. See “PROJECT PARTICIPANTS—The Contracting Authority—The Maryland Transit Administration.”

**Company**.......................... Purple Line Transit Partners LLC, a Delaware limited liability company (qualified to do business in Maryland), has entered into the P3 Agreement with the Contracting Authority for the purpose of the financing, development, design, construction, equipping, supplying light rail vehicles for and operation and maintenance of the Purple Line. See “PROJECT PARTICIPANTS—The Company.” Meridiam Infrastructure Purple Line, LLC, a Delaware limited liability company (“Meridiam”), Fluor Enterprises, Inc., a California corporation (“Fluor Enterprises”), and Star America Purple Line, LLC (“Star America”) hold a 70%, 15% and 15% stake, respectively, in the Company. The respective limited liability company members are not liable for the Company’s obligations. See “PROJECT PARTICIPANTS—Equity Participants.”

**Design-Build Contractor**............... Purple Line Transit Constructors, LLC (the “Design-Build Contractor”) is a Delaware limited liability company (qualified to do business in Maryland) whose members are Fluor Enterprises, Inc., a California corporation (“Fluor Enterprises”), The Lane Construction Corporation, a Connecticut corporation (“Lane”), and Traylor Bros., Inc., an Indiana corporation (“Traylor”). Fluor Enterprises, Lane and Traylor hold a 50%, 30% and 20% stake, respectively, in the Design-Build Contractor. See “PROJECT PARTICIPANTS—Design-Build Contractor.” The respective limited liability company members are not liable for the Design-Build Contractor’s obligations.

**Design-Build Guarantors**............. Fluor Corporation, a Delaware corporation (“Fluor”), Salini Impregilo S.p.A., a società per azioni formed under the laws of Italy and the ultimate parent company of Lane (“Salini”), and Traylor (each, a “Design-Build Guarantor”), have each provided a guaranty of all of the Design-Build Contractor’s obligations under the Design-Build Contract and such obligations owed to the Company under the Interface Agreement (the “Design-Build Guaranty”), subject to the limitations on liability set forth in the Design-Build Contract. See “RISK FACTORS—Risks Relating to the Project—Pass-Through Risks.”

**O&M Contractor**.......................... Purple Line Transit Operators, LLC (the “O&M Contractor”), is a Delaware limited liability company (qualified to do business in...
Maryland) whose members are Fluor Enterprises, Alternate Concepts, Inc., a Massachusetts corporation ("ACI"), and CAF USA, Inc., a Delaware corporation ("CAF USA"). Fluor Enterprises, ACI and CAF USA hold a 40%, 40% and 20% stake, respectively, in the O&M Contractor. The respective limited liability company members are not liable for the O&M Contractor’s obligations. See “PROJECT PARTICIPANTS—O&M Contractor.”

Fluor, ACI and Construcciones y Auxiliar de Ferrocarriles, S.A., a sociedad anónima formed under the laws of Spain and the ultimate parent company of CAF USA ("CAF" and together with Fluor and ACI, the “O&M Guarantors”) will each guarantee all of the obligations of the O&M Contractor under the O&M Contract and such obligations owed to the Company under the Interface Agreement (the “O&M Guaranty”), subject to the limitations on liability set forth in the O&M Contract. See “PROJECT PARTICIPANTS—O&M Guarantors.”
THE PROJECT

The Purple Line Light Rail Project consists of the financing, development, design, construction, equipping, supplying of light rail vehicles for and operation and maintenance of a planned 16.2 mile light rail transit line that will extend from Bethesda in Montgomery County to New Carrollton in Prince George’s County.

Project Costs

Project Costs include construction-related costs and the costs of operating and maintaining the Purple Line. Total construction-related costs of the Project are currently estimated to be approximately $2,009,873,600. Construction-related costs are to be funded from proceeds of the 2016 Bonds, the TIFIA Loan, Equity Contributions from the Sponsors, Progress Payments, a portion of the Final Completion Payment received by the Company under the P3 Agreement and interest earnings on all amounts in the Securities Accounts. See “—Other Project Funding” below and “PROJECTED SOURCES AND USES OF FUNDS” and “FINANCING FOR THE PROJECT—Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding.”

Construction

Substantially all of the construction work relating to the Project, including responsibility for the supply and delivery of the light rail vehicles (“LRVs”), is being undertaken by Purple Line Transit Constructors, LLC, as the Design-Build Contractor, pursuant to the Design-Build Contract described herein. See “THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract” and APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

To support performance of its obligations under the Design-Build Contract, the Design-Build Contractor will deliver or cause to be delivered to the Company a Design-Build Guaranty from each of Fluor, Salini and Traylor. Each Design-Build Guaranty will guarantee all of the Design-Build Contractor’s obligations under the Design-Build Contract and under the Interface Agreement, and the Company may enforce each Design-Build Guaranty up to the full amount of the guaranteed obligations, subject to certain limitations on liability set forth in the Design-Build Contract. See “RISK FACTORS—Risks Relating to the Project—Pass-Through Risks.” Additional support for performance of the Design-Build Contractor’s obligations will be provided in the form of: a Payment Bond and a Performance Bond equal to 55% of the Total Value of “D&C Construction Work”; and one or more letters of credit initially in the aggregate amount equal to 50% of potential delay liquidated damages payable by the Design-Build Contractor to the Company for which responsibility has been allocated to the Design-Build Contractor. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security.”

Operation and Maintenance

Pursuant to the P3 Agreement, the Company is responsible for the operation and maintenance of the portion of the Purple Line located within the O&M Limits.

Substantially all of the operation and maintenance work relating to the Purple Line is being undertaken by Purple Line Transit Operators, LLC, as the O&M Contractor. See “THE PRINCIPAL
To support performance of its obligations, the O&M Contractor will deliver or cause to be delivered to the Company an O&M Guaranty from each of Fluor, CAF and ACI, guaranteeing all of the O&M Contractor’s obligations under the O&M Contract and such obligations to the Company under the Interface Agreement, subject to certain limitations on liability, and the Company may enforce each O&M Guaranty up to the full amount of the guaranteed obligations. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Performance Security” and “RISK FACTORS—Risks Relating to the Project—Pass-Through Risks.”

FINANCING FOR THE PROJECT

2016 Loan..................................................
The initial senior debt to be incurred in connection with the financing of the Project will be comprised solely of the 2016 Bonds, which will be issued pursuant to the Indenture. The proceeds of the 2016 Bonds will be loaned to the Company pursuant to the Series 2016 Loan Agreement, between the Company and the Bond Issuer, and will be available to the Company, subject to the terms and conditions set forth in the Series 2016 Loan Agreement and the Indenture, to, among other things, pay certain costs of the Project. Pursuant to the Series 2016 Loan Agreement, the Company agrees to make payments to the Trustee in the amounts and on the dates required to pay the principal of and interest on the 2016 Bonds and agrees to comply with various covenants for the benefit of the Trustee and the Holders of the 2016 Bonds. See “FINANCING FOR THE PROJECT—Series 2016 Loan Agreement.”

Equity Contributions....................................
Each Sponsor has committed to make, or to cause its affiliates to make on its behalf, equity contributions to the Company, in the manner and at such times as contemplated in the Equity Contribution Agreement in an aggregate amount not to exceed such Sponsor’s equity commitment. The obligation of each Sponsor to fund its respective aggregate equity commitment will be supported by amounts on deposit in its respective sub-account of the Sponsor Cash Collateral Account (as defined herein) or a direct pay Equity Letter of Credit delivered on or prior to the Closing Date to the Collateral Agent, which may be drawn if any required Equity Contribution is not made when due and any applicable cure period has passed. The aggregate equity commitment (i) with respect to Meridiam is US$96,936,434; (ii) with respect to Fluor Enterprises, is US$20,772,093; and (iii) with respect to Star America, is US$20,772,093. See “FINANCING FOR THE PROJECT—Equity Contributions.”
Additional Parity Bonds.............................. Under the Indenture, upon request from the Company, the Bond Issuer may issue Additional Parity Bonds subject to satisfying various requirements set forth in the Indenture. The requirements, terms and conditions to issuance of any such Additional Parity Bonds are set forth in more detail in “THE 2016 BONDS—Additional Parity Bonds.” See also APPENDIX G—“SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE,” “RISK FACTORS—Risks Related to the 2016 Bonds—Additional Senior Debt and Additional Parity Bonds,” and “FINANCING FOR THE PROJECT—Series 2016 Loan Agreement,” and “THE 2016 BONDS—Additional Parity Bonds.”

Conditionally Subordinated Debt – TIFIA Loan.........................................................

Pursuant to the TIFIA Loan Agreement (the “TIFIA Loan Agreement”), to be entered into between the TIFIA Lender and the Company, as borrower thereunder, the TIFIA Lender will provide conditionally subordinated debt incurred in connection with the financing of the Project comprised of a loan of up to $874,595,239 (excluding capitalized interest) (the “TIFIA Loan”), which amount complies with the following conditions:

- the aggregate principal amount (excluding any interest that is capitalized in accordance with the terms thereof), together with the amount of any other credit assistance provided under the TIFIA Act, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and
- as required pursuant to federal law, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms thereof) does not exceed eighty percent (80%) of Eligible Project Costs.

The proceeds of the TIFIA Loan will be funded pursuant to multiple disbursements, subject to meeting certain conditions precedent to disbursement, and used to finance Eligible Project Costs (i.e., certain Project Costs that are eligible to be financed with proceeds of the TIFIA Loan pursuant to federal law).

The payment of debt service on the TIFIA Loan and other TIFIA Obligations and the Security Interest in the Collateral with respect thereto are generally subordinate to the payment of obligations of the Company under the Series 2016 Loan Agreement and any other Senior Secured Obligations of the Company and the Security Interest in the Collateral with respect thereto; provided that upon the occurrence of a Company Bankruptcy Related Event (for so long as the TIFIA Loan is held by the TIFIA Lender or another federal governmental entity to which the TIFIA Obligations have been transferred in accordance with the TIFIA Loan Agreement), which, for the avoidance of doubt, includes events in addition to the bankruptcy of the Company, (i) payments of principal of and interest and fees on the TIFIA Loan and other TIFIA Obligations will be on a parity with payments of principal of and interest and fees on the 2016 Bonds (and other Senior Secured Obligations), (ii) the Security Interest in the Collateral for payment of the 2016 Bonds (and other Senior Secured Obligations) and the TIFIA Obligations will be on a parity (other than with respect to certain exclusive Security Interests in certain Collateral pursuant to the
Security Documents, including the Bond Proceeds Sub-Accounts and the 2016D Bonds Debt Service Reserve Sub-Account, and (iii) the TIFIA Lender may, under certain circumstances, have greater rights than the Holders of the 2016 Bonds. See “SECURITY FOR AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Intercreditor Terms Among the Secured Parties” and “—Limited Subordination of the TIFIA Loan” and “FINANCING FOR THE PROJECT—TIFIA Loan Agreement” and “RISK FACTORS—Risks Relating to the 2016 Bonds—TIFIA ‘Springing Lien’ and other important rights of TIFIA as a secured creditor.” The TIFIA Loan has been assigned a preliminary rating of “BBB+” from S&P Global (“S&P”), an expected rating of “BBB+” from Fitch Ratings Inc. (“Fitch”) and a provisional rating of “BBB (high)” from DBRS Limited (“DBRS”).

TIFIA Debt Service Reserve Sub-Account

The TIFIA Debt Service Reserve Sub-Account of the Debt Service Reserve Account will be funded, to the extent of available amounts on deposit in the Construction Account (subject to certain limitations on funding sources) on the RSA Payment Date in an amount equal to the TIFIA Debt Service Reserve Required Balance or, if earlier, upon any Event of Default under the Series 2016 Loan Agreement. On each Monthly Transfer Date thereafter, the Collateral Agent will cause amounts in the Revenue Account, to the extent available, to be deposited in accordance with the provisions set forth under “PROJECT ACCOUNTS AND FLOW OF FUNDS” into the TIFIA Debt Service Reserve Sub-Account, in an amount necessary, together with amounts on deposit therein (including any amount available for drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account), to cause the amounts on deposit in the TIFIA Debt Service Reserve Sub-Account to equal the TIFIA Debt Service Reserve Required Balance. The TIFIA Debt Service Reserve Sub-Account will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of the TIFIA Lender. From and after the occurrence of a Company Bankruptcy Related Event, the Collateral Agent will fund the TIFIA Debt Service Reserve Sub-Account on a pari passu basis with the funding of the other sub-accounts within the Debt Service Reserve Account with respect to the Applicable Senior Secured Obligations. For a complete description, see “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Debt Service Reserve Account—TIFIA Debt Service Reserve Sub-Account” and “PROJECT ACCOUNTS AND FLOW OF FUNDS—Project Accounts—TIFIA Debt Service Reserve Sub-Account.”

Other Project Funding

It is currently anticipated that the Contracting Authority will receive additional funds allocated to pay costs of the Project, including the following: (i) over $300,000,000 in cash and in-kind payments from Prince George’s and Montgomery Counties; (ii) approximately $900,000,000 in Federal Transit Administration Section 5309 Capital Investment Grant (New Starts) funds from the Federal Transit Administration; and (iii) approximately $500,000 from the University of Maryland. See “PROJECT PARTICIPANTS—The Contracting Authority.”
P3 AGREEMENT

Pursuant to, and subject to the terms of, the P3 Agreement, as modified pursuant to the Amended and Restated Financial Close Notice, dated May 23, 2016, by the Company and accepted and agreed as of May 23, 2016 by MTA and to be amended by the First Amendment to P3 Agreement, the Contracting Authority has granted the Company the exclusive right to, and the Company is obligated to, finance, develop, design, construct, equip and supply light rail vehicles for the Project and to operate and maintain the portion of the Purple Line located within the O&M Limits and the Contracting Authority has agreed to make Progress Payments, the RSA Payment, the Final Completion Payment and Availability Payments and, following various relief and termination events, compensation and termination payments to the Company. The obligation of the Contracting Authority to make such payments is subject to the annual appropriation of sufficient funds therefor by the General Assembly. See “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement.”

Pursuant to, and subject to the terms of, the P3 Agreement, the Contracting Authority has agreed to make:

- Progress Payments up to $860,000,000 (subject to adjustment, as set forth herein) during the Design-Build Period based on substantiated progress and the approved schedule of values, equal to eighty-five percent (85%) of the value of the D&C Work, subject to the D&C Payment Cap. Out of that amount, most of the limited notice to proceed amount of up to $18.5 million may be invoiced pre-closing, subject to the terms of the P3 Agreement. The Progress Payments will be applied by the Company to pay Project Costs;

- the RSA Payment, in the amount of $100,000,000, following issuance of the Independent Engineer’s Certificate of Revenue Service Availability. The RSA Payment will be applied by the Company towards payment of the principal of the 2016A Bonds;

- the Final Completion Payment in the amount of $30,000,000, following achievement of Final Completion. A portion of the Final Completion Payment will be applied by the Company first, to pay the Design-Build Contractor pursuant to the Design-Build Contract only to the extent that amounts then due and payable to the Design-Build Contractor have not been paid in full, and the remainder of which will be applied by the Company to redeem the 2016B Bonds; and

- Availability Payments during the operating period based on, among other things the Purple Line being open and available for public transit. The Company will receive Availability Payments commencing after the RSA Date and continuing for the Term of the P3 Agreement. The Availability Payments will be applied by the Company to
pay operation and maintenance costs of the Purple Line, scheduled debt service on the 2016B Bonds, 2016C Bonds and the 2016D Bonds, the TIFIA Loan, and certain other costs. An Availability Payment is calculated for each calendar month and may be adjusted for certain deductions or escalations, as applicable, in accordance with the P3 Agreement.

The Contracting Authority expects to make the Progress Payments, the RSA Payment, the Final Completion Payment and Availability Payments using funds received from the Contracting Authority’s budget, subject to annual appropriation of such funds by the General Assembly. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally,” “FINANCING FOR THE PROJECT—Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding,” “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement—Payments to the Company,” APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT,” “PROJECT PARTICIPANTS—The Contracting Authority,” and APPENDIX A—AUDITED FINANCIAL STATEMENTS FOR THE MARYLAND DEPARTMENT OF TRANSPORTATION.”

Relief Events; Force Majeure Events; Non-Concessionaire-Caused Disruptions ........... Pursuant to the P3 Agreement, the Company will be entitled to incremental costs, schedule relief, excuse from compliance with performance requirements and/or other relief for certain delays or other impacts incurred as a result of a Relief Event, and the obligations of each party which are affected by a Force Majeure Event will be suspended, but only to the extent that, and for so long as such Force Majeure Event prevents that party from meeting its obligations in accordance with the P3 Agreement. During the Construction Period (in the case of a Relief Event, where performance of the D&C Work has been delayed due to the occurrence of such Relief Event), the Company is entitled to claim the extension of the applicable Contract Deadlines for the impact of the Relief Event on, or by the period that a Force Majeure Event results in a delay to, the Critical Path required to achieve Revenue Service Availability or Final Completion, as applicable, beyond the original Contract Deadline, subject to certain limitations and satisfaction of relevant conditions and requirements set forth in the Contract Documents. During the O&M Period, the Company is entitled to claim relief, subject to certain limitations and conditions from the assessment of Noncompliance Points and Deductions in the case of Force Majeure Events and Non-Concessionaire Caused Disruptions. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Force Majeure Events”, “—Non-Concessionaire Caused Disruptions” and “—Excuse from Compliance.”

Termination .......................... Upon the occurrence of any of the termination events set forth in the P3 Agreement, the P3 Agreement may be terminated by either the Contracting Authority or the Company, as applicable, in each such event creating an obligation of the Contracting Authority to pay the applicable Termination Compensation to the Company subject to appropriation of such funds by the General Assembly. The Termination Compensation is due and payable within thirty (30) or sixty (60) days (depending on the cause for termination) after such
All obligations of the Contracting Authority are subject to applicable Law and annual appropriation by the General Assembly. The obligation of the Contracting Authority to make payments under the P3 Agreement does not constitute an indebtedness of the Contracting Authority or the State and does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. Furthermore, the Contracting Authority has no taxing power and the Company has no right to have taxes levied or to compel appropriations by the General Assembly for any payment under the P3 Agreement.

SECURITY FOR THE 2016 BONDS

The payment of the 2016 Bonds will be payable from the Trust Estate (subject to certain exclusive Security Interests for certain Secured Parties with respect to portions of the Trust Estate) under the Indenture, including the payments to be made by the Company to the Bond Issuer under the Series 2016 Loan Agreement. The obligation of the Company to make payments on the 2016 Loan, along with any Additional Parity Bonds, any other Senior Secured Obligations and the TIFIA Obligations are secured by the Security Interests in the Collateral, created for the benefit of the Collateral Agent on behalf of the Secured Parties, including the Holders of the 2016 Bonds, the TIFIA Lender and the holders of any Additional Parity Bonds and any holders of any Other Permitted Senior Secured Indebtedness, pursuant to the Security Documents, which Collateral includes:

(a) all of the Company’s right, title and interest, whether now or in the future acquired by it and whether now existing or in the future coming into existence and wherever located, in the following (other than the Excluded Assets):

(i) all Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”);

(ii) the P3 Agreement and all other Assigned Agreements;

(iii) the Project Accounts (subject to certain exclusive Security Interests in certain accounts, including, among others, the Bond Proceeds Sub-Accounts and the 2016D Bonds Debt Service Reserve Sub-Account, for certain Secured Parties); and

(iv) all other amounts received or receivable by the Company under the P3 Agreement and all other Assigned Agreements; and

(b) the membership interests of the Company and the other Pledged Collateral under the Pledge Agreements.
2016D Bonds Debt Service Reserve Sub-Account

The sub-accounts of the Debt Service Reserve Account will each be established solely for the benefit of the relevant Secured Parties. Each sub-account will be held by the Collateral Agent, and the Security Interest thereon will be maintained for the exclusive benefit of only such Secured Parties.

The Collateral Agent will establish and maintain a sub-account relating to the 2016D Bonds under the Debt Service Reserve Account, which will be funded to the extent of available amounts on deposit in the Construction Account (subject to the Tax Regulatory Agreement) on the RSA Payment Date (or, if earlier upon any Event of Default under the Series 2016 Loan Agreement) in an amount equal to the 2016D Debt Service Reserve Required Balance (as calculated on such date) and thereafter, in accordance with the Flow of Funds as further described under “PROJECT ACCOUNTS AND FLOW OF FUNDS.”


Availability Payment Start-Up Reserve Account

The Availability Payment Start-Up Reserve Account will be funded on the RSA Date in an amount not to exceed the AP Start-Up Amount to the extent of available amounts on deposit in the Construction Account (and the sub-accounts thereof other than the Bond Proceeds Sub-Accounts) in excess of the Construction Completion Amount.

On the first Monthly Transfer Date to occur during the Availability Payment Start-Up Period, the Company shall instruct the Collateral Agent to transfer from the Availability Payment Start-Up Reserve Account and deposit in the Revenue Account an amount up to the AP Transfer Amount. On the immediately succeeding Monthly Transfer Date, any remaining amounts on deposit in the Availability Payment Start-Up Reserve Account shall be transferred to the Revenue Account. For a complete description, see “PROJECT ACCOUNTS AND FLOW OF FUNDS—Project Accounts—Availability Payment Start-Up Reserve Account.”

Rehabilitation Reserve Account

The Rehabilitation Reserve Account will be funded in an amount not to exceed the Rehabilitation Reserve Required Balance in accordance with the TIFIA Loan Agreement, the Flow of Funds as further described under “PROJECT ACCOUNTS AND FLOW OF FUNDS,” and with any amounts and/or letters of credit received from the O&M Contractor for deposit in the Rehabilitation Reserve Account to fund all or any part of the Lifecycle Deficit Amount pursuant to the O&M Contract.

Subject to certain requirements, the Collateral Agent will make withdrawals, transfers and payments from the Rehabilitation Reserve Account for the payment of Renewal Expenditures.
Other Accounts and Flow of Funds

Certain funds and accounts, including certain Project Accounts (which may exclude the Operating Account being established on or prior to the Closing Date), are being established from time to time under the Collateral Agency Agreement and the Indenture.

Prior to the RSA Date, except for amounts required to be deposited in other Project Accounts pursuant to the Collateral Agency Agreement, all (i) net proceeds of the 2016 Bonds (in respect of the 2016 Loan); (ii) proceeds of the TIFIA Loan, (iii) proceeds of all Capital Contributions, (iv) proceeds of Progress Payments, and (v) Project Proceeds will be deposited into the Construction Account (including the appropriate sub-accounts according to the Collateral Agency Agreement). There also will be deposited into the Construction Account (or any sub-account thereof, as designated in any accompanying direction from the Company), all moneys received by the Company, in each case, not otherwise required or permitted to be deposited into another account pursuant to the Collateral Agency Agreement, to the extent received prior to the RSA Date, and if received after the RSA Date but prior to the Final Completion Date, to the extent required to be retained in the Construction Account in accordance with the Collateral Agency Agreement.

On and after the RSA Date, all Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS,”) including Availability Payments, Project Proceeds and any other amounts received by the Company from any source whatsoever (including transfers from other Project Accounts from time to time as required by the terms of the Collateral Agency Agreement) will be deposited into the Revenue Account, in each case, in accordance with the Collateral Agency Agreement.

The Company has granted a Security Interest in all of the Project Accounts to the Collateral Agent pursuant to the terms of the Security Agreement (subject to certain exclusive Security Interests in certain accounts, including, among others, the Bond Proceeds Sub-Accounts and the 2016D Bonds Debt Service Reserve Sub-Account, for certain Secured Parties). The Collateral Agent has a security interest only in the accounts that constitute the Trust Estate under the Indenture. Accounts established under the Indenture that are not part of the Trust Estate are not subject to the Security Interest of the Collateral Agent and are not collateral for the repayment of the 2016 Bonds. As described under “PROJECT ACCOUNTS AND FLOW OF FUNDS,” the Collateral Agent will make withdrawals, transfers and payments from the Revenue Account in the amounts, at the times, for the purposes and in the order of priority (the “Flow of Funds”) set forth in the Collateral Agency Agreement.

For a description of all the funds and accounts established in relation to the Project and a more detailed description of the Flow of Funds, see “PROJECT ACCOUNTS AND FLOW OF FUNDS.”
Turner & Townsend cm2r Inc. (the “Lenders’ Technical Advisor”) was engaged to prepare an independent technical advisor’s report (the “Lenders’ Technical Advisor’s Report”) to review and report on the Project documentation. The Lenders’ Technical Advisor’s Report is included as APPENDIX I to this Official Statement. Matters addressed in the Lenders’ Technical Advisor’s Report are based on various assumptions and methodologies and are subject to certain qualifications. Reference is hereby made to the entire Lenders’ Technical Advisor’s Report for such important opinions, projections, qualifications and assumptions.

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General

The 2016A Bonds are being issued in the aggregate principal amount of $100,000,000; the 2016B Bonds are being issued in the aggregate principal amount of $23,320,000; the 2016C Bonds are being issued in the aggregate principal amount of $27,480,000; and the 2016D Bonds are being issued in the aggregate principal amount of $162,235,000. The 2016 Bonds will mature, subject to prior redemption, on the dates shown on the inside cover page of this Official Statement. The 2016 Bonds will be subject to redemption prior to maturity as described below. The 2016 Bonds are being issued as fully registered bonds in denominations of $5,000 and integral multiples thereof.

The 2016 Bonds will be dated their date of their original issuance and delivery and will bear interest from that date or from the most recent Interest Payment Date to which interest has been paid or duly provided for at the per annum rate set forth on the inside cover page of this Official Statement.

Interest on the 2016 Bonds is payable semi-annually on March 31 and September 30 of each year, commencing on September 30, 2016 until maturity or prior redemption. Interest on the 2016 Bonds will be calculated on the basis of a three hundred sixty (360)-day year consisting of twelve thirty (30)-day months.

The 2016 Bonds will be registered in the name of Cede & Co., as nominee for DTC. Purchases of beneficial interests in the 2016 Bonds will be made only in book-entry form. Purchasers of beneficial interests in the 2016 Bonds (the “Beneficial Owners”) will not receive physical delivery of certificates representing their interest in the 2016 Bonds. Interest on the 2016 Bonds, together with principal of the 2016 Bonds, will be paid by the Trustee directly to DTC, so long as DTC or its nominee is the registered owner of the 2016 Bonds. The final disbursement of such payments to Beneficial Owners of the 2016 Bonds will be the responsibility of the DTC’s Direct Participants and Indirect Participants, all as defined and more fully described herein. See APPENDIX K—“BOOK-ENTRY ONLY SYSTEM.”

Special Limited Obligations

OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE WITHIN THE MEANING OR APPLICATION OF ANY CONSTITUTIONAL PROVISION OR LIMITATION.

Payment of the 2016 Bonds

The principal of, the redemption premium, if any, and interest on the 2016 Bonds will be payable only to the Holder thereof appearing on the registration record maintained by the Trustee.

Pursuant to the Indenture, the principal and Redemption Price of any 2016 Bond will be paid to the Holder thereof as shown on the registration records of the Trustee upon maturity or prior redemption thereof in accordance with the terms of the Indenture and upon presentation and surrender of the 2016 Bonds at the Designated Payment Office of the Trustee in Richmond, Virginia. Interest on the 2016 Bonds (other than interest paid as part of the Redemption Price of a Bond) is payable to the Holder whose name appears in the registration record at the close of business on the Record Date (or such Holder’s legal representative) and will be paid (a) by check or draft mailed on or prior to each Interest Payment Date, by the Trustee to the address of the Holder appearing in the registration record of the Trustee at the close of business on the Record Date or (b) by such other method as mutually agreed in writing between the Holder of the 2016 Bond and the Trustee. The “Record Date” for the 2016 Bonds is the fifteenth (15th) day of the month in which the applicable Interest Payment Date occurs. If any such Record Date is not a Business Day then the Record Date is the Business Day next preceding such date.

The Indenture provides that any interest not timely paid will cease to be payable to the Holder thereof at the close of business on the Record Date and will be payable to the Person who is the Holder thereof at the close of business on a new record date for the payment of such defaulted interest (a “Special Record Date”). Such Special Record Date will be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date will be given by the Trustee to the Holders of the 2016 Bonds, not less than ten (10) days prior to the Special Record Date, by certified or first-class mail to each such Holder as shown on the Trustee’s registration records on a date selected by the Trustee, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest.

While the 2016 Bonds are held under the book-entry system, the principal of, interest on and Redemption Price of the 2016 Bonds will be paid by wire transfer to DTC, as securities depository, or its nominee.

Redemption of the 2016 Bonds

The 2016 Bonds are subject to redemption prior to their stated maturity, in accordance with the terms and provisions of the Indenture, as follows:

Optional Redemption.

The 2016A Bonds are subject to redemption prior to maturity, at the option of the Bond Issuer, at the direction of the Company, from amounts deposited in the Series 2016 Redemption Account (excluding accrued interest, which is payable from the Series 2016 Interest Account), in whole or in part (and if in part, in Authorized Denominations) from time to time, (i) on any date prior to November 30, 2021, at a Redemption Price equal to the Make Whole Redemption Price; and (ii) on or after November 30, 2021, on any date, at a Redemption Price equal to 100% of the principal amount of 2016A Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption, without penalty or make-whole premium.

The 2016B Bonds are subject to redemption prior to maturity, at the option of the Bond Issuer, at the direction of the Company, from amounts deposited in the Series 2016 Redemption Account (excluding accrued interest, which is payable from the Series 2016 Interest Account), in whole or in part (and if in part, in Authorized Denominations) from time to time, (i) on any date prior to November 30, 2021, at a Redemption Price equal to the Make Whole Redemption Price; and (ii) on or after November 30, 2021, on any date, at a Redemption Price equal to 100% of the principal amount of 2016B Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption, without penalty or make-whole premium.

The 2016C Bonds are subject to redemption prior to maturity, at the option of the Bond Issuer, at the direction of the Company, from amounts deposited in the Series 2016 Redemption Account (excluding accrued
interest, which is payable from the Series 2016 Interest Account), in whole or in part (and if in part, in Authorized Denominations) from time to time, (i) on any date prior to November 30, 2021, at a Redemption Price equal to the Make Whole Redemption Price; and (ii) on or after November 30, 2021, on any date, at a Redemption Price equal to 100% of the principal amount of 2016C Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption, without penalty or make-whole premium.

On any date prior to September 30, 2026, the 2016D Bonds are subject to redemption prior to maturity, at the option of the Bond Issuer, at the direction of the Company, from amounts deposited in the Series 2016 Redemption Account (excluding accrued interest, which is payable from the Series 2016 Interest Account), in whole or in part (and, if in part, in Authorized Denominations) from time to time, on any date at a Redemption Price equal to the Make Whole Redemption Price. The 2016D Bonds maturing on or after March 31, 2027 are subject to redemption prior to maturity, at the option of the Bond Issuer, at the direction of the Company, on or after September 30, 2026, from amounts deposited in the Series 2016 Redemption Account (excluding accrued interest, which is payable from the Series 2016 Interest Account), in whole or in part (and if in part, in Authorized Denominations) from time to time, on any date at a Redemption Price equal to 100% of the principal amount of 2016D Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption, without penalty or make-whole premium.

**Mandatory Sinking Fund Redemption of the 2016D Bonds.**

The 2016D Bonds maturing on March 31, 2036, March 31, 2041, March 31, 2046 and March 31, 2051 are subject to mandatory redemption prior to maturity, in part, on each March 31 and September 30 (or, if such date is not a Business Day, then the Business Day succeeding such date) of the years and in the respective principal amounts set forth below, at a Redemption Price equal to 100% of the principal amount thereof, plus accrued interest to the date of redemption, without penalty or make-whole premium, through mandatory Sinking Fund Installments that are required to be made in amounts sufficient to redeem on March 31 and September 30 of each year the principal amount of the 2016 Bonds specified for each of the dates show below:

<table>
<thead>
<tr>
<th>2016D Term Bond due March 31, 2036</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory Redemption Date</td>
</tr>
<tr>
<td>September 30, 2032</td>
</tr>
<tr>
<td>March 31, 2033</td>
</tr>
<tr>
<td>September 30, 2033</td>
</tr>
<tr>
<td>March 31, 2034</td>
</tr>
<tr>
<td>September 30, 2034</td>
</tr>
<tr>
<td>March 31, 2035</td>
</tr>
<tr>
<td>September 30, 2035</td>
</tr>
<tr>
<td>March 31, 2036**</td>
</tr>
</tbody>
</table>

**Final Maturity**
### 2016D Term Bond due March 31, 2041

<table>
<thead>
<tr>
<th>Mandatory Redemption Date</th>
<th>Principal Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 30, 2036</td>
<td>$2,560,000</td>
</tr>
<tr>
<td>March 31, 2037</td>
<td>2,625,000</td>
</tr>
<tr>
<td>September 30, 2037</td>
<td>2,690,000</td>
</tr>
<tr>
<td>March 31, 2038</td>
<td>2,755,000</td>
</tr>
<tr>
<td>September 30, 2038</td>
<td>2,825,000</td>
</tr>
<tr>
<td>March 31, 2039</td>
<td>2,895,000</td>
</tr>
<tr>
<td>September 30, 2039</td>
<td>2,970,000</td>
</tr>
<tr>
<td>March 31, 2040</td>
<td>3,045,000</td>
</tr>
<tr>
<td>September 30, 2040</td>
<td>3,120,000</td>
</tr>
<tr>
<td>March 31, 2041**</td>
<td>3,195,000</td>
</tr>
</tbody>
</table>

**Final Maturity**

### 2016D Term Bond due March 31, 2046

<table>
<thead>
<tr>
<th>Mandatory Redemption Date</th>
<th>Principal Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 30, 2041</td>
<td>$3,275,000</td>
</tr>
<tr>
<td>March 31, 2042</td>
<td>3,360,000</td>
</tr>
<tr>
<td>September 30, 2042</td>
<td>3,445,000</td>
</tr>
<tr>
<td>March 31, 2043</td>
<td>3,530,000</td>
</tr>
<tr>
<td>September 30, 2043</td>
<td>3,615,000</td>
</tr>
<tr>
<td>March 31, 2044</td>
<td>3,710,000</td>
</tr>
<tr>
<td>September 30, 2044</td>
<td>3,780,000</td>
</tr>
<tr>
<td>March 31, 2045</td>
<td>3,875,000</td>
</tr>
<tr>
<td>September 30, 2045</td>
<td>3,950,000</td>
</tr>
<tr>
<td>March 31, 2046**</td>
<td>4,050,000</td>
</tr>
</tbody>
</table>

**Final Maturity**

### 2016D Term Bond due March 31, 2051

<table>
<thead>
<tr>
<th>Mandatory Redemption Date</th>
<th>Principal Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 30, 2046</td>
<td>$4,155,000</td>
</tr>
<tr>
<td>March 31, 2047</td>
<td>4,260,000</td>
</tr>
<tr>
<td>September 30, 2047</td>
<td>4,325,000</td>
</tr>
<tr>
<td>March 31, 2048</td>
<td>4,435,000</td>
</tr>
<tr>
<td>September 30, 2048</td>
<td>4,550,000</td>
</tr>
<tr>
<td>March 31, 2049</td>
<td>4,665,000</td>
</tr>
<tr>
<td>September 30, 2049</td>
<td>4,785,000</td>
</tr>
<tr>
<td>March 31, 2050</td>
<td>4,865,000</td>
</tr>
<tr>
<td>September 30, 2050</td>
<td>4,990,000</td>
</tr>
<tr>
<td>March 31, 2051**</td>
<td>6,095,000</td>
</tr>
</tbody>
</table>

**Final Maturity**

There will be credited against and in satisfaction of all or a portion of the Sinking Fund Installment payable on any date the principal amount of 2016D Bonds of a particular maturity redeemed or purchased with money in the Series 2016 Redemption Account (excluding accrued interest, which is payable from the Series 2016 Interest Account) and the principal amount of such 2016D Bonds so redeemed or purchased shall be applied against and in fulfillment of the applicable required Sinking Fund Installment of the applicable maturity of such 2016D Bonds in accordance with the Indenture. In addition, there shall be credited against and in satisfaction of the applicable Sinking Fund Installments of the applicable maturity of 2016D Bonds (A) 2016D Bonds redeemed at the election of the Company pursuant to the Indenture or redeemed in accordance with the extraordinary mandatory redemption...
provisions set forth in the Indenture, (B) 2016D Bonds purchased by the Company and delivered to the Trustee for cancellation or (C) 2016D Bonds deemed to have been paid in accordance with the Indenture, and the principal amount of such 2016D Bonds shall be applied against and in fulfillment of the applicable required Sinking Fund Installments thereafter payable on such 2016D Bonds, as nearly as practicable pro rata, taking into consideration the Authorized Denominations.

**Extraordinary Mandatory Redemption**

**Loss Proceeds – 2016 Bonds.** The 2016 Bonds are subject to redemption prior to maturity, pro rata by series based on the then Outstanding principal amount of the 2016 Bonds of each series, in whole or in part, on any date, from amounts transferred to the Series 2016 Redemption Account from the PABs Mandatory Prepayment Sub-Account in accordance with the Collateral Agency Agreement, representing the applicable pro rata portion of Loss Proceeds transferred from the Loss Proceeds Account to the Mandatory Prepayment Account pursuant to the Collateral Agency Agreement. Such redemption shall be subject in all respects to the provisions and requirements of the Indenture and the Intercreditor Agreement and shall be at a Redemption Price equal to 100% of the principal amount of the 2016 Bonds to be redeemed, plus accrued interest to the date fixed for redemption.

**RSA Payment – 2016A Bonds.** The 2016A Bonds are subject to redemption prior to maturity, in whole or in part, from amounts transferred to the Series 2016 Redemption Account from the PABs Mandatory Prepayment Sub-Account in accordance with the Collateral Agency Agreement, representing the proceeds of any RSA Payment received by the Company pursuant to the terms of the P3 Agreement and any other amounts on deposit in the Revenue Service Availability Payment Account following the RSA Payment Date transferred from the Revenue Service Availability Payment Account to the Mandatory Prepayment Account as described in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Revenue Service Availability Payment Account,” such mandatory redemption to occur on any date (such date to be selected by the Company) on or prior to the later of (a) the thirty-fifth (35th) day following the RSA Payment Date and (b) November 30, 2021 in accordance with the Collateral Agency Agreement, at a Redemption Price equal to the Amortized Redemption Price if such redemption occurs prior to November 30, 2021, and at a Redemption Price equal to 100% of the principal amount of the 2016A Bonds to be redeemed, plus accrued interest to the date fixed for redemption if such redemption occurs on or after November 30, 2021. Such redemption shall be subject in all respects to the provisions and requirements of the Indenture.

**Final Completion Payment – 2016B Bonds.** The 2016B Bonds are subject to redemption prior to maturity, in whole or in part from, amounts transferred to the Series 2016 Redemption Account from the PABs Mandatory Prepayment Sub-Account in accordance with the Collateral Agency Agreement, representing the proceeds of the Final Completion Payment received by the Company pursuant to the terms of the P3 Agreement and any other amounts on deposit in the Final Completion Payment Account following the Final Completion Payment Date transferred from the Final Completion Payment Account to the Mandatory Prepayment Account, such mandatory redemption to occur on any date (such date to be selected by the Company) on or prior to the later of (a) the thirty-fifth (35th) day following the Final Completion Payment Date and (b) November 30, 2021 in accordance with the Collateral Agency Agreement, at a Redemption Price equal to the Amortized Redemption Price if such redemption occurs prior to November 30, 2021, and at a Redemption Price equal to 100% of the principal amount of the 2016B Bonds to be redeemed, plus accrued interest to the date fixed for redemption if such redemption occurs on or after November 30, 2021. Such redemption shall be subject in all respects to the provisions and requirements of the Indenture.

**Early RSA Date – 2016D Bonds.** The 2016D Bonds maturing on March 31, 2051 are subject to redemption prior to maturity, in whole or in part, from amounts transferred to the Series 2016 Redemption Account from the PABs Mandatory Prepayment Sub-Account in accordance with the Collateral Agency Agreement, representing an amount sufficient to cause the mandatory redemption of all of the then Outstanding 2016D Bonds (such amount to be transferred from the Revenue Account to the Mandatory Prepayment Account pursuant to sub-clause (b) of “Sixth” as described in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Revenue Account—On and After the RSA Date”) on the date that is the same number of days prior to the final scheduled Sinking Fund Installment of the final 2016D Bonds Outstanding as of the time of redemption as the actual RSA Date is prior to the RSA Deadline (without giving effect to any extension thereof under the P3 Agreement), provided that such extraordinary mandatory redemption event shall only come into effect in the event that the RSA Date actually occurs prior to the RSA Deadline (without giving effect to any extension thereof under the P3 Agreement).
redemption shall be subject in all respects to the provisions and requirements of the Indenture and shall be at a Redemption Price equal to 100% of the principal amount of the 2016D Bonds to be redeemed, plus accrued interest to the date fixed for redemption.

**P3 Agreement Termination Compensation – 2016 Bonds.** The 2016 Bonds are subject to redemption prior to maturity, pro rata by series based on the then Outstanding principal amount of 2016 Bonds of each series, in whole or in part, on any date, from amounts transferred to the Series 2016 Redemption Account from the PABs Mandatory Prepayment Sub-Account in accordance with the Collateral Agency Agreement, representing the applicable pro rata portion of the proceeds of any payments made as Termination Compensation received from the Contracting Authority, transferred from the Termination Compensation Account as described in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Termination Compensation Account” and deposited in the Mandatory Prepayment Account pursuant to the Collateral Agency Agreement. Such redemption shall be subject in all respects to the provisions and requirements of the Indenture. If such redemption occurs (a) with respect to the 2016A Bonds, the 2016B Bonds or the 2016C Bonds, prior to November 30, 2021 or (b) with respect to the 2016D Bonds, prior to September 30, 2026, such redemption shall be at a Redemption Price equal to the Amortized Redemption Price. If such redemption occurs on or after (a) with respect to the 2016A Bonds, the 2016B Bonds or the 2016C Bonds, November 30, 2021, or (b) with respect to the 2016D Bonds, September 30, 2026, such redemption shall be at a Redemption Price equal to 100% of the principal amount of the 2016 Bonds to be redeemed, plus accrued interest to the date fixed for redemption.

**Unspent 2016 Bonds – 2016 Bonds.** The 2016 Bonds are subject to redemption prior to maturity, in whole or in part, from amounts transferred to the Series 2016 Redemption Account from the PABs Mandatory Prepayment Sub-Account in accordance with the Collateral Agency Agreement, representing any remaining unspent 2016 Bonds proceeds of each series (rounded down to the nearest multiple of $5,000) on deposit in the 2016A Proceeds Sub-Account, the 2016B Proceeds Sub-Account, the 2016C Proceeds Sub-Account and the 2016D Proceeds Sub-Account, as applicable, that are transferred from the 2016A Proceeds Sub-Account, the 2016B Proceeds Sub-Account, the 2016C Proceeds Sub-Account and the 2016D Proceeds Sub-Account, as applicable, to the Mandatory Prepayment Account pursuant to the Collateral Agency Agreement on a date that is no earlier than five (5) years after the date of issuance of the 2016 Bonds and no later than five (5) years and sixty (60) days after the date of issuance of the 2016 Bonds unless the Company has obtained an opinion of Bond Counsel stating that the failure to redeem any such 2016 Bonds will not adversely affect the exclusion of interest on such 2016 Bonds from gross income for federal or State income tax purposes and that such redemption is not required by State law. Such redemption shall be subject in all respects to the provisions and requirements of the Indenture and shall be at a Redemption Price equal to 100% of the principal amount of the relevant series of 2016 Bonds to be redeemed, plus accrued interest to the date fixed for redemption.

**Notice of Redemptions**

Notice of the call for any redemption identifying the 2016 Bonds or portions thereof to be redeemed and specifying the terms of such redemption (including, with respect to any optional redemption of 2016 Bonds, if at the time of mailing such notice of redemption, there shall not have been deposited with the Trustee moneys sufficient to redeem all the 2016 Bonds called for redemption, a statement that the redemption is conditional, that is, subject to the deposit of moneys for the redemption with the Trustee not later than the opening of business on the redemption date, and such notice shall be of no effect and the 2016 Bonds called for redemption in such notice shall not be redeemed unless such moneys are so deposited) shall be given by the Trustee by mailing a copy of the redemption notice by United States first-class mail, postage pre-paid at least twenty (20) days and not more than sixty (60) days prior to the date fixed for redemption, to the Holder of each 2016 Bond to be redeemed at their last known addresses, if any, appearing on the registration records of the Trustee not more than ten (10) Business Days prior to the date such notice is given; provided, however, that failure of an Holder of a 2016 Bond to receive any such notice shall not affect the validity of any proceedings for the redemption of the 2016 Bonds.

The Bond Issuer’s obligation to purchase a 2016 Bond is conditioned upon the availability of sufficient money to pay the Purchase Price (as defined herein) for all of the 2016 Bonds to be purchased on the Purchase Date. If sufficient money is not available on the Purchase Date (as defined herein) for payment of the Purchase Price, the 2016 Bonds tendered or deemed tendered for purchase will continue to be registered in the name of the registered Holders on the Purchase Date, who will be entitled to the payment of the principal of and interest on such 2016 Bonds in accordance with their respective terms.
So long as DTC is effecting book-entry transfers of the 2016 Bonds, the Trustee will provide the redemption notices specified herein to DTC. It is expected that DTC will, in turn, notify its Direct Participants and that the Direct Participants, in turn, will notify or cause to be notified the Beneficial Owners (as defined below) of the 2016 Bonds. Any failure on the part of DTC or a Direct Participant, or failure on the part of a nominee of a Beneficial Owner of a 2016 Bond (having been mailed notice from the Trustee, DTC, a Direct Participant or otherwise) to notify the Beneficial Owner of the 2016 Bond so affected, will not affect the validity of the redemption of such 2016 Bond. See APPENDIX K—“BOOK-ENTRY ONLY SYSTEM.”

**Selection of 2016 Bonds for Redemption**

If the amounts received in connection with an extraordinary mandatory redemption described above, as applicable to a particular series of 2016 Bonds and with respect to each instance of a particular extraordinary mandatory redemption event, received by the Trustee are insufficient to cause the mandatory redemption of all of the 2016 Bonds of a series, the 2016 Bonds of such series shall be subject to partial redemption and will be redeemed ratable in Authorized Denominations, and principal amounts within maturities will be selected by the Trustee as described below.

If less than all of a series of 2016 Bonds are to be redeemed, the 2016 Bonds to be redeemed shall be selected by the Trustee in such order of maturity as directed by the Company. If less than all of a single maturity of the 2016 Bonds are to be redeemed, the Trustee shall select for redemption by lot, provided that the principal amount of any such 2016 Bond that will remain Outstanding following such partial redemption must be in an Authorized Denomination. If the 2016 Bonds of a series are registered in book-entry only form and so long as DTC or a successor securities depository is the sole registered Holder of the 2016 Bonds of such series, if less than all of the 2016 Bonds of a maturity within a particular series are called for prior redemption, the particular 2016 Bonds of such series or portions thereof to be redeemed shall be selected on a “Pro Rata Pass-Through Distribution of Principal” basis in accordance with DTC procedures, provided that, so long as the 2016 Bonds of such series are held in book-entry form, the selection for redemption of such 2016 Bonds of such series shall be made in accordance with the operational arrangements of DTC then in effect that currently provide for adjustment of the principal by a factor (where (a) the numerator is equal to the amount due to the respective Holders of the 2016 Bonds on a payment date, and (b) the denominator is equal to the total Outstanding principal amount of the respective 2016 Bonds) provided by the Trustee pursuant to DTC operational arrangements. If the Trustee does not provide the necessary information and identify the redemption as on a Pro Rata Pass-Through Distribution of Principal basis, the 2016 Bonds of such Series will be selected for redemption in accordance with DTC procedures by lot.

**Purchase in Lieu of Redemption**

The 2016A Bonds, the 2016B Bonds and the 2016C Bonds are subject to purchase prior to maturity, at the election of the Bond Issuer, upon the written request of the Company, on or after November 30, 2021, in any order, in whole or in part at any time, at a purchase price equal to one hundred percent (100%) of the principal amount thereof (the “Purchase Price”), plus accrued interest to but not including the date set for purchase (the “Purchase Date”) set forth in the notice of purchase to the Holders of the 2016A Bonds, the 2016B Bonds and the 2016C Bonds to be so purchased.

The 2016D Bonds maturing on or after March 31, 2027 are subject to purchase prior to maturity, at the election of the Bond Issuer, upon the written request of the Company, on or after September 30, 2026, in any order, in whole or in part at any time, at the Purchase Price, plus accrued interest to but not including the Purchase Date set forth in the notice of purchase to the Holders of the 2016D Bonds to be so purchased.

If the Bond Issuer, upon written request of the Company, elects to purchase 2016 Bonds, the Bond Issuer shall provide written notice to the Trustee of such election at least forty-five (45) days prior to the Purchase Date, and the Trustee shall give notice of the purchase of such 2016 Bonds in the name of the Bond Issuer to the Holders of the 2016 Bonds to be purchased by first-class mail, postage prepaid, not less than thirty (30) days nor more than sixty (60) days prior to the Purchase Date specified in such notice. The 2016 Bonds to be purchased are required to be tendered on the Purchase Date to the Trustee. The 2016 Bonds to be purchased that are not so tendered will be deemed to have been properly tendered for purchase. Such purchase will not operate to extinguish the indebtedness of the Bond Issuer evidenced thereby or modify the terms of the 2016 Bonds and such 2016 Bonds need not be cancelled, but will remain Outstanding under the Indenture and continue to bear interest.
The Bond Issuer’s obligation to purchase a 2016 Bond is conditioned upon the availability of sufficient money to pay the Purchase Price for all of the 2016 Bonds to be purchased on the Purchase Date. If sufficient money is available on the Purchase Date to pay the Purchase Price of the 2016 Bonds to be purchased, the former Holders of such 2016 Bonds will have no claim thereunder or under the Indenture or otherwise for payment of any amount other than the Purchase Price. If sufficient money is not available on the Purchase Date for payment of the Purchase Price, the 2016 Bonds tendered or deemed tendered for purchase will continue to be registered in the name of the Holders on the Purchase Date, who will be entitled to the payment of the principal of and interest on such 2016 Bonds in accordance with their respective terms.

Additional Parity Bonds

The Bond Issuer may issue Additional Parity Bonds in accordance with the Indenture for any purpose contemplated under (and in accordance with the conditions set forth in) the definition of Other Permitted Senior Secured Indebtedness as set forth in the Collateral Agency Agreement.

All Additional Parity Bonds must be issued on the same terms and conditions then applicable to the then Outstanding 2016 Bonds, unless otherwise approved by the Bond Issuer and the Company, except that the interest rate on such Additional Parity Bonds must be fixed and the amortization applicable to any such Additional Parity Bonds would be subject to then-current market conditions and on terms acceptable to the Company.

To the extent that any or all of the 2016 Bonds (or any Additional Parity Bonds) are Outstanding at the time the Additional Parity Bonds are proposed to be incurred, the additional Finance Documents entered into in connection therewith (1) shall not prohibit the Company from incurring new indebtedness to refinance such 2016 Bonds (at least to the extent permitted under the Indenture and under the Series 2016 Loan Agreement) and (2) shall provide that all Principal Payment Dates and Interest Payment Dates with respect to such Additional Parity Bonds will be the same Principal Payment Dates and Interest Payment Dates as the 2016 Bonds that remain Outstanding through maturity of such 2016 Bonds.

Prior to the issuance of any Additional Parity Bonds, the Company must cause compliance with the requirements of the Indenture for the delivery of Bonds and in addition deliver to the Trustee and the Collateral Agent the following:

(i) a certificate of the Company, signed by a Company Representative, dated as of the date of issuance of such proposed Additional Parity Bonds stating that no Default or Event of Default under the 2016 Loan Documents has occurred and is continuing or will result from the issuance of such Additional Parity Bonds (or a certificate, accompanied by the consent of the Majority Holders, that the issuance of any such Other Permitted Senior Secured Indebtedness would cure such Default or Event of Default);

(ii) executed counterparts of all financing documents related to the Additional Parity Bonds including, without limitation, (A) a certified copy of the executed counterpart of the Additional Parity Bonds Loan Agreement, under which the Bond Issuer agrees to loan the proceeds of the Additional Parity Bonds to the Company, and (B) an original executed counterpart of the Supplemental Indenture under which the Additional Parity Bonds have been issued; and

(iii) evidence that each Nationally Recognized Rating Agency then providing a rating on the 2016 Bonds has confirmed that the incurrence of such Additional Parity Bonds shall not, in and of itself, result in a downgrade of the rating of the 2016 Bonds below the higher of (x) the then current rating of the 2016 Bonds or (y) an Investment Grade Rating.

Notwithstanding anything to the contrary in the Indenture, any issuance of Additional Parity Bonds for the purpose of refinancing or replacing any or all of the 2016 Bonds is subject to the further condition that it must comply with the refinancing requirements set forth in the P3 Agreement. See “RISK FACTORS—Risks Related to the 2016 Bonds—Additional Senior Debt and Additional Parity Bonds.”
Designation as Green Bonds

The Company has self-designated the 2016 Bonds as “Green Bonds” based on the Green Bonds Principles (“GBP”) established by the Executive Committee of the GBP of the International Capital Markets Association. The Company believes the Project constitutes an “eligible Green Project” under the GBP because it has two key environmental and social purposes:

- To improve access to sustainable public transportation opportunities in the State as an alternative to private vehicle use; and
- To promote transit-oriented development, revitalization of inner-suburban neighborhoods and alternative modes of transportation and improved recreation.

The GBP are voluntary process guidelines that recommend transparency and disclosure and are intended to promote integrity by clarifying the approach for issuance of a green bond. The GBP are comprised of the following four components:

- Use of Proceeds;
- Process for Project Evaluation and Selection;
- Management of Proceeds; and
- Reporting.

In accordance with the 2015 edition of the GBP, the following sections set forth information relating to the Project and the use of proceeds of the 2016 Bonds within the framework of the four components of the GBP.

Use of Proceeds

The cornerstone of a green bond, according to the GBP, is utilization of the proceeds towards a green project that provides clear environmentally sustainable benefits which, where feasible, will be quantified or assessed by the issuer. The Company, not the Bond Issuer, has taken all action and will undertake all future action concerning the eligibility of the Project using green bond proceeds and the utilization of the proceeds of the 2016 Bonds for an eligible green project. The Project consists of the financing, development, design, construction, equipping, supply of light rail vehicles for, operation and maintenance of the Purple Line, which is a planned 16.2 mile light rail transit line that extends from Bethesda in Montgomery County to New Carrollton in Prince George’s County.

The use of proceeds from the 2016 Bonds will contribute towards a portion of the Project Costs. For a fuller description of the Project, see “THE PURPLE LINE LIGHT RAIL PROJECT—Scope of Work.”

The Project is expected to generate certain environmental and other benefits as further outlined below and in “THE PURPLE LINE LIGHT RAIL PROJECT—Rationale for the Purple Line.”

Process for Project Evaluation and Selection

The GBP encourages a high level of transparency in the evaluation and selection process and recommends that a green bonds issuer outline the decision-making process it follows to determine the eligibility of a project using green bond proceeds. The Company, not the Bond Issuer, has taken all action and will undertake all future action concerning the eligibility of the Project using green bond proceeds and the utilization of the proceeds of the 2016 Bonds for an eligible green project.

The Project is the result of a multi-year transportation planning effort by the Contracting Authority, Montgomery County and Prince George’s County.

Pursuant to the National Environmental Policy Act of 1969 (“NEPA”), as a potential recipient of funding from the Federal Transit Administration (“FTA”), MDOT, in conjunction with the FTA, is required to assess the environmental, social and economic effects of the Project. MDOT, in conjunction with the FTA, drafted and opened
for public comment a Final Environmental Impact Statement and Draft Section 4(f) Evaluation (“FEIS”) which identified and addressed issues raised by agency and public stakeholders through the development phase of the Project. On March 19, 2014, the FTA issued a Record of Decision (“ROD”), indicating that the Project had satisfied the requirements of the NEPA. The issuance of the ROD was the culmination of the FEIS process and sets forth the FTA’s decisions regarding the Project’s compliance with applicable environmental requirements. For a discussion of certain environmental litigation relating to the Project, see “THE PURPLE LINE LIGHT RAIL PROJECT—Environmental Litigation and Permits.”

While the Contracting Authority, not the Company, developed and obtained environmental approvals for the Project and assessed the environmental, social and economic effects of the Project, based on the records of such approvals, the Company has concluded that the Project constitutes an “eligible Green Project” under the GBP. In particular, the Project qualifies as a “clean transportation” project because it will use electricity (rather than fossil fuels) to power the light rail transit (“LRT”) mass transit system project. The operation of the Purple Line is expected to result in more efficient use of the red-amber-green times at intersections, resulting in less stop time which helps reduce emissions from vehicles idling at affected intersections. The Company also expects the Project to prompt a shift in the mode of travel from private automobiles to public transit and reduce automobile vehicle trips, both of which are expected to result in reduced traffic congestion and reduced greenhouse gas emissions.

Management of Proceeds

The GBP encourages a high level of transparency that can be supplemented by the use of a third party to verify the internal tracking method and allocation of funds from the proceeds of the 2016 Bonds. It is expected that the proceeds of the 2016 Bonds will be tracked by the Company and the Trustee. So long as the 2016 Bonds remain Outstanding, the balance of the proceeds will be reduced by amounts disbursed for the Project. Pending such disbursement, the balance will be invested in cash or a guaranteed investment contract, held as part of the Trust Estate, or may be invested in other Permitted Investments under the Indenture and the TIFIA Loan Agreement.

Reporting

The GBP recommendation is for transparency as key to any green bonds reporting process. The Company intends to develop, manage and implement an Energy Management Plan, which will comply with the Project requirements, including the use of energy-efficient equipment, real-time monitoring, automated reporting, and the ranking of Project features by energy use to realize cost-effective benefits, and through this process, the Company expects to conform the use of the proceeds of the 2016 Bonds with measuring the environmental impact of the Project.

Until the proceeds of the 2016 Bonds have been fully allocated to the Project, the Company has agreed to publish annually updates regarding the allocation of the net proceeds to the Project on its website (http://www.purplelinetransitpartners.com/default.htm) (this inactive textual reference is not a hyperlink, and this website is not incorporated herein). See “CONTINUING DISCLOSURE—Summary of the Terms of the Continuing Disclosure Agreement (Company)” and APPENDIX J-2—“CONTINUING DISCLOSURE AGREEMENT (COMPANY).”

A copy of the second party opinion by T&T on the designation of the 2016 Bonds as green bonds is attached to this Official Statement as APPENDIX M. See also, “RISK FACTORS—Risks Relating to the 2016 Bonds—Green Bonds Designation.”
THE PURPLE LINE LIGHT RAIL PROJECT

Overview

Located in Maryland just outside Washington, DC, the Purple Line is a planned 16.2 mile light rail transit line that will extend from Bethesda in Montgomery County to New Carrollton in Prince George’s County. The Purple Line will connect major activity centers located inside the heavily congested Capital Beltway and will provide direct connections to four branches of the Washington Metropolitan Area Transit Authority (“WMATA”) Metrorail system (both branches of the Red Line at Bethesda and Silver Spring, the Green Line at College Park, and the Orange Line at New Carrollton), as well as all three MARC commuter rail lines (linking Washington, Baltimore, and Frederick, Maryland) and Amtrak’s Northeast Corridor. The five major activity centers in the Purple Line corridor are Bethesda, Silver Spring, Takoma/Langley Park, College Park, and New Carrollton. Each of these centers has a substantial employment base and surrounding residential communities, and all have an existing Metrorail station except Takoma/Langley Park. A map of the Purple Line corridor is shown on page iii of this Official Statement. The Purple Line will operate in an exclusive or dedicated right of way for 13.9 miles of its 16.2-mile length. Light rail vehicles will be given signal priority or pre-emption at most traffic intersections, and the vehicles will be electrically powered through the use of catenary lines. Fare collection will be off-board and will be a “proof of payment” system. The initial planned headway is 7.5 minutes during peak periods and 10 to 15 minutes during early and late periods of operation.

Land use in the Montgomery County portion of the Purple Line corridor is primarily residential, with large concentrations of commercial development in Bethesda and Silver Spring. The communities in the corridor include a mix of housing types and densities. Much of the newer development, particularly in Bethesda and Silver Spring, is mixed-use, high-rise development compatible with transit-oriented development principles. Most of these areas have plans that emphasize transit-oriented mixed-use development in areas adjacent to transit stations. Land uses in the Prince George’s County portion of the Purple Line corridor include both residential and commercial uses. Much of the residential development is single-family homes and garden apartments. The retail uses are primarily strip shopping centers. The more recent development includes institutional and office uses.

According to publicly available sources, there is notable institutional development in the Purple Line corridor, including the University of Maryland at College Park (“UMD”). UMD is a large employer in Prince George’s County. A number of federal agencies have also relocated to the corridor, including medical and research facilities such as the Forest Glen Annex of Fort Detrick (formerly the Walter Reed Medical Center Annex), the National Oceanic and Atmospheric Administration, the U.S. Department of Agriculture, the Internal Revenue Service, and the Food and Drug Administration.

Rationale for the Purple Line

The Purple Line is intended to improve east-west transit service between Bethesda and New Carrollton, providing faster, more direct, and more reliable service connecting major activity centers and existing transit services. The corridor is marked by high transit usage, reflecting a large number of residents who do not own a vehicle. The WMATA Metrorail system and MARC commuter rail lines provide fast transit service along radial (north-south) routes into Washington, D.C. East-west travel on the WMATA Metrorail within the corridor is possible, but requires either a trip into and then out of Washington, D.C. or travel by east-west bus service, which is more limited and is often slow and unreliable because it operates on a congested roadway network particularly during peak periods and on weekends. The bus service is provided by multiple operators and often requires that patrons transfer between routes and providers.

The Purple Line is expected to generate significant benefits, which include:

- Reliable and rapid east-west travel;
- Connections to WMATA’s Metrorail green and orange lines and both branches of its red line;
- Supporting community revitalization and transit-oriented development;
- Connecting people to jobs;
• Connecting all three MARC lines, Amtrak, and local bus routes;
• Serving major economic centers; and
• Anticipated environmental benefits (see “THE 2016 BONDS—Designation as Green Bonds”).

Scope of Work

The Purple Line will generally be on a surface alignment except three short aerial structures and a 1,022-foot excavated tunnel under Plymouth Avenue. There are 21 proposed stations: 16 are at-grade, three are on aerial structures, and two are below-grade. Stations have been strategically located near or at existing three WMATA and MARC stations, and there are two maintenance facilities.

Alignment. In broad terms, the alignment can be divided into two major sections: the Western and Eastern Sections.

**Western Section.** Between Bethesda and Silver Spring, the alignment will use the former right-of-way of the Georgetown Branch of the B&O Railroad. The right-of-way currently functions as the Georgetown Branch Interim Trail. This section continues mostly at-grade except for two aerial structures and one below-grade crossing. The Lyttonsville Shop and Yard is also located within this section of the alignment. This facility will be a secondary vehicle storage location and will house the backup operations control center. The alignment continues at-grade to the CSX/WMATA corridor where it transitions to an elevated structure over the CSX/MARC/WMATA corridor and into the Silver Spring Transit Center. A station is planned at this location and will provide connections to MARC and WMATA rail and bus service.

Between Silver Spring and the Takoma/Langley Transit Center, the alignment drops to street level. The alignment is generally within the street right-of-way until it enters the Plymouth Tunnel. The proposed tunnel is approximately 1,000 feet in length after which the alignment then returns to street level.

**Eastern Section.** There are nine proposed at-grade stations and one aerial station in the Eastern Section. As the Purple Line enters Prince George’s County at Takoma/Langley Park, the alignment is located in the center of University Boulevard, where it continues eastbound. The alignment continues at-grade as it passes through the University of Maryland campus and crosses US Route 1. After crossing US Route 1, the line alternates between dedicated right-of-way and streets running along county and state roadways. The alignment along Paint Branch Parkway passes under two separate overpasses for the WMATA and CSX/MARC tracks near the College Park Metro station. In this portion of the alignment, it crosses two areas on an elevated structure: the Anacostia River Park and the intersection of Kenilworth Avenue and Riverdale Road. The remainder of the alignment is at grade. The alignment passes the site of the Glenridge Yard O&M Facility which is expected to earn Leadership in Energy and Environmental Design (LEED) silver certification. This is the primary facility for vehicle storage and maintenance and will house the operations control center.

**Vehicles.** The Company’s anticipated operation and maintenance plan for the Purple Line includes 26 LRVs for the initial service level. The LRVs will be supplied by CAF USA. The design is based on the LRVs CAF USA has recently delivered to Houston MetroRAIL light rail system. The Purple Line LRVs are 136 feet long with five modules, have 80% low floor and level boarding, have bi-directional operability, and operate on 1500-volt traction power to reduce system electrical losses and energy consumption. The 80% low floor LRV is the most spacious of the partial low-floor LRVs in the U.S. market. The vehicles will be assembled in CAF USA’s manufacturing facility in Elmira, New York.

**Catenary and Track System.** The overhead catenary system is mostly a full height auto-tensioned simple catenary system. The traction power system plan includes eight substations spaced along the mainline and one substation in each yard. Standard gauge track will be installed throughout the alignment. In addition, standard ballasted track with concrete ties, direct fixation, and embedded track will be installed.

**Signal Network.** The signaling system includes conventional equipment in areas of exclusive right-of-way and also in areas where the track alignment is along the side of a roadway. In the areas where the tracks run either in the median of a street or in shared, mixed traffic lanes, train speeds will be limited. At all cross streets, train
operators will follow bar signals controlled by the traffic signal controller. At highway grade crossings, where the train speeds are 35 mph and above, the design includes crossing gates and flashers.

**Fare Collection.** The fare collection system will use “proof of payment” wherein riders will be required to possess an electronic or paper proof that they have paid the required fare. There will be no entry/exit gates to access the platforms. The system will be compatible with the Baltimore/Washington regional electronic fare system currently in use by WMATA (i.e., SmarTrip), MTA, and some of the regional bus carriers. The Company is responsible for providing and maintaining the fare collection system (to include, among other things, stocking ticket vending machines, collecting cash from such machines, depositing cash receipts and arranging for proceeds of credit and other electronic transactions to be deposited into a designated Contracting Authority account) but does not have fare revenue risk. MTA will own the fare revenues, and all fare revenues of the Purple Line will be deposited in MDOT’s Transportation Trust Fund (“TTF”), where they may be used, along with other funds, subject to annual appropriation by the General Assembly, to meet MDOT’s payment obligations to third parties, including to pay for Availability Payments to the Company. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally—Source of Funds for Payments under the P3 Agreement.”

**Payments under the P3 Agreement; Funding of the Project**

The Contracting Authority has entered into the P3 Agreement with the Company pursuant to which the Contracting Authority agrees to make payments to the Company in amounts equal to the Progress Payments, the RSA Payment, the Final Completion Payment, Availability Payments and, following various relief and termination events, compensation and termination payments to the Company. See “FINANCING FOR THE PROJECT—Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding.” Such payments will be used to fund Project Costs and make various interest and principal payments on the 2016 Bonds. The obligation of the Contracting Authority to make such payments is subject to the annual appropriation of sufficient funds therefor by the General Assembly. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally—State Budget and Appropriation Processes” “THE PROJECT PARTICIPANTS—The Contracting Authority— Appropriation by the General Assembly” and “—Budgetary System” and “RISK FACTORS—Risks Relating to the Company and the Contracting Authority— Appropriation Risk.” The Term of the P3 Agreement ends 30 years after the earlier of the RSA Deadline and the date of issuance of the Certificate of Revenue Service Availability by the Independent Engineer, subject to certain terms of the P3 Agreement. The State operates under an annual budget with the fiscal year commencing on July 1 and ending on June 30 of the following calendar year. For more information concerning the State’s fiscal year, see “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally—State Budget and Appropriation Processes” and “THE PROJECT PARTICIPANTS—The Contracting Authority—Appropriation by the General Assembly” and “—Budgetary System.”

For a discussion of other sources of funding for the Project, see “FINANCING FOR THE PROJECT—Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding.”

**Handback Provisions**

No later than five calendar years before the end of the Term or within a reasonable period before any Early Termination Date, the Company and the Contracting Authority will jointly (a) identify the Renewal Work required for the Purple Line to be in the condition and meet all of the requirements for Residual Life at the conclusion of the Term specified in the Handback Requirements and (b) determine the schedule (and the Company’s estimated budget) for the performance, inspection by the Contracting Authority and the Company completion of all such Renewal Work. Such information and schedule will become the Handback Renewal Work Plan and be a separate document from, but complementary to, the Asset Management Plan. No later than ninety (90) days before the beginning of each subsequent calendar year, the Company will update the Handback Renewal Work Plan and provide the update to the Contracting Authority. Following delivery of the update the parties will meet to discuss whether any changes should be made to the scope or schedule for performance of the Renewal Work.

Subject to the handback inspection provisions described in “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement—Handback Requirements—Handback Requirements; the Contracting
Authority’s Right to Self-Perform and Recover Costs,” all Handback Renewal Work will be completed no later than the earlier of the date of the expiration of the Term and the Early Termination Date.

For a full description of the handback provisions, see “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement—Handback Provisions” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT.”

**Implementation of the Project**

The P3 Agreement governs the relationship between the Contracting Authority and the Company in connection with the Project. For a more detailed description of the P3 Agreement, see “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT.”

The construction of the Purple Line will be undertaken pursuant to the Design-Build Contract, by the Design-Build Contractor. For a more detailed description, see “THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract” and APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

Operation, maintenance and handback of the Purple Line will be performed pursuant to the O&M Contract, by the O&M Contractor. For a more detailed description, see “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement,” APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT” and APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT.”

**Company’s Expected Schedule**

The following schedule highlights milestone dates in the design and construction schedule for the Purple Line:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Estimated Date*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Close / Limited Notice to Proceed</td>
<td>April 7, 2016 (actual)</td>
</tr>
<tr>
<td>Financial Close</td>
<td>June 17, 2016</td>
</tr>
<tr>
<td>Commencement of non-Construction Work</td>
<td>June 18, 2016</td>
</tr>
<tr>
<td>Commencement of Construction Work</td>
<td>October 31, 2016</td>
</tr>
<tr>
<td>Completion of Design</td>
<td>August 30, 2017</td>
</tr>
<tr>
<td>Start of System Testing</td>
<td>May 20, 2019</td>
</tr>
<tr>
<td>Completion of Construction</td>
<td>May 5, 2021</td>
</tr>
<tr>
<td>Start of Trial Running</td>
<td>June 15, 2021</td>
</tr>
<tr>
<td>Revenue Service Availability</td>
<td>March 11, 2022 (contingent on Financial Close occurring by the agreed date)</td>
</tr>
<tr>
<td>Final Completion</td>
<td>September 14, 2022</td>
</tr>
</tbody>
</table>

* Estimated dates based on the current projected construction schedule, which may change due to actual events.

**Environmental Litigation and Permits**

The Contracting Authority has been coordinating the required permits and approvals for the Project for several years and, to date, several of the key environmental studies, permits and/or other required approvals have been obtained. The Company will coordinate with the Contracting Authority and all agencies required to provide Project approvals or permits to ensure that all necessary permits and approvals will be secured prior to the commencement of construction or when otherwise required in order for the Project to proceed as currently scheduled.

On August 26, 2014, the Friends of the Capital Crescent Trail and other interested individuals (the “Plaintiffs”) filed suit in the United States District Court for the District of Columbia against the FTA, the U.S. Department of Transportation, U.S. Fish and Wildlife Service (the “FWS”) and the U.S. Department of the Interior (collectively, the “Defendants”) alleging, among other things, that the Defendants violated federal law by their acts and omissions regarding approvals issued for the Project.
The Plaintiffs allege that the Defendants failed to adequately consider adverse environmental, species and habitat impacts of the Project in violation of federal law, specifically the NEPA, the Endangered Species Act (“ESA”), the Migratory Bird Treaty Act (“MBTA”) and the Federal-Aid Highway Act (the “FHA”). The Plaintiffs assert that the Defendants improperly evaluated adverse direct and cumulative impacts on wildlife, biodiversity, the environment and the aesthetic enjoyment of Rock Creek Park, a national park, and the Capital Crescent Trail, a popular hiking-biking trail that will be partially displaced by the Project. In addition, the Plaintiffs allege that the Defendants failed to adequately consider alternatives to the Project that would have avoided or reduced these impacts.

The Plaintiffs’ focus primarily on adverse impacts on two shrimp-like species, called “amphipods,” the presence of which was identified after the completion of the environmental impact statement (an “EIS”) under NEPA. One of the amphipods, the Hay’s Spring amphipod, is listed as endangered under the ESA, and is therefore protected from harm. The second, the Kenk’s amphipod, is being considered by the FWS for possible listing as endangered. The Plaintiffs contend that the population of these amphipods is so small and that their habitat range is so limited that impacts from the Project may threaten the species’ survival.

The Plaintiffs allege that the Defendants should have prepared a supplemental EIS under NEPA after being advised of the presence of these amphipod species in the area potentially affected by the Project. In addition, the Plaintiffs allege that the Defendants have failed to obtain a permit under the MBTA for killing or injuring migratory birds or destroying nests of migratory birds known to frequent the Project area.

The Defendants contend that all of the issues the Plaintiffs cite were adequately considered; that the Project will not have the significant impacts alleged; and that their decisions supporting or approving the Project for federal funding were based on an adequate administrative review.

The Plaintiffs seek to have the federal approvals set aside and for the Court to prohibit further development and construction of the Purple Line and enjoin the Defendants from spending federal funding on the Project until the Defendants comply with the relevant provisions of several statutes, including NEPA, the ESA, the MBTA and the FHA. A decision favoring the Plaintiffs would prevent the Defendants from spending additional federal funds on the development of the Project unless and until the federal agencies have complied with all such requirements.

The Plaintiffs amended their complaint on January 20, 2016, alleging, among other things, that certain changes to the design of the Purple Line made as cost cutting measures will have adverse environmental effects that require a new or supplemental EIS. On February 19, 2016, the Plaintiffs filed a motion for summary judgment on their claims and requested immediate relief.

The Defendants filed a cross-motion for summary judgment and related briefs on April 11, 2016, arguing, among other things, that they had complied with the law and that their actions were neither arbitrary, capricious nor not in accordance with law. The State of Maryland, as Defendant-Intervenor, filed a cross-motion for summary judgment and briefs in support of the Defendants.

Decisions on the motions for summary judgment are likely to be issued during the course of 2016. The outcome of the litigation cannot be predicted, and an independent review of a predicted outcome has not been undertaken. Whether the Plaintiffs’ motion is granted, or the Defendants’ and the Defendant-Intervenor’s motions are granted, there is the possibility of a judicial appeal that generally requires one to two years to resolve. If none of the motions for summary judgment is granted, then the trial court will consider the merits of the case, a process that could also require one or more years to resolve.

If the Plaintiffs ultimately were to prevail on their primary claims and challenges, the Defendants would be required to reconsider their decisions in favor of the Project. While the ultimate decisions in such case might not be different from the current decisions, the process of reconsideration could result in redesign of the Purple Line and additional studies and additional mitigation requirements, resulting in substantial delays and material changes to the Project. In addition, if the Plaintiffs were successful in obtaining an injunction prohibiting further development until the legal challenges are resolved, progress on the design, development and construction of the Purple Line could be halted until the litigation is complete.
The P3 Agreement provides that a determination by the Court or by another authority having jurisdiction over the Project, that a Threatened or Endangered Species exists at, near or on the Project right-of-way shall constitute a Relief Event to the extent that the Company is required to stop Work or perform Extra Work as a result. Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief that prohibits prosecution of any portion of the Work is also a Relief Event. In the case of a Relief Event, the Company will have a claim against the Contracting Authority for the extension of the applicable deadlines, reimbursement of extra costs, Delay Costs, Delay Interest and, during the O&M Period, relief from the deductions to the Availability Payments, all in accordance with the terms and conditions of the P3 Agreement. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Relief Events.” Further, if such Relief Event materially prevents or delays the Company from performing a substantial portion of its obligations under the P3 Agreement for a period of one hundred eighty (180) days or more in the aggregate within a period of three hundred sixty-five (365) consecutive days, it will be deemed an Extended DB Force Majeure Event and, therefore, an Extended Delay, which will provide the Company with the right to send to the Contracting Authority a notice of its conditional election to terminate the P3 Agreement. If the Contracting Authority accepts such election to terminate the P3 Agreement, the Company will have the right to claim Termination Compensation, as described below. If the Contracting Authority elects to continue the P3 Agreement, the Company will have the right to claim relief that includes a portion of the RSA Payment, and the Availability Payments sufficient to enable the Company to make principal and interest payments on the Project Debt (including the 2016 Bonds) scheduled to be paid from the RSA Payment, and such Availability Payments, starting with the date which is the later of (a) three hundred sixty-six (366) days after the original RSA Deadline or (b) the date on which Revenue Service Availability would have been achieved but for the Critical Path delays caused by the applicable Relief Events. The RSA Payment and the Availability Payments are subject to appropriation by the General Assembly. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally—State Budget and Appropriation Processes” and “RISK FACTORS—Risks Relating to the Company and the Contracting Authority—Appropriation Risk.”

Further, the P3 Agreement provides the Company with the right to terminate the P3 Agreement and claim Termination Compensation should an injunction be issued or if additional environmental review is required, or in the case of an Extended Delay, as described above. If the P3 Agreement is terminated in such circumstances, the Company will have the right to claim Termination Compensation under the P3 Agreement equal to the Project Debt Termination Amount plus the Outstanding Committed Investment plus Contract Termination Costs, subject to appropriations by the General Assembly, less available Credit Balances and Insurance Proceeds. In such event the 2016 Bonds are subject to mandatory redemption. See “THE 2016 BONDS – Extraordinary Mandatory Redemption—P3 Agreement Termination Compensation—2016 Bonds” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT – Termination of the P3 Agreement—Termination for Extended Delay,” “— Termination Compensation for Termination for Extended Delay, Insurance Unavailability or Court Ruling” and “RISK FACTORS—Risks Relating to the Project—Environmental and Permitting Risks” and “—Judicial Challenge.”

See also “LITIGATION—The Contracting Authority.”
SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS

Sources of Payment Generally

Payments from the Contracting Authority

The Contracting Authority has entered into the P3 Agreement with the Company pursuant to which the Contracting Authority agrees to make, in addition to other payments, payments to the Company in amounts equal to the Progress Payments, the RSA Payment, the Final Completion Payment and the Availability Payments. See “FINANCING FOR THE PROJECT—Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding.” The term of the P3 Agreement ends 30 years after the earlier of the RSA Deadline and the date of issuance of the Certificate of Revenue Service Availability by the Independent Engineer, subject to certain terms of the P3 Agreement. The State operates under an annual budget with the fiscal year commencing on July 1 and ending on June 30 of the following calendar year. For more information concerning the State’s Fiscal Year, see “—State Budget and Appropriation Processes.”

The RSA Payment, in the amount of $100,000,000, will be paid following issuance of the Independent Engineer’s Certificate of Revenue Service Availability. The RSA Payment will be applied by the Company to redeem the 2016A Bonds. The Final Completion Payment in the amount of $30,000,000, will be paid following achievement of Final Completion. A portion of the Final Completion Payment will be applied by the Company first to pay the Design-Build Contractor pursuant to the Design-Build Contract only to the extent that amounts then due and payable to the Design-Build Contractor have not been paid in full, and the remainder of which will be applied by the Company to redeem the 2016B Bonds. The Company will receive Availability Payments commencing after the RSA Date and continuing for the term of the P3 Agreement, subject to the Company’s ongoing performance of its obligations thereunder. The Availability Payments will be applied by the Company to pay operation and maintenance costs of the Purple Line, scheduled debt service on the 2016B Bonds, 2016C and 2016D Bonds, the TIFIA Loan and certain other costs.

The sources of funds appropriated to make all payments under the P3 Agreement are not limited to any particular source under the terms of the P3 Agreement. Rather, they will be paid from amounts on deposit in the TTF which was established in 1971 pursuant to Chapter 526 of the Laws of Maryland of 1970 codified as Section 3-216 of the Transportation Article of the Annotated Code of Maryland. The TTF is generally credited with taxes, fees, charges, bond proceeds, federal grants for transportation purposes and other receipts (excluding passenger facility charges and rental car customer facility charges and, to the extent required for debt service on obligations issued on behalf of MDOT by the Maryland Transportation Authority, certain parking revenues) of MDOT as shown in APPENDIX A—“AUDITED FINANCIAL STATEMENTS FOR THE MARYLAND DEPARTMENT OF TRANSPORTATION.” All expenditures of MDOT are paid from the TTF, and after payment of debt service on MDOT’s bonds (and potentially certain other obligations), MDOT may use funds in the TTF for any lawful purpose related to the exercise of its powers, duties and obligations, including making payments to the Company pursuant to the P3 Agreement. For a more detailed description of the funds available to make payments under the P3 Agreement, see “PROJECT PARTICIPANTS—The Contracting Authority.” For a more detailed description of the uses of the various payments made by the Contracting Authority to the Company, see “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement.” The Contracting Authority’s obligation to make payments under the P3 Agreement is subject to annual appropriation therefor by the General Assembly, and the General Assembly is not obligated to make such appropriation. See “—State Budget and Appropriation Processes,” “THE PROJECT PARTICIPANTS—The Contracting Authority—Appropriation by the General Assembly” and “—Budgetary System,” and “RISK FACTORS—Risks Relating to the Company and the Contracting Authority—Appropriation Risk.”

The Contracting Authority has covenanted under the P3 Agreement that MDOT shall prepare before the end of each fiscal year, its annual budget request submission to the Governor and include funds necessary to make scheduled payments to the Company for the coming fiscal year which begins July 1 and ends June 30 of the following calendar year (the “Fiscal Year”). The Contracting Authority will use its best efforts to obtain the authorization and appropriation of all necessary funds before the beginning of the coming Fiscal Year. For a more detailed description of the P3 Agreement, see “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT.”
All obligations of the Contracting Authority are subject to applicable law and appropriations by the General Assembly. The obligation of the Contracting Authority to make payments under the P3 Agreement does not constitute an indebtedness of the Contracting Authority or the State and does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. Furthermore, the Contracting Authority has no taxing power and the Company has no right to have taxes levied or to compel appropriations by the General Assembly for any payment under the P3 Agreement.

If the Contracting Authority becomes aware that it will not obtain appropriations for any Fiscal Year sufficient to pay all compensation owing to the Company under the P3 Agreement, the Contracting Authority will promptly notify the Company regarding the anticipated shortfall and will consult with the Company regarding the situation and possible solutions. If the Contracting Authority determines that it will not have funds available to make any of the payments owing, the Contracting Authority will suspend all Work. If the Contracting Authority determines that there will be a partial shortfall, the Contracting Authority will suspend all or a portion of the Work so as to ensure that the Contracting Authority has sufficient funds to make payments owing for Work performed. Any such suspension will be considered a Contracting Authority Change. After passage of time, the continuing suspension of Work would give the Company the right to terminate the P3 Agreement and claim Termination Compensation. See “RISK FACTORS—Risks Relating to the Company and the Contracting Authority—Appropriation Risk.”

The General Assembly is not obligated under the P3 Agreement to make any appropriation, or to make sufficient appropriations, to pay Progress Payments, the RSA Payment, the Final Completion Payment or Availability Payments, termination payments or other compensation amounts in any Fiscal Year.

**State Budget and Appropriation Processes**

The Contracting Authority is required under the P3 Agreement to pay Progress Payments, the RSA Payment, the Final Completion Payment and Availability Payments to the Company from funds appropriated to it for such payments. Progress Payments will be applied by the Company to pay Project Costs, and a portion of the RSA Payment, the Final Completion Payment and Availability Payments will be applied by the Company to pay Project Costs and/or loan payments under the Series 2016 Loan Agreement, which the Bond Issuer will use to pay principal of and interest on the 2016 Bonds, and payments on the TIFIA Loan.

The State operates under an annual budget, and the budget process begins in May of each calendar year with the initial submission on or before October 1 of the Contracting Authority’s proposed transportation budget to the State’s Department of Budget and Management. The Project is included in the Consolidated Transportation Program, which is separate from the State’s annual capital budget. The Contracting Authority is charged with the responsibility of preparing its annual budget request submission to the Governor and shall (i) include funds necessary to make scheduled payments under the P3 Agreement for the coming fiscal year and (ii) use its best efforts to obtain the authorization and appropriation of all necessary funds before the beginning of the coming fiscal year.

The Governor is required to submit a balanced budget to the General Assembly shortly after the beginning of its annual session in January. The State’s Constitution requires the Governor to include appropriations for certain matters, including specifically an appropriation to pay and discharge the principal and interest of the debt of the State in conformity with Article III, §34 of the Constitution and all laws enacted pursuant thereto. The Governor is also required to include in his annual budget sufficient appropriations to fund programs for which statutory spending levels or rates have been established by the General Assembly at a preceding session. The General Assembly reviews, holds hearings and makes decisions on the budget during the legislative session from January to April of each year. Prior to the budget bill’s passage, the Governor may amend or supplement the bill. Subject to certain exceptions and limitations, the General Assembly has express power only to strike or reduce appropriations in the budget bill and may not increase the proposed budget.

The budget bill must be passed by the State Senate and the House of Delegates in the same form, and passage of the State’s budget is constitutionally prioritized. Upon passage, the bill becomes law without presentment to the Governor. As introduced and passed, the budget must be balanced. The Maryland Constitution requires that the General Assembly enact a budget by the eighty-third (83rd) day of the legislative session, or one week before the
session ends. Failure to do so requires the Governor to call for an extended session. If the General Assembly fails to enact the budget by the ninetieth (90th) day of the legislative session, the General Assembly will go into an extended session, during which time only the budget may be considered. After enactment of the budget, the General Assembly is permitted to enact supplementary appropriations but may not enact any supplementary appropriation unless embodied in a separate bill that is limited to a single object or purpose and provides the revenue necessary to pay the appropriation by a tax to be levied and collected under the terms of the bill. A supplementary appropriation bill is subject to the Governor’s power of veto.

The Contracting Authority currently does not anticipate including amounts sufficient to pay Compensation Amounts and Termination Compensation in its annual budget request. If a termination occurs, any compensation payable as a result of that termination will only be paid with those funds that are legally available and appropriated to the Contracting Authority after other payments that have priority are satisfied and then pro rata, pari passu, with all payments under the P3 Agreement—namely, the Progress Payments, the RSA Payment, the Final Completion Payment, Availability Payments and, following various relief and termination events, compensation and termination payments—falling due in such Fiscal Year. To the extent that there is a shortfall, the Contracting Authority may seek an additional appropriation although it is not obligated to do so. The P3 Agreement includes as a condition to the Contracting Authority’s right to terminate for convenience that the Contracting Authority demonstrate it has the ability to fully pay those amounts payable upon termination. See “RISK FACTORS—Risks Relating to the Company and the Contracting Authority—Appropriation Risk,” “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT.”

For an additional discussion of the State’s appropriation and budgetary processes, see “THE PROJECT PARTICIPANTS—The Contracting Authority—Appropriation by the General Assembly” and “—Budgetary System.”

Collateral Generally

The Bond Obligations will constitute direct, senior secured, absolute and unconditional obligations of the Company, which will rank pari passu and ratably without any preference or priority among themselves or Additional Parity Bonds and, following a Company Bankruptcy Related Event, the TIFIA Obligations, will rank in priority to all unsecured obligations of the Company and will be payable from the Trust Estate (subject to certain exclusive Security Interests for certain Secured Parties with respect to portions of the Trust Estate) under the Indenture, including the payments to be made by the Company to the Bond Issuer under the Series 2016 Loan Agreement, and secured by all personal (but not real) property interests of the Company (to the extent permitted and except otherwise expressly provided in the Security Agreement), now owned or hereafter acquired (the “Collateral”), which is subject to the security interests or Security Interests under any of the Security Documents, including, without limitation, the following:

(a) all of the Company’s interest in the following:

(i) the Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”);

(ii) the P3 Agreement and all other Assigned Agreements;

(iii) the Project Accounts, subject to certain exclusive Security Interests in certain accounts, including, among others, the Bond Proceeds Sub-Accounts and the 2016D Bonds Debt Service Reserve Sub-Account, for certain Secured Parties; and

(iv) all other amounts received or receivable by the Company under the P3 Agreement and all other Assigned Agreements; and

(b) the membership interests of the Company and the other Pledged Collateral under the Pledge Agreements.
The 2016 Bonds

Except for revenues received pursuant to the Series 2016 Loan Agreement as described in the following sentence, the Holders of the 2016 Bonds may not look to any revenues of the Bond Issuer or the State for payment of the 2016 Bonds. The only sources of payment of the 2016 Bonds are payments provided by the Company pursuant to the Series 2016 Loan Agreement and the Security Interests that are part of the Trust Estate.

The 2016 Bonds and interest thereon are special, limited obligations of the Bond Issuer and the principal or purchase price of, redemption premium, if any, and interest on the 2016 Bonds shall be payable solely from, and secured exclusively by, the Trust Estate or moneys to be received in connection with the financing and refinancing of the Project or from any other moneys made available to the Bond Issuer for such purpose (amounts paid by the Company pursuant to the relevant Finance Document), and the issuance of the 2016 Bonds shall not be, directly, indirectly or contingently, a moral or other obligation of the State, the Contracting Authority or any other government unit or the Bond Issuer to levy or pledge any tax or to make an appropriation to pay such amounts, and the Bond Issuer shall not be obligated to pay the principal or purchase price of, redemption premium, if any, or interest on the 2016 Bonds except from the Trust Estate or moneys to be received in connection with the financing and refinancing of the Project or from any other moneys made available to the Bond Issuer for such purpose. Neither the full faith and credit nor the taxing power of the State, the Contracting Authority or any other governmental unit or the Bond Issuer is pledged to the payment of the principal or purchase price of, redemption premium, if any, or interest on the 2016 Bonds. The Bond Issuer and the Contracting Authority have no taxing power. The principal or purchase price of, redemption premium, if any, and interest on the 2016 Bonds are not payable from taxes or appropriations made by the General Assembly. The 2016 Bonds do not constitute an indebtedness, or a pledge of the faith and credit, of the Contracting Authority, the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation.

Debt Service Reserve Accounts

**Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts**

The sub-accounts of the Debt Service Reserve Account will each be established solely for the benefit of the relevant Secured Parties. Each such sub-account will be held by the Collateral Agent, and the Security Interest thereon will be maintained for the exclusive benefit of only such Secured Parties. For a fuller description of these sub-accounts, see “PROJECT ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts” and APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts.”

**2016D Bonds Debt Service Reserve Sub-Account**

The 2016D Bonds Debt Service Reserve Sub-Account of the Debt Service Reserve Account will be created in the name of the Company and will be pledged to the Collateral Agent solely for benefit of the Holders of the 2016D Bonds and the Trustee. For a fuller description of the 2016D Bonds Debt Service Reserve Sub-Account, see “PROJECT ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts” and APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts.”

**TIFIA Debt Service Reserve Sub-Account**

The TIFIA Debt Service Reserve Sub-Account will be solely for the benefit of the TIFIA Lender and will not be subject to any Security Interest in favor of any Person other than the TIFIA Lender and will be held by the Collateral Agent for the exclusive benefit of only the TIFIA Lender. For a full description of the TIFIA Debt Service Reserve Account, see “PROJECT ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts” and APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts.”
Reserve Sub-Account, see “PROJECT ACCOUNTS AND FLOW OF FUNDS—Project Accounts—TIFIA Debt Service Reserve Account.”

Security Agreement

The Company and the Collateral Agent will enter into a security agreement (the “Security Agreement”), pursuant to which the Company will grant a Security Interest on all of its personal property and fixtures, aside from the Excluded Assets (as defined below) as set forth in the Security Agreement.

Security Interest

Aside from the Excluded Assets, in order to secure the prompt, irrevocable and indefeasible payment in full when due of the Secured Obligations (whether now existing or hereafter arising and howsoever evidenced, and whether at stated maturity, upon acceleration, because of mandatory prepayment or otherwise) and to secure the Company’s performance of all other Secured Obligations now existing or hereafter arising, the Company will pledge and grant to the Collateral Agent, for the ratable benefit of the Secured Parties, a Security Interest in and lien on all of its right, title and interest whether now owned or in the future acquired by it and whether now existing or in the future coming into existence and wherever located, in and to the following: (a) all Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”); (b) all accounts, general intangibles, documents, goods, investment property, letter-of-credit rights and letters of credit; (c) P3 Agreement, the Design-Build Contract, the Design-Build Guaranty from each Design-Build Guarantor, the O&M Contract, the O&M Guaranty from each O&M Guarantor and each other Project Document; (d) all Indenture Account Collateral; (e) all Project Accounts (subject to certain exclusive Security Interests in certain accounts, including, among others, the Bond Proceeds Sub-Accounts and the 2016D Bonds Debt Service Reserve Sub-Account, for certain Secured Parties, see, “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS – Collateral Agency Agreement”); (f) all Secured Accounts; (g) all Progress Payments, the RSA Payment, the Final Completion Payment, Availability Payments, Compensation Amounts and Termination Compensation and all other amounts paid or payable pursuant to the P3 Agreement; (h) all Instruments; (i) all Inventory; (j) all Equipment; (k) all Documents; (l) to the extent not covered by (b) or (c) above, all general intangibles, including all contracts and other agreements of the Company relating to the sale or other disposition of all or any part of the Inventory, Equipment or Documents and all rights, warranties, claims and benefits of the Company against any Person arising out of, relating to or in connection with all or any part of the Inventory, Equipment or Documents of the Company, including any such rights, warranties, claims or benefits against any Person storing or transporting any such Inventory or Equipment or issuing any such Documents; (m) all Assigned Agreements; (n) all deposit accounts and securities accounts of the Company not constituting Project Accounts or accounts and funds established under the Indenture, including, to the extent related to all or any part of the other Collateral, (o) all Intellectual Property; (p) all Governmental Approvals now or held in the future in the name, or for the benefit, of the Company; (q) certain commercial tort claims described in the Security Agreement; (r) all proceeds of Insurance and condemnation awards and (s) all proceeds, rents, profits, income, benefits, supporting obligations, substitutions and replacements of and to any of the property of the Company described in the foregoing (a) through (s), including all causes of action, claims and warranties now or held in the future by the Company in respect of any of the items listed above and, to the extent related to any property described above or such proceeds, all books, correspondence, credit files, records, invoices and other documents in the possession or under the control of the Company or any computer bureau or service company from time to time acting for the Company; provided further, that (i) the Security Interest on the 2016A Proceeds Sub-Account, all Account Interest or other earnings thereon, all funds or investments on deposit therein and all proceeds of the foregoing will solely secure the obligations of the Company to the Holders of the 2016A Bonds; (ii) the Security Interest on the 2016B Proceeds Sub-Account, all Account Interest or other earnings thereon, all funds or investments on deposit therein and all proceeds of the foregoing will solely secure the obligations of the Company to the Holders of the 2016B Bonds; (iii) the Security Interest on the 2016C Proceeds Sub-Account, all Account Interest or other earnings thereon, all funds or investments on deposit therein and all proceeds of the foregoing will solely secure the obligations of the Company to the Holders of the 2016C Bonds; (iv) the Security Interest on the 2016D Proceeds Sub-Account and the 2016D Bonds Debt Service Reserve Sub-Account, all Account Interest or other earnings thereon, all funds or investments on deposit therein and all proceeds of the foregoing will solely secure the obligations of the Company to the Holders of the 2016D Bonds; (v) the Security Interest on any other Bond Proceeds Sub-Account or any Additional Parity Bonds Proceeds Account, as the case may be, any sub-account of the Debt Service Reserve Account established for any such Additional Parity
Bonds, and any sub-account of the Mandatory Prepayment Account established for any such Additional Parity Bonds, all Account Interest or other earnings thereon, all funds or investments on deposit therein and all proceeds of the foregoing will solely secure the obligations of the Company to the Holders of the applicable Additional Parity Bonds; (vi) the Security Interest on the PABs Mandatory Prepayment Sub-Account, all Account Interest or other earnings thereon, all funds or investments on deposit therein and all proceeds of the foregoing will solely secure the obligations of the Company to the Holders of the Bonds; (vii) the Security Interest on the TIFIA Loan Proceeds Sub-Account, the TIFIA Debt Service Reserve Sub-Account and the TIFIA Mandatory Prepayment Sub-Account, all Account Interest or other earnings thereon, all funds or investments on deposit therein and all proceeds of the foregoing will solely secure the obligations of the Company to the TIFIA Lender; (viii) the Security Interest on any sub-account of the Construction Account established for the deposit of proceeds of any Other Permitted Senior Secured Indebtedness (other than Additional Parity Bonds), any sub-account of the Debt Service Reserve Account established for any such Other Permitted Senior Secured Indebtedness, and any sub-account of the Mandatory Prepayment Account established for any such Other Permitted Senior Secured Indebtedness, all Account Interest or other earnings thereon, all funds or investments on deposit therein and all proceeds of the foregoing will solely secure the obligations of the Company to the respective Holders of the Bonds.

The Secured Obligations will not be secured by Excluded Assets, which means: (a) any property to the extent that a grant of any Security Interest in such property is prohibited by any requirement under a Governmental Approval or any Requirements of Law (each a “Legal Requirement”), requires a consent not obtained of any Governmental Authority pursuant to such Legal Requirements or is prohibited by, or constitutes a breach or default under or results in the termination of, or grants any Person (other than the Company) the right to terminate its obligations thereunder, or constitutes or results in the abandonment, invalidation or unenforceability of any right, title or interest of the Company therein, or requires any consent not obtained under, any lease, contract, permit, license, agreement, instrument or other document evidencing or giving rise to such property, except to the extent that such Legal Requirements or the term in such lease, contract, permit, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable Law (including, without limitation, pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any successor provision thereto); provided that any such property will constitute an Excluded Asset only to the extent and for so long as the consequences specified above will exist and will cease to be an Excluded Asset and will become subject to the Security Interest of the Security Documents immediately and automatically, at such time as such consequence will no longer be applicable; (b) any equipment (as such term is defined in the UCC) owned by the Company that is subject to a purchase money Security Interest or a capital lease, in each case constituting Permitted Indebtedness, if the contract or other agreement in which such Security Interest is granted (or in the documentation providing for such capital lease) prohibits or requires the consent not obtained of any Person other than the Company as a condition to the creation of any other Security Interest in such equipment, but only, in each case, to the extent, and for so long as, the Indebtedness secured by the applicable Security Interest or the capital lease has not been repaid in full or the applicable prohibition (or consent requirement) has not otherwise been removed or terminated; (c) any “intent-to-use” application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(e) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a Security Interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law; (d) except to the extent any such amounts would constitute a preference or a fraudulent conveyance, any and all amounts paid or distributed by the Company, in each case, to the extent expressly permitted under the Collateral Agency Agreement; (e) any and all assets or property sold, conveyed, transferred, assigned or otherwise disposed of by the Company to the extent expressly permitted by the terms of the Finance Documents (but, for the avoidance of doubt, the proceeds thereof will not be considered “Excluded Assets” for the purposes of this Agreement); (f) each of the Distribution Account, the Material Project Contract Accounts, the Series 2016 Rebate Fund (and any similar rebate fund established with respect to any future tax-exempt borrowings comprising Additional Parity Bonds), and all respective monies, funds, instruments, securities and all other property from time to time on deposit therein or credited thereto and all proceeds of any or all of the foregoing and (g) those properties and assets as to which the Intercreditor Agent (at the direction of the Required Creditors in accordance with the Intercreditor Agreement) will determine in its reasonable discretion that the costs or burden of obtaining such Security Interest are excessive in relation to the value of the security to be afforded thereby.
Notwithstanding anything to the contrary in the Security Agreement, the Company will remain liable for all obligations under and in respect of the Collateral and nothing contained in the Security Agreement is intended to, or will be, a delegation of its duties to the Collateral Agent or any Secured Party.

**Remedies**

If an Event of Default under the Indenture or under the TIFIA Loan Agreement will have occurred and be continuing, to the extent permitted by applicable law and subject to the Intercreditor Agreement, the Collateral Agent may exercise the following remedies: (a) cure any Event of Default, may enter onto the property where any Collateral is located and take possession thereof with or without judicial process, and may foreclose upon the Collateral; (b) prior to the disposition of the Collateral, the Collateral Agent may store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner the extent the Collateral Agent deems appropriate; (c) require the Company to assemble the Collateral owned by it at such place or places, reasonably convenient to both the Collateral Agent and the Company, designated in the Collateral Agent’s request; (d) make any reasonable compromise or settlement with respect to any of the Collateral and to extend the time of payment, arrange for payment in installments, or otherwise modify the terms of all or any part of the Collateral; (e) in its name or in the name of the Company or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for all or any part of the Collateral, but will be under no obligation to do so; (f) upon fifteen (15) days’ prior written notice to the Company of the time and place, with respect to the Collateral or any part thereof that will then be or will thereafter come into the possession, custody or control of the Collateral Agent or the other Secured Parties (or any of their respective agents), sell, lease, assign or otherwise dispose of all or any part of such Collateral, without giving any warranty, at such place or places as the Collateral Agent deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required above or by applicable statute and cannot be waived), and any of the Secured Parties or anyone else may be the purchaser, lessee, assignee or recipient of any or all of the Collateral so disposed of at any public sale or, to the extent permitted by law, at any private sale, and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of the Company, any such demand, notice and right or equity will be expressly waived and released; (g) exercise, in the Collateral Agent’s discretion, all of the rights, remedies, powers and privileges with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, remedies, powers and privileges are asserted) and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of the Security Agreement or the Collateral may be asserted, including the right, to the maximum extent permitted by Law, to exercise all voting (if applicable), consensual and other powers of ownership pertaining to the Collateral as if the Collateral Agent were the sole and absolute owner of the Collateral (and the Company agrees to take all such action as may be appropriate to give effect to such right); (h) to the full extent provided by law, have a court having jurisdiction appoint a receiver, which receiver will take charge and possession of and protect, preserve, replace and repair the Collateral or any part thereof, and manage and operate the same, and receive and collect all rents, income, receipts, royalties, revenues, issues and profits therefrom, and the Company will irrevocably consent to the entry of an order authorizing such receiver to invest upon interest any funds held or received by the receiver in connection with such receivership. The Collateral Agent will be entitled to such appointment as a matter of right, if it will so elect, without the giving of notice to any other party and without regard to the adequacy of the security of the Collateral; and (i) enforce one or more remedies provided under the Security Agreement, successively or concurrently, and such action shall not operate to estop or prevent the Collateral Agent from pursuing any other or further remedy which it may have under the Security Agreement or by law, and any repossess or retaking or sale of the Collateral pursuant to the terms of the Security Agreement will not operate to release the Company until indefeasible payment of any deficiency in respect of the Secured Obligations has been made in cash. Except to the extent required by applicable Law, the Collateral Agent will have no obligation to marshal any of the Collateral.

**Pledge Agreement**

Each of Meridiam, Fluor Enterprises and Star America (collectively, the “Pledgors”) and the Collateral Agent, on behalf of the Secured Parties, will enter into a substantially similar Pledge Agreement (each, a “Pledge Agreement” and collectively, the “Pledge Agreements”).

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Grant

Each Pledgor will assign, pledge and grant to the Collateral Agent, for the ratable benefit of the Secured Parties, a Security Interest in and lien on, subject to the limitations under the Pledge Agreement, all of its respective right, title and interest, as further detailed in the Pledge Agreement, in and to the following property, whether now owned or hereafter acquired (the “Pledged Collateral”):

(i) (a) all of its limited liability company interests in the Company; (b) all options, warrants and rights to purchase limited liability company interests in the Company and any security certificates or other documents, instruments or certificates representing its limited liability company interests in the Company and all dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Company and all proceeds thereof; (c) all rights to vote or otherwise control the Company; (d) all other rights, privileges, authority and powers as a member of the Company; and (e) all other rights under the LLC Agreement (collectively, the “Pledged Membership Interests”);

(ii) any Indebtedness owed to such Pledgor by the Company from time to time, including any instruments (as such term is defined in the UCC) or payment intangibles (as such term is defined in the UCC) evidencing or relating to such Indebtedness, including, without limitation, the Indebtedness listed in the Pledge Agreement; and

(iii) subject to the Pledge Agreement regarding certain distribution and voting right prior to an Event of Default, all proceeds, dividends and distributions payable with respect to products and accessions of and to any and all of the foregoing, including, without limitation, “proceeds” as defined in Section 9-102(a)(64) of the UCC, including whatever is received upon any sale, exchange, collection or other disposition of any of the Pledged Membership Interests, and any property into which any of the Pledged Membership Interests are converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the Pledged Membership Interests.

Additional Pledged Collateral

Subject to the Pledge Agreement regarding certain distribution and voting rights prior to an Event of Default, upon obtaining any additional Pledged Collateral, including, without limitation, any additional equity interest in the Company issued in respect of any new equity investment or other consideration of any kind from any Pledgor, including in connection with any Capital Contribution made by such Pledgor pursuant to the Equity Contribution Agreement, or any certificates or any other equity interests, whether as an addition to, in substitution for or exchange for any Pledged Collateral, each Pledgor is obligated to hold such Pledged Collateral in trust for the Collateral Agent, segregate such Pledged Collateral from other property or funds of such Pledgor, and promptly (and in any event, within ten (10) Business Days) deliver to the Collateral Agent the certificates or instruments evidencing such additional Pledged Collateral, if any, which will be in suitable form for transfer by delivery, and will be accompanied by duly executed instruments of transfer or assignment, where applicable, in blank, and accompanied by any required transfer tax stamps, all in form and substance reasonably satisfactory to the Collateral Agent.

Remedies

Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent may exercise, in addition to all other rights and remedies granted to it in the Pledge Agreement and in any other instrument or agreement securing, evidencing, or relating to the Secured Obligations, all rights and remedies with respect to the Pledged Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where such rights, remedies, powers and privileges are asserted) and such additional rights, remedies, powers and privileges to which a secured party is entitled under the laws in effect in any jurisdiction where any rights, remedies, powers and privileges in respect of the Pledge Agreement or the Pledged Collateral may be asserted, including the
right, to the maximum extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral as if the Collateral Agent were the sole and absolute owner of the Pledged Collateral (and each Pledgor agrees to take all such action as may be reasonably appropriate to give effect to such right), provided, however, that in no event will such Pledgor be required, in the context of any foreclosure action or exercise of remedies contemplated under the Pledge Agreement, to register its Pledged Collateral with any state or federal securities regulatory agencies.

Without limiting the generality of the foregoing, the Collateral Agent, may, upon ten (10) days’ prior written notice to the Pledgor of the time and place, without demand of performance or other demand, presentment, protest, advertisement, or notice of any kind (except such notice as is required in the Pledge Agreement or by any notice required by law referred to below and cannot be waived) to or upon each Pledgor or any other Person (all and each of which demands, defenses, advertisements and notices will be waived), may in such circumstances, with respect to all or any part of its Pledged Collateral which will then be or will thereafter come into the possession, custody or control of the Collateral Agent or any of their respective agents, sell, lease, assign, give option or options to purchase, or otherwise dispose of all or any part of such Pledged Collateral (or contract to do any of the foregoing), at such place or places as the Collateral Agent deems best, for cash, for credit or for future delivery (without thereby assuming any credit risk) at public or private sale, and the Collateral Agent or any other Person may be the purchaser, lessee, assignee or recipient of any or all of the Pledged Collateral so disposed of at any public sale or, to the extent permitted by Law, at any private sale, and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise) of such Pledgor, any such demand, notice and right or equity will be expressly waived and released. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned.

**Non-Recourse to Pledgor**

Notwithstanding anything to the contrary contained in any Pledge Agreement, (a) no Pledgor nor any Affiliates of the Company (collectively, the “Non-Recourse Parties”), or any past, present or future officers, directors, employees, advisors, shareholders, agents, attorneys or representatives of any Non-Recourse Party will have any obligations or liabilities under the Finance Documents or be liable for any amount payable under its Pledge Agreement or any other Finance Documents, other than obligations or liabilities with respect to any Non-Recourse Party arising under any Finance Documents or Project Documents to which such Non-Recourse Party is a party; (b) no Secured Party will seek a money judgment or deficiency or personal judgment against any Non-Recourse Party for payment of the Indebtedness secured by the Pledge Agreements; and (c) no property or assets of any Non-Recourse Party, other than the Pledged Collateral, will be sold, levied upon or otherwise used to satisfy any judgment rendered in connection with any action brought with respect to any Pledge Agreement. Nothing in this section will limit or affect the obligations or liabilities of any Non-Recourse Party (or any security granted by any Non-Recourse Party) in accordance with the terms of any Finance Document or any Project Document to which such Non-Recourse Party is a party, or arising from any liability pursuant to any applicable Law for such Non-Recourse Party’s fraudulent actions or willful misconduct. The foregoing acknowledgments, agreements and waivers will survive the termination of its Pledge Agreement, will be enforceable by any Non-Recourse Party, and are a material inducement for each Pledgor’s execution of the Pledge Agreement.

**Release of the Collateral**

The Security Interests granted under each Pledge Agreement terminate when all of the Secured Obligations have been indefeasibly paid and performed in full.

**Collateral Agency Agreement**

The Collateral Agency Agreement will be entered into by the Company, the TIFIA Lender, the Collateral Agent and the Securities Intermediary and, by accession agreement on the Closing Date, the Trustee and the Intercreditor Agent.

Pursuant to the terms of the Collateral Agency Agreement, U.S. Bank National Association will be appointed as Collateral Agent for the benefit of the Secured Parties with respect to the Security Interests on the
Collateral and the rights and remedies granted pursuant to the Security Documents. Pursuant to the Collateral Agency Agreement, certain Project Accounts will be established and created with the Collateral Agent in the name of the Company, in its capacity as the Company, but subject to and under the control of the Collateral Agent (or, in the case of the Operating Account and any Other Operating Accounts, under the possession of the Deposit Account Bank pursuant to the Control Agreement). Except as expressly provided in the Collateral Agency Agreement (and in the case of the Operating Account or any Other Operating Account, in the Control Agreement, to the extent applicable), the Company, in its capacity as the Company, shall not have any right to withdraw funds from any Project Account (including the sub-accounts).

All (i) net proceeds of the 2016 Bonds (in respect of the Series 2016 Loan); (ii) proceeds of the TIFIA Loan, (iii) proceeds of all Capital Contributions, (iv) proceeds of Progress Payments, (v) Project Proceeds, and (vi) all other Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMINS”), including Availability Payments, and (vii) other amounts received by the Company in its capacity as the Company, from any source whatsoever, will be deposited into certain Project Accounts, and the Company will irrevocably authorize the Collateral Agent to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Project Account in accordance with the terms of the Collateral Agency Agreement. The Project Accounts will be maintained at all times in New York, New York or, in the case of the Operating Account or the Other Operating Accounts, in either New York, New York or at the Collateral Agent branch office in the State or at the Deposit Account Bank. See “PROJECT ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts,” “PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds,” and for a more detailed description of the Project Accounts and the flow of funds, see APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT.”

Intercreditor Terms Among the Secured Parties

General

The Intercreditor Agreement will be entered into among the Intercreditor Agent, the Trustee on behalf of the Holders of the 2016 Bonds, the TIFIA Lender and the Collateral Agent, and thereafter, certain other Senior Secured Parties that become a party thereto from time to time.

The Intercreditor Agreement in general sets forth the parties’ rights and obligations with respect to (i) the exercise and enforcement of remedies against the Collateral and (ii) the subordination of the TIFIA Obligations to the Senior Secured Obligations in right of payment and priority, including certain fundamental modifications thereto.

Exercise and Enforcement of Remedies

Exercise of Remedies

Upon receipt by the Intercreditor Agent of a notice from a representative of a Secured Creditor that any Default or Event of Default under the Finance Documents has occurred or is continuing, the Intercreditor Agent shall promptly send copies of such notice to each other Designated Representative and to the Collateral Agent.

Except as expressly permitted in accordance with the Intercreditor Agreement, the TIFIA Lender will not exercise or seek to exercise unilaterally any rights or remedies with respect to the TIFIA Obligations or the Collateral, or institute any action or proceeding with respect to such rights or remedies, whether against the Company, any Sponsor or otherwise, without the approval of the Required Creditors, including (i) any action of foreclosure or proceeding, (ii) the issuance of any notice directing the Collateral Agent to exercise any Enforcement Actions or (iii) any contest or objection (or the support of any objection) to any exercise by the Collateral Agent (at the direction of the Intercreditor Agent in accordance with the Intercreditor Agreement) or the Intercreditor Agent relating to the Secured Obligations or the Collateral, and (b) the Intercreditor Agent (acting at the direction of the Required Creditors in accordance with the Intercreditor Agreement) shall have the exclusive right to direct the Collateral Agent to enforce rights and exercise remedies under the Security Documents, including directing the Collateral Agent to exercise or refrain from exercising any Enforcement Actions against the Company or the Collateral, without the consent of any Secured Party except the Required Creditors.
Notwithstanding the foregoing, nothing in the Intercreditor Agreement shall be construed to prohibit the TIFIA Lender from (i) enforcing, or limiting its right to enforce, any obligation owed to the TIFIA Lender by the Collateral Agent or any other Secured Party arising under the Intercreditor Agreement, the Collateral Agency Agreement or any other Finance Document, or (ii) directing the Collateral Agent with respect to any of its rights under the TIFIA Loan Agreement or the Security Documents with respect to the TIFIA Debt Service Reserve Sub-Account, the TIFIA Loan Proceeds Sub-Account, the TIFIA Mandatory Prepayment Sub-Account or any other Project Account or Collateral created or granted for the sole and exclusive benefit of the TIFIA Lender. Additionally, nothing in the Intercreditor Agreement shall be construed to limit any right of the TIFIA Lender as a Required Creditor if the TIFIA Lender qualifies as a Required Creditor under the Intercreditor Agreement or the right of the TIFIA Lender to participate in any Intercreditor Vote under the Intercreditor Agreement.

Except as set forth below, and notwithstanding any other provision of the Intercreditor Agreement, the TIFIA Lender and the Trustee may (i) upon any failure by the Company or the Collateral Agent, as applicable, to pay, transfer or apply any funds in accordance with the Collateral Agency Agreement, instruct the Intercreditor Agent to deliver a Direction Notice to the Collateral Agent to take an Enforcement Action with respect thereto, which Enforcement Action shall be limited to the exercise of rights and remedies to reapply such funds in accordance with the Collateral Agency Agreement; (ii) upon any distribution of funds from any Project Account in violation of any restriction on such distribution set forth in the Collateral Agency Agreement, instruct the Intercreditor Agent to deliver a Direction Notice to the Collateral Agent to take an Enforcement Action with respect thereto, which Enforcement Action shall be limited to the exercise of rights and remedies against the recipient of such funds or any other party responsible for such wrongful distribution; (iii) upon any breach by the Company of any non-monetary covenant or term of the TIFIA Loan Agreement or the Series 2016 Agreements that results in an Event of Default (as such term is defined in the TIFIA Loan Agreement or the Series 2016 Agreements), bring suit against the Company seeking an order directing specific performance of such covenant or an order of injunction against the Company restraining it from any further breach of such covenant, seek a declaratory judgment or exercise any other right under the TIFIA Loan Agreement or the Series 2016 Agreements that does not involve the acceleration of the TIFIA Loan (unless an acceleration of any Senior Secured Obligations has occurred or a Company Bankruptcy Related Event has occurred), a foreclosure or proceeding against the Collateral or a suit for monetary damages against the Company (other than in respect of indemnification and fees under the TIFIA Loan Agreement or the Series 2016 Agreements); provided that in the case of a breach of a covenant or term relating to the acquisition, construction, use, lease, ownership, operation, maintenance, repair, restoration or modification of the Project (excluding any such covenant or term relating to the preparation or distribution to the TIFIA Lender or the Holders of the 2016 Bonds to documents or other information), the TIFIA Lender or the Trustee must first provide written notice to the Intercreditor Agent (and the Intercreditor Agent shall promptly send copies of such notice to the Designated Representatives of the Senior Secured Creditors), and consult with such Designated Representatives of the Senior Secured Creditors with respect thereto in accordance with the Intercreditor Agreement, and, subject to the Intercreditor Agreement, shall not bring a suit for specific performance or injunctive relief relating thereto if the Intercreditor Agent (acting at the direction of the Required Creditors in accordance with the Intercreditor Agreement) advises the TIFIA Lender or the Trustee in writing within ten (10) Business Days of receiving such notice from the TIFIA Lender or the Trustee that, in the reasonable determination of the Required Creditors, enforcement of the performance of such covenant or restraining the Company from any further breach of such covenant, as the case may be, would have a material adverse effect on the Senior Secured Creditors; and (iv) (A) charge interest at the Default Rate (as defined in the TIFIA Loan Agreement) on any past due amount or as otherwise contemplated in the TIFIA Loan Agreement, and (B) enforce any claim for indemnification or fees arising under the TIFIA Loan Agreement or the Series 2016 Agreements.

 Enforcement After Bankruptcy Related Event

If a Bankruptcy Proceeding with respect to the Company occurs, the following provisions shall apply:

(a) Subject to clauses (b), (c) and (d) below, each Applicable Secured Creditor, as to any Secured Obligations held by such Applicable Secured Creditor, will have all rights of a creditor of the Company including, without limitation, the right to file proofs or claims of debt with respect to such Secured Obligations (provided that if any Applicable Secured Creditor does not file any such proof or claim of debt within thirty (30) days prior to the last date for the filing thereof, then the Intercreditor Agent (acting at the direction of the Required Creditors in
accordance with the Intercreditor Agreement) may, with the consent of such Applicable Secured Creditor, instruct the Collateral Agent to file any appropriate proof or claim on behalf of such Applicable Secured Creditor, to appear and be heard as a creditor in such proceeding, to serve as a member of a committee of creditors, to file a plan of reorganization, to take any action necessary to perfect its lien (or preserve the perfection of its lien) on the Collateral, to vote its claims in respect of any proposed plan of reorganization, and, subject to the provisions of the Intercreditor Agreement, to receive and retain any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, securities or other property, made in or as a result of such proceeding pursuant to any plan of reorganization or otherwise.

(b) Subject to clauses (c) and (d) below, the Holders of the 2016 Bonds, Additional Secured Parties (other than any Hedge Provider), if any, (or, in each case, the Designated Representative acting on their behalf) and the TIFIA Lender shall use reasonable efforts to develop a plan for the course and conduct of any actions in any such proceeding (including any proposed foreclosure or disposition of all or a substantial part of the Collateral). Each Applicable Secured Creditor will agree to authorize or take such Enforcement Actions as shall be directed in writing by the Required Creditors, and no Secured Party shall take any enforcement or other action (or give or join in any directions to the Collateral Agent) which is inconsistent with a written direction by the Required Creditors.

(c) Subject to clause (d) below, if the Intercreditor Agent (acting at the direction of the Required Creditors in accordance with the Intercreditor Agreement) requests that any Applicable Secured Creditor join in a Remedies Instruction in seeking a lifting of the automatic stay and in commencing and pursuing a foreclosure action with respect to the Collateral, such Applicable Secured Creditor will join in such Remedies Instruction and will not take any action that would hinder such action.

(d) The TIFIA Lender shall not be required to take any action, or refrain from taking any action, in connection with any Bankruptcy Proceeding unless and until approved in writing by the U.S. Department of Justice, consistent with 28 U.S.C. § 516 and any other federal statute or regulation applicable to matters in litigation. Nothing in this clause (d) shall be construed to limit any right of the TIFIA Lender as a Required Creditor if the TIFIA Lender qualifies as a Required Creditor under the Intercreditor Agreement or the right of the TIFIA Lender to participate in any Intercreditor Vote under the Intercreditor Agreement.

**Limited Subordination of the TIFIA Loan**

**Ranking of Claims**

The TIFIA Obligations shall be subject and subordinate to the Senior Secured Obligations and, except as otherwise expressly set forth in the Intercreditor Agreement, any Security Interest in and to the Collateral securing the TIFIA Obligations shall be subject and subordinate to the Senior Secured Obligations and, except with respect to any Segregated Collateral for the benefit of the TIFIA Lender, any Security Interest in and to the Collateral securing the TIFIA Obligations is and shall be subject and subordinate to any Security Interest in and to the Collateral securing the Senior Obligations, to the extent and in the manner set forth in the Intercreditor Agreement and the Collateral Agency Agreement, provided that, from and after the occurrence of any Company Bankruptcy Related Event, (a) the TIFIA Obligations then held by the TIFIA Lender and each TIFIA Agency Assignee shall automatically and without action on the part of the TIFIA Lender, any TIFIA Agency Assignee, or any other Person immediately become and constitute Senior Secured Obligations and (b) other than with respect to the Segregated Collateral, the Security Interest in and to the Collateral securing the TIFIA Loan then held by the TIFIA Lender and each TIFIA Agency Assignee shall automatically and without action on the part of the TIFIA Lender, any TIFIA Agency Assignee or any other Person immediately become and be of equal rank and in parity with the Security Interest in and to the Collateral securing the other Senior Secured Obligations. Without limiting any of the foregoing, upon and following the occurrence of a Company Bankruptcy Related Event, each of the TIFIA Lender and each TIFIA Agency Assignee shall be a Senior Secured Creditor holding Senior Secured Obligations for all purposes of the Finance Documents, including for purposes of clause (a) of the definition of Required Creditors.

**Acceleration of the TIFIA Loan**

Except upon and following the occurrence of a Company Bankruptcy Related Event, the TIFIA Lender shall not accelerate the TIFIA Obligations unless any of the Senior Secured Obligations have been accelerated.
Segregated Collateral

Notwithstanding anything to the contrary set forth in the Intercreditor Agreement, any Modification to any Finance Document, any instruction to the Intercreditor Agent or the Collateral Agent and any discretion exercised by the Intercreditor Agent or the Collateral Agent, in each case, solely in respect of the Segregated Collateral, will require only the consent of the Applicable Secured Creditors benefitting from such Segregated Collateral in accordance with the terms of the applicable Finance Document.

Default in Payment of TIFIA Debt Service

Without limiting clause (b)(iii) of the definition of Bankruptcy Related Event, the existence of one or more defaults by the Company in the payment of, or the inability of the Company to pay, any principal of or interest on the TIFIA Loan as it becomes due shall not, in and of itself, be sufficient to establish that the standard set forth in clause (b)(ii) of the definition of Bankruptcy Related Event with respect to the Company has been met.

Modifications to the Finance Documents

No Senior Secured Creditor (or any Designated Representative acting on behalf of such Senior Secured Creditor) may without the prior written consent of the TIFIA Lender and the Intercreditor Agent (acting at the direction of the Required Creditors (excluding the TIFIA Lender) in accordance with the Intercreditor Agreement), enter into any amendments with the Company, or grant any waivers or consents to the Company, in connection with any applicable Finance Document that would: (i) increase the lending commitments of a Senior Secured Creditor over the amounts permitted under such Finance Document as in effect as of the Effective Date or, with respect to any Other Permitted Senior Secured Indebtedness, such other date on which the applicable Finance Document will come into effect pursuant to the terms thereof (the “Other Permitted Senior Secured Indebtedness Effective Date”), or the aggregate principal amount of any Senior Secured Obligations except as permitted by such Finance Document as of the Effective Date, or the effective date of any Other Permitted Senior Secured Indebtedness, as applicable, shorten the fixed maturity of such Senior Secured Obligations, alter the prepayment or cash sweep provisions so as to accelerate the repayment of such Senior Secured Obligations, or shorten the amortization schedule of such Senior Secured Obligations (provided that the foregoing shall not restrict the exercise of rights or remedies by such Senior Secured Creditor, to the extent permitted under the Intercreditor Agreement and the Collateral Agency Agreement, following the occurrence and during the continuance of an Event of Default under such Finance Document, including with respect to making protective advances and otherwise advancing funds or making payments to protect or preserve the Collateral or the Senior Secured Creditor’s rights), (ii) increase the interest rate or yield of, change the method of calculation of interest upon or shorten the time for payment of interest on, the Senior Secured Obligations, except as permitted under such Finance Document as in effect as of the Effective Date or the Other Permitted Senior Secured Indebtedness Effective Date, as applicable, (iii) increase any fees payable under a Finance Document, or shorten the scheduled date of payment thereof, except in accordance with the terms of such Finance Document in effect as of the Effective Date or the Other Permitted Senior Secured Indebtedness Effective Date, as applicable, (iv) provide for dates of payments of principal or interest which are either earlier or later than as provided in the applicable Finance Document as in effect as of the Effective Date or the Other Permitted Senior Secured Indebtedness Effective Date, as applicable, (v) permit the amendment of any hedging arrangements for the Senior Secured Obligations that affects the Company or TIFIA Lender in any material adverse respect, including any material adverse effect on the ability of the Company to make any payment in respect of the TIFIA Loan, (vi) add or modify any covenant, event of default or mandatory prepayment event for the benefit of such Senior Secured Creditor or increase the debt service reserve requirement with respect to the applicable Senior Secured Obligations, in each case, in a manner which is material and adverse to the TIFIA Lender, including any material adverse effect on the ability of the Company to make any payment in respect of the TIFIA Loan; (vii) reduce the amount of proceeds of dispositions of Collateral that are required under the Finance Documents as in effect on the Effective Date to be used to prepay Senior Secured Obligations or TIFIA Obligations; or (viii) following the occurrence and during the continuance of an Event of Default under the Finance Documents with respect to the applicable Senior Secured Obligations, make any other modification to such Finance Document that could adversely affect the TIFIA Lender, including any material adverse effect on the ability of the Company to make any payment in respect of the TIFIA Loan.

The TIFIA Lender may not, without the prior written consent of the Intercreditor Agent (acting at the direction of the Required Creditors (excluding the TIFIA Lender) in accordance with the Intercreditor Agreement)
and the designated representative acting on behalf of the materially and adversely affected Senior Secured Creditor with respect to clauses (vi) and (vii) below, enter into any amendments with the Company, or grant any waivers or consents to the Company, in connection with any of the TIFIA Obligations or the TIFIA Loan Documents that would: (i) increase the lending commitments of the TIFIA Lender over the amount permitted under the TIFIA Loan documents as in effect as of the Effective Date, or increase the aggregate principal amount of any TIFIA Obligation (other than as permitted under the TIFIA Loan documents as in effect as of the Effective Date, including by capitalization of interest), shorten the fixed maturity of the TIFIA Obligations, alter the prepayment provisions so as to accelerate the repayment of the TIFIA Obligations, or shorten the amortization schedule of the TIFIA Obligations (provided that the foregoing shall not restrict the exercise of rights or remedies by the TIFIA Lender to the extent permitted under the Intercreditor Agreement following the occurrence and during the continuance of an Event of Default under the TIFIA Loan Agreement, including with respect to making protective advances and otherwise advancing funds or making payments to preserve or protect the Collateral or the TIFIA Lender’s rights, or restrict the amendment of the TIFIA Loan amortization schedule, the anticipated TIFIA Loan disbursement schedule or the TIFIA Loan debt service schedule in accordance with the terms of the TIFIA Loan Agreement); (ii) increase the rate of interest or yield of, change the method of calculation of interest upon, or shorten the time for payment of interest on, any TIFIA Obligation, except as permitted under the terms of the TIFIA Loan Agreement in effect as of the Effective Date; (iii) increase any fees payable under the TIFIA Loan Agreement, or shorten the scheduled date of any payment thereof, except as permitted under the terms of the TIFIA Loan Agreement in effect as of the Effective Date; (iv) decrease or cancel the lending commitment under the TIFIA Loan Agreement, except as permitted under the terms of the TIFIA Loan Agreement in effect as of the Effective Date or change the conditions to disbursement so as to materially increase the restrictions on the availability of disbursements from the terms in effect on the Effective Date; (v) provide for dates of payments of principal or interest which are either earlier or later than such dates provided for under the TIFIA Loan Agreement in effect as of the Effective Date; (vi) add or modify any covenant, event of default or mandatory prepayment event for the benefit of the TIFIA Lender or increase the TIFIA Debt Service Reserve Required Balance, in each case, in a manner which is material and adverse to any Senior Secured Creditor, including any material adverse effect on the ability of the Company to make any payment in respect of the applicable Senior Secured Obligations; (vii) reduce the amount of proceeds of dispositions of Collateral that are required under the TIFIA Loan Agreement as in effect on the Effective Date to be used to prepay Senior Secured Obligations or TIFIA Obligations; and (viii) following the occurrence and during the continuance of an Event of Default under the TIFIA Loan Agreement, make any other modification to the TIFIA Loan Agreement that could adversely affect any Senior Secured Creditor with respect to its Senior Secured Obligations, including any material adverse effect on the ability of the Company to make any payment in respect of the applicable Senior Secured Obligations.

Additional Secured Creditors

The Intercreditor Agreement includes a mechanism for any Person that is to provide secured credit to the Company, or any Person that replaces any of the Secured Parties, to accede to the Intercreditor Agreement by execution and delivery of a counterpart to the Intercreditor Agreement and a designation letter pursuant to which it is designated as an Applicable Secured Creditor under the Intercreditor Agreement.

Direct Agreements

The following direct agreements will be entered into in connection with the Project:

(a) The Contracting Authority and the Company will enter into a direct agreement with the Collateral Agent which will contain the Contracting Authority’s consent to the pledge and assignment of, and the granting of a lien on, all of the Company’s right, title and interest in the P3 Agreement, and which will set forth certain agreements for the benefit of the Secured Parties with respect to the P3 Agreement in the event of a default thereunder by the Company, including, subject to certain terms and conditions specified therein, step-in and cure rights, forbearance obligations of the Contracting Authority with respect to its exercise of remedies under the P3 Agreement, rights of substitution and other rights of the Secured Parties.

(b) The Design-Build Contractor will enter into a direct agreement with the Collateral Agent and the Company, which will contain the Design-Build Contractor’s consent to the pledge and assignment of, and the granting of a lien on, all of the Company’s right, title and interest in the Design-Build Contract and the Interface Agreement, and which will set forth certain agreements for the benefit of the Collateral Agent with respect to the
Design-Build Contract and the Interface Agreement, including, subject to certain terms and conditions specified therein, step-in and cure rights, forbearance obligations of the Design-Build Contractor with respect to its exercise of remedies under the Design-Build Contract and the Interface Agreement, rights of substitution and other rights of the Collateral Agent for the benefit of the Secured Parties.

(c) Each Design-Build Guarantor will enter into a consent and agreement with the Collateral Agent and the Company, which will contain each Design-Build Guarantor’s consent to the pledge and assignment of, and the granting of a lien on, all of the Company’s right, title and interest in each Design-Build Guaranty, and which will set forth certain agreements for the benefit of the Collateral Agent with respect to each Design-Build Guaranty, including, subject to certain terms and conditions specified therein, step-in and cure rights, the performance by such Design-Build Guarantor of its obligations under its respective Design-Build Guaranty, rights of substitution and other rights of the Collateral Agent for the benefit of the Secured Parties.

(d) The O&M Contractor will enter into a direct agreement with the Collateral Agent and the Company, which will contain the O&M Contractor’s consent to the pledge and assignment of, and the granting of a lien on, all of the Company’s right, title and interest in the O&M Contract and the Interface Agreement, and which will set forth certain agreements for the benefit of the Collateral Agent with respect to the O&M Contract and the Interface Agreement, including, subject to certain terms and conditions specified therein, step-in and cure rights, forbearance obligations of the O&M Contractor with respect to its exercise of remedies under the O&M Contract and the Interface Agreement, rights of substitution and other rights of the Collateral Agent for the benefit of the Secured Parties.

(e) Each O&M Guarantor will enter into a consent and agreement with the Collateral Agent and the Company, which will contain each O&M Guarantor’s consent to the pledge and assignment of, and the granting of a lien on, the respective O&M Guaranty, respectively, and which will set forth certain agreements for the benefit of the Collateral Agent with respect to each O&M Guaranty, including, subject to certain terms and conditions specified therein, step-in and cure rights, the performance by such O&M Guarantor of its obligations under its respective O&M Guaranty, rights of substitution and other rights of the Collateral Agent for the benefit of the Secured Parties.

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FINANCING FOR THE PROJECT

2016 Loan

The initial senior debt to be incurred in connection with the financing of the Project will be comprised of the 2016 Bonds, which will be issued pursuant to the Indenture. Upon the issuance of the 2016 Bonds, all of the proceeds of such 2016 Bonds will be immediately loaned by the Bond Issuer to the Company in accordance with and subject to the terms of the Series 2016 Loan Agreement to be entered into between the Company and the Bond Issuer. Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”) and certain other cash available to the Company will be applied to the payment of debt service on the 2016 Bonds to the extent described herein and in accordance with the Collateral Agency Agreement and the Intercreditor Agreement. For more information, see “PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds.”

Series 2016 Loan Agreement

General. The Company and the Bond Issuer will enter into a Series 2016 Loan Agreement (the “Series 2016 Loan Agreement”), pursuant to which the proceeds of the issuance of the 2016 Bonds will be loaned to the Company on the date of issuance of the 2016 Bonds (the “Series 2016 Loan”), subject to the terms and conditions of the Series 2016 Loan Agreement. The net proceeds received from the sale of the 2016 Bonds will be deposited directly into the applicable Bond Proceeds Sub-Accounts of the Construction Account as required by the Collateral Agency Agreement and agreed to by the Company. The Company will use the proceeds of the Series 2016 Loan to pay a portion of the Project Costs. In order to secure the payment of the 2016 Bonds, all the Bond Issuer’s rights in the Series 2016 Loan Agreement (except for Reserved Rights) will be assigned to, and are subject to a security interest in favor of, the Trustee pursuant to the Indenture.

Compliance with the Indenture. In accordance with any applicable provisions of the Indenture, and subject to the limitations contained in the Indenture and the Series 2016 Loan Agreement with respect to the limitation of the Bond Issuer’s liability, the Bond Issuer will take any action directed by the Company to the extent required under, or permitted by, the provisions of the Indenture or the Series 2016 Loan Agreement. The Company will take all action required to be taken by the Company in the Indenture as if the Company were a party to the Indenture.

Prepayment Terms. The Company will have the option and, in some cases the obligation, to prepay its obligations under the Series 2016 Loan Agreement at the times and in the amounts as necessary to cause the Bond Issuer to redeem the 2016 Bonds in accordance with the terms of the Indenture and the 2016 Bonds. The Bond Issuer, at the request of the Company, if applicable, will take all steps necessary (other than the payment of funds necessary to effect such redemption) under the applicable redemption provisions of the Indenture to effect redemption of all or a part of the Outstanding 2016 Bonds, as may be specified by the Company and required by the Indenture, on the date established for such redemption. For more information regarding the redemption terms, see “THE 2016 BONDS—Redemption of the 2016 Bonds.”

Company to Provide Funds. If proceeds derived from the Series 2016 Loan, or any other available (or to be available) funds are not sufficient to finance the Project Costs, the Company will not be entitled to any reimbursement from the Bond Issuer or the Trustee for the payment of such costs nor will the Company be entitled to any abatement, diminution or postponement of its payment obligations under the Series 2016 Loan Agreement.

Covenants of the Company

In the Series 2016 Loan Agreement, the Company will undertake to comply with certain covenants, including, but not limited to the following:

Material Project Contracts. The Company will not amend, waive or modify any material term of, or terminate prior to the expiration of its term, any Material Project Contract, or, at any time, give notice or make an election to continue the P3 Agreement after receipt of a conditional election of Contracting Authority to terminate the P3 Agreement pursuant to the P3 Agreement, without the prior written consent of the Majority Holders, which consent will be given within a reasonable period of time with respect to requests for amendments to the P3 Agreement; provided that, without such consent: 
(a) the Company and the Design-Build Contractor may enter into change orders under the Design-Build Contract and the Company may enter into any amendments of any Material Project Contract or new agreements, in each case, required for compliance with the P3 Agreement or any change order, Contracting Authority Change or directive letter issued under the P3 Agreement or otherwise as required under the P3 Agreement;

(b) the Company and the Design-Build Contractor may enter into change orders or amendments, as applicable, under the Design-Build Contract, if such change or amendment will not require the payment by the Company, net of any payments received from or required to be paid by the Contracting Authority or any other party for payment of the change order or amendment, to exceed in any year an aggregate amount equal to or in excess of $20,000,000; provided that any change order or amendment that results in exceeding the annual $20,000,000 threshold will be permitted (x) without the consent of the Majority Holders, if (A) it is required by applicable Law, or (B) the Lenders’ Technical Advisor has certified that, in its reasonable opinion, there are sufficient funds available to the Company to pay for such change order or amendment, together with other Project Costs, necessary to achieve Revenue Service Availability on or prior to the Long Stop Date and that such change order or amendment could not reasonably be expected to have a Material Adverse Effect, or (y) with the consent of the Majority Holders;

(c) the Company may amend, waive or (other than the P3 Agreement, subject to clause (d) below) terminate prior to the expiration of its term any Material Project Contract if such amendment, waiver or termination could not reasonably be expected to have a Material Adverse Effect; provided, if such Material Project Contract being terminated is the Design-Build Contract, a Design-Build Guaranty, the O&M Contract or an O&M Guaranty, it is replaced by a replacement agreement between the Company and an Acceptable Replacement Party (x) (A) within a period of ninety (90) days, up to one hundred eighty (180) days if reasonably necessary to effect such replacement so long as the Company is diligently pursuing such replacement, and (B) that is reasonably expected to allow the Company to achieve Revenue Service Availability in accordance with the P3 Agreement on or prior to the Long Stop Date and that cannot reasonably be expected to adversely affect the Company’s ability to repay the 2016 Bonds, or (y) with the prior written consent of the Trustee; provided, further, that if a Material Project Contract is replaced and a direct agreement existed with respect to such Material Project Contract prior to its replacement, the Company will cause a new (or amended and restated as the case may be) direct agreement to be entered into by any counterparty to such Material Project Contract within ninety (90) days of entry into such agreement, in form and substance substantially similar to the one being replaced or otherwise that is reasonably acceptable to the Collateral Agent;

(d) the Company may terminate the P3 Agreement without the consent of the Majority Holders if such termination is in accordance with the P3 Agreement and would not be reasonably expected to have a Material Adverse Effect, provided that the definition of Material Adverse Effect for this purpose shall not include a material adverse effect on the business, property or condition (financial or otherwise) of the Company; and

(e) the Company may, without the consent of the Majority Holders, choose to continue the P3 Agreement pursuant to the P3 Agreement after receipt of a conditional election of the Contracting Authority to terminate the P3 Agreement, if such election by the Company cannot reasonably be expected to adversely affect the Company’s ability to repay the 2016 Bonds or otherwise have a Material Adverse Effect.

Limitation on Fundamental Changes; Sale of Assets. The Company will not merge, liquidate or dissolve or enter into any consolidation, amalgamation, demerger, reconstruction, partnership, profit-sharing or any analogous arrangement or wind up, liquidate or dissolve or take any action that would result in the liquidation or dissolution of the Company. The Company will not sell, lease, assign or otherwise dispose of, or direct the Collateral Agent, as applicable, to sell, assign, lease or otherwise dispose of, any assets of the Project except for any Permitted Disposition.

Indebtedness. The Company will not create, incur, assume or be liable for any Indebtedness other than Permitted Indebtedness.

Abandonment of the Project. The Company will not, unless required or permitted under the P3 Agreement, abandon all or a material portion of the Project, which abandonment will be deemed to have occurred if the Company, without reasonable cause or unless as required or permitted by the P3 Agreement, (a) expressly declares
in writing that it will not resume Work on the Project (or such material portion) or (b) fails to pursue the
construction of the Purple Line (or such material portion) for a continuous period of more than ninety (90) days.

Additional Covenants. The following summarizes additional covenants of the Company (which covenants
may be qualified by materiality and other exceptions).

(a) The Company will deliver the following financial statements and reports to the Trustee and to the
Bond Issuer (and to EMMA, solely to the extent expressly provided in the Series 2016 Loan Agreement and in the
Continuing Disclosure Agreement (Company); provided, that neither a failure to deliver (nor a delay in delivery of)
such information to the dissemination agent, nor or a failure to post such information to EMMA, shall be a Default
or Event of Default under the 2016 Loan Documents):

(i) audited financial statements of the Company within one hundred and twenty (120) days
after the end of each Fiscal Year of the Company, beginning with the Fiscal Year ending December 31,
2017, prepared in accordance with GAAP and unaudited financial statements of the Company within sixty
(60) days after the end of the first, second and third fiscal quarters of the Company;

(ii) simultaneously with delivery of the financial statements described in subclause (i) above,
a certificate of the Company, stating that no Event of Default with respect to the 2016 Loan Documents has
occurred and is continuing except as set forth in such certificate (such certificate to be disclosed on EMMA
solely if an Event of Default has occurred and is continuing);

(iii) an annual operating budget for each Fiscal Year within ten (10) days following
acceptance thereof by the Company’s management, but in no event later than fifteen (15) days prior to the
commencement of such Fiscal Year;

(iv) prior to the RSA Date, on a monthly basis, (i) a construction progress report of the
Company, providing an assessment of the overall construction progress of the D&C Work since the date of
the last report (or, with respect to the first such report, the Closing Date) and setting forth a reasonable
estimate as to the completion date for the applicable D&C Work and providing a reasonably detailed
description of any material delays encountered or anticipated in connection with such D&C Work, and a
reasonably detailed description of the proposed course of action with respect to such delay, and (ii) a
monthly progress report issued by the Lenders’ Technical Advisor for such monthly period (solely a
summary of which prepared by the Company on a quarterly basis will be disclosed on EMMA). Such
reports shall be provided within twenty-eight (28) days after the end of the relevant month (or quarter);

(v) not later than sixty (60) days after the end of each fiscal quarter of the Company
following the RSA Date, a report showing (i) the operating data for the Project for the previous fiscal
quarter, including total Project Revenues (as such term is defined in the Indenture and in APPENDIX B—
“DEFINITIONS OF TERMS”), total O&M Expenditures and total Renewal Expenditures incurred, and (ii)
the variances for such period between the actual Project Revenues (as such term is defined in the Indenture
and in APPENDIX B—“DEFINITIONS OF TERMS”), actual O&M Expenditures and actual Renewal
Expenditures incurred, and the projected Project Revenues (as such term is defined in the Indenture and in
APPENDIX B—“DEFINITIONS OF TERMS”), budgeted O&M Expenditures and budgeted Renewal
Expenditures respectively for the same period as set forth in the annual operating budget, together with a
brief narrative explanation of the reasons for any such variance of ten percent (10%) or more;

(vi) details of litigation in respect of the Company, pending or, to the knowledge of the
Company, threatened in writing, by or before any arbitrator or Governmental Authority, in which (1) the
claim against the Company exceeds $10,000,000, net of any amounts covered by insurance or (2) a remedy
requested in the litigation is the permanent stoppage or delay of completion of the Project beyond the Long
Stop Date;

(vii) details of any penalties or damages paid by the Company under the Material Project
Contracts in excess of $10,000,000 in the aggregate per Material Project Contract;
(viii) details of any “event of default” or “Event of Default” (or its equivalent) as defined or used in, or termination with respect to, any Material Project Contract and copies of all written notices of default delivered to the Company with respect to any Material Project Contract;

(ix) copies of any notice of any insurance claims in excess of ten million dollars ($10,000,000);

(x) copies of any notice of the occurrence of a Force Majeure Event or Relief Event under the P3 Agreement or any written claim for any similar event or occurrence under the Design-Build Contract;

(xi) any certificates certifying achievement of Revenue Service Availability (including specifically the number of days that the actual RSA Date is prior to the RSA Deadline (without giving effect to any extension thereof under the P3 Agreement), if such eventuality occurs, and the date the 2016D Bonds shall be subject to mandatory redemption as described under “THE 2016 BONDS—Redemption of the 2016 Bonds—Extraordinary Mandatory Redemption—Early RSA Date – 2016D Bonds) or Final Completion;

(xii) in the event that any letter of credit issuer of a then-effective Equity Letter of Credit is downgraded such that such issuer is no longer an Acceptable LC Bank, notice of the final resolution thereof (for the avoidance of doubt, whether such Equity Letter of Credit is ultimately replaced or drawn) pursuant to the terms of the Equity Contribution Agreement; and

(xiii) copies of any written claim or notice of (1) violation in respect of any violation of Environmental Law or (2) any new or not previously disclosed historical release of Hazardous Materials that, in either case of clauses (1) or (2), would reasonably be expected to cause or does cause a Material Adverse Effect.

(b) The Company will also promptly deliver the following notices and information to the Trustee and the Bond Issuer:

(i) copies of any reports or ratings on the 2016 Bonds or, if applicable, any Additional Parity Bonds, from any Nationally Recognized Rating Agency rating the 2016 Bonds or such Additional Parity Bonds;

(ii) notice of any Default or Event of Default (with a copy to the Collateral Agent and the Contracting Authority);

(iii) notice of the occurrence and continuance of any other event or condition which has a Material Adverse Effect (with a copy to the Contracting Authority);

(iv) notice of any change of law or acts of the Contracting Authority that the Company becomes aware of that could reasonably be expected to have a Material Adverse Effect; and

(v) copies of all final reports of the Lenders’ Technical Advisor, the Insurance Advisor and the Model Auditor to the Trustee and the Collateral Agent on the Closing Date and thereafter, to the extent any additional final reports are generated by such parties, the Company shall provide summaries thereof (with a copy to the Collateral Agent).

(c) The Company will provide a notice to the Trustee, the Contracting Authority and the Bond Issuer of any proposal to suspend or permanently abandon the Project, except as provided in the Series 2016 Loan Agreement.

(d) The Company will maintain proper records and books of account, and permit inspection of such records and books by the Bond Issuer, the Trustee and the Collateral Agent upon reasonable notice and at reasonable times.
The Company will maintain its legal existence as a limited liability company, its good standing and qualification to do business in the State, its good standing in the State of Delaware, and all other relevant material rights, franchises and privileges required for the maintenance of its existence and for the development, construction and operation and maintenance of the Purple Line and in order to perform its obligations and exercise its remedies under the Transaction Documents.

The Company will obtain, maintain and comply with, in all material respects, all required Governmental Approvals and all applicable Laws.

The Company will timely pay and discharge of all taxes imposed on the Company or the Project.

The Company will maintain, or cause its relevant contractors to maintain, all insurances required under the P3 Agreement.

The Company will use the proceeds of the 2016 Bonds only in accordance with the Series 2016 Loan Agreement and the P3 Agreement, aid and assist the Bond Issuer in connection with preparing and submitting to the Internal Revenue Service (“IRS”) a Form 8038 (or other applicable information reporting statement) at the time and in the form required by the Code, comply at all times with the requirements and covenants in the Tax Regulatory Agreement, operate the Project as a “qualified highway or surface freight transfer facilities” within the meaning of Sections 142(a)(15) and (m) of the Code, use commercially reasonable efforts to maintain its status as a “pass-through” entity for federal income tax purposes, and pay all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final treasury regulations as may be applicable to the 2016 Bonds.

The Company will create, perfect, preserve and maintain a perfected first priority security of the Collateral Agent for the benefit of the Holders of the 2016 Bonds in the Collateral, subject to Permitted Security Interests, and take all action reasonably necessary to perfect the Security Interests therein, including executing, acknowledging and delivering, or causing to be executed, acknowledged and delivered, such documents and such further instruments as may be required by Law to perfect the Security Interests created by the Security Documents, whether now existing or hereafter arising.

The Company will ensure that all Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”) received by the Company shall be applied in accordance with the Collateral Agency Agreement and the other 2016 Loan Documents.

The Company will enter into a reasonable and customary “ratings surveillance” agreement with at least one Nationally Recognized Rating Agency rating the 2016 Bonds and use commercially reasonable efforts to cooperate with each such Nationally Recognized Rating Agency rating the 2016 Bonds and, if applicable, any Additional Parity Bonds, in connection with any review of a rating which may be undertaken by such Nationally Recognized Rating Agency with respect to the 2016 Bonds.

The Company will maintain rights to all patents, copyrights and intellectual property required for the development, construction, maintenance and operation of the Purple Line by the Company in accordance with the P3 Agreement, except where such failure to maintain would not reasonably be expected to have a Material Adverse Effect.

The Company perform all of its obligations and use commercially reasonable efforts to enforce against any counterparty to a Material Project Contract all of its rights under each such Material Project Contract to which the Company is a party, except to the extent that the failure to do any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

The Company will establish and maintain each Project Account required from time to time by the 2016 Loan Documents.

The Company will obtain and maintain independent auditors of nationally recognized standing.
(q) Subject to the covenant described in paragraph (cc) below, the Company shall deliver to the Contracting Authority, a notice of termination of the P3 Agreement within one (1) Business Day following the Contracting Authority’s failure to execute the “New Starts Full Funding Grant Agreement” on or prior to May 17, 2018 (see “—Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding” and “RISK FACTORS—Risks Relating to the Project Agreements—New Starts Full Funding Agreement” for further detail on the New Starts Full Funding Grant Agreement).

(r) The Company will provide the Trustee and its consultants and representatives with reasonable access to the Site, at the sole cost of such Persons, upon reasonable prior notice to the Company, and in each case, solely during official business hours and in a manner that cannot reasonably be expected to materially interfere with or disrupt the performance by the Company or any other party of its obligations with respect to the construction and operation of the Purple Line, subject at all times to compliance with applicable safety standards and requirements and other requirements pertaining to Site access as set forth in the P3 Agreement.

(s) The Company will pay to the Bond Issuer the Bond Issuer’s Annual Fee due and payable on the Closing Date and on each anniversary thereafter, and the Administrative Expenditures of the Bond Issuer, if any, incurred by the Bond Issuer in the administration of the Series 2016 Loan Agreement, of the 2016 Loan, and of the 2016 Bonds, including reasonable attorneys’ fees.

(t) The Company agrees that all actions taken by it (prior or subsequent to the Closing Date) to carry out the financing of the Project, including the making of contracts, and all actions after the Closing Date to be taken by the Bond Issuer to carry out the financing and refinancing of the Project recommended or requested by any officer of the Company, have been and will be in full compliance with the Indenture and the Series 2016 Loan Agreement.

(u) The Company will not directly or indirectly engage at any time in any business other than the development, design, construction, equipping, supplying light rail vehicles for, financing, operation and maintenance of the Purple Line and any business ancillary and related thereto.

(v) The Company will not amend or modify its limited liability company agreement or its other organizational documents to the extent that such amendment or modification would reasonably be expected to be materially adverse to the Trustee or the Holders of the 2016 Bonds, other than any amendment or modification to permit a transfer of equity interests of the Company that would not result in a Change of Ownership or is permitted by the P3 Agreement or is otherwise waived by the Contracting Authority or is otherwise acceptable to the Majority Holders.

(w) The Company will not change its fiscal year, or its name or jurisdiction of its formation without thirty (30) days prior written notice to the Collateral Agent, the Bond Issuer and the Trustee.

(x) The Company will not create, incur, assume or permit to exist any Security Interest on any assets or properties except Permitted Security Interests.

(y) The Company will not make or direct the Trustee or the Collateral Agent to make any investments other than Permitted Investments.

(z) The Company will not enter into a material transaction or agreement with any Affiliate unless entered into on terms fair and commercially reasonable to the Company and contains terms no less favorable to the Company than those which would reasonably be included in a comparable arm’s-length transaction with a non-Affiliate, except as provided in the Series 2016 Loan Agreement.

(aa) The Company will not make any Restricted Payments, other than Permitted Distributions.

(bb) The Company will not knowingly, directly or indirectly, use the proceeds of the 2016 Bonds, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (1) to unlawfully fund or facilitate any prohibited activities of or business with any person that, at the time of such funding or facilitation, is the subject or the target of Sanctions, (2) to unlawfully fund or facilitate any prohibited activities of or business in any Sanctioned Country or (3) in any other manner that will result in a material
violation by any person participating in the transaction (whether as underwriter, initial purchaser, advisor, investor or otherwise) of Sanctions.

(cc) The Company will not agree in writing to any alternative arrangements with respect to the New Starts Full Funding Grant Agreement pursuant to the P3 Agreement, unless (i) the TIFIA Lender has acknowledged in writing that such alternative arrangement satisfies in full (or the TIFIA Lender has permanently waived in writing) the condition to funding in the TIFIA Loan Agreement that requires execution of the “New Starts Full Funding Grant Agreement” and (ii) as of the date of such acknowledgment or waiver, after giving effect to such waiver by the TIFIA Lender or such alternative arrangement, the TIFIA Loan remains available to fund the Project on the material terms contained in and in accordance with the TIFIA Loan Agreement.

(dd) The Company will not take any action or fail to take any action with respect to the 2016 Bonds that would cause the interest on the 2016 Bonds to lose its tax-exempt status.

Events of Default Under the Series 2016 Loan Agreement

Each of the following events constitutes an “Event of Default” under the Series 2016 Loan Agreement (subject to certain cure periods, materiality and other qualifications, as applicable):

(a) The Company fails to (i) make any payment of principal of the 2016 Bonds when due; (ii) make any payment of interest on the 2016 Bonds when due, and such failure is not remedied within five (5) Business Days after the applicable due date; or (iii) pay fees or other amounts pursuant to the Finance Documents when due and such failure is not remedied within ten (10) Business Days after the applicable due date; provided, that, in the case of clauses (i), (ii) and (iii), where such failure to pay is a result of a technical or an administrative error caused by a party other than the Company in connection with the administration of the accounts from which such payment is made or is due to be made, the Company shall have five (5) Business Days after notice is received by the Company from the Trustee of such failure to pay;

(b) Any of the representations or warranties of the Company made in or delivered pursuant to the 2016 Loan Documents proves to have been incorrect in any material respect when made and a Material Adverse Effect would reasonably be expected to result therefrom, unless the effect of such material misrepresentation is capable of remedy and is remedied by the Company, as reasonably determined by the Trustee, within thirty (30) days after the Company’s receipt of written notice from the Trustee thereof;

(c) The Company fails to comply with any covenant or other obligation on its part to be observed or performed under the 2016 Loan Documents to which the Company is a party (other than as provided in the Series 2016 Loan Agreement) unless such failure is remedied within sixty (60) days after the earlier of (i) written notice specifying such failure shall have been given to the Trustee by the Company or (ii) written notice specifying such failure and requesting that it be remedied shall have been given to the Company by the Trustee, or such longer period as is reasonably necessary under the circumstances to remedy such failure, so long as corrective action is instituted by the Company within such sixty (60) day period and diligently pursued, not to exceed one hundred and eighty (180) days without the prior written approval of the Majority Holders;

(d) The Company has failed to achieve Revenue Service Availability on or prior to the Long Stop Date;

(e) A Bankruptcy Event or a Bankruptcy Related Event occurs and is continuing, in each case, with respect to the Company;

(f) Any Finance Document to which the Company is a party ceases to be in effect or ceases to be the legally valid, binding and enforceable obligation of the Company (other than in accordance with the terms thereof or in the event a direct agreement with respect to a Material Project Contract ceases to be in effect as a result of a replacement of a contract counterparty);

(g) (i) A “Default Termination Event” (as defined in the P3 Agreement) under the P3 Agreement occurs, is continuing beyond the applicable grace period (not including any grace or cure period provided to the Company’s lenders pursuant to the terms of the P3 Agreement or the direct agreement by and among the
Contracting Authority, the Company and the Collateral Agent with respect thereto) and has not been waived by the Contracting Authority, or (ii) the Company fails to perform or observe any material term or obligation of any other Material Project Contract, and such failure constitutes an event of default under such Material Project Contract that shall not have been cured or waived within the grace period provided in such Material Project Contract (not including any grace or cure period provided to the Company’s lenders under such Material Project Contract or the direct agreement with respect thereto) and would reasonably be expected to result in a Material Adverse Effect; provided, however, that, in the case of clause (ii), the Company shall be entitled to an extension of such time (such extension not to exceed one hundred and eighty (180) days) so long as a concurrent extension of time is granted under the applicable Material Project Contract;

(h) The occurrence of an “event of default” (howsoever described) with respect to the non-payment of any indebtedness under (x) the Indenture or (y) any instrument or agreement governing Other Permitted Senior Secured Indebtedness involving in the aggregate in excess of $10,000,000, and, in each case, the maturity of such indebtedness is accelerated as a result thereof; or (ii) a final, non-appealable judgment for the payment of money in excess of $10,000,000 (adjusted annually for inflation and not otherwise covered by insurance) individually is entered against the Company and such judgment remains unsatisfied without any procurement of a stay of execution or insurance or a performance bond that adequately covers the liability for such judgment within thirty (30) days;

(i) Any Security Document shall cease (other than in accordance with its terms or as permitted under the 2016 Loan Documents) to be effective to grant a Security Interest on any material portion of the Collateral, other than as a result of actions or failure to act by the Collateral Agent or any other Secured Party, or, except as permitted under any Security Document, any Security Interest securing any Senior Secured Obligation shall, in whole or in part, cease to be a perfected first priority Security Interest (subject to Permitted Security Interests) in favor of the Collateral Agent for the benefit of the Senior Secured Parties, other than as a result of an act or omission of the Trustee or the Collateral Agent or any other Secured Party, and in either case, such event continues for thirty (30) days after the Collateral Agent gives notice thereof;

(j) The P3 Agreement expires, is terminated or otherwise ceases to be a valid and binding obligation of the Contracting Authority;

(k) The termination of the funding commitments under the TIFIA Loan Agreement by the TIFIA Lender prior to the RSA Date, to the extent following such termination, the committed funds to complete construction of the Purple Line are less than the projected remaining Project Costs to complete construction, as certified by the Lenders’ Technical Advisor, unless such commitments are replaced by alternative sources of financing (including funds available under the P3 Agreement) within ninety (90) days of such termination;

(l) The occurrence of a Change of Ownership not permitted by the P3 Agreement that has not been waived or consented to by the Contracting Authority;

(m) A Bankruptcy Event occurs with respect to Fluor while it is obligated with respect to the Design-Build Contractor’s obligations under the Design-Build Contract pursuant to its Design-Build Guaranty;

(n) Any Equity Letter of Credit expires or otherwise ceases to be valid or effective at any time that the Sponsor on whose behalf such Equity Letter of Credit was issued has any remaining commitment under the Equity Contribution Agreement and such Equity Letter of Credit is not drawn in full or replaced with another Equity Letter of Credit (or with cash collateral arising from a deposit to such Sponsor’s Applicable Sponsor Cash Collateral Account) within ten (10) Business Days after such event;

(o) Any Sponsor shall fail to make in full any Capital Contributions when required in accordance with the terms of the Equity Contribution Agreement, and such failure shall continue unremedied or unwaived for a period of thirty (30) days after the date of such failure; provided, that no Event of Default shall occur if such Sponsor’s obligations are secured by an Equity Letter of Credit (or cash collateral arising from a deposit to such Sponsor’s Applicable Sponsor Cash Collateral Account or a drawing under an Equity Letter of Credit) with an undrawn amount equal to or greater than the amount of such Capital Contribution, and before any such failure shall constitute an Event of Default, the Collateral Agent shall have made a drawing (and such drawing shall have been paid) under the applicable Equity Letter of Credit (or such cash collateral) supplied by such Sponsor pursuant to the Equity Contribution Agreement (and, if applicable, the Collateral Agency Agreement); provided further, that no
Event of Default shall occur if before the last day in which such Default could have been remedied prior to an Event of Default occurring, any one or more Sponsors have made a cash contribution sufficient to fund any deficiencies resulting after the applicable Equity Letters of Credit (or such cash collateral) have been drawn;

(p) The Design-Build Contract, any Design-Build Guaranty, the O&M Contract or any O&M Guaranty becomes void, voidable, unenforceable or illegal or are terminated by any party thereto during the effective period of such contract, and such event or circumstance would reasonably be expected to have a Material Adverse Effect, unless such agreement is replaced in accordance with the Series 2016 Loan Agreement and such event has not yet resulted in a Concessionaire Default under the P3 Agreement;

(q) Any insurance required to be maintained as set forth in the Series 2016 Loan Agreement ceases to be in full force and effect, unless such failure is remedied within thirty (30) days (without duplication of any cure period provided to the Company in the P3 Agreement) from receipt by the Company of written notice from the Contracting Authority specifying such failure and requesting that it be remedied; and

(r) The Company fails to comply with its obligations under “—Covenants of the Company—Abandonment of the Project” above.

**Remedies on Event of Default Under the Series 2016 Loan Agreement**

Whenever any Event of Default as described above has occurred and is continuing, the Trustee, or the Bond Issuer with the written consent of the Trustee, has the right to, in conjunction with its available remedies under the Indenture, take one or any combination of the following remedial steps, by notice to the Company and the Collateral Agent (in each case, subject and pursuant to the terms of the Intercreditor Agreement):

(a) If so instructed by the Majority Holders, declare that all or any part of any amount outstanding under the Series 2016 Loan Agreement is (1) immediately due and payable, and/or (2) payable on demand by the Trustee, and any such notice shall take effect in accordance with its terms but only if all amounts payable with respect to the Outstanding 2016 Bonds are being concurrently accelerated pursuant to the Indenture, or if all of the Outstanding 2016 Bonds are being defeased pursuant to Article XI of the Indenture or otherwise paid in full;

(b) If so instructed by the Majority Holders pursuant to the terms of the Intercreditor Agreement and the Collateral Agency Agreement, direct the Collateral Agent to take or cause to be taken any and all actions necessary to implement any available remedies with respect to the Collateral under any of the Security Documents;

(c) Have reasonable access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Company during regular business hours of the Company and following prior reasonable notice; or

(d) If so instructed by the Majority Holders, take on behalf of the Beneficial Owners whatever other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under the Series 2016 Loan Agreement or the rights of the Beneficial Owners, in each case, subject to the terms of the Intercreditor Agreement.

Any amounts collected pursuant to action taken under the Series 2016 Loan Agreement and the Security Documents and paid to the Trustee shall be applied in accordance with the Indenture.

**Amendments, Changes and Modifications**

Subsequent to the issuance of the 2016 Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise expressly provided in the Series 2016 Loan Agreement, the Series 2016 Loan Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of the Indenture.

For more detailed information relating to the terms of the Series 2016 Loan Agreement in general, including provisions relating to covenants, defaults and terminations, see APPENDIX H—“SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2016 LOAN AGREEMENT.”
TIFIA Loan Agreement

Conditionally Subordinated Debt - TIFIA Loan

Pursuant to the TIFIA Loan Agreement, the TIFIA Lender has agreed to extend a loan to the Company, drawn down from time to time, in an aggregate principal amount (excluding any interest that is capitalized in accordance with the terms thereof), together with the amount of any other credit assistance provided under the TIFIA Act to the Company, not to exceed 33% of reasonably anticipated Eligible Project Costs and as required pursuant to Section 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms thereof) not to exceed eighty percent (80%) of Eligible Project Costs, up to $874,595,239 (excluding capitalized interest), to be applied to the payment or reimbursement of certain Project Costs that are eligible to be financed with proceeds of the TIFIA Loan pursuant to federal law (the “Eligible Project Costs”). The interest rate with respect to the TIFIA Loan will be 2.41% per annum except that (i) in the event of a payment default, the Company will pay interest on any overdue amount from (and including) its due date to (but excluding) the date of actual payment at the foregoing rate plus 200 basis points (the “Default Rate”) and (ii) upon occurrence of an Event of Default under the TIFIA Loan Agreement based on a development default or Project abandonment, the interest rate on the outstanding TIFIA Loan balance will be the Default Rate and will continue to bear interest at such rate until (a) with respect to a development default, such development default has been cured or (b) with respect to an Event of Default under the TIFIA Loan Agreement due to Project abandonment, the outstanding TIFIA Loan balance has been paid in full.

As security for the TIFIA Loan, the Company will pledge, assign and grant, or will cause to be pledged, assigned and granted, to the Collateral Agent, for the benefit of the TIFIA Lender, liens on the Collateral in accordance with the provisions of the Security Documents. The payment of debt service on the TIFIA Loan and other TIFIA Obligations and the Security Interest in the Collateral with respect thereto are subordinate to the payment of obligations of the Company under the Series 2016 Loan Agreement and any other Senior Secured Obligations of the Company and the Security Interest in the Collateral with respect thereto. See “SECURITY FOR AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Intercreditor Terms Among the Secured Parties” and “—Limited Subordination of the TIFIA Loan” herein for circumstances under which, upon the occurrence of a Company Bankruptcy Related Event (for so long as the TIFIA Loan is held by the TIFIA Lender or another federal governmental entity to which the TIFIA Obligations have been transferred in accordance with the TIFIA Loan Agreement), which, for the avoidance of doubt, includes events in addition to the bankruptcy of the Company, (i) payments of principal of and interest and fees on the TIFIA Loan and other TIFIA Obligations will be on a parity with payments of principal of and interest on the 2016 Bonds (and other Senior Secured Obligations), (ii) the Security Interest in the Collateral for payment of the 2016 Bonds (and other Senior Secured Obligations) and the TIFIA Obligations will be on a parity (other than with respect to certain exclusive Security Interests in certain Collateral pursuant to the Security Documents, including the Bond Proceeds Sub-Accounts and the 2016D Bonds Debt Service Reserve Sub-Account), and (iii) the TIFIA Lender may, under certain circumstances, have greater rights than the Holders of the 2016 Bonds. See “FINANCING FOR THE PROJECT—TIFIA Loan Agreement,” “PAYMENT FOR THE 2016 BONDS—Intercreditor Terms Among the Secured Parties” and “RISK FACTORS—Risks Relating to the 2016 Bonds—TIFIA ‘Springing Lien’ and other important rights of TIFIA as a secured creditor.”

The TIFIA Loan has been assigned a preliminary rating of “BBB+” from S&P, an expected rating of “BBB+” from Fitch and a provisional rating of “BBB (high)” from DRBS.

Disbursement Request

All requests for disbursements of the TIFIA Loan have to be made by the Company by submission to the TIFIA Lender of a requisition form as attached to the TIFIA Loan Agreement (which form contains certain representations which the Company has to make and prescribes all documentation and other information required). The TIFIA Lender will be entitled to withhold approval of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

(a) an “Event of Default”, or event that, with the giving of notice or the passage of time or both, would constitute an “Event of Default” under the TIFIA Loan Agreement will have occurred and be continuing; or
(b) the Company:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated by the TIFIA Loan Agreement;

(ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or with good engineering practices, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by the Company with applicable federal or local law pertaining to the Project, or with the terms and conditions of the TIFIA Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or

(iv) fails to satisfy the disbursement conditions set forth in the TIFIA Loan Agreement, such disbursement conditions including, among other things, that:

1. following the making of the requested disbursement, the ratio of (A) the aggregate amount of the disbursements of the TIFIA Loan since the effective date of the TIFIA Loan Agreement (the “Effective Date”) to (B) maximum principal amount of the TIFIA Loan (excluding capitalized interest) will not exceed the Initial Senior Obligations Percentage;

2. with respect to the initial disbursement of the TIFIA Loan, (A) the closing of the Initial Senior Obligations will have occurred and (B) the New Starts Full Funding Grant Agreement will have been executed and delivered by FTA and MTA;

3. each equity contribution that has been made by the Sponsors pursuant to the Equity Contribution Agreement has been, or will be, applied towards payment of total Project costs (other than any total Project costs that would, or the reimbursement of which would, constitute a restricted payment) and the outstanding portion of the equity commitment will be fully supported by Equity Credit Support;

4. the Company will have demonstrated to the TIFIA Lender’s satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Purple Line have been issued and are in full force and effect;

5. as of the time of the applicable disbursement, (A) each of the insurance policies then required to be obtained by the Company (or caused to be maintained on its behalf) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider, (B) all premiums required to have been paid with respect to the Required Insurance Policies have been paid in full, and (C) to the extent requested by the TIFIA Lender prior to the date of disbursement, the Company has provided evidence of such payment of premiums to the TIFIA Lender;

6. at the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Event of Default under the TIFIA Loan Agreement or event of default under any other Related Document and (B) no event that with the giving of notice
or the passage of time or both would constitute an Event of Default under the TIFIA Loan Agreement or event of default under any other Related Document, in each case, will have occurred and be continuing;

(7) the Company will have provided to the TIFIA Lender evidence satisfactory to the TIFIA Lender that there is no shortfall between funds necessary to achieve Substantial Completion and funds available to pay all total Project costs necessary to achieve Substantial Completion; and

(8) no Material Adverse Effect (as defined in the TIFIA Loan Agreement), or any event or condition that could reasonably be expected to result in a Material Adverse Effect (as defined in the TIFIA Loan Agreement), will have occurred and be continuing since April 1, 2016; or

(v) fails to deliver documentation, satisfactory to the TIFIA Lender, evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Any determination, action or failure to act by the TIFIA Lender with respect to any requisition, including any withholding of a disbursement, will be at the TIFIA Lender’s sole discretion, and in no event will the TIFIA Lender be responsible for or liable to the Company for any and/or all consequence(s) which are the result thereof.

**Repayment Terms**

No payment of the principal of or interest on the TIFIA Loan is required to be made during the Capitalized Interest Period. On each March 31 and September 30 occurring during the Capitalized Interest Period and on the last day of the Capitalized Interest Period, interest accrued on the TIFIA Loan in the 6 month period ending immediately prior to such date (or such shorter period, if the Capitalized Interest Period ends on a date other than March 31 or September 30) will be capitalized and added to the outstanding TIFIA Loan balance. Within 30 days after the end of the Capitalized Interest Period, the TIFIA Lender will give written notice to the Company stating the outstanding TIFIA Loan balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof will be deemed conclusive absent manifest error; provided, that no failure to give or delay in giving such notice will affect any of the obligations of the Company under the TIFIA Loan Agreement or under any of the other TIFIA loan documents.

On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the Company will pay TIFIA Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date in the TIFIA Loan Agreement, as the same may be revised as provided in the TIFIA Loan Agreement, which payments will be made in accordance with the terms of the TIFIA Loan Agreement. The Company will pay all TIFIA Debt Service exclusively with funds derived from a source other than the Government.

If any Senior Obligations require the payment of principal or interest on any Interim Payment Date occurring after the Debt Service Payment Commencement Date, the Company will promptly notify the servicer (if any) and the TIFIA Lender thereof in writing, identifying the period covered by such Interim Payment Period and the Interim Payment Date. On any such Interim Payment Date occurring after the Debt Service Payment Commencement Date, the Company will transfer or otherwise deposit, or cause to be transferred or otherwise deposited, into the TIFIA Debt Service Account an amount equal to the amount of TIFIA Debt Service due and payable on the next succeeding Semi-Annual Payment Date multiplied by a fraction, the numerator of which is equal to the number of months contained in the Interim Payment Period ending on such Interim Payment Date and the denominator of which is equal to 6. If an Interim Payment Date is other than the first business day of a calendar month, the method for calculating any amount required to be transferred or deposited into the TIFIA Debt Service Account will be determined at such time by the parties to the TIFIA Loan Agreement.
Notwithstanding anything in the TIFIA Loan Agreement to the contrary, the outstanding TIFIA Loan balance and any accrued interest thereon will be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan will be accelerated pursuant to the provisions of the TIFIA Loan Agreement).

**Prepayment of TIFIA Loan**

The Company will be required to mandatorily prepay all or a portion of the TIFIA Loan pursuant to the terms of the TIFIA Loan Agreement, including:

(a) on the Revenue Service Availability Payment Date, with Equity Contributions made by the Equity Sponsors, and any other available amounts on deposit in the Construction Account, solely from funds that do not constitute TIFIA Loan proceeds, 2016 Bond proceeds or Progress Payments, in an aggregate amount, if any, necessary for the Company to comply with the Maximum Debt to Equity Ratio in accordance with the TIFIA Loan Agreement;

(b) upon receipt of any Termination Compensation, in an amount equal to the proceeds thereof less the amount of such proceeds required to be used to prepay the Senior Obligations pursuant to the Collateral Agency Agreement; provided, that if the Termination Compensation is payable on or after the occurrence of a Company Bankruptcy Related Event, or if the amount of Termination Compensation is in an amount less than 100% of the Company’s aggregate outstanding indebtedness, then such proceeds will be applied pro rata to prepay Senior Obligations and the TIFIA Loan;

(c) following the determination thereof in accordance with the Collateral Agency Agreement, any Net Loss Proceeds;

(d) on any Calculation Date after the Substantial Completion Date, any amounts that have remained in the Equity Lock-Up Account for more than 30 months (the “Equity Lock-Up Prepayment Amount”);

(e) in the amount of any compensation payable to the TIFIA Lender pursuant to the Intercreditor Agreement, such compensation arising if, at any time after the occurrence and during the continuance of an Event of Default under the TIFIA Loan Agreement and prior to the occurrence of a Company Bankruptcy Related Event, in connection with any consent, waiver or other modification of the TIFIA Loan Agreement or the TIFIA Note requested by the Company (or any affiliate thereof) or any person on behalf of the foregoing, if the Senior Secured Creditors are entitled to fees (or other compensation) for the entry into any comparable consent, waiver or other modification under the Finance Documents in respect of the Senior Secured Obligations, which fees (or other compensation) are at least equal to $100,000 in the aggregate, then the Company will be required to pay compensation to the TIFIA Lender in connection with the relevant consent, waiver or other modification that is no less favorable to the TIFIA Lender than the fees (or other compensation), if any, to which the Senior Secured Creditors are entitled. Such compensation payable to the TIFIA Lender will be paid as a mandatory prepayment of the TIFIA Loan; and

(f) in the amount of any mandatory prepayment of the TIFIA Loan required from amounts on deposit in the Revenue Account pursuant to the Flow of Funds, either pro rata with, or subordinate to, as the case may be, any mandatory prepayment or redemption of Additional Senior Obligations (but not 2016 Bonds) required from amounts on deposit in the Revenue Account pursuant to the Flow of Funds. The TIFIA Lender has the right to consent to the Company’s entrance into Additional Senior Obligations that feature extraordinary mandatory prepayment, extraordinary mandatory redemption or payment of accelerated amounts from amounts on deposit in the Revenue Account pursuant to the Flow of Funds. As part of such consent rights, TIFIA has the right to demand pro rata prepayment triggered by the same events or circumstances as such Additional Senior Obligations from amounts on deposit in the Revenue Account pursuant to the Flow of Funds. See “—Representations, Warranties and Covenants—Restrictions on Mandatory Prepayments from the Revenue Account” for further detail.

In addition, the Company has the right to prepay the TIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid will be determined by the Company; provided, that such prepayments have to be in principal amounts of at least $1,000,000 or any integral multiple of $1 in excess thereof), at any time or from time-to-time, without penalty or premium, by paying to the TIFIA Lender such principal amount of the TIFIA Loan to be
prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the TIFIA Loan has to be made on such date and in such principal amount as the Company specifies in a written notice delivered to the TIFIA Lender. In the case of any optional prepayment, such written notice has to be delivered to the TIFIA Lender not less than 10 days or more than 30 days prior to the date set for prepayment, unless otherwise agreed by the TIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Company may, without penalty or premium, rescind its announced optional prepayment by further written notice to the TIFIA Lender.

Representations, Warranties and Covenants

Pursuant to the terms of the TIFIA Loan Agreement, the Company will provide certain customary representations and warranties as of each date on which a disbursement of the TIFIA Loan is requested or made. In addition, the Company will undertake to comply with certain covenants, for the benefit of the TIFIA Lender, including, but not limited to:

Coverage Certificates. No later than five (5) Business Days after each Calculation Date after the Substantial Completion Date, the Company will furnish to the TIFIA Lender a certificate certifying as to (i) the Total Debt Service Coverage Ratio and the Senior Debt Service Coverage Ratio as of such Calculation Date and as of the Calculation Date immediately preceding such Calculation Date, (ii) the projected Total Debt Service Coverage Ratio and the projected Senior Debt Service Coverage Ratio as of such Calculation Date and for each of the four (4) Calculation Dates immediately succeeding such Calculation Date, and (iii) the Project Life Coverage Ratio as of such Calculation Date (each, a “TIFIA Coverage Certificate”). Each TIFIA Coverage Certificate has to be in form and substance satisfactory to the TIFIA Lender and has to include the Company’s calculation of each such coverage ratio in reasonable detail and the amount of the Equity Lock-Up Prepayment Amount payable (or anticipated to be payable), if any.

Oversight Covenant. If, after the Substantial Completion Date, (A) the Company fails on two consecutive Calculation Dates to maintain a minimum Total Debt Service Coverage Ratio of not less than 1.10:1.00, (B) the projected Total Debt Service Coverage Ratio for any Calculation Date through the Final Maturity Date is less than 1.10:1.00, or (C) the number of Noncompliance Points (x) for Operations Availability Noncompliance Events over the course of any four (4) consecutive months (determined on a rolling basis) is at least 2,880 or (y) for Activity Noncompliance Events over the course of any four (4) consecutive months (determined on a rolling basis) is at least 960, then in the case of clause (A), (B) or (C) above, the Company will:

(a) upon the request of the TIFIA Lender, engage a consultant, not objected to by the TIFIA Lender within 30 days after receiving written notice from the Company of the name of the proposed consultant, to review and analyze the operations of the Project and to recommend actions regarding changing the methods of operations or other actions to (i) increase the Net Cash Flow in an amount necessary to cause the Total Debt Service Coverage Ratio to satisfy the minimum requirements set forth in clauses (A) and (B) of the introductory paragraph above and (ii) reduce the frequency and severity of Noncompliance Events and related Noncompliance Points and, in each case, related deductions; and

(b) either implement the consultant’s recommendations or undertake an alternative plan that the consultant agrees is (i) likely to generate equivalent or greater Net Cash Flow than the consultant’s recommended actions or (ii) reduce the frequency and severity of Noncompliance Events and related Noncompliance Points and, in each case, related deductions, as applicable.

Notwithstanding the foregoing, the TIFIA Lender will expressly agree in the TIFIA Loan Agreement that the Company will not be obligated to undertake any action described in clause (b) above, whether or not such action is within the Company’s control, if such action may result in (x) non-compliance by the Company with any applicable law, regulation or Governmental Approval, (y) a breach by the Company of any obligation in the P3 Agreement or (z) interference in any material respect with the rights of the Contracting Authority as set forth in the P3 Agreement with respect to oversight, inspection and testing.

No Lien Extinguishment or Adverse Amendments. The Company will not, and will not permit any person to, without the prior written consent of the TIFIA Lender, either (i) extinguish or impair the liens on the Collateral, except as expressly provided in the Collateral Agency Agreement and the other Security Documents, (ii) assign,
terminate or replace any Principal Project Contract, subject to the replacement rights and other exceptions set forth in the applicable Events of Default under the TIFIA Loan Agreement described in more detail in section “—Events of Default” below, (iii) amend, modify, replace or supplement any Related Document (other than a Principal Project Contract) in a manner that could adversely affect the TIFIA Lender in connection with the TIFIA Loan, (iv) waive or permit a waiver of any provision of any Related Document (other than a Principal Project Contract) in a manner that could adversely affect the TIFIA Lender in connection with the TIFIA Loan, or (v) amend, supplement or modify, or waive performance by the Contracting Authority or any Principal Project Party of its respective material covenants under, any Principal Project Contract except for any amendment, supplement, modification or waiver that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect.

Rehabilitation Reserve Account.

(i) On or prior to the Substantial Completion Date, the Company will establish the Rehabilitation Reserve Account. The Rehabilitation Reserve Account shall be subject to the Security Interest of the Collateral Agent for the benefit of the Secured Parties. The Company will deposit into the Rehabilitation Reserve Account all Lifecycle Payments (other than the Special Lifecycle Payments) received from the Contracting Authority from time to time pursuant to the P3 Agreement. Subject to clauses (ii) and (iii) of this section below, the Company will be entitled to withdraw funds from the Rehabilitation Reserve Account solely to pay the O&M Contractor in accordance with the Collateral Agency Agreement (and solely to the extent of the available cash on deposit therein), as follows:

(A) if an element of Renewal Work was required to be performed (and was performed) earlier than specified in the Company’s budget and schedule set forth in the Base Case Projections (the “Base Case Budget”), the Company will be entitled to withdraw funds from the Rehabilitation Reserve Account to pay the O&M Contractor an amount equal to the total amount budgeted in the Base Case Budget for such element of Renewal Work and in accordance with the schedule included in the Base Case Budget or, if earlier, following the receipt by the Company of the Lifecycle Payment from the Contracting Authority in respect of such element of Renewal Work and the deposit thereof into the Rehabilitation Reserve Account;

(B) if the costs actually incurred by the O&M Contractor for performance of an element of Renewal Work are less than the costs projected for such element in the Base Case Budget, the Company will be entitled to withdraw funds from the Rehabilitation Reserve Account to pay the O&M Contractor the total amount budgeted for such element of Renewal Work in the Base Case Budget; provided that if the costs actually incurred by the O&M Contractor for performance of an element of Renewal Work are greater than the amount projected for such element in the Base Case Budget, the Company will only be entitled to withdraw from the Rehabilitation Reserve Account and pay to the O&M Contractor an amount equal to such budgeted amount;

(C) if the Company reasonably determines (as confirmed in writing to the TIFIA Lender by the Lenders’ Technical Advisor) that an element of Renewal Work set forth in the Base Case Budget is no longer required to be performed (other than in the case where such element of Renewal Work was performed earlier than specified in the Base Case Budget as described in clause (A) above), the Company will be entitled to withdraw funds from the Rehabilitation Reserve Account to pay the O&M Contractor the total amount budgeted for such element of Renewal Work in the Base Case Budget in accordance with the schedule therein (notwithstanding that such element of Renewal Work has not been, and will not be, performed); and

(D) if the Company reasonably determines (as confirmed in writing to the TIFIA Lender by the Lenders’ Technical Advisor) that an element of Renewal Work set forth in the Base Case Budget may be performed later than specified in the applicable schedule set forth therein, the Company will be entitled to perform, or cause to be performed, such element of Renewal Work at such later time and to pay the O&M Contractor the total amount budgeted for such element of Renewal Work in the Base Case Budget; provided that (1) the Company will not be entitled to withdraw any funds from the Rehabilitation Reserve Account to pay the O&M Contractor for such element of Renewal Work until such Renewal Work has been performed and (2) performance of such Renewal Work at such later time is in compliance with the P3 Agreement.
(ii) On the tenth (10th) anniversary of the Substantial Completion Date and annually thereafter, concurrently with the delivery of the annual Lenders’ Technical Advisor report pursuant to the TIFIA Loan Agreement, the Lenders’ Technical Advisor will deliver a certificate to the TIFIA Lender certifying: (A) that the Company’s budget for the performance of Renewal Work is sufficient to cover the remaining scheduled Renewal Work necessary to meet the Handback Requirements and (B) as to the difference, if any, between (1) the sum of (x) the remaining scheduled Lifecycle Payments (other than the Special Lifecycle Payments) and (y) the amount on deposit in the Rehabilitation Reserve Account (not inclusive of any remaining amounts deposited therein at such time corresponding to any prior determination of the Lifecycle Deficit Amount) and (2) the projected remaining cost of the Renewal Work, including costs necessary to meet the Handback Requirements, from the date of such certificate until the end of the scheduled Term (any such amount from time to time, the “Lifecycle Deficit Amount” and such certificate, the “Lifecycle Deficit Amount Certificate”).

(iii) Promptly (and no later than ten (10) Business Days) following the delivery of the Lifecycle Deficit Amount Certificate on such tenth (10th) anniversary date, the Company will deposit, or cause to be deposited, an amount equal to the Lifecycle Deficit Amount, if any, into the Rehabilitation Reserve Account. Thereafter, the Rehabilitation Reserve Account will be funded pursuant to the Flow of Funds, as described in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Revenue Account—On and After the RSA Date,” in the amount of the Lifecycle Deficit Amount, if any, set forth in each subsequent Lifecycle Deficit Certificate. The Company may replace, or cause to be replaced, all or a portion of the balance of the Rehabilitation Reserve Account, in accordance with the terms of the Collateral Agency Agreement, with an Acceptable Letter of Credit.

P3 Agreement. The Company will comply with the P3 Agreement in all material respects and will not (A) terminate the P3 Agreement, (B) accept any conditional election of the Contracting Authority to terminate the P3 Agreement or (C) following a conditional election of the Contracting Authority to terminate the P3 Agreement for extended delay or insurance unavailability, give the Contracting Authority notice to continue performing its obligations thereunder (or that Company elects to continue to perform its obligations thereunder), in each case, without the prior written consent of the TIFIA Lender; provided that, the Company may, without the prior written consent of the TIFIA Lender, take the actions set forth in (x) clauses (A) or (B) above if such termination or acceptance of termination is in accordance with the terms of the P3 Agreement, respectively, on account of insurance unavailability, extended delay or court ruling and could not reasonably be expected to have a Material Adverse Effect (other than pursuant to clauses (a) or (b) of the definition thereof as defined in the TIFIA Loan Agreement), or (y) clause (C) above if such election or notice by the Company cannot reasonably be expected to adversely affect the Company’s ability to repay in full on cash the TIFIA Loan and could not otherwise reasonably be expected to have a Material Adverse Effect (as defined in the TIFIA Loan Agreement).

Permitted Indebtedness. Except for Permitted Debt, the Company will not without the prior written consent of the TIFIA Lender issue or incur Indebtedness of any kind; provided that the Company will not incur any Indebtedness of any kind payable from, secured or supported by the Collateral, including Permitted Debt, without the prior written consent of the TIFIA Lender, following the occurrence, and during the continuation, of an Event of Default under the TIFIA Loan Agreement. Prior to or promptly following the incurrence of Permitted Debt described in clause (d) of the definition thereof (purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project that are payable as Operations and Maintenance Expenses and that in the aggregate do not require payments by the Company in any Company Fiscal Year in excess of $250,000), the Company will provide a certificate to the TIFIA Lender certifying that (x) such purchase money obligations or capitalized leases, as applicable, comply with the requirements therefor set forth in clause (d) of the definition of Permitted Debt and (y) solely if such Permitted Debt is payable from, secured or supported by the Collateral, at the time of such incurrence and after giving effect thereto, no Event of Default under the TIFIA Loan Agreement has occurred and is continuing. At least thirty (30) days prior to the incurrence of any Additional Senior Obligations, the Company will provide notice to the TIFIA Lender of the contemplated incurrence of such Indebtedness, which notice will (i) specify the anticipated closing date with respect to such Indebtedness, (ii) include a written certification of the Company’s Authorized Representative that such proposed Indebtedness is authorized pursuant to the TIFIA Loan Agreement, (iii) be accompanied by a Revised Financial Model reflecting the incurrence of such Indebtedness, as and to the extent required under the definition of Additional Senior Obligations, and (iv) include all certifications and confirmations required under the definition of Additional Senior Obligations with respect to such Indebtedness.
Restrictions on Mandatory Prepayments from the Revenue Account. The Company will not make any extraordinary mandatory prepayment, extraordinary mandatory redemption or payment of accelerated amounts with respect to the Senior Obligations (x) pursuant to the Flow of Funds set forth in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Revenue Account – Upon the RSA Date” or (y) otherwise with amounts transferred from the Revenue Account except (A) the extraordinary mandatory redemption with respect to the Series 2016D Bonds in the case that the RSA Date occurs prior to the RSA deadline and (B) any extraordinary mandatory prepayment, extraordinary mandatory redemption or payment of accelerated amounts with respect to any Additional Senior Obligations; provided that, in the case of this clause (B), the TIFIA Lender has consented thereto in writing, which consent may include, in the discretion of the TIFIA Lender, a requirement for the TIFIA Loan to be prepaid on a pro rata basis with the prepayment of the relevant Additional Senior Obligations. For the avoidance of doubt, this section will not impair the Company’s ability to make, or require the consent of the TIFIA Lender in connection with making, scheduled principal payments, mandatory sinking fund payments, optional redemptions or optional prepayments (x) pursuant to the Flow of Funds set forth in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Revenue Account – Upon the RSA Date,” or (y) otherwise with amounts transferred from the Revenue Account in accordance with the Flow of Funds set forth in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Revenue Account – Upon the RSA Date”, nor will this section affect the rights of the Collateral Agent regarding collateral and remedies, including the enforcement waterfall set forth in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Application of Proceeds” in the Collateral Agency Agreement.

Change of Control. The Company will not permit a Company Change of Control or an Equity Change of Control to occur without the prior written consent of the TIFIA Lender, provided that, with respect to any Company Change of Control (x) after the date that is two (2) years after Substantial Completion, and (y) as long as no Event of Default under the TIFIA Loan Agreement or any event that, with the giving of notice or the passage of time or both, would constitute an Event of default under the TIFIA Loan Agreement, has occurred and is continuing, and no event of default under the Senior Loan Agreement, or any event that, with the giving of notice or the passage of time or both, would constitute an event of default under the Senior Loan Agreement, has occurred and is continuing, the TIFIA Lender may witheld such consent only if (A) the proposed transfer is prohibited by applicable law or (B) the Person to whom Control is proposed to be transferred is, in the reasonable judgment of the TIFIA Lender, not capable of performing the obligations and covenants of the Company under the P3 Agreement, which determination may be based upon, or take into account, one or more of the following factors: (1) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (2) the capitalization of the proposed transferee; (3) the experience of the proposed transferee or the operations and maintenance contractor proposed to be engaged by such transferee in operating assets and facilities of the same type as, and otherwise comparable in size and nature to, the Project and performing other projects; and (4) the background and reputation of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person’s past or present performance on other projects).

Distributions. Except in accordance with this section, the Company will not at any time make (i) any distribution or other payment in respect of an outstanding equity interest in the Company, or in respect of any redemption, repurchase or other acquisition thereof (or otherwise permit the withdrawal of capital from the Company), (ii) any payment of, interest on or other amounts in respect of any debt for borrowed money owed by the Company to any holder of an outstanding equity interest in the Company, or (iii) any payment to any Affiliate of the Company or of any holder of an equity interest in the Company (other than (v) the transfer or withdrawal of funds from any Project Account following substitution of an Acceptable Letter of Credit for cash on deposit in such Project Account permitted pursuant to “PROJECT ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—Rehabilitation Reserve Account” or “PROJECT ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—Reserve Accounts; Reserve Letters of Credit,” (w) any development fees payable to the Equity Sponsors on or promptly following the 2016 Bonds Closing Date in accordance with the Base Case Financial Model, (x) payments of Equity Letter of Credit fees to the extent scheduled in the Base Case Financial Model and made in accordance with the Collateral Agency Agreement, (y) payments permitted pursuant to the provisions regarding transactions with Affiliates in the TIFIA Loan Agreement, including amounts required to be paid by the Company to the Design-Build Contractor or the O&M Contractor under the applicable Principal Project Contracts and (z) the transfer or withdrawal of funds from the Tax Reserve Account in accordance with “PROJECT ACCOUNTS AND FLOW OF FUNDS—Description of Project Accounts—Tax Reserve Account”) (collectively,
"Restricted Payments"). The Company may make Restricted Payments (1) at any time from monies on deposit in the Distribution Account and (2) solely on Restricted Payment Dates and subject to this section, from the Equity Lock-Up Account. On the date occurring ten (10) days following any Calculation Date (or if such day is not a Business Day, the immediately preceding Business Day) (each, a "Restricted Payment Date"), monies may be transferred to the Distribution Account (or from the Equity Lock-Up Account to the Distribution Account or to make Restricted Payments) if all of the following conditions (the "Restricted Payment Conditions") have been satisfied as of the applicable Restricted Payment Condition Satisfaction Dates (provided that, in the case of any such transfer from the Equity Lock-Up Account, the Restricted Payment Conditions will have been satisfied in full on the Restricted Payment Condition Satisfaction Dates applicable to the Restricted Payment Date on which such transfer is made and on the Restricted Payment Condition Satisfaction Dates applicable to the immediately preceding Restricted Payment Date):

(i) The Revenue Service Availability Date will have occurred and the Contracting Authority’s obligation to make Availability Payments under the P3 Agreement will have commenced, (b) the Final Completion Payment Date will have occurred and (c) the Debt Service Payment Commencement Date will have occurred;

(ii) The 2016C Bonds will have been paid in full in cash with the proceeds of the Revenue Service Availability Payment and other amounts under and in accordance with the Initial Senior Loan Agreement and the other applicable Senior Loan Documents, (b) the 2016B Bonds will have been paid in full in cash with the proceeds of the Final Completion Payment under and in accordance with the Initial Senior Loan Agreement and the other applicable Senior Loan Documents, and (c) the first principal payment under the TIFIA Loan will have been paid in full;

(iii) All transfers and distributions required to be made pursuant to clauses First through Eighteenth of the Flow of Funds set forth in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Revenue Account – Upon the RSA Date” on or prior to the applicable Semi-Annual Transfer Date will have been satisfied in full;

(iv) The Total Debt Service Coverage Ratio as of the most recent Calculation Date (which may occur on such Semi-Annual Payment Date) and as of the Calculation Date immediately preceding such Calculation Date is or was, as applicable, equal to at least 1.20:1.00 and (b) the Total Debt Service Coverage Ratio as of the four (4) consecutive Calculation Dates following the most recent Calculation Date is projected to be at least 1.20:1.00;

(v) The Project Life Coverage Ratio is or was, as applicable, greater than 1.20:1.00 on the most recent Calculation Date (which may occur on such Semi-Annual Payment Date);

(vi) No Event of Default under the TIFIA Loan Agreement, or any event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the TIFIA Loan Agreement, has occurred and is continuing, and no event of default under the Senior Loan Documents, or any event that, with the giving of notice or the passage of time or both, would constitute an event of default under the Senior Loan Documents, has occurred and is continuing, or, in each case, would occur as a direct result of the proposed transfer of funds to the Distribution Account or the Restricted Payment;

(vii) No Payment Default or payment event of default with respect to the Senior Obligations will have occurred and be continuing and the Company has made all TIFIA Debt Service payments during the twelve (12) month period ending on the Semi-Annual Payment Date occurring on or immediately prior to the applicable Restricted Payment Date;

(viii) Each Reserve Account is fully funded (in cash, Permitted Investments or by an Acceptable Letter of Credit) in an amount equal to its respective required balance;

(ix) The Company is not insolvent and would not be rendered insolvent by the making of such proposed Restricted Payment; and
(x) The TIFIA Lender has received, no earlier than ten (10) Business Days and no later than three (3) Business Days prior to the applicable Restricted Payment Date, a certificate signed by the Company's Authorized Representative certifying as to the matters contemplated in clauses (i) through (ix) above, including a TIFIA Coverage Certificate providing calculations in reasonable detail of the applicable coverage ratios.

Additional Covenants. The following briefly summarizes certain additional covenants of the Company (which covenants may be qualified by materiality and other exceptions):

(a) securing and maintaining the liens;

(b) providing copies of documents to the TIFIA Lender;

(c) using proceeds of the TIFIA Loan only for purposes permitted by applicable law, and as otherwise permitted under the TIFIA Loan Agreement and Related Documents;

(d) diligently prosecuting the work relating to the Project (and ensuring the Design-Build Contractor complies with all applicable laws and requirements relating to any Design-Build Contract performance security instrument);

(e) general operation and maintenance covenants;

(f) maintaining all required insurance on the Project;

(g) providing notice, information and proposed remedial action to the TIFIA Lender following the occurrence of various events;

(h) maintaining its existence as a limited liability company under the laws of Delaware;

(i) providing an annual rating;

(j) causing delivery of the Lenders’ Technical Advisor’s report;

(k) requirements relating to project accounts and reserve accounts;

(l) contribution of equity commitments and maintenance of equity letters of credit;

(m) paying its material obligations and paying and discharging all taxes, assessment and governmental charges or levies;

(n) requirements relating to issuance of any Other Permitted Senior Secured Indebtedness that bears interest at a variable interest rate, including interest hedging requirements;

(o) pursuing all rights to compensation following an Event of Loss and paying or applying all Loss Proceeds in accordance with the P3 Agreement and the Collateral Agency Agreement;

(p) limitations on liens, additional project contracts and transactions with affiliates;

(q) no prohibited sales or assignments;

(r) prohibition on amending or modifying organizational documents or adopting any fiscal year other than the Company Fiscal Year, without the prior written consent of the TIFIA Lender;

(s) no engagement in any business or activity other than the design, construction, operation and maintenance of the Purple Line and activities incidental or related thereto;

(t) No mergers or acquisitions; and

(u) OFAC compliance.
Events of Default

The following events constitute “Events of Default” under the TIFIA Loan Agreement:

(a) The Company fails to pay any of the principal amount of or interest due and payable on the TIFIA Loan;

(b) A failure by the Company to observe or perform any covenant, agreement or obligation of the Company under the TIFIA Loan Agreement, the TIFIA Note or any other TIFIA Loan document (other than in the case of any payment default or any Development Default), and such failure will not be cured within 30-days after the earlier to occur of (A) receipt by the Company from the TIFIA Lender of written notice thereof, or (B) the Company’s knowledge of such failure; provided, that if such failure is capable of cure but cannot reasonably be cured within such 30-day period, then no Event of Default under the TIFIA Loan Agreement will be deemed to have occurred or be continuing and such 30-day cure period will be extended by up to 150 additional days, if and so long as (x) within such 30 -day cure period the Company commences actions reasonably designed to cure such failure and diligently pursues such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either clause (A) or (B) above, as applicable;

(c) A Development Default occurs, and such Development Default is not be cured within 30 days thereafter; provided that no Event of Default under the TIFIA Loan Agreement will be deemed to have occurred or be continuing by reason of such Development Default if and so long as (A) within such 30-day period, the Company demonstrates to the TIFIA Lender’s reasonable satisfaction (which demonstration will include certification by the Lenders’ Technical Advisor) that (1) the Company has commenced actions reasonably designed to achieve Substantial Completion prior to the Long Stop Date and (2) the Company has sufficient funds to pay all total Project costs necessary to achieve Substantial Completion and all other costs, including all debt service and other amounts in respect of its indebtedness as originally scheduled under all of its Finance Documents (including Senior Debt Service and TIFIA Debt Service), irrespective of the delay in achieving Substantial Completion, and (B) the Company continues to proceed with construction of the Purple Line with due diligence to achieve Substantial Completion prior to the Long Stop Date. If a Development Default exists and is not cured as provided above, then the TIFIA Lender may suspend the disbursement of TIFIA Loan proceeds under the TIFIA Loan Agreement and pursue such other remedies as provided in the TIFIA Loan Agreement. If so requested by the TIFIA Lender in connection with a Development Default, the Company will immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Company;

(d) Any of the representations, warranties or certifications of the Company made in or delivered pursuant to the TIFIA loan documents (or in any certificates delivered by the Company in connection with the TIFIA loan documents) proves to have been false or misleading in any material respect (or any representation and warranty that is subject to a materiality qualifier proves to have been false or misleading in any respect) when made or deemed made; provided, that no Event of Default under the TIFIA Loan Agreement will be deemed to have occurred if and so long as (a) such misrepresentation is not intentional, (b) such misrepresentation is not a misrepresentation in respect of certain representations and warranties in the TIFIA Loan Agreement, (c) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a material adverse effect, (d) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured, (e) such underlying issue is cured by the Company within 30 days from the date on which the Company first became aware (or reasonably should have become aware) of such misrepresentation and (f) the Company diligently pursues such cure during such 30-day period;

(e) Any acceleration occurs with respect to the maturity of the Senior Obligations or of any other indebtedness of the Company in an aggregate principal amount equal to or greater than $1,000,000 (“Other Material Indebtedness”), or any such Senior Obligations or Other Material Indebtedness is not be paid in full upon the final maturity thereof, unless and for only so long as any default arising from such non-payment has been waived in accordance with the terms thereof and the Company has delivered a complete, correct and fully executed copy of such waiver to the TIFIA Lender;

(f) (i) Any of the representations, warranties or certifications of the Company made in or delivered pursuant to the Senior Loan Documents, or made in or delivered pursuant to the other loan documents
under which any Other Material Indebtedness is created or incurred (the “Other Loan Documents”), proves to be false or misleading in any material respect (each an “Other Indebtedness Misrepresentation Default”), or any default will occur in respect of the performance of any covenant, agreement or obligation of the Company under the Senior Loan Documents or the Other Loan Documents, and such default will be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the Senior Loan Documents or the Other Loan Documents (as the case may be) with respect to such default (each an “Other Indebtedness Misrepresentation Default”), if the effect of such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default is to permit the immediate acceleration of the maturity of any or all of the Senior Obligations or the Other Material Indebtedness (as the case may be), and, in the case of any such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default, the Company has failed to cure such Other Indebtedness Misrepresentation Default or Other Indebtedness Covenant Default or to obtain an effective written waiver thereof in accordance with the terms of such Senior Obligations or Other Material Indebtedness;

(ii) (1) The Company defaults in the timely performance of any covenant, agreement or obligation under any Principal Project Contract to which it is a party or any Principal Project Contract is terminated prior to its scheduled termination date (or, with respect to the P3 Agreement, the Contracting Authority has provided notice of termination thereunder), other than a termination or notice of termination with respect to the P3 Agreement that does not require the consent of the TIFIA Lender pursuant to, and in accordance with, the proviso set forth in section “—Representations, Warranties and Covenants – P3 Agreement” above unless, in any such case, such default or termination could not reasonably be expected to have a Material Adverse Effect, and the Company has failed to cure such default or to obtain an effective written waiver thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be), or (2) the Design-Build Contract, any Design-Build Guaranty, the O&M Contract or any O&M Guaranty ceases to be in full force and effect for any reason (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable (unless such failure to be in full force and effect or such event or circumstance could not reasonably be expected to have a Material Adverse Effect); provided that no Event of Default under the TIFIA Loan Agreement will be deemed to have occurred or be continuing under this clause (ii) if, in the case of any termination of a Principal Project Contract (other than the P3 Agreement) or upon the occurrence of any event described in clause (2) above, the Company replaces such Principal Project Contract with a replacement agreement (I) entered into with another counterparty that (x) is of similar or greater creditworthiness (including credit support), technical capability and relevant experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the TIFIA Lender) and (y) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (II) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender) and (III) effective as of the date of termination of the Principal Project Contract being replaced (or with respect to the occurrence of any event described in clause (2) above, effective as soon as practicable following such event (but in no case longer than sixty (60) days thereafter));

(g) One or more judgments (A) for the payment of money in an aggregate amount in excess of $1,000,000 and not otherwise fully covered by insurance or (B) that would reasonably be expected to result in a Material Adverse Effect are, in either case, rendered against the Company and the same remains undischarged for a period of 30 consecutive days during which time period execution is not be effectively stayed, or any action is legally taken by a judgment creditor to attach or levy upon any assets of the Company to enforce any such judgment;

(h) A Company Change of Control or an Equity Change of Control occurs other than a Company Change of Control or an Equity Change of Control for which the TIFIA Lender has given its consent in accordance with the TIFIA Loan Agreement;

(i) The Company fails to maintain its existence as a limited liability company under the laws of the State of Delaware;

(j) Any equity contribution required to be made under the provisions of the TIFIA Loan Agreement or pursuant to the Equity Contribution Agreement fails to be made at the time and in the amount so required, unless
such failure is cured by a draw on the Equity Letter of Credit or other Equity Credit Support securing such equity contribution;

(k) A Bankruptcy Related Event occurs with respect to:

(i) the Company or any other Company Related Party; or

(ii) any Principal Project Party; provided that no Event of Default under the TIFIA Loan Agreement will be deemed to have occurred or be continuing with respect to a Bankruptcy Related Event of a Principal Project Party under the following circumstances:

(1) with respect to a Bankruptcy Related Event of any Principal Project Party (including a Design-Build Contractor Party, Design-Build Guarantor, O&M Contractor Party or O&M Guarantor to the extent clause (2) or (3) below, as applicable, does not apply), (I) such Principal Project Party is replaced within ninety (90) days after the occurrence of such Bankruptcy Related Event by a new Principal Project Party that (x) possesses similar or greater creditworthiness (including credit support), technical capability and relevant experience as the counterparty being replaced, considered as of the time the applicable Principal Project Contract was executed, as certified by the Lenders’ Technical Advisor (or otherwise reasonably acceptable to the TIFIA Lender), (y) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, and (z) to the extent the replaced Principal Project Party was party to a Principal Project Contract, is bound under a contract containing substantially the same terms and conditions as such replaced Principal Project Contract (or otherwise reasonably acceptable to the TIFIA Lender) and which is effective as of the date of termination of such Principal Project Contract, (II) solely with respect to a Bankruptcy Related Event of a DB Party, the Design-Build Contractor is capable (in the TIFIA Lender’s reasonable determination, in consultation with the Lenders’ Technical Advisor) of completing the Project in accordance with the construction schedule and project budget set forth in the financial plan most recently approved by the TIFIA Lender, (III) solely with respect to a Bankruptcy Related Event of an O&M Party, the O&M Contractor is capable (in the TIFIA Lender’s reasonable determination, in consultation with the Lenders’ Technical Advisor) of performing the O&M Work in accordance with the O&M Contract and the Company’s schedule and budget with respect thereto set forth in the financial plan most recently approved by the TIFIA Lender and (IV) each DB Performance Security Instrument or O&M Performance Security Instrument, as applicable, required under the applicable Principal Project Contracts is in full force and effect at the time of such replacement;

(2) solely with respect to a Bankruptcy Related Event of a Design-Build Contractor Party or a DB Guarantor (other than Fluor or Fluor Enterprises), the Lenders’ Technical Advisor certifies to the TIFIA Lender that, notwithstanding such Bankruptcy Related Event (I) the Design-Build Contractor is capable of completing the Project in accordance with the construction schedule and project budget set forth in the financial plan most recently approved by the TIFIA Lender and (II) there is no adverse effect on any of the DB Performance Security Instruments as a result of such Bankruptcy Related Event (other than (x) the DB Guaranty of the DB Guarantor affected by the Bankruptcy Related Event or (y) any other DB Performance Security Instrument with respect to which such affected DB Guarantor is an account party, so long as, in the case of this clause (y), one or more replacement DB Performance Security Instruments have been provided that satisfy in full the applicable requirements therefor under the Design-Build Contract and the P3 Agreement as applicable; and

(3) solely with respect to a Bankruptcy Related Event of an O&M Contractor Party or an O&M Guarantor (other than Fluor or Fluor Enterprises), the Lenders’ Technical Advisor certifies to the TIFIA Lender that, notwithstanding such Bankruptcy Related Event (I) the O&M Contractor is capable of performing the O&M Work in accordance with the O&M Contract and the Company’s schedule and budget with respect thereto set forth in the Financial Plan most recently approved by the TIFIA Lender and (II) there is no adverse effect on any of the O&M Performance Security
Instruments as a result of such Bankruptcy Related Event (other than (x) the O&M Guaranty of the O&M Guarantor affected by the Bankruptcy Related Event or (y) any other O&M Performance Security Instrument with respect to which such affected O&M Guarantor is an account party, so long as, in the case of this clause (y), one or more replacement O&M Guarantor is an account party, so long as, in the case of clause (y) one or more replacement O&M Performance Security Instruments have been provided that satisfy in full in the aggregate the applicable requirements therefor under the O&M Contract and the P3 Agreement, as applicable);

(l) The Company abandons the Project;

(m) The P3 Agreement expires or is terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason ceases to be in full force and effect;

(n) (i) Any TIFIA loan document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes or is declared by a court of competent jurisdiction to be void, voidable, illegal or unenforceable, or any Company Related Party contests in any manner the validity or enforceability of any TIFIA loan document to which it is a party or denies it has any further liability under any TIFIA loan document to which it is a party, or purports to revoke, terminate or rescind any TIFIA loan document to which it is a party; or (ii) any Security Document ceases (other than as expressly permitted thereunder) to be effective to grant a perfected security interest on any material portion of the Collateral described therein other than as a result of actions or a failure to act by the Collateral Agent or any other Secured Party, and with the priority purported to be created thereby;

(o) Operation of the Purple Line after the Substantial Completion Date ceases for a continuous period of not less than one hundred eighty (180) days unless the Company demonstrates to the TIFIA Lender’s satisfaction that: (A) such cessation of operations has occurred by reason of a Relief Event or Force Majeure Event and the Contracting Authority has consented to the cessation of operations by reason of such Relief Event or Force Majeure Event or has otherwise directed the cessation under the P3 Agreement, (B) the Company has sufficient funds, or is entitled to receive or recover funds, in an aggregate amount sufficient to pay all Senior Debt Service, TIFIA Debt Service and costs and expenses of the Company during such cessation of operations, including any costs of repair or renewal of the Project following any casualty event, from (1) one or more insurance policies held by the Company (or any Principal Project Party) which are in full force and effect and (2) payments under the P3 Agreement, and (C) the Company diligently restores any physical damage or destruction to the Project;

(p) Any Reserve Account is not fully funded to its required balance on the date required to be initially funded in accordance with the Collateral Agency Agreement;

(q) The number of Noncompliance Points exceeds (A) 13,908 during any period of three (3) consecutive months, (B) 23,028 during any period of six (6) consecutive months or (C) 32,034 during any period of twelve (12) consecutive months.

Remedies

If an “Event of Default” under the TIFIA Loan Agreement consisting of a Development Default occurs, all obligations of the TIFIA Lender under the TIFIA Loan Agreement with respect to the disbursement of any undisbursed amounts of the TIFIA Loan will automatically be deemed terminated.

If an “Event of Default” under the TIFIA Loan Agreement consisting of a Company Bankruptcy Related Event occurs, all obligations of the TIFIA Lender under the TIFIA Loan Agreement with respect to the disbursement of any undisbursed amounts of the TIFIA Loan will automatically be deemed terminated, and the outstanding TIFIA Loan balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under the TIFIA Loan Agreement, the TIFIA Note or the other TIFIA loan documents, will automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which will be expressly waived.

If any other “Event of Default” under the TIFIA Loan Agreement occurs, the TIFIA Lender, by written notice to the Company, may (A) suspend or terminate all of its obligations under the TIFIA Loan Agreement with
respect to the disbursement of any undisbursed amounts of the TIFIA Loan and (B) declare the unpaid principal amount of the TIFIA Note to be, and the same will thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under the TIFIA Loan Agreement, the TIFIA Note or the other TIFIA loan documents, all without presentment, demand, notice, protest or other requirements of any kind, all of which will be expressly waived.

**Equity Contributions**

Pursuant to the Equity Contribution Agreement, each Sponsor has committed and undertaken to make, or to cause any of its affiliates to make on its behalf, in the manner and at such times as contemplated in the Equity Contribution Agreement in an aggregate amount not to exceed such Sponsor’s aggregate equity commitment. The aggregate equity commitment of each Sponsor (i) with respect to Meridiam, is US$96,936,434; (ii) with respect to Fluor Enterprises, is US$20,772,093; and (iii) with respect to Star America, is US$20,772,093.

On or prior to each Construction Funds Transfer Date occurring on or prior to the RSA Funding Date, subject to the delivery of a Contribution Notice, each Sponsor will make or cause to be made through any of its affiliates, a Capital Contribution in an amount equal to such Sponsor’s Percentage Interest of any Funding Insufficiency as of such Construction Funds Transfer Date. The Company will deliver a Company Contribution Notice to the Sponsors no later than seven (7) Business Days prior to any Construction Funds Transfer Date on which a Funding Insufficiency is reasonably expected by the Company to occur.

On the earlier of (a) the date that is ten (10) Business Days prior to the RSA Deadline, or (b) the RSA Date, (i) Meridiam will contribute, or will cause any of its Affiliates to contribute on its behalf, funds to the capital of the Company equal to 100% of Meridiam’s Unused Capital Commitment as of such date, (ii) Star America will contribute, or will cause any of its Affiliates to contribute on its behalf, funds to the capital of the Company, equal to 100% of Star America’s Unused Capital Commitment as of such date, and (iii) Fluor Enterprises will contribute, or will cause any of its Affiliates to contribute on its behalf, funds to the capital of the Company equal to 100% of Fluor Enterprises’ Unused Capital Commitment as of such date.

**Acceleration**

Upon the occurrence and during the continuance of a Non-Bankruptcy Event of Default, subject to the delivery of a Lenders’ Contribution Notice, the Collateral Agent (acting at the direction of the Intercreditor Agent) will be entitled to accelerate the obligation of each Sponsor to contribute each Sponsor’s Unused Capital Commitment, and upon receipt of such Lenders’ Contribution Notice, each Sponsor will make payment of its respective Unused Capital Commitment to the capital of the Company.

Upon the occurrence of an Acceleration Event or upon the occurrence and during the continuance of a Bankruptcy Event of Default, each Sponsor’s Unused Capital Commitment will be automatically due and payable without further action of the Collateral Agent and each Sponsor will make payment, in each case, within three (3) Business Days, of its respective Unused Capital Commitment to the capital of the Company and will make such payment directly to the Collateral Agent for application in accordance with the Collateral Agency Agreement.

Each Sponsor retains the option to contribute funds to the capital of the Company at any time up to the amount of such Sponsor’s Unused Capital Commitment.

To the extent a Sponsor funds its Capital Contributions with Sponsor Subordinated Loans (including any future conversion of such Capital Contribution to the Company into a Sponsor Subordinated Loan), such Sponsor Subordinated Loans may accrue interest during the Design-Build Period at a rate not to exceed 2.4%; provided that such interest will capitalize semi-annually and be added to the principal amount of such Sponsor Subordinated Loans; provided further that, notwithstanding anything in the Equity Contribution Agreement or in any Finance Document to the contrary, all such interest, whether or not capitalized, will be excluded from the calculation of a Sponsor’s Capital Contributions under the Equity Contribution Agreement or any other Finance Document for any purpose.
**Additional Equity Contributions**

No Sponsor will be obligated to contribute in aggregate any more than its Aggregate Capital Commitment; however, subject to the limitations contained in the LLC Agreement, each Sponsor retains the option to contribute additional funds to the capital of the Company at any time in excess of such Sponsor’s Unused Capital Commitment, including through Sponsor Subordinated Loans.

**Equity Letters of Credit**

The Capital Contribution of each Sponsor will be secured by irrevocable standby letters of credit for which such Sponsor is the account party (or which are provided on behalf of a Sponsor), which will (a) be denominated in United States Dollars, (b) which will be non-recourse to the Company, (c) be issued in favor of the Collateral Agent by an Acceptable LC Bank and (d) not be secured by the Collateral and will have a stated amount equal to such Sponsor’s Unused Capital Commitment as of the relevant date of delivery to the Collateral Agent of such Sponsor’s Equity Letter of Credit. Subject to certain exceptions, an Equity Letter of Credit in an aggregate stated amount not less than each Sponsor’s Unused Capital Commitment will be required for each Sponsor from the Effective Date through the Release Date.

If any Sponsor has failed to comply with its obligation to make a Capital Contribution in whole or in part on or prior to the applicable Contribution Date, the Collateral Agent will, within one (1) Business Day of such Contribution Date, draw upon the applicable Equity Letters of Credit for the purposes of satisfying the obligations of such Sponsor. Amounts drawn from the Equity Letters of Credit and deposited into the Equity Funding Sub-Account of the Construction Account to satisfy the obligations of a Sponsor will be deemed to be a Capital Contribution under the Equity Contribution Agreement.

In the event that the issuer of an Equity Letter of Credit fails to satisfy the requirements of an Acceptable LC Bank, the Sponsor on whose behalf such Equity Letter of Credit has been issued is required to notify the Collateral Agent of such failure and replace such Equity Letter of Credit with an Equity Letter of Credit from an Acceptable LC Bank, in the stated amount of such Sponsor’s Unused Capital Commitment as of the date of such failure within ten (10) Business Days after such failure. In the event such Sponsor fails to provide such new equity letter of credit within such period, the Collateral Agent will draw the full undrawn amount of such Equity Letter of Credit, up to the amount of such Sponsor’s then outstanding Unused Capital Commitment, as determined as of the draw date, and deposit such amount into the Applicable Sponsor Cash Collateral Account. To the extent that, following such deposit, (a) the applicable Sponsor provides such new equity letter of credit and (b) the deposited funds have not been transferred to the Equity Funding Sub-Account of the Construction Account (or otherwise transferred to the Collateral Agent), the Collateral Agent is instructed to withdraw an amount equal to the stated amount of such new equity letter of credit from the Applicable Sponsor Cash Collateral Account for transfer to the applicable Sponsor.

In the event that an Equity Letter of Credit issued on behalf of a Sponsor expires prior to the Release Date (or, if earlier, prior to the date on which Capital Contributions in an aggregate amount equal to the Aggregate Capital Commitment of the applicable Sponsor under the Equity Contribution Agreement) such Sponsor will replace such Equity Letter of Credit with a new equity letter of credit at least thirty (30) days prior to the stated expiry date of the existing Equity Letter of Credit and such new equity letter of credit will be in a stated amount equal to at least the amount of such Sponsor’s then outstanding Unused Capital Commitment, provided that if such Sponsor fails to provide such new equity letter of credit by the date required above, the Collateral Agent will draw on the existing Equity Letter of Credit of such Sponsor in the full undrawn amount of such Equity Letter of Credit, up to the amount of such Sponsor’s then outstanding Unused Capital Commitment, as determined as of such draw date, and deposit the proceeds of such drawing into the Applicable Sponsor Cash Collateral Account. To the extent that, following such draw, (a) the applicable Sponsor provides such new equity letter of credit and (b) such deposit has not been transferred to the Equity Funding Sub-Account of the Construction Account (or otherwise transferred to the Collateral Agent), the Collateral Agent is instructed to withdraw an amount equal to the stated amount of such new equity letter of credit from the Applicable Sponsor Cash Collateral Account for transfer to the applicable Sponsor.
Sponsor Cash Collateral Accounts

At the option of a Sponsor, a Sponsor may also satisfy all or a portion of its obligations under the Equity Contribution Agreement by depositing amounts in cash to the Applicable Sponsor Cash Collateral Account equal to all or a portion of its Unused Capital Commitment otherwise required to be secured by Equity Letters of Credit pursuant to the Equity Contribution Agreement, provided that, as of any date of determination, amounts on deposit in the Applicable Sponsor Cash Collateral Account plus the amounts available under such Sponsor’s Equity Letters of Credit will at least equal such Sponsor’s then outstanding Unused Capital Commitment. Any withdrawals from the Applicable Sponsor Cash Collateral Account established on behalf of a Sponsor and all releases of funds from such Applicable Sponsor Cash Collateral Account will be subject to the terms and conditions of the Collateral Agency Agreement. So long as no Event of Default will have occurred and be continuing and subject to the Collateral Agency Agreement, a Sponsor may instruct the Company to direct the Collateral Agent to withdraw funds from the Applicable Sponsor Cash Collateral Account and deposit such funds into the Equity Funding Sub-Account of the Construction Account to satisfy in whole or in part such Sponsor’s obligations under the Equity Contribution Agreement.

Amounts drawn from the Applicable Sponsor Cash Collateral Account and deposited into the Equity Funding Sub-Account of the Construction Account to satisfy the obligations of a Sponsor under the Equity Contribution Agreement will be deemed to be a Capital Contribution under the Equity Contribution Agreement.

To the extent that, as of any date of determination, a Sponsor has (i) an Equity Letter of Credit in effect and (ii) an Applicable Sponsor Cash Collateral Account with available amounts, both securing its obligations under the Equity Contribution Agreement, if such Sponsor has failed to comply with its obligation to make a Capital Contribution under the Equity Contribution Agreement in whole or in part, on or prior to the applicable Contribution Date, the Collateral Agent will, for Meridiam, first, draw on the applicable Equity Letter of Credit and, second, to the extent necessary, draw from the Applicable Sponsor Cash Collateral Account, which, with respect to such draws will be in an aggregate amount equal to such shortfall in such Sponsor’s performance and will deposit such funds into the Equity Funding Sub-Account of the Construction Account. With respect to Fluor Enterprises and Star America, the Collateral Agent will, first, draw from such Applicable Sponsor Cash Collateral Account and, second, to the extent necessary, draw on such Equity Letter of Credit and will deposit such funds into the Equity Funding Sub-Account.

If the Collateral Agent attempts to make a draw upon an Equity Letter of Credit, and the amount of such draw (or any portion thereof) is not paid by the relevant Acceptable LC Bank for any reason, the Collateral Agent will promptly deliver a Lenders’ Contribution Notice to the applicable Sponsor of such failure and such Sponsor will, no later than seven (7) Business Days after the date of delivery of such notice, make a Capital Contribution to the Company in the amount of such failed draw.

No draw on an Equity Letter of Credit or withdrawal from an Applicable Sponsor Cash Collateral Account will constitute a Default or Event of Default, except to the extent such draw or withdrawal (if honored) is not sufficient to satisfy the obligation of any Sponsor to make a Capital Contribution pursuant to the terms of the Equity Contribution Agreement (in the aggregate with any other amounts contributed to satisfy such obligation).

Benefit of Capital Contributions

The Equity Contribution Agreement is not intended for the benefit of any Person other than the Company, the Collateral Agent, all of the other Secured Parties and MDOT and MTA.

Nature of Obligations

The obligation of each Sponsor to make equity contributions is irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any Finance Document or any other agreement or instrument referred to therein, or any substitution, release or exchange of any other guarantee of or security for the Capital Contributions or any Secured Obligation, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of the Equity Contribution Agreement that the
obligation of each Sponsor thereunder will be absolute and unconditional under any and all circumstances (other than as contemplated in the Equity Contribution Agreement).

**Defaulting Sponsor**

If (i) a Sponsor fails to make a payment due by it in accordance with the provisions of the Equity Contribution Agreement; and (ii) payment is not made by (a) the issuer of such Sponsor’s relevant Equity Letter of Credit, if any, and/or (b) a draw of the relevant amount from the Applicable Sponsor Cash Collateral Account, if available, such Sponsor will be a “Defaulting Sponsor” for the purposes of the Equity Contribution Agreement.

Where a Sponsor is a Defaulting Sponsor, each other Sponsor will have the right, but not the obligation, to provide payment in cash of the relevant Capital Contribution on behalf of the Defaulting Sponsor, provided that they exercise such option by providing notice to the Collateral Agent of their intent to provide such payment within 5 (five) Business Days and will provide such payment in cash into the Equity Funding Sub-Account of the Construction Account (or directly to the Collateral Agent, as the case may be) within ten (10) Business Days, of the relevant Sponsor becoming a Defaulting Sponsor.

**Restriction on Successors and Assigns**

The provisions of the Equity Contribution Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns; provided that (a) the Collateral Agent may not assign its rights or obligations under the Equity Contribution Agreement unless such assignment is in accordance with the Finance Documents, and (b) neither the Company nor any Sponsor may assign or otherwise transfer its rights or obligations under the Equity Contribution Agreement, except that a Sponsor may assign its rights and obligations under the Equity Contribution Agreement (and, in connection with such assignment, the related portion of its Unused Capital Commitment), to any Person if (i) such transfer is permitted under the other Finance Documents (including the TIFIA Loan Agreement prior to the termination thereof), (ii) such transferee will have satisfied the requirements under the Equity Contribution Agreement relating to the Unused Capital Commitment assigned to, and assumed by, such Person, (iii) such transfer is permitted under the terms of the LLC Agreement and (iv) such transferee will have executed a counterpart to the Equity Contribution Agreement and delivered such other documentation, including legal opinions, as the parties determine necessary to evidence such transferee’s assumption of any portion of a transferor’s Unused Capital Commitment. An assignment by a Sponsor of its rights and obligations under the Equity Contribution Agreement (including the related portion of its Unused Capital Commitment) will not be effective until the conditions set forth in the preceding clauses (i) through (iv) have been satisfied. In the event of any such assignment by a Sponsor, the relevant transferee will become a “Sponsor” under the Equity Contribution Agreement with the same force and effect as if it were an original signatory thereto.

**Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding**

The Company is compensated by the Contracting Authority for the Work pursuant to the P3 Agreement through Progress Payments, the RSA Payment, the Final Completion Payment, Availability Payments and, following various relief and termination events, compensation and termination payments to the Company.

The Contracting Authority expects to make the Progress Payments, the RSA Payment, the Final Completion Payment and Availability Payments using funds received from the Contracting Authority’s budget. The availability of such funds is subject to annual appropriation by the General Assembly. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally” “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement—Payments to the Company,” and “RISK FACTORS—Risks Relating to the Company and the Contracting Authority—Appropriation Risk.”

For a detailed description of the sources available to the Contracting Authority to make such payments, see “PROJECT PARTICIPANTS—The Contracting Authority.” Progress Payments will be used to pay Project Costs during construction of the Purple Line. In addition, a portion of the Final Completion Payment will be applied by the Company to pay the Design-Build Contractor pursuant to the Design-Build Contract only to the extent that amounts then due and payable to the Design-Build Contractor have not been paid in full, and a portion of the Availability
Payments will be applied by the Company to pay operation and maintenance costs for the portion of the Purple Line located within the O&M Limits.

In addition to the payments which the Contracting Authority has received or expects to receive for the purpose of making payments under the P3 Agreement, it is currently anticipated that the Contracting Authority will receive additional funds allocated to pay costs of the Project, including the following: (i) over $300,000,000 in cash and in-kind payments from Prince George’s and Montgomery Counties; (ii) approximately $900,000,000 in Federal Transit Administration Section 5309 Capital Investment Grant (New Starts) funds from the Federal Transit Administration, $200,000,000 of which has already been allocated to the Project from fiscal year 2015 and 2016 appropriations and $125,000,000 of which has been recommended for allocation to the Project in the President’s fiscal year 2017 federal budget; and (iii) approximately $500,000 from the University of Maryland.

MTA has sought federal grant funding for the Project through the discretionary CIG program as a New Starts project. The CIG program provides funding for fixed guideway investments such as new and expanded rapid rail, commuter rail, light rail, and other forms of transit that emulate the features of rail. The discretionary New Starts program requires projects to proceed through a multi-step, multi-year process to be eligible for funding with FTA evaluation and rating required at various points in the process. The first step is called project development, the second engineering, and the third a full funding grant agreement for construction. The first and second steps have been successfully completed, and MTA and the FTA are in process of finalizing the New Starts Full Funding Grant Agreement. See “RISK FACTORS—Risks Relating to the 2016 Bonds—New Starts Full Funding Grant Agreement.”

A portion of this funding from the counties, FTA and the State will be used for payments to the Company while the remainder will be used for costs incurred outside of the P3 Agreement, including real estate, professional services, off-site environmental mitigation and oversight during construction.
RISK FACTORS

THE PURCHASE OF THE 2016 BONDS IS SUBJECT TO CERTAIN RISKS. EACH PROSPECTIVE INVESTOR IN THE 2016 BONDS IS ENCOURAGED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY, INCLUDING ALL APPENDICES HERETO. PARTICULAR ATTENTION SHOULD BE GIVEN TO THE FACTORS DESCRIBED BELOW, WHICH, AMONG OTHERS, COULD AFFECT THE PAYMENT OF PRINCIPAL OF AND INTEREST ON THE 2016 BONDS AND WHICH COULD ALSO AFFECT THE MARKET PRICE OF THE 2016 BONDS TO AN EXTENT THAT CANNOT BE PRESENTLY DETERMINED.

The following discussion is not meant to be an exhaustive list of the risks and other factors that should be considered in connection with the purchase of the 2016 Bonds and does not necessarily reflect the relative importance of the various risks and other factors. Any one or more of the risks described, and others, could adversely affect the Company and/or MDOT and MTA (in their capacity as the Contracting Authority), and could lead to substantial decreases in the market value and/or the liquidity of the 2016 Bonds. There can be no assurance that other risk factors will not become material in the future.

Risks Relating to the Company and the Contracting Authority

The 2016 Bonds Are Special, Limited Obligations

The 2016 Bonds and interest thereon are special, limited obligations of the Bond Issuer and the principal or purchase price of, redemption premium, if any, and interest on the 2016 Bonds shall be payable solely from, and secured exclusively by, the Trust Estate or moneys to be received in connection with the financing and refinancing of the Project or from any other moneys made available to the Bond Issuer for such purpose (including amounts paid by the Company pursuant to the relevant Finance Document), and the issuance of the 2016 Bonds shall not be, directly, indirectly or contingently, a moral or other obligation of the State, the Contracting Authority or any other government unit or the Bond Issuer to levy or pledge any tax or to make an appropriation to pay such amounts, and the Bond Issuer shall not be obligated to pay the principal or purchase price of, redemption premium, if any, or interest on the 2016 Bonds except from the Trust Estate or moneys to be received in connection with the financing and refinancing of the Project or from any other moneys made available to the Bond Issuer for such purpose. Neither the full faith and credit nor the taxing power of the State, the Contracting Authority or any other governmental unit or the Bond Issuer is pledged to the payment of the principal or purchase price of, redemption premium, if any, or interest on the 2016 Bonds. The Bond Issuer and the Contracting Authority have no taxing power. The principal or purchase price of, redemption premium, if any, and interest on the 2016 Bonds are not payable from taxes or appropriations made by the General Assembly. The 2016 Bonds do not constitute an indebtedness, or a pledge of the faith and credit, of the Contracting Authority, the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation. The 2016 Bonds do not constitute a charge against the faith, credit or taxing power of the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation.

The Company Is a Single Purpose Entity

The Company was formed for the purpose of entering into the P3 Agreement and undertaking the Project and performing the activities related thereto, including the activities contemplated by the Transaction Documents. The Company has no assets other than its rights to the Equity Contributions to be made pursuant to the Transaction Documents; the Company’s rights under the P3 Agreement to receive the Progress Payments, the RSA Payment, the Final Completion Payment and the Availability Payments and other payments due and owing under the P3 Agreement from the Contracting Authority; and the Company’s rights under the Design-Build Contract and the O&M Contract, the other Material Project Contracts and the Finance Documents. Substantially all of the Company’s responsibilities in connection with the Project (with certain exceptions) are being passed through to the Design-Build Contractor and to the O&M Contractor, and substantially all of the Company’s rights under the P3 Agreement and the other Material Project Contracts will be pledged and assigned as security for the Company’s financial obligations in connection with the Project. No assurance can be given, however, that the funds available to the Trustee will be sufficient to make all of the payments to be paid from the Trust Estate, including payments to be made of principal of, interest or premium, if any, on or costs incident to the 2016 Bonds.
Appropriation Risk

The primary source of funds for the payment of the 2016 Bonds is the Contracting Authority’s payment of Progress Payments, the RSA Payment, the Final Completion Payment, Availability Payments and, following various relief and termination events, compensation and termination payments to the Company under the P3 Agreement (the “P3 Payments”). See “FINANCING FOR THE PROJECT——Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding.” The P3 Payments are payable from the Contracting Authority’s funds solely to the extent budgeted and appropriated therefor by the General Assembly in each successive Fiscal Year. The General Assembly is not obligated under the P3 Agreement to make any appropriation, or to make a sufficient appropriation, to pay the P3 Payments in any fiscal year. A failure to appropriate amounts sufficient to pay any P3 Payments coming due in any fiscal year and a failure to pay any P3 Payments as a result of such failure to appropriate would not constitute a Contracting Authority Default under the P3 Agreement. For a further description of the Company’s rights under the P3 Agreement in the event of a failure to appropriate, see “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally—Payments from the Contracting Authority.”

While the Contracting Authority has covenanted that it shall include in its annual budget proposals items for all P3 Payments coming due during the ensuing fiscal year and shall use its best efforts to secure the timely approval and appropriation of P3 Payments by the General Assembly prior to the beginning of each ensuing fiscal year during the term of the P3 Agreement, there is no assurance that the General Assembly will appropriate money sufficient to pay the P3 Payments in each ensuing fiscal year until maturity of the 2016 Bonds. Furthermore, in the State’s appropriation process, by law, the principal and interest on all Consolidated Transportation Bonds issued by MDOT have priority over any other MDOT expenditures, including the P3 Payments.

In the event of a failure to appropriate, none of the Contracting Authority, the Bond Issuer nor the State would be obligated to make any P3 Payments coming due during the then-current fiscal year for which funds had been appropriated, and the Contracting Authority would be authorized to terminate the P3 Agreement for convenience. Upon occurrence of a failure to appropriate, the Contracting Authority is not obligated to pay the P3 Payments beyond the last day of the fiscal year for which an appropriation is available and neither the Bond Issuer nor the Trustee has any right to compel the Contracting Authority to make further payments. Upon termination of the P3 Agreement, the Company is required to relinquish and surrender care, custody and control of the Purple Line to the Contracting Authority, and the Contracting Authority and the State would have no obligation to make further payments to the Company, unless funds for such payments were appropriated by the General Assembly.

The likelihood of any future appropriation is dependent upon factors beyond the control of the Bond Issuer, the Contracting Authority and the Holders of the 2016 Bonds, including (i) the continuing need of the Contracting Authority for the Company’s role in the Project, (ii) the continuing sufficiency of the Project for the evolving, and perhaps increasing, needs of the Contracting Authority, (iii) the financial condition of the Contracting Authority and the State and (iv) demographic and economic conditions which would affect the need for the Project and the financial condition of the Contracting Authority.

THE REMEDIES AVAILABLE TO THE BOND ISSUER AND THE TRUSTEE IN THE EVENT OF A FAILURE TO APPROPRIATE DO NOT INCLUDE THE RIGHT TO INSTITUTE LEGAL PROCEEDINGS TO COMPEL P3 PAYMENTS FOR WHICH FUNDS HAVE NOT BEEN APPROPRIATED, NOR MAY THE BOND ISSUER OR THE TRUSTEE SEEK A JUDGMENT AGAINST THE STATE OR THE CONTRACTING AUTHORITY. THE PAYMENT OF ANY JUDGMENT RESULTING FROM ANY CLAIM WOULD BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY. THE FAILURE TO APPROPRIATE IS NOT AN EVENT OF DEFAULT.

The 2016 Bonds and interest thereon are special, limited obligations of the Bond Issuer and the principal or purchase price of, redemption premium, if any, and interest on the 2016 Bonds shall be payable solely from, and secured exclusively by, the Trust Estate or moneys to be received in connection with the financing and refinancing of the Project or from any other moneys made available to the Bond Issuer for such purpose (including amounts paid by the Company pursuant to the relevant Finance Document), and the issuance of the 2016 Bonds shall not be, directly, indirectly or contingently, a moral or other obligation of the State, the Contracting Authority or any other government unit or the Bond Issuer to levy or pledge any tax or to make an appropriation to pay such amounts, and the Bond Issuer shall not be obligated to pay the
principal or purchase price of, redemption premium, if any, or interest on the 2016 Bonds except from the Trust Estate or moneys to be received in connection with the financing and refinancing of the Project or from any other moneys made available to the Bond Issuer for such purpose. Neither the full faith and credit nor the taxing power of the State, the Contracting Authority or any other governmental unit or the Bond Issuer is pledged to the payment of the principal or purchase price of, redemption premium, if any, or interest on the 2016 Bonds. The Bond Issuer and the Contracting Authority have no taxing power. The principal or purchase price of, redemption premium, if any, and interest on the 2016 Bonds are not payable from taxes or appropriations made by the General Assembly. The 2016 Bonds do not constitute an indebtedness, or a pledge of the faith and credit, of the Contracting Authority, the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation. The 2016 Bonds do not constitute a charge against the faith, credit or taxing power of the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally.”

Conflicting Interests of the Parties

As in any commercial arrangement, parties may disagree about the appropriate course of action to be taken, particularly if adverse events occur. The Contracting Authority, the Company, the Design-Build Contractor, the O&M Contractor and within the Design-Build Contractor and the O&M Contractor, the respective limited liability company members, have different priorities and interests and may have difficulty in resolving disputes should their interests diverge. Similarly, the Contracting Authority and the Trustee, on behalf of the Holders of the 2016 Bonds, and the Collateral Agent, on behalf of the Secured Parties, may have different interests and priorities following a default or other adverse event under the P3 Agreement, and no assurance can be given that the Contracting Authority will be willing or able to take into account the interests of the Holders of the 2016 Bonds if an event occurs that would entitle the Contracting Authority to terminate or to take other remedial action under the P3 Agreement. Each of the Finance Documents specifically incorporates by reference certain of the terms of the P3 Agreement, subjecting various of the terms of each Finance Document to the requirements of the P3 Agreement and the rights of the Contracting Authority therein. There can be no assurance that in the event of a default under any of the Finance Documents the interests of the Holders of the 2016 Bonds and the Contracting Authority will align or that the Contracting Authority will not assert a right under the P3 Agreement that is adverse to the interests of the Holders of the 2016 Bonds.

Equity Contributions

The Capital Contributions required to be made by the Sponsors are not required to be made prior to the issuance of the 2016 Bonds, (See “FINANCING FOR THE PROJECT—Equity Contributions” and “PROJECT PARTICIPANTS—Equity Participants”). While the obligations of each of the Sponsors to make Capital Contributions will be supported by an Equity Letter of Credit or an Applicable Sponsor Cash Collateral Account, the Sponsors may be unable or unwilling to make Capital Contributions and the Equity Letters of Credit may not be honored or withdrawals from any Applicable Sponsor Cash Collateral Account could be stayed during any bankruptcy or insolvency proceeding affecting the Company or the depositor of such cash. See “FINANCING FOR THE PROJECT—Equity Contributions” and “RISK FACTORS—Risks Relating to the 2016 Bonds—Letter of Credit Dishonor or Non-Renewal.”

Risks Relating to the Project

Pass-Through Risks

The Design-Build Contract and the O&M Contract are structured in a way intended to pass through, for fixed compensation, to the Design-Build Contractor and to the O&M Contractor, respectively, substantially all of the Company’s obligations and risks under the P3 Agreement with respect to the design, procurement, delivery of LRVs, construction, operation and maintenance of the Purple Line, except certain limited excluded obligations retained by the Company. Not all responsibilities and risks have been passed through, and events may occur that result in increases in the amounts payable to the Design-Build Contractor and/or the O&M Contractor, or afford the Design-Build Contractor additional time for performance, that may not be compensated, reimbursed or otherwise provided for under the P3 Agreement. Reductions in payments by the Contracting Authority to the Company because of non-performance by the Design-Build Contractor or by the O&M Contractor may not be made up in full
by offsets against amounts payable from the Company to the Design-Build Contractor and/or the O&M Contractor. In some circumstances, the reductions in payments from the Contracting Authority to the Company may exceed the amounts for which the Design-Build Contractor or the O&M Contractor are responsible as a result of the liability cap of the Design-Build Contractor of thirty-five percent (35%) of the Design-Build Contract price and the total aggregate liability cap of the O&M Contractor, without termination of the O&M Contract, not to exceed seventy-five percent (75%) of the operating annual turnover in any contract year but no more than one hundred fifty percent (150%) of the operating annual turnover in the aggregate in any three consecutive years, and on termination of the O&M Contract, two hundred percent (200%) of the sum of the operating annual total turnover and the average lifecycle payments, subject to certain exceptions and adjustments. Also, the failure to properly perform certain required activities may constitute a Concessionaire Default, which could result in termination of the P3 Agreement. In such events, the Company may not receive Availability Payments, Termination Compensation or other amounts from the Contracting Authority in amounts sufficient to pay debt service on the 2016 Bonds. See “THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—Performance Security” and “—The O&M Contract—Performance Security.”

**Construction Risks**

As described in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT,” the Company is obligated to achieve Revenue Service Availability and Final Completion by certain designated deadlines, as each may be extended under certain circumstances in accordance with the P3 Agreement. Pursuant to the Design-Build Contract, the Design-Build Contractor has agreed to comply with certain deadlines set forth in the Design-Build Contract with respect to the DB Work required to be undertaken by the Design-Build Contractor under the Design-Build Contract. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

**General.** As with any major construction effort, the construction of the Purple Line involves risks that could result in cost overruns, delays or failure to complete the Purple Line. Some of the risks to completing the Purple Line on time and within budget include shortages of materials and labor, work stoppages, labor disputes, bad weather, floods, and other casualties, unforeseen engineering, failure of the Contracting Authority to obtain the necessary Project right-of-way in accordance with the P3 Agreement, environmental or geological problems, changes in law, discovery of unidentified geologic or hazardous materials or unidentified utilities, damage to property or personal injuries, third-party litigation, difficulties in obtaining or renewing permits or other federal, state or local government approvals, changes in federal and state or local design or building requirements and permit conditions, any of which could increase the cost and delay of the construction and start-up of the Purple Line. These risks may be exacerbated by the Purple Line’s urban, densely developed location and constrained site.

The Design-Build Contract is a fixed-price contract and a number of these risks – such as the risks related to Force Majeure Events, Relief Events and Non-Concessionaire Caused Disruptions under the P3 Agreement and, except under certain circumstances, the risks related to completion of the DB Work on schedule and on budget—have been allocated in whole to the Design-Build Contractor under the Design-Build Contract. Not all of these risks (including Company-caused delays), however, have been shifted or can be insured against, and there can be no assurance that the Company will have or will be able to obtain sufficient funds, if necessary, to cause the Design-Build Contractor or any replacement contractor to complete the construction of the Purple Line within the projected time table or in line with the budget and other assumptions described in this Official Statement. See also “—Risks Relating to the Project Agreements—Potential Replacement of Any or All of the Design-Build Contractor Members, Design-Build Guarantors, O&M Contractor Members or O&M Guarantors.”

Even though the obligations of the Design-Build Contractor under the Design-Build Contract are guaranteed by the Design-Build Guarantors under each Design-Build Guaranty, the Design-Build Guarantors are generally subject to the same obligations and can avail themselves of the same rights and defenses as the Design-Build Contractor, including the overall limitations of liability under the Design-Build Contract (subject to the exceptions set forth therein). See “THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—Performance Security.” One of the Design-Build Guarantors, Salini, is an Italian corporation. If Salini fails to perform its obligations under its Design-Build Guaranty, any arbitration award or judicial decision obtained against it in the United States would need to be enforced in the courts of Italy and there can be no assurance that courts in Italy would so enforce any judgment or award or that, if enforced, sufficient funds will be obtained from Salini.
Also, there can be no assurance that sufficient funds will be obtained from any judgment or award against Fluor or Traylor.

The Design-Build Contractor may, in certain circumstances when it fails to achieve specified deadlines, be liable to the Company for delay liquidated damages which may be used to make payments of the principal, interest or premium, if any, on the 2016 Bonds, but these are subject to their own risks. See “RISK FACTORS—Risks Relating to the Project Agreements—Insurance and Liquidated Damages.”

Contractors, Utility Owners and Related Transportation Facilities. The Company has passed through to the Design-Build Contractor substantially all of its obligations under the P3 Agreement to design and construct the Project. In turn, the Design-Build Contractor expects to subcontract certain of its obligations under the Design-Build Contract. However, there can be no assurance that the Design-Build Contractor and the subcontractors will perform their respective obligations under the relevant agreements. Lack of coordination among the Company, the Contracting Authority, the Design-Build Contractor, the Utility Owners, or any owner, manager or operator of any Related Transportation Facilities or other third parties with respect to completion of the D&C Work or their inspections on schedule, could also result in delays or cost overruns or both. In particular, the Work under the P3 Agreement will require relocation of certain utilities and will require integration of the Purple Line with Related Transportation Facilities. This will require negotiation with the applicable Utility Owner and/or cooperation and coordination with the owners, managers and/or operators of the Related Transportation Facilities in connection with required works, compensation, work schedules and performance of works by the applicable Utility Owner or any other third party. Increased costs that result from delays or change orders caused by actions of the Contracting Authority, the Company, Utility Owners, or other third parties or by Force Majeure Events, changes in applicable laws or other uncontrollable circumstances may not be covered under the fixed price and schedule set forth in the Design-Build Contract or the entitlement to compensation for Relief Events and may not require payment by the Design-Build Contractor of liquidated damages, to the extent the Design-Build Contractor did not cause or contribute to such event. In addition, Utility Owners and/or owners of Related Transportation Facilities may be compensated by the Design-Build Contractor directly based on the terms of the approved utility agreements (on behalf of the Company pursuant to the terms of the Design-Build Contract), depending on the type of utility and works to be done. Certain events related to utilities may constitute Relief Events. Although the Company may be entitled to schedule relief and/or compensation for certain costs, suffered or incurred as a result of any such Relief Event, no assurance can be given that any of the above will not result in increased costs and delays to the Project. See “RISK FACTORS—Risks Relating to the Project Agreements—Events of Force Majeure; Limited Insurance Coverage; Relief Events.”

Insurance and Liquidated Damages. Not all risks are insured, and it is not possible to obtain insurance for all Force Majeure Events and other contingencies described in the Design-Build Contract and the P3 Agreement. See “RISK FACTORS—Risks Relating to the Project Agreements—Events of Force Majeure; Limited Insurance Coverage; Relief Events.” In addition, the amount of liquidated damages the Design-Build Contractor could be required to pay under the Design-Build Contract for delay is subject to a capped amount specified in the Design-Build Contract and may not be sufficient to cover all of the Company’s losses in the event of a delay or a failure to complete the required D&C Work in accordance with the P3 Agreement. In addition, the Design-Build Contractor may be relieved from its obligation to pay liquidated damages in the event the scheduled completion dates are extended due to a Company-caused delay or a Company-initiated DB Work suspension, in each case subject to the terms set forth in the Design-Build Contract. The Design-Build Contractor also has not waived its rights to contest a demand for payment of liquidated damages. Neither the Design-Build Contractor nor the Design-Build Guarantor nor the issuer of any performance bond or other security is guaranteeing performance by the Design-Build Contractor under the Design-Build Contract under all circumstances and each Design-Build Guarantor may assert as a defense to payment any defenses the Design-Build Contractor claims or has. No assurance can be given that insurance or other funds will be sufficient should delays occur or should the Company have payment obligations that are not satisfied by or included in the responsibility of the Design-Build Contractor under the Design-Build Contract.

Changes in Law

Both the Company and the Purple Line are subject to various laws, policies and regulations, including, among others, laws governing environmental protections and tax policies. The Purple Line and the Company’s business, financial condition and results of operations may be adversely affected by changes in such laws, policies or
regulations, or by new laws, policies or regulations. Although the change in law provisions in the P3 Agreement are intended to protect the Company from changes in law, some of the potential changes in the laws related to the Project and the Purple Line may nonetheless impact the Company’s ability to complete construction of the Purple Line, receive Progress Payments, the RSA Payment, the Final Completion Payment and Availability Payments and Termination Compensation, and to make timely payments of amounts due under the Series 2016 Loan Agreement and, in turn, the ability to make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds. More specifically, the Company and the Contracting Authority must respond to changes in federal, state or other requirements mandating changes in the Project’s facilities or technical requirements. In general, it is not possible to predict the kind or cost of changes that could be mandated over the term of the P3 Agreement, and no assurance can be given that the Company and/or the Contracting Authority will be able to respond adequately to mitigate the impact of any such changes. Any such changes may impact the Company’s ability to make timely payments of amounts due under the Series 2016 Loan Agreement and, in turn, affect the ability to make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Relief Events.”

To the extent that the Company or any other parties that are involved in the Project require expenditures of additional funds not budgeted-for in order to be in compliance with any new or amended policies, regulations or laws, and assuming that no compensation or other relief is provided pursuant to the terms and conditions of the P3 Agreement, such unanticipated expenditures could negatively impact the Company’s cash flow and thus its ability to satisfy its payment obligations under the Series 2016 Loan Agreement and, thus, the ability to satisfy its payment obligations under the 2016 Bonds. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Relief Events—Relief Event Relief.” Furthermore, to the extent that the Company, the Design-Build Contractor, or any other third party that contracts with the Company requires additional time in order to be in compliance with any new or amended policies, regulations or laws, and as a result, completion of construction of the Purple Line is delayed, the Company may suffer a delay in the payment of the Progress Payments, the RSA Payment, the Final Completion Payment and commencement of the payment of Availability Payments from the Contracting Authority under the P3 Agreement and hence have less revenues for servicing its debt obligations, including its payment obligations under the Series 2016 Loan Agreement (and, in turn, the obligation to make timely payments of principal of, or interest or premium, if any, on the 2016 Bonds). Depending on the extent of the delay and assuming that no compensation or schedule relief is provided pursuant to the terms and conditions of the P3 Agreement, this delay may result in a breach of the Company’s obligations under the P3 Agreement, which could give rise to the assessment of Deductions, or Noncompliance Points and corresponding reductions in the Progress Payments and/or Availability Payments, as applicable, otherwise owed to the Company under the P3 Agreement, and potentially, could give rise to a right of the Contracting Authority to terminate the P3 Agreement. See “RISK FACTORS—Risks Relating to the Project Agreements—Failure to Comply with P3 Agreement; Termination of the P3 Agreement.” To the extent that any of the foregoing occurs, the Company may have a limited ability, or no ability, to continue making payments pursuant to the Series 2016 Loan Agreement, and, in turn, the ability to make timely payments of principal of, or interest or premium, if any, on the 2016 Bonds would be adversely affected.

**Environmental and Permitting Risks**

*Environmental Contamination or Conditions.* Environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), impose liability on owners or operators for the clean-up costs associated with remediating contaminated property. The Company could become liable for certain claims for remediation of pre-existing contamination existing on or under the Project area or with respect to additional properties, as well as future contamination associated with the Project and the Purple Line. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Relief Events.”

Under the P3 Agreement, the Company is obligated to assume all of the Contracting Authority’s obligations with respect to the existing environmental approvals for the Project and generally complying with all Environmental Laws, including remediation and management of environmental conditions. Under the Design-Build Contract, the Design-Build Contractor is, with certain limited exceptions, assuming all obligations of the Company (except as otherwise assumed by the Contracting Authority) with respect to compliance with all Environmental Laws and the performance of any remediation and the management of the Project in response to any such remediation.
The presence of hazardous material contamination at or near the Purple Line could cause construction delays in order to enable investigation and remediation of such conditions. The Company can seek relief in connection with the remediation of pre-existing hazardous materials released by a party other than the Company, the Design-Build Contractor or any other Company-Related Entities performing the Work that are unknown and are not reasonably suspected to exist, and of contamination that is due to certain spills of hazardous material by a third party (other than by a Company-Related Entity) which occur, except for any release of hazardous materials that would typically be removed and disposed of during routine maintenance. See “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement.”

Any of the above risks could require substantial expenditures or delay Project completion or both, which could adversely impact the Company’s cash flow, its ability to comply with the P3 Agreement and adversely affect the Company’s ability to make timely payments of amounts due under the Series 2016 Loan Agreement and, in turn, affect the ability to make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds.

Changes in Environmental Laws. The laws and regulations governing environmental protection have changed significantly over recent years and are expected to continue to change. Regulations governing, among other things, air pollution, noise abatement and control, wetlands mitigation, hazardous waste, solid waste, water quality and threatened and endangered species may become more stringent in the future, possibly requiring additional compliance and having a material and adverse effect on the design, construction or operation of the Purple Line. The P3 Agreement provides relief from adverse cost or schedule effects of certain Changes in Law that are Force Majeure Events or Relief Events. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Force Majeure Events” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Relief Events.” Changes in environmental laws may, however result in uncompensated increased construction costs, delays in construction or increased compliance costs, which could adversely impact the Company’s cash flow, its ability to comply with the P3 Agreement and to make timely payments of amounts due under the Series 2016 Loan Agreement, which could, in turn, affect the ability to make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds.

Permits and Permitting Requirements. Governmental Approvals of many kinds are required to be obtained for the construction and operation of the Purple Line. The issuance of such Governmental Approvals may include public notice and comment, hearings, or administrative or judicial appeals. Governmental Approvals may be appealed if they have not been issued in compliance with law, and there are various remedies available to governmental agencies and to the public if the Purple Line is constructed without appropriate Governmental Approvals or is constructed other than in compliance with the Governmental Approvals.

The Contracting Authority has obtained or will obtain all of the Contracting Authority-Provided Approvals pursuant to the P3 Agreement, and the Company is to obtain all of the other Governmental Approvals (and modifications, renewals or extensions) required for the Project. Under the Design-Build Contract, the Design-Build Contractor is, with certain limited exceptions, assuming the Company’s responsibility under the P3 Agreement for obtaining, furnishing, paying the cost of and maintaining in full force and effect all Governmental Approvals required for the timely construction of the Purple Line and for complying with and paying the cost of compliance with all environmental laws applicable to the construction of the Purple Line. The Company retains all responsibility for obtaining and complying with Governmental Approvals required for operation and maintenance of the portions of the Purple Line located within the O&M Limits. The obligation to obtain all required Governmental Approvals extends to third-party consents or other required approvals arising under agreements between the Contracting Authority and other persons, including municipalities, railroads, and utilities.

The design of the Purple Line is not complete and the terms of existing and expected Governmental Approvals could change as the Project specifications or environmental or species conditions change during the design process, and delays could ensue particularly if any required Governmental Approvals would require public hearings or are otherwise challenged. The Company expects that all Governmental Approvals required for the Project that are not yet obtained will be obtained as required for timely construction of the Purple Line. However, in some cases, the issuance of these Governmental Approvals, including any terms and conditions, is subject to the discretion of the issuer thereof, and such Governmental Approvals are subject to administrative and judicial appeal. With the exception of the Contracting Authority-Provided Governmental Approvals relating directly to work with respect to the Silver Spring Transit Center alignment, currently, the Company has obtained all required Governmental Approvals necessary for the Project, including for Revenue Service Availability and operation and
maintenance, other than certain permits that are routine in nature and are expected to be obtained ahead of Revenue Service Availability, which the Company will apply for once the final design of the corresponding portion of the Purple Line is completed (including in support of those Governmental Approvals which the Contracting Authority is responsible to obtain). No assurance can be given that the Company or the Design-Build Contractor will be able to obtain all required Governmental Approvals by the time they are necessary for construction or operation (as applicable) of the Purple Line. If not timely obtained, or if issued with restrictive terms and conditions, the need for these Governmental Approvals or for satisfying any conditions thereunder could cause delays in the construction of the Purple Line.

The construction schedule for the Project assumes that Governmental Approvals will be obtained in accordance with a schedule that anticipates a conventional permitting process without significant appeals, delays, imposition of unexpected conditions, unexpected changes in environmental or species conditions, finalization of or modifications to the Project design. Certain approvals are currently subject to a judicial challenge. See “THE PURPLE LINE LIGHT RAIL PROJECT—Environmental Litigation and Permits.” Any material delay in obtaining or renewing Governmental Approvals, imposition of an unexpected material condition on a Governmental Approval, unexpected changes in environmental conditions or conditions relating to threatened and endangered species or modification of the Purple Line design required as a result of the Governmental Approvals process could increase the costs of constructing the Purple Line or delay its completion. Certain of the risk of these costs and delays is allocated to the Contracting Authority under the P3 Agreement or to the Design-Build Contractor under the Design-Build Contract. However, there are procedural and other limitations on the liability of the Design-Build Contractor (including the aggregate liability cap) under the Design-Build Contract, and, if the Design-Build Contractor is not liable or does not pay for such costs or delays, such costs would be borne by the Company, affecting its cash flows and its ability to make timely payments of amounts due under the Series 2016 Loan Agreement and, in turn, the ability to make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Relief Events” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Force Majeure Events.”

Operating Risks

Increasing operating costs, including maintenance costs, may adversely impact the Company’s results of operations and, therefore, its receipt of Availability Payments and ability to make timely payments of amounts due under the Series 2016 Loan Agreement and, in turn, the ability to make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds.

As with any infrastructure project of the size and complexity of the portions of the Purple Line located within the O&M Limits, operations could be affected by many factors, including breakdown or failure of equipment or processes, performance below expected levels of availability, higher than expected traffic levels, failure to operate to design specifications and in accordance with then-applicable permit requirements, labor disputes, changes in law, inability to obtain necessary Governmental Approvals and catastrophic Force Majeure Events. Some but not all of these events can be covered by general liability, business interruption and other operating period insurance. The Contracting Authority has agreed to bear the risk of some, but not all, of these events under the Force Majeure Event/Relief Event regime set forth in the P3 Agreement, whereby the Contracting Authority is required to pay certain amounts and/or provide schedule relief for Relief Events and/or Force Majeure Events, as applicable. However, the Company is not entitled to compensation for Non-Discriminatory Changes in O&M Standards, except for certain cases, such as where the Company is obligated to advance the completion of scheduled renewal work, subject to other conditions, in which case such additional work will be a Relief Event under the P3 Agreement. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Relief Events.” The occurrence of any of these types of events could significantly increase O&M Expenditures.

The Collateral Agency Agreement provides that O&M Expenditures will be paid from time to time before any payments are made on the 2016 Bonds and before any required deposits to the Senior Debt Service Reserve Account are made. There will be an Rehabilitation Reserve Account established by the Company and funded with Lifecycle Payments from the Contracting Authority which will be applied to pay any amounts as may be necessary to ensure the Company’s performance of its obligations under the P3 Agreement in respect of the O&M Work. The costs of operating and maintaining the Purple Line (including the payment of certain taxes) will be paid before other expenses of the Company, including payments with respect to the 2016 Bonds and the funding and replenishment from time to time of the Senior Debt Service Reserve Account for such payments. The Company has passed through
to the O&M Contractor the risk that actual operation and maintenance costs exceed projected O&M costs. However, if the actual O&M costs significantly exceed the costs assumed in the base case financial projections for the Project, the company may not have sufficient cash flow to make payments pursuant to the Series 2016 Loan Agreement, thereby adversely impacting payments of principal of, or interest or premium, if any, on the 2016 Bonds. Also, certain operating responsibilities allocated to the Company under the P3 Agreement and passed through to the O&M Contractor under the O&M Contract may not be performed or cured simply by the expenditure of additional funds. For example, the failure to collect, deposit and account for fare revenues as required by the Contract Documents constitutes a Concessionaire Default. Such a Concessionaire Default could lead to a termination of the P3 Agreement. See “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement—Concessionaire Default,” “—Termination of the P3 Agreement—Termination for Concessionaire Default,” APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Concessionaire Default,” “—Termination of the P3 Agreement—Termination for Concessionaire Default,” and APPENDIX I—“LENDERS’ TECHNICAL ADVISOR REPORT.”

The accumulation of Noncompliance Events and Noncompliance Points for failure to achieve required levels of performance and availability of the Purple Line to the traveling public, as specified in the P3 Agreement, may result in a reduction in the amount of Availability Payments paid by the Contracting Authority to the Company under the P3 Agreement. See “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT.” Any such reduction in Availability Payments would reduce the amount available to pay Project Costs, O&M Expenditures and other expenses and to make any payments on the 2016 Bonds. Any such reduction in the Availability Payments payable to the Company may impact the Company and may impact the Company’s ability to make timely payments of amounts due under the Series 2016 Loan Agreement and the ability to make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds. Further, the accumulation of such Noncompliance Events and Noncompliance Points beyond a certain threshold, unless timely cured, would be a Concessionaire Default and could lead to termination of the P3 Agreement, with termination compensation which could be insufficient to pay all of the principal and interest on the 2016 Bonds.

Even though the obligations of the O&M Contractor under the O&M Contract are guaranteed by the O&M Guarantors under each O&M Guaranty, the O&M Guarantors are generally subject to the same rights, duties and defenses as the O&M Contractor, including the overall limitations of liability under the O&M Contract. See “THE PRINCIPAL PROJECT DOCUMENTS—SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Performance Security.” One of the O&M Guarantors, CAF, is an unrated Spanish corporation. CAF has not provided financial statements audited under U.S. GAAP. CAF’s financial statements are available at the Spanish Securities and Exchange Commission’s website (www.cnmv.es) and CAF’s website (www.caf.net) (these inactive textual references are not hyperlinks, and these websites are not incorporated herein). If CAF fails to perform its obligations under its O&M Guaranty, any arbitration award or judicial decision obtained against it in the United States would need to be enforced in the courts of Spain and there can be no assurance that courts in Spain would so enforce any judgment or award or that, if enforced, sufficient funds will be obtained from CAF.

Judicial Challenge

The Purple Line is to be designed, constructed, financed and operated in accordance with the P3 Agreement and the other Material Project Contracts, including in compliance with certain Governmental Approvals. Certain litigation has been filed raising claims based on various environmental statutes. See “THE PURPLE LINE LIGHT RAIL PROJECT—Environmental Litigation and Permits.” There is no assurance that any additional judicial, administrative or other legal actions or investigations into or challenging the construction or financing of the Project, the operation and maintenance of the portions of the Purple Line located within the O&M Limits, the granting of any permits and approvals required in connection therewith or any of the other transactions contemplated by this Official Statement, including the issuance of the 2016 Bonds, will not be filed or commenced in the future or, that the outcome of the ongoing litigation or any subsequently commenced judicial, administrative or other legal actions or investigations will not adversely affect the commencement or timely completion of the construction of the Purple Line, or the ability to pay principal and interest on the 2016 Bonds. For additional information about the current status of this litigation, and the various forms of schedule and monetary relief available to the Company under the P3 Agreement relating thereto, see “THE PURPLE LINE LIGHT RAIL PROJECT—Environmental Litigation and Permits.” See also “LITIGATION—The Contracting Authority.”
Risks Relating to the Project Agreements

Failure to Comply with P3 Agreement; Termination of the P3 Agreement

The Company’s principal asset is its right under the P3 Agreement to receive Progress Payments, the RSA Payment, the Final Completion Payment, Availability Payments, Compensation Amounts and Termination Compensation related to the construction, operation, and maintenance of the Purple Line. The Availability Payments are payable for a term of 30 years after the earlier of the Revenue Service Availability (RSA) Deadline and the date of issuance of the Certificate of Revenue Service Availability (the Design-Build Period for the Project is approximately sixty-nine (69) months). The Company’s failure to comply with the terms and conditions of the P3 Agreement may result in the reduction of Availability Payments or Termination Compensation payable to the Company or in the early termination of the P3 Agreement, any of which would limit the Company’s ability to make timely payments of amounts due under the Series 2016 Loan Agreement and, in turn, the ability to make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds. In addition, certain failures by the Company in the performance of its obligations under the P3 Agreement will result in the assessment of Deductions for Noncompliance Events and Noncompliance Points against the Company in accordance with the P3 Agreement. The accumulation of specified amounts of assessed Noncompliance Events and Noncompliance Points can lead, if not properly remedied, to a default. In the case of certain material or continuing defaults, the Contracting Authority will have the right to terminate the P3 Agreement, and subject to the rights of the Collateral Agent (acting on behalf of the Secured Parties) it may have under the a direct agreement by and among the Contracting Authority, the Company and the Collateral Agent, take possession and assume operational control of the portions of the Purple Line located within the O&M Limits and take such other action as it may deem appropriate in accordance with the P3 Agreement and such direct agreement. In the event of termination of the P3 Agreement, the amount of Termination Compensation payable by the Contracting Authority to the Company is subject to appropriation by the General Assembly and the amount payable to the Company under the P3 Agreement could be insufficient to make timely payments of amounts due under the Series 2016 Loan Agreement, which could, in turn, affect the ability to make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally,” ”THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT.”

Delay Under P3 Agreement

Pursuant to the terms and conditions of the P3 Agreement, the Company is obligated to achieve Revenue Service Availability by the Long Stop Date and to achieve Final Completion by the Final Completion Deadline, defined as twenty-four (24) months from the RSA Date, subject to extension of each such deadline for Relief Events and Force Majeure Events. Pursuant to the Design-Build Contract, the Design-Build Contractor has agreed to comply with the corresponding deadlines as they relate to the work required to be undertaken by the Design-Build Contractor under the Design-Build Contract. However, a delay in the completion of the construction of the Purple Line may cause a delay by the Company in receiving the RSA Payment, the Final Completion Payments and the Availability Payments, thereby adversely impacting the Company’s ability to make timely payments of amounts due under the Series 2016 Loan Agreement and, in turn, affect the ability to make timely payments of principal of, or interest or premium, if any, on the 2016 Bonds. In addition, even though the Guaranteed DB Long Stop Date agreed under the Design-Build Contract has been established at a date which is approximately three (3) months prior to the Long Stop Date set forth in the P3 Agreement, if the Design-Build Contractor does not meet the applicable construction deadlines set forth in the Design-Build Contract, the Company may not achieve Revenue Service Availability upon which the payment of the Availability Payments commences. If Revenue Service Availability is not achieved by the Long Stop Date, as the Long Stop Date may be extended under the P3 Agreement, the Contracting Authority may terminate the P3 Agreement. The applicable Termination Compensation payable under such circumstance is subject to appropriation by the General Assembly and may not be sufficient to pay in full all obligations under the 2016 Bonds. See “RISK FACTORS—Risks Relating to the Project Agreements—Failure to Comply with P3 Agreement; Termination of the P3 Agreement.” In addition, although the Company may be entitled to receive compensation from the Design-Build Contractor through payments of termination damages or liquidated damages to use for payments on the 2016 Bonds, the Design-Build Contractor could fail to pay such termination damages or liquidated damages or the amounts actually paid by the Design-Build Contractor could be insufficient. To the extent that any of the foregoing occurs, the Company may have a limited ability, or no ability, to
make payments pursuant to the Series 2016 Loan Agreement, which in turn, may adversely impact the ability to make payments of the principal of, or interest or premium, if any, on the 2016 Bonds.

**Events of Force Majeure; Limited Insurance Coverage; Compensation and Relief Events**

Construction of the Purple Line and the operation and maintenance of the Purple Line are at risk of Force Majeure Events, such as tornadoes, landslides, floods, seismic events, fires and explosions, strikes (not specific to the Company), sabotage, wars, acts of terrorism, armed blockades, riots, nuclear explosions and radioactive contamination, among other events. Also, construction and O&M may be stopped or delayed by non-casualty events, including Relief Events, such as discovery of archaeological artifacts or of threatened or endangered species at, near or on the Project right-of-way, certain changes in law, delays in obtaining and renewing certain Governmental Approvals, revocation or revision of certain Governmental Approvals and litigation, among other things, and the O&M Work may be affected by events outside of the Company’s control, including Non-Concessionaire-Caused Disruptions, such as obstruction of grade crossings by third parties, unauthorized passenger activity, power network change and other events. Although the Company is entitled to schedule and payment relief and excuse from performance obligations for certain events including Force Majeure Events, Relief Events and Non-Concessionaire Caused Disruptions, (subject to certain time and monetary deductibles), such protection does not cover all events that potentially could interrupt construction of the Purple Line or the operation and maintenance of the portions of the Purple Line and, in certain cases, may result in the termination of the P3 Agreement.

In addition, although the Design-Build Contractor, the O&M Contractor and the Company are required to obtain and maintain certain insurance, the required policies do not cover damage and delay from all events that potentially could interrupt construction of the Purple Line, or the operation and maintenance of the portions of the Purple Line. Insurance policies may not be maintained or be obtainable in amounts that would be sufficient or be paid on time, in all events, to cover all of the costs required to be paid under the P3 Agreement and under the Indenture, including payment of the principal of, or interest or premium, if any, on the 2016 Bonds. Risks that may not be insurable include a nuclear event, war, known and pre-existing environmental or geological conditions, criminal or intentional acts by the insured, bankruptcy, longshoremen’s strikes and insurer insolvency. In addition, changes in federal, state or local design, building and environmental requirements and other changes in law are not risks that are generally insurable. There also can be no assurance that any use by the Design-Build Contractor or the O&M Contractor of the respective insurance proceeds would not be challenged by other creditors, that the Company could repair any damage if insurance proceeds were not available or that insurance proceeds could be used to pay amounts owed with respect to the 2016 Bonds and the Series 2016 Loan if damaged facilities cannot be repaired or restored.

**Potential Replacement of Any or All of the Design-Build Contractor Members, Design-Build Guarantors, O&M Contractor Members or O&M Guarantors**

Under certain circumstances, one or more of the Design-Build Contractor members, Design-Build Guarantors, O&M Contractor members or O&M Guarantors may be replaced without consent of the Holders of the 2016 Bonds. The Company is permitted to terminate the Design-Build Contract, any Design-Build Guaranty, the O&M Contract or any O&M Guaranty, so long as such agreement or guaranty is replaced by a replacement agreement between the Company and an Acceptable Replacement Party, such replacement is reasonably expected to allow the Company to achieve Revenue Service Availability on or prior to the Long Stop Date, and such replacement cannot reasonably be expected to adversely affect the Company’s ability to repay the 2016 Bonds. In connection with any such replacement party or agreement, the Company will need to obtain consent of the TIFIA Lender and the Contracting Authority, unless such replacement satisfies the specific exceptions set forth in the TIFIA Loan Agreement and P3 Agreement, respectively.

No assurance can be given that any Acceptable Replacement Party will satisfy its obligations under the applicable contract that is being replaced. Thus, termination and replacement of the Design-Build Contract, any Design-Build Guaranty, the O&M Contract or any O&M Guaranty could increase the risk of material delay in completing or failure to complete the Project and/or failure to operate the Project in accordance with the terms of the P3 Agreement which may in turn result in the delay in payment or reduction of Progress Payments, the RSA Payment, the Final Completion Payment and Availability Payments to the Company and may affect the Company’s ability to make timely payments of amounts due under the Series 2016 Loan Agreement and, in turn, the ability to
make timely payments of the principal of, or interest or premium, if any, on the 2016 Bonds. See “—Risks Relating to the Project—Construction Risks” and “—Operating Risks.”

Risks Relating to the 2016 Bonds

Bankruptcy and Insolvency Risks

General. Numerous statutory provisions, including the United States Bankruptcy Code (the “Bankruptcy Code”) and other federal and state bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other federal or state laws affording relief to debtors, may interfere with and delay the enforceability of the rights and remedies of the Holders of the 2016 Bonds under the Indenture, of the Collateral Agent under the Series 2016 Loan Agreement or the Collateral Agency Agreement and of the Company under the Material Project Contracts, the enforceability of obligations of the Company, the Design-Build Contractor, the O&M Contractor, the Design-Build Guarantors, the O&M Guarantors, the Contracting Authority, obligors on the Material Project Contracts and the issuers or obligors under the letters of credit and performance bonds and the enforceability of the liens, security interests and pledges created by the Indenture, Collateral Agency Agreement, Security Agreements and other documents. For example, under the Bankruptcy Code, virtually all actions (including foreclosure actions or actions to modify or terminate contracts) are automatically stayed upon the filing of a bankruptcy petition. Risks associated with a bankruptcy of the Company include the risks of delay in, or reductions to, the payment or of nonpayment under the Series 2016 Loan Agreement and the risk that the Collateral Agent or the Contracting Authority may be unable for an extended time, or at all, to substitute a new developer for the Company. Certain of these risks are risks that are incurred whenever one enters into a contract with an entity that could become a debtor under the Bankruptcy Code, while others are risks that result from the treatment under the Bankruptcy Code of secured financings. Potential purchasers of the 2016 Bonds should consult their own attorneys and advisors in assessing the risks and the likelihood of recovery in the event the Company or any other party to a document described herein becomes a debtor in a bankruptcy case prior to the time the 2016 Bonds are paid in full.

Company Bankruptcy Risk. Most of the assets that comprise the Trust Estate are derived from the P3 Agreement, including the Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”) due or to become due under the P3 Agreement. If the Company became the subject of federal bankruptcy proceedings, the automatic stay provisions of the Bankruptcy Code would prohibit the State, the Trustee and the Collateral Agent, as applicable, without permission of the bankruptcy court from commencing or continuing any act to enforce the P3 Agreement, the Series 2016 Loan Agreement, the Collateral Agency Agreement, the Security Agreements or any other agreement that creates a Security Interest in favor of the Collateral Agent for the benefit of the Trustee on behalf of the Holders of the 2016 Bonds, including, among others, declaring the P3 Agreement (or such other documents) to be in default, recovering amounts due but unpaid, terminating the P3 Agreement, accelerating the due dates of any payments due from the Company, dispossessing the Company and taking possession of the Project or realizing against any collateral provided by the Company as security for its payment obligations under the P3 Agreement, the Series 2016 Loan Agreement and the other Security Documents or enforcing any other remedies provided for in the P3 Agreement or in the other documents.

The Contracting Authority will enter into the P3 Direct Agreement, the Design-Build Contractor will enter into the Design-Build Direct Agreement, the O&M Contractor will enter into the O&M Direct Agreement and each of the Design-Build Guarantors and the O&M Guarantors will enter into a Design-Build Guaranty Consent and Agreement and an O&M Guaranty Consent and Agreement, respectively, in each case, with the Company and the Collateral Agent for the benefit of the Secured Parties. Each such agreement is intended to provide the Collateral Agent with notice and time to take action following the occurrence of an event that would entitle a party to terminate or to suspend its agreement with the Company, even though the P3 Direct Agreement does not grant any right to the Collateral Agent to demand a new agreement with the Contracting Authority if the P3 Agreement is terminated. Each of these agreements, however, imposes certain terms and conditions with respect to the ability of the Collateral Agent or any designee or assignee to succeed to the interests of the Company under the agreement to which such Direct Agreement relates, or to request that the applicable counterparty deliver a replacement design-build contract (as applicable). If a bankruptcy trustee (including the Company itself as a debtor in possession) or similar official has been appointed for the Company, that trustee or official may have the power to prevent the transfer of the Company’s interests under such agreements. Consequently, no assurance can be given that the provisions of these agreements will be enforced or that the terms and conditions specified therein will be satisfied. Thus, as a practical matter, the Secured Parties will have limitations on their ability to replace the Company as the developer under the
P3 Agreement and under the Design-Build Contract. A bankruptcy trustee (including the Company itself as a debtor in possession) or similar official may have the ability to compel the transfer of the Company’s interests under such agreements, which may be approved by a bankruptcy court over the objection of the Secured Parties.

The bankruptcy court or similar court could authorize the Company to obtain credit secured by a senior, priming lien on property of the bankruptcy estate already encumbered by existing liens, but only if the bankruptcy court determines that there is adequate protection of the interests of the holders of those existing liens on the property of the estate on which the senior or equal lien is proposed to be granted. Similarly, the Company may, in certain circumstances, be able to confirm a plan that modifies the terms of the 2016 Bonds the Series 2016 Loan Agreement, the Collateral Agency Agreement, the Security Agreements, and the other security documents over the objection of the Holders of the 2016 Bonds and the Series 2016 Loan Agreement.

Regardless of any decision made by a court, the fact that a bankruptcy case has been commenced by or against the Company could have an adverse effect on the liquidity and value of the 2016 Bonds and the obligations under the Series 2016 Loan Agreement.

In addition, if the Company were to become the subject of bankruptcy or similar proceedings, a bankruptcy or similar court could authorize the Company is no longer required to perform its obligations under the P3 Agreement, or the court could reject such agreements themselves, thereby depriving the Holders or the Company, as applicable, of its rights thereunder, including the rights and remedies available to the Holders pursuant to the Indenture and the right to operate the Project. Moreover, bankruptcy law permits the debtor to continue to remain in possession of its assets and property and use property that has been pledged as collateral even though the debtor is in default under the applicable indebtedness instrument, provided that the secured creditor is given “adequate protection.” The meaning of the term “adequate protection” may vary according to the circumstances, but it is intended to protect the value of the secured creditor’s interest in the collateral and may include cash payments or the granting of additional security if and at such times as the court in its discretion determines that the value of the secured creditor’s interest in the collateral is declining during the pendency of the bankruptcy case. A bankruptcy court may determine that a secured creditor may not prevent diminution in the value of its collateral if the value of the collateral exceeds the indebtedness it secures.

In view of the lack of a precise definition of the term “adequate protection” and the broad discretionary power of a bankruptcy court or similar court, it is impossible to predict:

- how long payments under the 2016 Bonds could be delayed following commencement of a bankruptcy case;
- whether or when the trustee could repossess or dispose of the collateral;
- the value of the collateral at the time of the bankruptcy petition; or
- whether or to what extent holders of the notes would be compensated for any delay in payment or loss of value of the collateral through the requirement of “adequate protection.”

In the event that a bankruptcy case is commenced by or against the Company, if the value of the Collateral is less than the amount due to the Holders and the Company’s other senior secured obligations, interest may cease to accrue on the 2016 Bonds from and after the date the bankruptcy petition is filed. In the event of a foreclosure, liquidation, bankruptcy or similar proceeding, there can be no assurance that the proceeds from any sale or liquidation of the Collateral will be sufficient to pay the obligations due under the 2016 Bonds and any other obligations secured by a first-priority lien on the Collateral, including TIFIA (as described below). Any such judicial discretion or interpretations may cause a delay in enforcement proceedings or may limit or modify the rights and remedies available to the Holders and/or the Company. As a result, the Holders may not be able to realize sufficient value from the Collateral to be repaid all of the outstanding indebtedness under the notes.

**Other Parties.** The Design-Build Contractor and the O&M Contractor and their respective limited liability company members, and the Design-Build Guarantors and the O&M Guarantors and any Equity Letter of Credit providers are involved, or are affiliates of companies that are involved, in many businesses and are entities that can become debtors under the Bankruptcy Code. If any of such persons became a debtor under the Bankruptcy Code, the
Company’s or the Collateral Agent’s ability to substitute a new contractor, to obtain funds under any payment or performance security or to exercise other remedies may be delayed or not available at all. In the case of counterparties organized under the laws of a foreign jurisdiction, any bankruptcy or insolvency proceedings could be initiated in such jurisdiction. Such multi-jurisdictional proceedings are typically complex and costly for creditors and often result in substantial uncertainty and delay in the enforcement of creditors’ rights. Consequently, any judgment obtained in the United States against such counterparties may not be collectible in the United States.

**TIFIA “Springing Lien” and other important rights of TIFIA as a secured creditor**

The rights of the Holders with respect to the Collateral will be subject to an Intercreditor Agreement among the TIFIA Lender and all holders (or their designated representative) of obligations secured on a first-priority basis by the Collateral.

If a Company Bankruptcy Related Event occurs, the right to payment under the TIFIA Loan, to the extent the TIFIA Loan is then held by the TIFIA Lender or a TIFIA Agency Assignee, will automatically change from being subordinate to the right to payment on the 2016 Bonds and other Senior Secured Obligations to ranking equally with the same. In addition, in such a circumstance, the TIFIA Loan will share, on a pari passu basis, the liens securing the 2016 Bonds and other Senior Secured Obligations, other than the exclusive Security Interest for the 2016 Bonds on certain separate collateral, including the 2016D Bonds Debt Service Reserve Sub-Account and the Bonds Proceeds Sub-Accounts with respect to each series of 2016 Bonds. A Company Bankruptcy Related Event includes not only bankruptcy and insolvency, but also failure to pay mandatory debt service on the TIFIA Loan for two consecutive semiannual payment dates as well as any effort by the Collateral Agent to exercise remedies with respect to the Collateral, including foreclosure on the Collateral, sale or disposition in lieu of foreclosure on the Collateral, and upon the occurrence and during the continuance of an event of default under the 2016 Loan Documents, transferring, or directing the transfer of, funds on deposit in any of the Project Accounts pursuant to the enforcement waterfall set forth in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Application of Proceeds” for application to the payment of any Secured Obligations. Thus, if a foreclosure on or disposition of the Collateral is commenced or the Collateral is foreclosed upon in a bankruptcy or any other foreclosure proceeding, including liquidation of the Project Accounts to pay the Senior Secured Obligations, the rights of the Holders with respect to the Collateral will be significantly diluted by the amount of the TIFIA Loan, which may adversely impact the ability of the Holders to obtain payment in full of the obligations due to them pursuant to the 2016 Bonds then Outstanding. In addition, under the Intercreditor Agreement, all material actions that may be taken with respect to the Collateral, including the ability to cause or refrain from causing the commencement of enforcement proceedings against the Collateral, to control such proceedings and to approve releases of Collateral from the lien of the Security Documents, will be at the direction of the Required Creditors. The Required Creditors will also have the sole and exclusive right to adjust, compromise or settle any loss with an insurer. The principal and accrued interest of the TIFIA Loan is expected to exceed the principal and accrued interest on the 2016 Bonds no later than approximately 3.1 years into the Design-Build Period. Whenever the principal of and accrued interest on the TIFIA Loan exceeds the Bond Obligations, upon and following the occurrence of a Company Bankruptcy Related Event, the TIFIA Lender alone will constitute the Required Creditors. This means that, upon the occurrence of a Company Bankruptcy Related Event, the TIFIA Lender, and not the Holders, is expected to have the right to control virtually all decisions with respect to the Collateral. The TIFIA Lender is not a private entity, and its objectives and interests may differ materially from those of the Holders. Also, the TIFIA Loan Agreement allows the TIFIA Lender to transfer its interests in the TIFIA Loan to TIFIA Agency Assignees at any time after the Substantial Completion Date, and a TIFIA Agency Assignee (unlike a commercial entity) would have the same rights to a first priority security interest in the Collateral and the same right to control commencement of and direction of enforcement proceedings upon and other material decisions in respect of the Collateral following the occurrence of any Company Bankruptcy Related Event.

The TIFIA Lender also has important rights as a creditor prior to a Company Bankruptcy Related Event which afford the TIFIA Lender pari passu or, in some cases, priority treatment in respect of payments from the Company. For example, under the Collateral Agency Agreement, regardless of whether a Company Bankruptcy Related Event has occurred, if Termination Compensation under the P3 Agreement is paid in an amount less than 100% of the Borrower’s aggregate outstanding Indebtedness (excluding Permitted Subordinated Debt), the Termination Compensation will be allocated among the Bond Obligations, other Senior Secured Obligations and the TIFIA Obligations pro rata based on the outstanding principal of such respective Indebtedness. Similarly, under the
Collateral Agency Agreement, all insurance proceeds received for physical property damage to the Project under any Insurance Policies (other than any business interruption or delay in start-up insurance) which are not applied to repair, restore or replace the Project will be applied on a pro rata basis to the TIFIA Loan and the Senior Secured Obligations, regardless of whether a Company Bankruptcy Related Event has occurred. Thus, the Holders’ recovery from any Termination Compensation or casualty proceeds will be diluted by the amount of the TIFIA Loan, which may adversely impact the ability of the Holders to obtain payment in full of the obligations due to them pursuant to the 2016 Bonds then Outstanding. Also, if funds remain credited to the Equity Lock-Up Account for a period of at least thirty (30) months because the Company fails to satisfy the conditions to equity distributions, all of such funds will be applied to prepay the TIFIA Loan on a senior basis to, and to the exclusion of, the Holders. In addition, if an Event of Default under the 2016 Loan Documents occurs and is continuing prior to the RSA Payment Date, the TIFIA Debt Service Reserve Sub-Account must be funded from certain available amounts in the Construction Account in an amount not to exceed the TIFIA Debt Service Reserve Required Balance, after the similar transfer from available amounts in the Construction Account to fund the 2016D Bonds Debt Service Reserve Sub-Account in an amount not to exceed the 2016D Bonds Debt Service Reserve Required Balance has been made in full (unless (x) a Company Bankruptcy Related Event has occurred and (y) the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, in which case, such transfers would be made on a pro rata basis). The TIFIA Lender also has the right to demand pro rata prepayment from amounts paid from the Revenue Account pursuant to the Flow of Funds comprising extraordinary mandatory prepayment, extraordinary mandatory redemption or payment of accelerated amounts, other than any extraordinary mandatory redemption of the Series 2016D Bond arising from early achievement of the RSA Date, and the TIFIA Lender’s consent is required pursuant to the terms of the TIFIA Loan Agreement for the Company to enter into Additional Senior Obligations that feature such prepayment and redemption terms. See “SECURITY FOR AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Intercreditor Terms Among the Secured Parties” and “—Limited Subordination of the TIFIA Loan” and “FINANCING FOR THE PROJECT—TIFIA Loan Agreement.”

**Letter of Credit Dishonor**

Each of the Sponsors is required to provide an Equity Letter of Credit to support its obligations to make Capital Contributions (if it does not cash collateralize such obligation through its Applicable Sponsor Cash Collateral Account). In addition, the Design Build Contractor and the O&M Contractor are each obligated to provide to the Company one or more letters of credit to secure performance of its respective obligations under the Design Build Contract or the O&M Contract, as applicable.

There can be no assurance that the issuer of any Equity Letter of Credit or any other letter of credit to be provided for the benefit of the Sponsors or the Company will honor its letter of credit in accordance with its terms, or that such issuers would not become subject to a bankruptcy or that other circumstances might arise that prevent such issuers from honoring their obligations under such Equity Letters of Credit or any other letters of credit. There can also be no assurance that the beneficiary of any Equity Letter of Credit or any other letter of credit provided pursuant to the terms of the Material Project Contracts will timely enforce its rights under such letters of credit prior to expiration thereof.

**New Starts Full Funding Agreement**

MTA has sought federal grant funding for the Project through the discretionary Capital Investment Grant (the “CIG”) program as a New Starts project. See “FINANCING FOR THE PROJECT—Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding.” Such federal grant funds will not be available to the MTA from the FTA unless and until the full funding grant agreement (the “New Starts Full Funding Grant Agreement”) is finalized and executed. The initial disbursement of the TIFIA Loan is expressly conditioned in the TIFIA Loan Agreement upon execution of the New Starts Full Funding Grant Agreement by the MTA and the FTA. See “FINANCING FOR THE PROJECT—TIFIA Loan Agreement—Disbursement Request.”

Under the P3 Agreement, the Contracting Authority has agreed to execute, and use commercially reasonable efforts to cause the FTA to execute, the New Starts Full Funding Grant Agreement prior to May 17, 2018. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT.” This timing for execution is in advance of the currently anticipated initial disbursement of the TIFIA Loan. However, if the New Starts Full Funding Grant Agreement is not fully executed prior to May 17, 2018, then the Company may terminate
the P3 Agreement, effective immediately upon the Contracting Authority’s receipt of the Company’s notice of termination delivered on or after such date. See “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement—Termination of the P3 Agreement—Company Rights to Terminate.” The Series 2016 Loan Agreement obligates the Company to deliver to the Contracting Authority such a notice of termination within one (1) Business Day following the Contracting Authority’s failure to execute the New Starts Full Funding Grant Agreement on or prior to May 17, 2018, unless (i) prior to April 2, 2018 the TIFIA Lender has acknowledged in writing that an alternative arrangement to be agreed to in writing between the Contracting Authority and the Company in accordance with the P3 Agreement satisfies in full (or the TIFIA Lender has permanently waived in writing) the condition to funding in the TIFIA Loan Agreement that requires execution of the New Starts Full Funding Grant Agreement and (ii) as of the date of such acknowledgment or waiver, after giving effect to such waiver by the TIFIA Lender or such alternative arrangement, the TIFIA Loan remains available to fund the Project on the material terms contained in and in accordance with the TIFIA Loan Agreement.

In the event of termination of the P3 Agreement for failure to execute the New Starts Full Funding Grant Agreement, the amount of Termination Compensation is calculated in the same fashion as in a Termination for Convenience, and is intended to fully cover principal and interest on the 2016 Bonds, among other outstanding liabilities of the Company; the 2016 Bonds are subject to extraordinary mandatory redemption from the proceeds of the Termination Compensation. See “THE 2016 BONDS—Extraordinary Mandatory Redemption—P3 Agreement Termination Compensation—2016 Bonds.” Termination Compensation payable by the Contracting Authority to the Company is subject to appropriation by the General Assembly. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally—State Budget and Appropriation Processes,” “THE PROJECT PARTICIPANTS—The Contracting Authority—Appropriation by the General Assembly” and “—Budgetary System,” “RISK FACTORS—Risks Relating to the Company and the Contracting Authority—Appropriation Risk” and APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT.”

**Limitations on Enforceability**

Upon a default under the P3 Agreement, the Series 2016 Loan Agreement, the Indenture, the Collateral Agency Agreement, any of the Material Project Contracts or any of the Security Documents, the remedies available to the Bond Issuer, the Contracting Authority, the Company, the Trustee and the Collateral Agent may depend upon judicial actions that may be subject to substantial discretion and delay. As a result, remedies otherwise provided for in these agreements may not be enforceable. The rights of the Holders of the 2016 Bonds and the enforceability of the Company’s, the Bond Issuer’s and the other parties’ obligations may be subject to the exercise of judicial discretion under a variety of circumstances. The enforceability of governmental obligations is also subject to constitutional, statutory and public policy limitations, such as sovereign immunity, statutes of limitations and to other considerations that do not limit enforcing of similar obligations of private parties. The Contracting Authority makes a number of agreements, such as its agreement to make Progress Payments, Availability Payments, Compensation Amounts and Termination Compensation pursuant to the P3 Agreement. See “FINANCING FOR THE PROJECT—Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding.” While these agreements and other are made largely for the benefit of the Company and, indirectly, the Holders of the 2016 Bonds, no assurances can be given that a court exercising its judicial discretion will enforce such agreements in all circumstances. The opinion of Bond Counsel as to the enforceability of the Indenture and the 2016 Bonds and the opinions of other parties’ counsel will be qualified as to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally, and the application of such laws may limit or prevent remedies otherwise available to the Trustee and Collateral Agent, respectively, in the Indenture, the Collateral Agency Agreement and in the other documents and/or, in each case, to the Holders of the 2016 Bonds, the Bond Issuer or the Contracting Authority from being exercised by these constituencies. The enforceability of the Design-Build Contractor’s payment bond and performance bond may be limited not only by the legal matters described above, but also by various provisions of suretyship and insurance law. The surety or insurance company providing the payment bond and performance bond is not waiving its right to assert the Design-Build Contractor’s defenses to payment, nor is the surety or insurance company waiving its suretyship defenses. The obligations of the surety or insurance company under the payment bond and performance bond to complete construction or to pay damages thus are limited, and no assurances can be given that the surety or insurance company will honor a claim under the payment bond or performance bond.
**Insufficient Collateral**

It may be difficult to realize the value of the Collateral to be pledged as part of the Trust Estate, including under the Security Documents, and the proceeds received from a sale of such Collateral may be insufficient to repay the 2016 Bonds. Foreclosure on such Collateral on the Holders’ behalf may be subject to perfection and priority issues and to practical problems associated with the realization of the Holders’ security interest in such Collateral. The enforcement of the security interest with respect to any such Collateral may not provide sufficient funds to repay all amounts due on the 2016 Bonds. Any such Collateral will be shared with the holders of Additional Parity Bonds and other senior debt that the Company incurs in the future, including Other Permitted Senior Secured Indebtedness and upon the occurrence of a Company Bankruptcy Related Event, if the TIFIA Obligations are then held by the TIFIA Lender or a TIFIA Agency Assignee, the TIFIA Obligations, which increases the risk that the proceeds of foreclosure on such Collateral will not be sufficient to satisfy the Company’s obligations under the Series 2016 Loan Agreement, which in turn may adversely impact the ability to make payments of the principal of, interest or premium, if any, on the 2016 Bonds.

In addition, there are practical limitations on the exercise of remedies in respect of the Company’s rights under the P3 Agreement. Any transferee of such rights in connection with the exercise of the Collateral Agent’s remedies must meet certain requirements established by the P3 Direct Agreement. Thus, as a practical matter, the Company’s creditors (including the Holders of the 2016 Bonds) will have limitations on their ability to replace the Company in its role as concessionaire under the P3 Agreement. See “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement.”

Furthermore, upon an Event of Default by the Company under the P3 Agreement, if such Event of Default continues after expiration of all additional cure periods, if any, available to the Collateral Agent under the P3 Direct Agreement, the Contracting Authority will have the right to pay and perform all or any portion of the Company’s obligations under (a) the P3 Agreement and (b) under any other then-existing breaches or failures to perform for which the Company received prior notice from the Contracting Authority but has not commenced or does not continue diligent efforts to cure. The Contracting Authority’s right to access such funds, however, does not include a security interest in such funds, and under the P3 Agreement the Contracting Authority can only exercise such right if it is necessary to cure the default and if it does not interfere with the right of the Secured Parties, if any, under the “Security Documents” (as defined in the P3 Agreement) and any direct agreement that is entered into pursuant to the P3 Agreement to access such funds. The Company expects that the Contracting Authority’s rights to access funds in the Operating Account will not interfere with the right of the Collateral Agent under the “Security Documents” (as defined in the P3 Agreement) or Direct Agreements to which Collateral Agent is party, to access such funds. Nevertheless, the Contracting Authority’s exercise of such right may reduce the amount of funds available to satisfy the Company’s obligations under the Series 2016 Loan Agreement, which in turn may adversely impact the ability to make payments of the principal of, interest or premium, if any, on the 2016 Bonds.

Also, the Collateral Agency Agreement requires that, following an Enforcement Action, only Net Loss Proceeds and any net proceeds in respect of certain business interruption or delay in startup insurance may be applied from the Loss Proceeds Account to the payment of the Secured Obligations pursuant to the enforcement waterfall set forth in “PROJECT ACCOUNTS AND FLOW OF FUNDS—Application of Proceeds”. Thus, even if there are sufficient Loss Proceeds to repay or redeem in whole or in part the Applicable Senior Secured Obligations at the time of receipt, and the Required Creditors at such time desire to so repay or redeem the Applicable Senior Secured Obligations, such Loss Proceeds (other than as specified in the preceding sentence) must instead be retained in the Loss Proceeds Account to repair, restore or replace the Purple Line.

**No Interest in Real Property**

Under the P3 Agreement, the Company has not been granted any right, title or interest in or to any real property. Consequently, the Collateral does not include a deed of trust or other pledge of real property to secure the payment of principal and interest on the 2016 Bonds. Upon termination of the P3 Agreement, regardless of whether the Contracting Authority has made or will pay Termination Compensation (which, if payable by the Contracting Authority is subject to appropriation by the General Assembly), possession of the Purple Line and all rights with respect thereto, other than any rights of the Company to Termination Compensation under the P3 Agreement (which, if payable by the Contracting Authority is subject to appropriation by the General Assembly), will revert to the Contracting Authority.
Uncertainties of Forecasts and Assumptions

The information in this Official Statement includes certain assumptions, forecasts and projections. Demonstration of compliance with certain of the covenants contained in the Indenture, the Series 2016 Loan Agreement and in the P3 Agreement may also be based upon assumptions and projections. Such assumptions, forecasts and projections and any forecasts and projections that may be contained in any future certificate required under the P3 Agreement, the Series 2016 Loan Agreement, the Indenture or the Collateral Agency Agreement are not necessarily indicative of future performance, and actual results are likely to differ, even materially, from those projected. None of the Company, the Bond Issuer, the Contracting Authority, the Sponsors or their affiliates or any other party (including, but not limited to, the Underwriters) assumes any responsibility for the accuracy of such projections. In addition, certain assumptions with respect to future business and financing decisions are subject to change. No representation is made or intended, nor should any representation be inferred, with respect to the likely existence of any particular future set of facts or circumstances, and prospective purchasers of the 2016 Bonds are cautioned not to place undue reliance upon the projections contained in this Official Statement or upon requirements for future projections. If actual results are less favorable than the results projected or if the assumptions used in preparing the projections prove to be incorrect, the Contracting Authority’s ability to make the payments required by the P3 Agreement, the Company’s ability to make timely payments of amounts due under the Series 2016 Loan Agreement and the ability to make timely payments of the principal of, interest or premium, if any, on the 2016 Bonds may be materially and adversely affected.

Ratings of the 2016 Bonds

S&P, Fitch and DBRS are expected to assign underlying credit ratings to the 2016 Bonds. The ratings of the 2016 Bonds are not a recommendation to purchase, hold or sell the 2016 Bonds, and the ratings do not comment on the market price or suitability of the 2016 Bonds for a particular investor. The ratings of the 2016 Bonds may not remain for any given period of time and may be lowered or withdrawn depending on, among other things, each rating agency’s assessment of the Company’s financial strength respectively. The credit ratings assigned to the 2016 Bonds reflect the rating agencies’ assessments of the Company’s ability to make payments under the Series 2016 Loan Agreement when due, thus reflecting on the ability to make payments on the 2016 Bonds when due, as well as the credit profile or ratings of the Contracting Authority, the State, the Design-Build Guarantor and the O&M Guarantor. Consequently, real or anticipated changes in any of these credit ratings will generally affect the market value of the 2016 Bonds. These credit ratings, however, may not reflect the potential impact of risks relating to structure, market or other factors related to the value of the 2016 Bonds.

Market Liquidity

The 2016 Bonds constitute a new issue with no established trading market. Although the Underwriters have informed the Bond Issuer and the Company that the Underwriters currently intend to make a market for the 2016 Bonds, the Underwriters are not obligated to do so, and they may discontinue any such market-making at any time without prior notice. No assurance can be given as to the development or liquidity of any market for the 2016 Bonds. If an active public market does not develop, the market price and liquidity of the 2016 Bonds may be adversely affected.

Furthermore, even if a market were to develop, the 2016 Bonds could trade at prices that may be lower than the initial issue price depending on many factors, including prevailing interest rates, markets for similar securities, general economic conditions and financial condition and performance and prospects of the Company and the Project. Holders may not be able to sell their 2016 Bonds in the future or such sales may not be at prices equal to or greater than the initial offering price of the 2016 Bonds. As a result, Holders may not be able to liquidate their investment in the 2016 Bonds quickly, at an attractive price or at all.

Additional Senior Obligations and Additional Parity Bonds

The Company will be permitted, in certain circumstances, to incur Other Permitted Senior Secured Indebtedness, which may adversely impact the payment of the principal of, or interest or premium, if any, on the 2016 Bonds. The Series 2016 Loan Agreement permits the Company to incur, in specific circumstances and subject to certain requirements, Other Permitted Senior Secured Indebtedness. See “FINANCING FOR THE PROJECT—Series 2016 Loan Agreement.” The Indenture permits the issuance, in specific circumstances and subject to certain
requirements, of Additional Parity Bonds to be ratably and equally secured by the Trust Estate (other than with respect to certain Collateral subject to exclusive Security Interests pursuant to the Security Documents, including the Bond Proceeds Sub-Accounts and the 2016D Bonds Debt Service Reserve Sub-Account). See ‘THE 2016 BONDS—Additional Parity Bonds.” Any Other Permitted Senior Secured Indebtedness incurred, including Additional Parity Bonds, or issued would be payable from the Company’s revenues on a pari passu basis with the 2016 Bonds and would, with certain limited exceptions, also share on an equal basis in the Collateral, including Termination Compensation (which would be subject to appropriation by the General Assembly) payable by the Contracting Authority, if any, pursuant to the P3 Agreement following a termination thereof. Therefore, to the extent that the Company’s revenues are insufficient to make payments on all of the Company’s outstanding senior debt, including any Other Permitted Senior Secured Indebtedness, such insufficiency may negatively impact the payment of principal of, or interest or premium, if any, on the 2016 Bonds. During any foreclosure action with respect to the Collateral, or in the case of an early termination of the P3 Agreement, to the extent that the Company has incurred Other Permitted Senior Secured Indebtedness, including Additional Parity Bonds, Holders of the 2016 Bonds will be required to share the proceeds of the common Collateral with the holders of such Other Permitted Senior Secured Indebtedness, including Additional Parity Bonds, and upon the occurrence of a Company Bankruptcy Related Event, if the TIFIA Obligations are then held by the TIFIA Lender or a TIFIA Agency Assignee, also with the TIFIA Lender or TIFIA Agency Assignee. Additionally, the holders of such Other Permitted Senior Secured Indebtedness, including Additional Parity Bonds, will have an exclusive Security Interest in any similar accounts, such as, among others, any proceeds accounts and debt service reserve accounts established with respect to such Other Permitted Senior Secured Indebtedness. Any Termination Compensation payable by the Contracting Authority, as applicable, with a larger group of senior debt holders, may reduce proportionally any claim that the Holders of the 2016 Bonds may have to such proceeds or Termination Compensation. In the case of any voting required to be undertaken among the Secured Parties, to the extent that the Company has incurred Other Permitted Senior Secured Indebtedness, the voting power of Holders of the 2016 Bonds will be diluted among a larger group of Secured Parties, reducing the votes that the Holders of the 2016 Bonds may have in such situation, and the holders of Other Permitted Senior Secured Indebtedness might not vote in a manner consistent with the desires or best interests of the Holders of the 2016 Bonds.

**Green Bonds Designation**

The Company has self-designated the 2016 Bonds as “Green Bonds” pursuant to the GBP. The GBP are voluntary process guidelines, and designation as a green bond is self-reported and is not monitored or endorsed by the Executive Committee of the GBP, ICMA or any other body. There can be no assurance that the Project constitutes an “eligible Green Project” under the GBP or that any positive environmental attributes or impacts of the Project described in this Official Statement will be realized.

**Risks Relating to Tax Matters**

The Indenture, the Series 2016 Loan Agreement and the Tax Regulatory Agreement contain various covenants and agreements on the part of the Bond Issuer and the Company that are intended to establish and maintain the excludability of interest on the 2016 Bonds from gross income for federal income tax purposes. A failure by the Bond Issuer or the Company to comply with such covenants and agreements, including their respective remediation obligations could, directly or indirectly, cause the interest on the 2016 Bonds to be included in gross income for federal income tax purposes retroactively to the date of issuance of the 2016 Bonds. See “TAX MATTERS.” Neither the Bond Issuer nor the Company is required to redeem the 2016 Bonds should interest thereon no longer be excludable from gross income for federal income tax purposes.

Current and future legislative proposals, if enacted into law, clarification of the Code, or court decisions may cause interest on the 2016 Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Holders from realizing the full current benefit of the tax status of such interest. Proposals have been made that could significantly reduce the benefit of, or otherwise affect, the excludability from gross income of interest on obligations like the 2016 Bonds. The introduction or enactment of any such legislative proposals, clarification of the Code, or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the 2016 Bonds. Prospective purchasers of the 2016 Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations, or litigation, and regarding the impact of future legislation, regulations, or litigation, as to which Bond Counsel expresses no opinion. See “TAX MATTERS—Changes in Federal and State Tax Law.”
PROJECT ACCOUNTS AND FLOW OF FUNDS

General

Various accounts, including the Project Accounts, will be created under the Indenture and the Collateral
Agency Agreement in relation to the financing and operation of the Purple Line, including the payment of principal
of and interest on the 2016 Bonds when due.

Each of the Securities Accounts, the Operating Account, any Other Operating Account, any Material
Project Contract Account and other accounts specified as being a “Project Account” under the Collateral Agency
Agreement will constitute a “Project Account” (and collectively, the “Project Accounts”).

Project Accounts

The following Project Accounts will be established and created under the Collateral Agency Agreement in
the name of the Company:

(a) the Construction Account, and within the Construction Account, the following sub-accounts, which will be established as of the date of the Collateral Agency Agreement:
   (i) the 2016A Proceeds Sub-Account;
   (ii) the 2016B Proceeds Sub-Account;
   (iii) the 2016C Proceeds Sub-Account;
   (iv) the 2016D Proceeds Sub-Account;
   (v) the TIFIA Loan Proceeds Sub-Account;
   (vi) the Contracting Authority Funding Sub-Account; and
   (vii) the Equity Funding Sub-Account;

(b) the Revenue Account, which will be established no later than the RSA Date;

(c) the Senior Debt Service Account, and within the Senior Debt Service Account, the following sub-
   accounts, which will be established no later than the RSA Date:
   (i) the Senior Interest Payment Sub-Account; and
   (ii) the Senior Principal Payment Sub-Account;

(d) the TIFIA Debt Service Account, and within the TIFIA Debt Service Account, the following sub-
   accounts, which will be established no later than the RSA Date:
   (i) the TIFIA Interest Payment Sub-Account; and
   (ii) the TIFIA Principal Payment Sub-Account;

(e) the Debt Service Reserve Account, and within the Debt Service Reserve Account, the following sub-
   accounts, which will be established no later than the RSA Date:
   (i) the 2016D Bonds Debt Service Reserve Sub-Account; and
   (ii) the TIFIA Debt Service Reserve Sub-Account;

(f) the Termination Compensation Account, which will be established as of the date of the Collateral
   Agency Agreement;
(g) the Revenue Service Availability Payment Account, which will be established no later than the RSA Date;
(h) the Final Completion Payment Account, which will be established no later than the RSA Date;
(i) the Special Lifecycle Payment Account, which will be established no later than the RSA Date;
(j) the Availability Payment Start-Up Reserve Account, which will be established no later than the RSA Date;
(k) the Rehabilitation Reserve Account, which will be established no later than the RSA Date;
(l) the Tax Reserve Account, which will be established as of the date of the Collateral Agency Agreement;
(m) the Voluntary Prepayment Account, which will be established no later than the RSA Date;
(n) the Equity Lock-Up Account, which will be established no later than the RSA Date;
(o) the Loss Proceeds Account, which will be established as of the date of the Collateral Agency Agreement;
(p) the Mandatory Prepayment Account, and within the Mandatory Prepayment Account, the following sub-accounts, which will be established as of the date of the Collateral Agency Agreement:
   (i) PABs Mandatory Prepayment Sub-Account; and
   (ii) TIFIA Mandatory Prepayment Sub-Account; and
(q) the Sponsor Cash Collateral Account, and within the Sponsor Cash Collateral Account, the following sub-accounts, which will be established as of the date of the Collateral Agency Agreement:
   (i) the Meridiam Sponsor Cash Collateral Sub-Account;
   (ii) the Star America Sponsor Cash Collateral Sub-Account; and
   (iii) the Fluor Sponsor Cash Collateral Sub-Account.

In addition to these Project Accounts, on or prior to the date of the Collateral Agency Agreement, the Company will establish an operating account (the “Operating Account”) with a Deposit Account Bank subject to a Control Agreement, and such account will be maintained in the name of the Company. The Operating Account will also constitute a Project Account and will be subject to the Security Interest of the Collateral Agent for the benefit of the Secured Parties.

The Company may establish in its name certain accounts if, in its reasonable judgment, the creation of such accounts will enable it to facilitate the construction and operations and maintenance of the Project, as permitted in and subject to the Series 2016 Loan Agreement, the TIFIA Loan Agreement and any Additional Finance Documents, in connection with the construction and operations of the Project (collectively referred to as the “Other Operating Accounts”).

The Company may cause to be established in its name one or more proceeds accounts (each, an “Additional Parity Bonds Proceeds Account”) in connection with the incurrence of any Additional Parity Bonds following the RSA Date. Each Additional Parity Bonds Proceeds Account will constitute a Project Account and a Securities Account. See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Additional Parity Bonds Proceeds Accounts” for further detail.

The Company may cause to be established in its name certain accounts required or permitted to be established pursuant to the Material Project Contracts, subject, in each case, to the consent rights of any Secured
Party pursuant to the terms of its respective Finance Document, among other limitations as to maximum size and purpose (each a “Material Project Contract Account” and collectively, the “Material Project Contract Accounts”). Each Material Project Contract Account will constitute a Project Account but will not be subject to the Security Interest of the Collateral Agent for the benefit of the Secured Parties. See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Operating Account; Other Operating Accounts; Material Project Contract Accounts; Distribution Account” for further detail.

A Distribution Account will be established and created with the Collateral Agent in the name of the Company on or prior to the RSA Date, but will not constitute a Project Account and will not be subject to the Security Interest of the Collateral Agent for the benefit of the Secured Parties. The Company will have the exclusive right to withdraw or otherwise dispose of funds from the Distribution Account.

**Description of Project Accounts**

The following is a description of certain of the Project Accounts:

**Construction Account**

Prior to the RSA Date, except for amounts required to be deposited in other Project Accounts pursuant to the Collateral Agency Agreement, all (i) net proceeds of the 2016 Bonds (in respect of the 2016 Loan); (ii) proceeds of the TIFIA Loan; (iii) proceeds of all Capital Contributions; (iv) proceeds of Progress Payments; and (v) Project Proceeds will be deposited into the Construction Account (including the applicable sub-accounts thereof). There also will be deposited into the Construction Account (or any sub-account thereof, as designated in any accompanying direction from the Company), all moneys received by the Company, in each case, not otherwise required or permitted to be deposited into another account pursuant to the Collateral Agency Agreement, including proceeds of Permitted Indebtedness, amounts relating to change orders, other amounts relating to the Material Project Contracts, Voluntary Equity Contributions and other liquidated damages, to the extent received prior to the RSA Date, and if received after the RSA Date but prior to the Final Completion Date, to the extent required to be retained in the Construction Account pursuant to the Collateral Agency Agreement. Pending any deposit into the Construction Account, the Company will hold all such amounts coming into its possession in trust for the benefit of the Secured Parties.

(a) Bond Proceeds Sub-Accounts

All proceeds from the issuance of the 2016 Bonds (and any Additional Parity Bonds), net of any original issue discount, underwriting discount or similar fee in respect thereof, and any amounts to be deposited in any related Debt Service Reserve Sub-Account, in each case, received by the Company pursuant to the terms of the Series 2016 Loan Agreement or the Additional Parity Bonds Loan Agreement, as applicable, and, thereafter, any Account Interest or other earnings earned on such proceeds, will be deposited in the 2016A Proceeds Sub-Account, the 2016B Proceeds Sub-Account, the 2016C Proceeds Sub-Account, the 2016D Proceeds Sub-Account, and any additional sub-account established for the deposit of proceeds of Additional Parity Bonds, as applicable (each, a “Bond Proceeds Sub-Account”). Moneys in the Bond Proceeds Sub-Accounts will be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs in compliance with the Series 2016 Loan Agreement, the Code and the Tax Regulatory Agreement.

Upon a date that is no earlier than five (5) years after the date of issuance of the 2016 Bonds (or with respect to any future tax-exempt borrowings comprising Additional Parity Bonds, the date of issuance thereof) and no later than five (5) years and sixty (60) days after the date of issuance of the 2016 Bonds (or with respect to any future tax-exempt borrowings comprising Additional Parity Bonds, the date of issuance thereof), the remaining unspent proceeds of the 2016 Bonds (or any future tax-exempt borrowings comprising Additional Parity Bonds), in each case, rounded down to the nearest multiple of $5,000, from any remaining unspent 2016 Bonds proceeds (or any proceeds of any future tax-exempt borrowings comprising Additional Parity Bonds) on deposit in the applicable Bond Proceeds Sub-Accounts on such date (with respect to which, for the avoidance of doubt, no Secured Party will have any right) will be applied as follows, pursuant to one or more written directions of an Authorized Representative of the Company:
First, any applicable amount thereof will be transferred to the Series 2016 Rebate Fund or any similar rebate fund established with respect to any future tax-exempt borrowings comprising Additional Parity Bonds, as applicable; and

Second, any remaining amount will be transferred to the PABs Mandatory Prepayment Sub-Account of the Mandatory Prepayment Account (or such other applicable sub-account thereof) for redemption of the 2016 Bonds (or such Additional Parity Bonds) in accordance with the Indenture;

provided that no such transfer to the Mandatory Prepayment Account and redemption of the 2016 Bonds (or such Additional Parity Bonds) will be required if the Company has obtained an opinion of Bond Counsel stating that the failure to redeem any such 2016 Bonds (or such Additional Parity Bonds) will not adversely affect the exclusion of interest on such 2016 Bonds (or such Additional Parity Bonds) from gross income for federal or State income tax purposes and that such redemption is not required by State law.

(b) TIFIA Loan Proceeds Sub-Account

Proceeds from the disbursements of the TIFIA Loan (and any Account Interest or other earnings earned on such proceeds) will be deposited in the TIFIA Loan Proceeds Sub-Account. Moneys in the TIFIA Loan Proceeds Sub-Account will be applied pursuant to the applicable Approved Construction Requisition in respect of Eligible Project Costs previously paid or incurred by the Company in connection with the Project in accordance with the terms of the TIFIA Loan Agreement.

(c) Contracting Authority Funding Sub-Account

Any Progress Payments and other payments from the Contracting Authority under the P3 Agreement and Account Interest (other than as expressly provided in the Collateral Agency Agreement with respect to Account Interest) received on or prior to the RSA Date will be deposited in the Contracting Authority Funding Sub-Account, except to the extent expressly provided in the Collateral Agency Agreement. Moneys in the Contracting Authority Funding Sub-Account will be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs.

(d) Equity Funding Sub-Account

Except for amounts that are delivered to the Collateral Agent pursuant to the Equity Contribution Agreement and Voluntary Equity Contributions that are deposited into other Project Accounts, the proceeds of any Capital Contributions and Voluntary Equity Contributions made in accordance with the Equity Contribution Agreement and the proceeds of certain drawings upon any Equity Letter of Credit (or certain transfers from any Applicable Sponsor Cash Collateral Account) in accordance with the Equity Contribution Agreement will in each case be deposited in the Equity Funding Sub-Account. Moneys in the Equity Funding Sub-Account will be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs.

(e) Sub-Accounts

Upon the written instruction of the Company, the Collateral Agent may hereafter establish and maintain additional sub-accounts of the Construction Account in accordance with the Collateral Agency Agreement. Prior to the RSA Date, the Company may deposit into such additional sub-accounts the proceeds of any Other Permitted Senior Secured Indebtedness permitted to be incurred by the Finance Documents. The Collateral Agent will promptly, and in any event prior to establishing such sub-account, provide written notice of any such request or instruction from the Company to the Intercreditor Agent (and the Intercreditor Agent will promptly deliver such written notice to the Secured Parties that are parties to the Collateral Agency Agreement or relevant representatives thereof). Upon creation of any such additional sub-accounts, the Company or the Collateral Agent will, by written notice, inform the Contracting Authority of each such additional sub-account’s purposes, terms and instructions.

Moneys in any such additional sub-accounts of the Construction Account will be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs.
See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Construction Account” for further detail on (a) retention of funds in the Construction Account (and the sub-accounts thereof) on the RSA Date for the payment of certain final construction costs and (b) transfers from the Construction Account (and the sub-accounts thereof) to various Project Accounts, including the 2016D Bonds Debt Service Reserve Sub-Account, among other transfers, to take place on the RSA Payment Date.

**Revenue Account**

On and after the RSA Date, except for amounts required or permitted to be deposited in other Project Accounts pursuant to the Collateral Agency Agreement, all (i) Project Revenues (including Availability Payments), (ii) Project Proceeds and (iii) any other amounts received by the Company from any source whatsoever (including transfers from other Project Accounts from time to time as required by the terms of the Collateral Agency Agreement) will be deposited into the Revenue Account. Pending such deposit, the Company will hold all such amounts coming into its possession in trust for the benefit of the Secured Parties. See “—Flow of Funds—Revenue Account—On and After the RSA Date” below and APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Revenue Account” for further detail.

**Senior Debt Service Account**

The Senior Debt Service Account will be established no later than the RSA Date and will contain two sub-accounts: the Senior Interest Payment Sub-Account and the Senior Principal Payment Sub-Account.

The Senior Interest Payment Sub-Account will be funded in accordance with and subject to clause “Fifth” of “—Flow of Funds—Revenue Account—On and After the RSA Date.” The Senior Principal Payment Sub-Account will be funded in accordance with and subject to clause “Sixth” and clause “Twelfth” of “—Flow of Funds—Revenue Account—On and After the RSA Date” and as described in “—Special Lifecycle Payment Account.”

Funds on deposit in the Senior Interest Payment Sub-Account will be applied to pay accrued and unpaid interest due and payable on all Applicable Senior Secured Obligations and any related Hedging Obligations due to the Hedge Providers.

Funds on deposit in the Senior Principal Payment Sub-Account will be applied to pay Principal Related Payments (and related Hedging Termination Obligations, if any) that are due and payable on all Applicable Senior Secured Obligations.

**TIFIA Debt Service Account**

The TIFIA Debt Service Account will be established no later than the RSA Date and will contain two sub-accounts: the TIFIA Interest Payment Sub-Account and the TIFIA Principal Payment Sub-Account.

The TIFIA Interest Payment Sub-Account will be funded in accordance with and subject to clause “Eighth” under “—Flow of Funds—Revenue Account—On and After the RSA Date.” The TIFIA Principal Payment Sub-Account will be funded in accordance with and subject to clause “Ninth” under “—Flow of Funds—Revenue Account—On and After the RSA Date.”

Funds (i) on deposit in the TIFIA Interest Payment Sub-Account will be applied to pay accrued and unpaid interest due and payable on all TIFIA Obligations and (ii) on deposit in the TIFIA Principal Payment Sub-Account will be applied to pay Principal Related Payments and Mandatory Payments that are due and payable on all TIFIA Obligations, including, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, by and through transfer of such payments to the Mandatory Prepayment Account to make certain mandatory prepayments of the TIFIA Loan in accordance with the TIFIA Loan Agreement.

From and after a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, payments of TIFIA Debt Service will be made from the Senior Debt Service Account
with amounts funded in accordance with and subject to clauses “Fifth” and “Sixth” of “—Flow of Funds—Revenue Account—On and After the RSA Date” in accordance with the Collateral Agency Agreement.

**Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts**

The sub-accounts of the Debt Service Reserve Account will each be established solely for the benefit of the relevant Secured Parties. Each such sub-account will be held by the Collateral Agent, and the Security Interest thereon will be maintained for the exclusive benefit of only such Secured Parties.

The Collateral Agent will create a sub-account relating to the 2016D Bonds under the Debt Service Reserve Account, in the name of the Company and titled the “2016D Bonds Debt Service Reserve Sub-Account,” which will be pledged to the Collateral Agent solely for the benefit of the Holders of the 2016D Bonds and the Trustee. Subject to the following paragraph, the 2016D Bonds Debt Service Reserve Sub-Account will be funded (i) on the RSA Payment Date from available amounts on deposit in the Construction Account (subject to the Tax Regulatory Agreement) or from other amounts available to the Company, in an amount equal to the 2016D Debt Service Reserve Required Balance (as calculated on such date) and (ii) thereafter in accordance with clause “Seventh” under “—Flow of Funds—Revenue Account—On and After the RSA Date.” Any amounts on deposit in the 2016D Bonds Debt Service Reserve Sub-Account in excess of the Senior Debt Service Reserve Required Balance will, subject to “—Reserve Accounts; Reserve Letters of Credit” below, be deposited into the Revenue Account for application as described under “—Flow of Funds—Revenue Account—On and After the RSA Date.”

If an Event of Default under the 2016 Loan Documents has occurred and is continuing beyond any applicable grace period prior to the RSA Payment Date, the Collateral Agent will establish and fund the 2016D Bonds Debt Service Reserve Sub-Account from available amounts on deposit in the Construction Account (subject to the Tax Regulatory Agreement and solely from funds that do not constitute 2016A Bonds proceeds) in an amount not to exceed the 2016D Bonds Debt Service Reserve Required Balance (as calculated as of such date); provided, that if (i) the 2016D Bonds Debt Service Reserve Sub-Account has been funded prior to the RSA Payment Date due to the occurrence of an Event of Default under the 2016 Loan Documents that is continuing, (ii) prior to the RSA Payment Date, such Event of Default has been cured, and (iii) at the time of such cure, no other Event of Default under the 2016 Loan Documents has occurred and is continuing, then the entire balance of the 2016D Bonds Debt Service Reserve Sub-Account will be transferred back to the Construction Account and the relevant sub-accounts thereof and thereafter, the 2016D Bonds Debt Service Reserve Sub-Account will be funded on or prior to the earlier of (x) the RSA Payment Date and (y) the next date upon which an Event of Default under the 2016 Loan Documents has occurred and is continuing.

Funds on deposit in any sub-account of the Debt Service Reserve Account with respect to Applicable Senior Secured Obligations (each a “Senior Debt Service Reserve Sub-Account”) will be used by the Collateral Agent (without the requirement of a Funds Transfer Certificate) as follows:

(a) if on any Monthly Transfer Date immediately preceding or occurring on an Interest Payment Date or Principal Payment Date, as applicable, with respect to the Applicable Senior Secured Obligations, the funds on deposit in the Senior Interest Payment Sub-Account or the Senior Principal Payment Sub-Account available for the payment of such Applicable Senior Secured Obligations (in each case, after giving effect to the transfers as described in clauses “Fifth” and “Sixth,” as applicable, under “—Flow of Funds—Revenue Account—On and After the RSA Date,” solely with respect to the relevant Applicable Senior Secured Obligations) are insufficient to pay the principal, Redemption Price or interest on the relevant Applicable Senior Secured Obligations, as applicable, on the applicable Interest Payment Date or Principal Payment Date, funds on deposit in the relevant Senior Debt Service Reserve Sub-Account will be transferred to the Senior Interest Payment Sub-Account or the Senior Principal Payment Sub-Account, as applicable, for payment of interest or principal, as applicable, which will become due and payable on the relevant Applicable Senior Secured Obligations as of such Interest Payment Date or Principal Payment Date, as applicable; and

(b) following the taking of an Enforcement Action, moneys in such sub-accounts of the Debt Service Reserve Account will be applied as described under “—Application of Proceeds.”

(c) Notwithstanding any other provision of the Collateral Agency Agreement to the contrary, the Company may upon notice to the Collateral Agent and relevant Senior Secured Party, substitute all or any portion of
the cash or Permitted Investments on deposit in any Senior Debt Service Reserve Sub-Account with an Acceptable Letter of Credit in favor of the Collateral Agent for purposes of the applicable Debt Service Reserve Required Balance; provided, however, that if any proceeds of the Bonds are on deposit in such Senior Debt Service Reserve Sub-Account, an opinion of Bond Counsel that such substitution will not adversely affect the tax-exempt status of the Bonds will be required.

**TIFIA Debt Service Reserve Sub-Account**

The TIFIA Debt Service Reserve Sub-Account will be solely for the benefit of the TIFIA Lender and will not be subject to any Security Interest in favor of any Person other than the TIFIA Lender and will be held by the Collateral Agent for the exclusive benefit of only the TIFIA Lender.

Subject to the following paragraph, the TIFIA Debt Service Reserve Sub-Account will be funded (i) on the RSA Payment Date, from available amounts on deposit in the Construction Account (from amounts other than those on deposit in the Bond Proceeds Sub-Accounts and otherwise subject to the Tax Regulatory Agreement), pursuant to “—Construction Account,” or from other amounts available to the Company, in an amount equal to the TIFIA Debt Service Reserve Required Balance (as calculated on such date) and (ii) thereafter in accordance with clause “Tenth” under “—Flow of Funds—Revenue Account—On and After the RSA Date” or, upon and following the occurrence of a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, clause “Seventh” of “—Flow of Funds—Revenue Account—On and After the RSA Date.” Any amounts on deposit in the TIFIA Debt Service Reserve Sub-Account in excess of the TIFIA Debt Service Reserve Required Balance (including as a result of funding of the TIFIA Debt Service Reserve Sub-Account with an Acceptable Letter of Credit) will, subject to “—Reserve Accounts; Reserve Letters of Credit,” be deposited into the Revenue Account for application as described under “—Flow of Funds—Revenue Account—On and After the RSA Date.”

If an Event of Default under the 2016 Loan Documents has occurred and is continuing beyond any applicable grace period prior to the RSA Payment Date, the Collateral Agent will establish the TIFIA Debt Service Reserve Sub-Account and, after the transfer from the Construction Account to fill the 2016D Bonds Debt Service Reserve Sub-Account described more fully in the third paragraph of “—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts” has been made in full (unless (x) a Company Bankruptcy Related Event has occurred, and (y) the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, in which case, the transfer pursuant to this paragraph will be made pro rata with the transfer with respect to the 2016D Bonds Debt Service Reserve Sub-Account), the Collateral Agent will fund the TIFIA Debt Service Reserve Sub-Account from available amounts on deposit in the Construction Account (subject to the Tax Regulatory Agreement and solely from funds that do not constitute TIFIA Loan proceeds, 2016 Bonds proceeds or Progress Payments) in an amount not to exceed the TIFIA Debt Service Reserve Required Balance (as calculated as of such date); provided, that if (i) the TIFIA Debt Service Reserve Sub-Account has been funded prior to the RSA Payment Date due to the occurrence of an Event of Default under the 2016 Loan Documents that is continuing, (ii) prior to the RSA Payment Date, such Event of Default has been cured, and (iii) at the time of such cure, no other Event of Default under the 2016 Loan Documents has occurred and is continuing, then the entire balance of the TIFIA Debt Service Reserve Sub-Account will be transferred back to the Construction Account and the relevant sub-accounts thereof and thereafter, the TIFIA Debt Service Reserve Sub-Account will be funded on or prior to the earlier of (x) the RSA Payment Date and (y) the next date upon which an Event of Default under the 2016 Loan Documents has occurred and is continuing. To the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, funds on deposit in the TIFIA Debt Service Reserve Sub-Account will be used by the Collateral Agent (without the requirement of a Funds Transfer Certificate) as follows (provided that upon and following the occurrence of a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, funds on deposit in the TIFIA Debt Service Reserve Sub-Account will be applied in accordance with “—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts”)

(a) if on any Monthly Transfer Date immediately preceding or occurring on an Interest Payment Date or Principal Payment Date, as applicable, with respect to the TIFIA Obligations, the funds on deposit in the TIFIA Interest Payment Sub-Account or the TIFIA Principal Payment Sub-Account available for the payment of the TIFIA Obligations (in each case, after giving effect to the transfers as described in clauses “Eighth” and “Ninth” under “—Flow of Funds—Revenue Account—On and After the RSA Date,” are insufficient to pay the principal, interest or any mandatory prepayment of or on the TIFIA Obligations, as applicable, on the applicable Interest Payment Date or Principal Payment Date, funds on deposit in the TIFIA Debt Service Reserve Sub-Account will be transferred to the
TIFIA Interest Payment Sub-Account or the TIFIA Principal Payment Sub-Account for payment of interest or principal, as applicable, which will become due and payable on the TIFIA Obligations as of such Interest Payment Date or Principal Payment Date, as applicable; and

(b) following the taking of an Enforcement Action, moneys in such sub-account of the Debt Service Reserve Account will be applied as described under “Applicati(n of Proceeds.”

The TIFIA Debt Service Reserve Sub-Account may be funded with an Acceptable Letter of Credit at the option of the Company and otherwise in accordance with the provisions of the Collateral Agency Agreement.

Rehabilitation Reserve Account

The Rehabilitation Reserve Account will be funded in an amount not to exceed the Rehabilitation Reserve Required Balance in accordance with the terms of the TIFIA Loan Agreement, clause “Eleventh” under “—Flow of Funds—Revenue Account—On and After the RSA Date” and with any amounts and/or letters of credit received from the O&M Contractor for deposit in the Rehabilitation Reserve Account to fund all or any part of the Lifecycle Deficit Amount pursuant to the O&M Contract. Any amounts on deposit in the Rehabilitation Reserve Account in excess of the Rehabilitation Reserve Required Balance will, subject to the third paragraph of this section and “Reserve Accounts; Reserve Letters of Credit” be transferred to the Revenue Account to be applied, on the next succeeding Monthly Transfer Date, as described under “—Flow of Funds—Revenue Account—On and After the RSA Date,” provided that, to the extent that such excess funds are due to a reduction in the Lifecycle Deficit Amount as calculated in any year, such excess funds (in an amount not to exceed the amount of such reduction) will be transferred, at the instruction of the Company in accordance with a Funds Transfer Certificate, pro rata to the extent the Lifecycle Deficit Amount has been funded by the O&M Contractor, to the O&M Contractor and (ii) to the extent the Lifecycle Deficit Amount has been funded from amounts on deposit in the Revenue Account pursuant to “—Revenue Account—On and After the RSA Date,” to the Revenue Account to be applied, on the next succeeding Monthly Transfer Date, pursuant to clauses “Twelfth” through “Eighteenth” under “—Flow of Funds—Revenue Account—On and After the RSA Date.”

At the instruction of the Company in accordance with a Funds Transfer Certificate, the Collateral Agent will make withdrawals, transfers and payments from the Rehabilitation Reserve Account from time to time for the payment of Renewal Expenditures (including by and through transfer to the Operating Account and/or any Other Operating Account) in accordance with the terms of the TIFIA Loan Agreement.

The amounts on deposit in the Rehabilitation Reserve Account may be replaced in whole or in part with an Acceptable Letter of Credit at the option of the Company, and upon such replacement amounts on deposit in the Rehabilitation Reserve Account in excess of the Rehabilitation Reserve Required Balance will, at the instruction of the Company in accordance with a Funds Transfer Certificate, be transferred to the Distribution Account, to the account of any Sponsor(s) (or their designee) or other Affiliate of the Company, or otherwise as may be specified by the Company, pursuant to “Reserve Accounts; Reserve Letters of Credit.”

To the extent that the Lifecycle Deficit Amount has been funded with an Acceptable Letter of Credit, notwithstanding anything else herein to the contrary, such letter of credit may be reduced (or increased) annually such that the full remaining stated amount thereof equals the Lifecycle Deficit Amount and the Collateral Agent agrees that, at the written instruction of the Company, accompanied by a copy of the then-current lifecycle deficit amount certificate from the Lenders’ Technical Advisor, the Collateral Agent will submit to the applicable bank a reduction certificate (or certificate to increase the stated amount, as applicable) with respect to such letter of credit and execute and deliver any related consents or notices required thereunder, in each case, promptly following recalculation of the Lifecycle Deficit Amount in accordance with the TIFIA Loan Agreement; provided that, following any such increase or reduction, the remaining stated amount of such Acceptable Letter of Credit is at least equal to the Lifecycle Deficit Amount.

During the Handback Period, the Contracting Authority also has certain rights with respect to assessment of the balance in the Rehabilitation Reserve Account from time to time pursuant to the P3 Agreement and rights to withhold some or all Availability Payments due and owing, subject to Company rights to provide a letter of credit, if there is a shortfall between the remaining budget for Renewal Work included in the Availability Payments and the costs of such Renewal Work after taking into account the then balance of the Rehabilitation Reserve Account. See
APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Handback Requirements” and APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M Contract—Scope of Services—Handback” for further detail.

Voluntary Prepayment Account

The Voluntary Prepayment Account will be funded as described in clause “Sixteenth” under “—Flow of Funds—Revenue Account – On and After the RSA Date.” Funds in the Voluntary Prepayment Account will be applied (subject to the Tax Regulatory Agreement) to prepay or redeem the TIFIA Obligations and the Senior Secured Obligations (and pay any corresponding Hedging Termination Obligations resulting from such prepayment) at the direction of the Company and in accordance with the terms of the Finance Documents.

Equity Lock-Up Account

The Equity Lock-Up Account will be funded in accordance with clause “Seventeenth” under “—Flow of Funds—Revenue Account – On and After the RSA Date.” At the instruction of the Company in accordance with a Funds Transfer Certificate, funds on deposit in the Equity Lock-Up Account may be transferred to the Distribution Account (or to make Restricted Payments directly) on any Restricted Payment Date (each, a “Transfer Restricted Payment Date”) upon satisfaction of the Restricted Payment Conditions with respect to the Transfer Restricted Payment Date and also with respect to the Restricted Payment Date immediately preceding the Transfer Restricted Payment Date; provided, that (i) on each of the Transfer Restricted Payment Date and such immediately preceding Restricted Payment Date, an Authorized Representative of the Company will have delivered to the Collateral Agent a certification to the effect that the Restricted Payment Conditions have been satisfied with respect to the applicable Restricted Payment Date, (ii) prior to any such transfer on the Transfer Restricted Payment Date, an Authorized Representative of the Company will have delivered to the Collateral Agent (A) Senior Coverage Certificates with respect to the applicable Calculation Dates and (B) copies of the certificates (including the applicable TIFIA Coverage Certificates) delivered to the TIFIA Lender pursuant to the TIFIA Loan Agreement relating to the satisfaction of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) with respect to the Transfer Restricted Payment Date and such immediately preceding Restricted Payment Date and (iii) the amount of funds available to be transferred to the Distribution Account (or to make Restricted Payments directly) from the Equity Lock-Up Account on the Transfer Restricted Payment Date will be not greater in the aggregate than the amount of Applicable Excess Funds on deposit in the Equity Lock-Up Account on the Semi-Annual Transfer Date immediately preceding the Transfer Restricted Payment Date.

Funds on deposit in the Equity Lock-Up Account will be transferred to the Mandatory Prepayment Account for application in respect of mandatory prepayments and mandatory redemptions required in accordance with “—Mandatory Prepayment Account” and the Finance Documents, which will include the transfer to the Mandatory Prepayment Account of any amounts that have remained in the Equity Lock-Up Account for at least thirty (30) months as of any Restricted Payment Date following the RSA Date, which amounts will be applied to the prepayment of the TIFIA Obligations.

Distribution Account

The Distribution Account will be funded in accordance with clause “Eighteenth” under “—Flow of Funds—Revenue Account – On and After the RSA Date” and “—Equity Lock-Up Account;” provided that, prior to any transfer pursuant to clause “Eighteenth” under “—Flow of Funds—Revenue Account – On and After the RSA Date” on a Restricted Payment Date, an Authorized Representative of the Company will have delivered to the Collateral Agent (i) a certification to the effect that the Restricted Payment Conditions have been satisfied with respect to the applicable Restricted Payment Date and (ii) (A) a senior coverage certificate with respect to the applicable Calculation Date and (B) a copy of the certificate (including the applicable TIFIA Coverage Certificate) delivered to the TIFIA Lender in accordance with the TIFIA Loan Agreement, relating to the satisfaction of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) with respect to the applicable Restricted Payment Date. Funds on deposit in the Distribution Account may be distributed to an account (or to such Person) as directed by the Company in its sole discretion, including to make Restricted Payments and Permitted Distributions.
**Operating Account**

The Operating Account (and any Other Operating Account) will be funded (i) in accordance with clauses “First,” “Second” and “Fifteenth” of “—Flow of Funds—Revenue Account – On and After the RSA Date,” (ii) with amounts transferred from the Rehabilitation Reserve Account in accordance with “—Rehabilitation Reserve Account,” (iii) with amounts transferred from the Loss Proceeds Account in accordance with “—Loss Proceeds Account” and (iv) pursuant to transfers from the Construction Account (and the sub-accounts thereof) to facilitate the payment (or reimbursement of the prior payment) of Project Costs in accordance with “—Construction Account” above and subject to the Tax Regulatory Agreement. See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Operating Account” for further detail.

**Loss Proceeds Account**

All Loss Proceeds will be deposited directly into the Loss Proceeds Account. Amounts on deposit in the Loss Proceeds Account will be transferred to the Operating Account (and/or any Other Operating Account) or other accounts and/or payees in accordance with Funds Transfer Certificates (provided that such transfers to the Operating Account and/or any Other Operating Account will take into account any unallocated amounts then on deposit therein pursuant to APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—Description of Project Accounts—Operating Account” and such transferred amounts will be applied to restoration of the Project or any portion thereof in accordance with the requirements of the P3 Agreement (and the parties acknowledge that the P3 Agreement requires, as of the date of the Collateral Agency Agreement, that all insurance proceeds received for physical property damage to the Project under any Insurance Policies (as defined in the P3 Agreement), other than any business interruption or delay in start-up insurance maintained as part of such Insurance Policies, will be first applied to repair, restore or replace each part or parts of the Project or the Work with respect to which such proceeds were received), except that, to the extent that (i) the Loss Proceeds on deposit in the Loss Proceeds Account exceed the amount required to restore the Project or any portion thereof to the condition required by the P3 Agreement or, if the P3 Agreement requires restoration of the Project but does not specify the required condition for such restoration, to the condition existing prior to the event of loss or (ii) such proceeds will not be used to restore the Project due to waiver by the Contracting Authority, or other amendment, of the P3 Agreement, unless required to be disposed of in another manner pursuant to the terms of such waiver or amendment (other than by transfer to the Distribution Account or other distribution to the Sponsors) (subject to any consent requirement in respect of such waiver or amendment pursuant to the Finance Documents), and the Finance Documents otherwise require prepayment of the Secured Obligations with such amounts (any amounts described in clause (i) or (ii) above, “Net Loss Proceeds”), such Net Loss Proceeds will be transferred to the Mandatory Prepayment Account to cause the extraordinary mandatory redemption or mandatory prepayment, as applicable, of the Senior Secured Obligations and the TIFIA Obligations on a pro rata basis and in accordance with the related Finance Documents. Any Loss Proceeds remaining in the Loss Proceeds Account after the transfers described in this paragraph will be transferred to the Revenue Account.

Proceeds in respect of business interruption or delay in startup insurance (net of any amounts payable therefrom to the Contracting Authority pursuant to the P3 Agreement) will be deposited into the Loss Proceeds Account and will be withdrawn from the Loss Proceeds Account and transferred to (i) prior to the RSA Date, the Construction Account and (ii) thereafter, the Revenue Account, in each case, in a manner commensurate with the period of interruption or delay for which such insurance is intended to correspond.

Following the taking of an Enforcement Action, only Net Loss Proceeds and amounts deposited in accordance with the preceding paragraph will be withdrawn from the Loss Proceeds Account and will be applied in the manner set forth in “—Application of Proceeds.”
**Mandatory Prepayment Account**

The Mandatory Prepayment Account (and the sub-accounts thereof) will be funded as follows:

(a) from Net Loss Proceeds transferred to the Mandatory Prepayment Account from the Loss Proceeds Account in accordance with “—Loss Proceeds Account;”

(b) from proceeds of any Termination Compensation received from the Contracting Authority under the P3 Agreement and transferred from the Termination Compensation Account to the Mandatory Prepayment Account in accordance with “—Termination Compensation Account;”

(c) from amounts transferred from the Equity Lock-Up Account to the Mandatory Prepayment Account in accordance with “—Equity Lock-Up Account;”

(d) from amounts transferred, if any, from the Revenue Account and the TIFIA Debt Service Account, in accordance with sub-clause (b) of clause “Sixth” of “Flow of Funds—Revenue Account—On and After the RSA Date” and the second paragraph of “—TIFIA Debt Service Account,” respectively, to make only the following Mandatory Payments: (x) the extraordinary mandatory redemption of the 2016D Bonds pursuant to “THE 2016 BONDS—Extraordinary Mandatory Redemption Early RSA Date—2016D Bonds” in the case that the RSA Date occurs prior to the RSA Deadline, (y) any mandatory prepayment or mandatory redemption of Other Permitted Senior Secured Indebtedness in accordance with the applicable Additional Finance Documents, subject to the consent rights of any existing Secured Party (or representative thereof) pursuant to its respective Finance Documents or (z) any mandatory prepayment of the TIFIA Loan to be made from time to time (i) with any compensation payable to the TIFIA Lender pursuant to certain provisions in the Intercreditor Agreement relating to any consent, waiver or other modification of the TIFIA Loan Agreement or the TIFIA Note after the occurrence and during the continuance of an Event of Default or (ii) as a result of any consent by the TIFIA Lender to mandatory redemptions or prepayments from the Flow of Funds in connection with the issuance of Other Permitted Senior Secured Indebtedness, as applicable (see “FINANCING FOR THE PROJECT—TIFIA Loan Agreement—Prepayment of TIFIA Loan”, clauses (e) and (f) for further details on the mandatory prepayment of the TIFIA Loan described in sub-clause (z));

(e) from amounts transferred from the Revenue Service Availability Payment Account, the Final Completion Payment Account, and the Special Lifecycle Payment Account to the Mandatory Prepayment Account in accordance with “—Revenue Service Availability Payment Account,” “—Final Completion Payment Account,” and “—Special Lifecycle Payment Account,” respectively, for the payment of mandatory prepayments and mandatory redemptions;

(f) from amounts transferred from any Bond Proceeds Sub-Accounts in accordance with the second paragraph of “—Bond Proceeds Sub-Accounts;”

(g) from amounts transferred from any Additional Parity Bonds Proceeds Accounts in accordance with the Collateral Agency Agreement (see APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Additional Parity Bonds Proceeds Accounts” for further detail); and

(h) from any amounts transferred to the Mandatory Prepayment Account from the Construction Account on the RSA Payment Date from Equity Contributions made by the Equity Sponsors, and any other available amounts on deposit in the Construction Account, solely from funds that do not constitute TIFIA Loan proceeds, 2016 Bond proceeds or Progress Payments, in an aggregate amount, if any, necessary for the Company to comply with the Maximum Debt to Equity Ratio in accordance with the TIFIA Loan Agreement.

Funds deposited into the Mandatory Prepayment Account will be transferred into the PABs Mandatory Prepayment Sub-Account and/or the TIFIA Mandatory Prepayment Sub-Account and/or any other sub-account of the Mandatory Prepayment Account established for any other Secured Obligations in accordance with the provisions of “—Mandatory Prepayment Account” for prepayment and redemption of the Bonds, the TIFIA Loan and any other Secured Obligations to the extent required to be repaid thereby (and solely to the extent expressly required, on a pro rata basis based on the then outstanding principal amounts of the TIFIA Loan, the Bonds, and such other Senior
Secured Obligations) in accordance with the terms of the Finance Documents and the other provisions of the Collateral Agency Agreement at such redemption prices and required prepayment amounts as and to the extent contemplated in the Collateral Agency Agreement and the Finance Documents; provided that, amounts on deposit in the PABs Mandatory Prepayment Sub-Account and/or the TIFIA Mandatory Prepayment Sub-Account and/or any other sub-account established for any other Secured Obligations will be transferred by the Collateral Agent to the Trustee for deposit into the applicable sub-account of the Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be, or to any other applicable Secured Party (or representative or account thereof) for the mandatory redemption and/or mandatory prepayment of the related Secured Obligations at the instruction of the Company in accordance with a Funds Transfer Certificate.

See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Mandatory Prepayment Account” for further detail.

**Sponsor Cash Collateral Account**

The Applicable Sponsor Cash Collateral Account relating to each Sponsor will be funded with (i) amounts received from, or on behalf of, such Sponsor in accordance with the Equity Contribution Agreement and (ii) the proceeds of certain drawings upon such Sponsor’s Equity Letter of Credit in accordance with the Equity Contribution Agreement.

Funds in an Applicable Sponsor Cash Collateral Account will be transferred to (i) the Equity Funding Sub-Account of the Construction Account as directed by the Company or by the Collateral Agent in accordance with the Equity Contribution Agreement or (ii) the applicable Sponsor, at the direction of the Company, to the extent that such Sponsor has delivered an Equity Letter of Credit (which may not be secured by the Collateral) in substitution for such funds.

**Revenue Service Availability Payment Account**

The Revenue Service Availability Payment Account will be funded with the proceeds of the RSA Payment (and Account Interest, any other earnings thereon and interest, if any, thereon pursuant to the P3 Agreement) received by the Company from the Contracting Authority on the RSA Payment Date and with any amounts transferred to the Revenue Service Availability Payment Account from available amounts in the Construction Account (and the sub-accounts thereof) on the RSA Payment Date. See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Construction Account” for further detail regarding the transfer from the Construction Account, if any, on the RSA Payment Date.

At the instruction of the Company in accordance with a Funds Transfer Certificate, funds on deposit in the Revenue Service Availability Payment Account will be used solely for, and will be available to the Company and will be applied by the Company for, the following purposes in the following order of priority on or prior to the later to occur of (i) the thirty-fifth (35th) day (or if such day is not a Business Day, the next subsequent Business Day) following the RSA Payment Date, and (ii) November 30, 2021:

First, to repay, prepay or redeem, as applicable, (i) first, the 2016A Bonds, which payment will also satisfy the portion of the 2016 Loan related thereto (and any refinancing thereof permitted under the Finance Documents) and (ii) second, any Other Permitted Senior Secured Indebtedness to the extent the RSA Payment has been increased by an amount equivalent to or greater than the Other Permitted Senior Secured Indebtedness to be repaid therefrom, in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable, by transfer of the applicable redemption price and any mandatory prepayment amount to the Mandatory Prepayment Account to be applied in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable); and

Second, any remaining amounts on deposit in the Revenue Service Availability Payment Account following the transfers described in clause “First” in the preceding paragraph will be transferred to the Revenue Account.
On the first Monthly Transfer Date following the date that all amounts on deposit in the Revenue Service Availability Payment Account are transferred out of the Revenue Service Availability Payment Account pursuant to clause “Second” in the preceding paragraph, the Collateral Agent will close the Revenue Service Availability Payment Account.

**Final Completion Payment Account**

The Final Completion Payment Account will be funded with the proceeds of the Final Completion Payment (and Account Interest, any other earnings thereon and interest, if any, thereon pursuant to the P3 Agreement) received by the Company from the Contracting Authority on the Final Completion Payment Date.

At the instruction of the Company in accordance with a Funds Transfer Certificate, funds on deposit in the Final Completion Payment Account will be used solely for, and will be available to the Company and will be applied by the Company for, the following purposes in the following order of priority on or prior to the later to occur of (i) the thirty-fifth (35th) day (or if such day is not a Business Day, the next subsequent Business Day) following the Final Completion Payment Date and (ii) November 30, 2021:

First, to pay the Design-Build Contractor pursuant to the Design-Build Contract only to the extent that amounts then due and payable to the Design-Build Contractor have not been paid in full;

Second, to repay, prepay or redeem, as applicable, (i) first, the 2016B Bonds, which payment will also satisfy the portion of the 2016 Loan related thereto (and any refinancing thereof permitted under the Finance Documents) and (ii) second, any Other Permitted Senior Secured Indebtedness to the extent the Final Completion Payment has been increased by an amount equivalent to or greater than the Other Permitted Senior Secured Indebtedness to be repaid therefrom, in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable by transfer of the applicable redemption price and any mandatory prepayment amount to the Mandatory Prepayment Account to be applied in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable; and

Third, any remaining amounts on deposit in the Final Completion Payment Account following the transfers described in clauses “First” and “Second” in the preceding paragraphs will be transferred to the Mandatory Prepayment Account for application to the mandatory prepayment of the TIFIA Obligations.

On the first Monthly Transfer Date following the date that all amounts on deposit in the Final Completion Payment Account are transferred out of the Final Completion Payment Account pursuant to clause “Third” in the preceding paragraph, the Collateral Agent will close the Final Completion Payment Account.

**Special Lifecycle Payment Account**

The Special Lifecycle Payment Account will be funded from time to time from the Availability Payments received by the Company from the Contracting Authority upon the deposit of each Availability Payment in the Revenue Account, at the instruction of the Company in accordance with a Funds Transfer Certificate, in an amount equal to the Special Lifecycle Payment portion of each Availability Payment as set forth in the P3 Agreement (and Account Interest, any other earnings thereon and interest, if any, thereon pursuant to the P3 Agreement).

At the instruction of the Company in accordance with a Funds Transfer Certificate, funds on deposit in the Special Lifecycle Payment Account will be used solely for, and will be available to the Company for, the following purposes:

(i) payment of the Principal Related Payments payable on (A) the 2016C Bonds (which payment will also satisfy the portion of the 2016 Loan related thereto) and any refinancing thereof permitted under the Finance Documents and (B) any Other Permitted Senior Secured Indebtedness to the extent the Special Lifecycle Payments to be paid on any date have been increased by an amount equivalent to or greater than the Other Permitted Senior Secured Indebtedness to be repaid therefrom, in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable, by transfer of the applicable amount(s) to the Senior Principal
Payment Sub-Account, in each case, no later than the Monthly Transfer Date occurring on or immediately prior to any applicable Principal Payment Date;

(ii) payment of the redemption price or the required prepayment amounts related to optional redemptions or voluntary prepayments payable on the 2016C Bonds (which payment will also satisfy the 2016 Loan related thereto) and any permitted refinancing thereof, and any Other Permitted Senior Secured Indebtedness to the extent the Special Lifecycle Payments have been increased by an amount equivalent to or greater than the Other Permitted Senior Secured Indebtedness to be repaid therefrom, in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable, by transfer of the applicable amount(s) to the Voluntary Prepayment Account from time to time at the option of the Company; and

(iii) after the 2016C Bonds have been repaid in full, transfer of any remaining amounts on deposit in the Special Lifecycle Payment Account to the Mandatory Prepayment Account for application to the mandatory prepayment of the TIFIA Obligations.

On the first Monthly Transfer Date following the date that all amounts on deposit in the Special Lifecycle Payment Account are transferred out of the Special Lifecycle Payment Account pursuant to clause (iii) in the preceding paragraph, the Collateral Agent will close the Special Lifecycle Payment Account.

**Availability Payment Start-Up Reserve Account**

The Availability Payment Start-Up Reserve Account will be funded on the RSA Date from available amounts on deposit in the Construction Account (and the sub-accounts thereof other than the Bond Proceeds Sub-Accounts), after funds in the Construction Account (and the sub-accounts thereof) are retained therein on the RSA Date for the payment of certain final construction costs, up to an amount equal to the product of (i) 1.25 and (ii) the difference (which may not be less than zero) between (A) the sum of (x) the interest that will accrue on the TIFIA Loan and the Senior Secured Obligations during the Availability Payment Start-Up Period and (y) the Company Operations and Maintenance Expenses to be incurred during the Availability Payment Start-Up Period and (B) the aggregate amount of the general (i.e., MAPG) portions of the Availability Payments anticipated to be received by the Company during the Availability Payment Start-Up Period that are intended to be used to pay accrued interest on the TIFIA Loan and the Senior Secured Obligations (such amount, the “AP Start-Up Amount”). See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Construction Account” for further detail on the timing of the transfer of the AP Start-Up Amount from the Construction Account.

In accordance with a Funds Transfer Certificate, on the first Monthly Transfer Date to occur during the Availability Payment Start-Up Period, the Company will instruct the Collateral Agent to transfer from the Availability Payment Start-Up Reserve Account to the Revenue Account an amount up to the product of (i) 1.25 and (ii) the difference between (A) the sum of (x) the interest that has accrued since the commencement of the Availability Payment Start-Up Period that must be paid or reserved with respect to the Senior Secured Obligations and the TIFIA Loan on such Monthly Transfer Date in accordance with “—Flow of Funds—Revenue Account—On and After the RSA Date” and (y) the Company Operations and Maintenance Expenses incurred by the Company since the commencement of the Availability Payment Start-Up Period that must be paid or reserved on such Monthly Transfer Date in accordance with “—Flow of Funds—Revenue Account—On and After the RSA Date” and (B) the aggregate amount of the general (i.e., MAPG) portions of the Availability Payments that will be used to pay or reserve such interest on the TIFIA Loan and the Senior Secured Obligations on such Monthly Transfer Date. On the immediately succeeding Monthly Transfer Date, any remaining amounts on deposit in the Availability Payment Start-Up Reserve Account will be transferred to the Revenue Account.

On the first Monthly Transfer Date following the end of the Availability Payment Start-Up Period, the Collateral Agent will close the Availability Payment Start-Up Reserve Account.
**Termination Compensation Account**

The Termination Compensation Account will be funded with the Termination Compensation, if any (and interest, if any, thereon pursuant to the P3 Agreement) received by the Company from the Contracting Authority in respect of a termination of the P3 Agreement.

In accordance with a Funds Transfer Certificate, funds on deposit in the Termination Compensation Account will be applied in the following order of priority:

**First,** to repay, prepay or redeem the outstanding Applicable Senior Secured Obligations in full by transfer to the Mandatory Prepayment Account to be applied in accordance with the terms of the Collateral Agency Agreement and of the applicable Finance Documents;

**Second,** to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, to repay or prepay the outstanding TIFIA Obligations in full by transfer to the Mandatory Prepayment Account to be applied in accordance with the terms of the TIFIA Loan Agreement; and

**Third,** any remaining amounts will be paid (for the avoidance of doubt, without the delivery of a Funds Transfer Certificate, transfer of such funds to the Revenue Account, application of funds pursuant to—Flow of Funds—Revenue Account—On and After the RSA Date” or satisfaction of the Restricted Payment Conditions) to the Distribution Account;

provided that, except to the extent the TIFIA Obligations qualify as Applicable Senior Secured Obligations, in any case where the Termination Compensation under the P3 Agreement is in an amount less than 100% of the Company’s aggregate outstanding Indebtedness (other than Permitted Subordinated Debt (as defined in the TIFIA Loan Agreement)), the Termination Compensation will be allocated between the Applicable Senior Secured Obligations and the TIFIA Obligations pro rata based on the outstanding principal of such respective Indebtedness.

**Tax Reserve Account**

From time to time following the Closing Date but prior to the RSA Payment Date, the Tax Reserve Account will be funded from amounts on deposit in the Contracting Authority Funding Sub-Account and from amounts on deposit in the Equity Funding Sub-Account in accordance with the Collateral Agency Agreement in an aggregate amount not to exceed the Tax Reserve Required Balance as of the Closing Date. See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—The Project Accounts—Construction Account” for further detail regarding funding of the Tax Reserve Account.

In accordance with a Funds Transfer Certificate, funds on deposit in the Tax Reserve Account may be withdrawn and transferred from time to time to an account (or to such Person) as directed by the Company in its sole discretion in connection with the projected corporate income Tax liability of the Sponsors attributable to their ownership interests in the Company set forth in the Base Case Model, in each case, up to the maximum amount of such Tax liability at such time, as calculated in accordance with the then-current Base Case Model. On the Semi-Annual Transfer Date immediately preceding the Restricted Payment Date upon which the Company will make its Initial Permitted Distribution, the Company may direct the Collateral Agent to transfer to the Revenue Account from the Tax Reserve Account all amounts, if any, then on deposit therein.

On the first Monthly Transfer Date following the Restricted Payment Date on which the Initial Permitted Distribution is made, any remaining amounts on deposit in the Tax Reserve Account will be transferred to the Revenue Account pursuant to written notice by an Authorized Representative of the Company to the Collateral Agent, and after such transfer, the Collateral Agent will close the Tax Reserve Account.

**Reserve Accounts; Reserve Letters of Credit**

The Applicable Reserve Requirement of any Reserve Account may be funded from time to time by any Applicable Reserve Letter of Credit; provided that the Collateral Agent will make a drawing upon any such Applicable Reserve Letter of Credit in an amount equal to the full remaining stated amount under such Applicable Reserve Letter of Credit in the event that:
• the issuer of such Applicable Reserve Letter of Credit fails to satisfy the requirements of an Acceptable LC Bank and, within ten (10) Business Days of the date on which the existing issuer ceased to be an Acceptable LC Bank, the Company fails to replace such Applicable Reserve Letter of Credit with either cash or another Acceptable Letter of Credit from an Acceptable LC Bank; or

• such Applicable Reserve Letter of Credit will expire within thirty (30) days and (A) the Collateral Agent has received a notice from the issuer thereof that such Applicable Reserve Letter of Credit will not be renewed in accordance with its terms and (B) the Company has failed to replace such Applicable Reserve Letter of Credit with either cash or another Acceptable Letter of Credit from an Acceptable LC Bank.

Any drawing upon any such Applicable Reserve Letter of Credit in accordance with the first paragraph of this section will be in an amount equal to the lesser of (1) the Applicable Reserve Requirement at such time minus the sum of (x) the amount of cash on deposit in the applicable Reserve Account at such time and (y) the remaining stated amounts of any other Applicable Reserve Letters of Credit for the applicable Reserve Account available to be drawn pro rata with such Applicable Reserve Letter of Credit in accordance with clause (iii) of the succeeding paragraph and (2) the remaining stated amount under such Applicable Reserve Letter of Credit. The proceeds of any such drawing upon any such Applicable Reserve Letter of Credit will be deposited into the Reserve Account to which such Applicable Reserve Letter of Credit was credited by the Collateral Agent.

On any date that the Collateral Agent is required or permitted to withdraw funds from any Reserve Account, the Collateral Agent will, in the following order of priority: (i) first, withdraw available cash, if any, on deposit in such Reserve Account; (ii) second, liquidate Permitted Investments, if any, held in such Reserve Account and withdraw the proceeds of such liquidation; and (iii) third, make a pro rata drawing under each Applicable Reserve Letter of Credit in respect of such Reserve Account.

At the written request of an Authorized Representative of the Company, the Collateral Agent will release funds from any Reserve Account in the event that the Company has delivered (or has caused to be delivered) to the Collateral Agent an Applicable Reserve Letter of Credit in a stated amount at least equal to the amount of funds to be released from such Reserve Account; provided that, following such release, the amount on deposit in the applicable Reserve Account (taking into account the stated amount of any Acceptable Letters of Credit provided with respect to such Reserve Account) is at least equal to the Applicable Reserve Requirement. Any amounts so released will be transferred directly (for the avoidance of doubt, without the delivery of a Funds Transfer Certificate, to the Revenue Account for application pursuant to “—Flow of Funds—Revenue Account—On and After the RSA Date” or satisfaction of the Restricted Payment Conditions) to the Reserve Account to the account of any Sponsor(s) (or their designee) or other Affiliate of the Company, or otherwise as may be specified by the Company in a written direction to the Collateral Agent from an Authorized Representative of the Company on the date specified in such written direction. The Collateral Agent will credit any such additional Applicable Reserve Letter of Credit to the applicable Reserve Account.

See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT”—The Project Accounts—Reserve Accounts; Reserve Letters of Credit” for further detail.

Funds as Collateral

Any deposit made into the Project Accounts under the Collateral Agency Agreement (except through clerical or other manifest error or in a manner that is otherwise inconsistent with the Collateral Agency Agreement) will be irrevocable and all cash, cash equivalents, Permitted Investments, instruments, and other Securities on deposit in the Project Accounts will be subject to a Security Interest in favor of the Collateral Agent on behalf of the Secured Parties pursuant to the Security Agreement and will be held by the Collateral Agent as Collateral for the benefit of the Secured Parties as provided in the Collateral Agency Agreement.

Investment

Funds in the Project Accounts may be invested and reinvested only in Permitted Investments in accordance with written instructions given to the Collateral Agent by the Company (prior to the occurrence of an Event of Default and, thereafter (so long as such Event of Default is continuing), as directed by the Intercreditor Agent and in
accordance with the written instructions of the Intercreditor Agent) and, unless an Event of Default has occurred and is continuing, the Company is entitled to instruct the Collateral Agent to liquidate Permitted Investments for purposes of effecting any such investment or reinvestment, upon permitted withdrawals from the respective accounts or for any other purpose permitted in the Collateral Agency Agreement; provided that, absent such instruction, such amounts held in the Project Accounts will be invested and reinvested in Permitted Investments as selected by the Company in advance (which may be in the form of a standing instruction). The Collateral Agent will not be required to take any action with respect to investing the funds in any Project Account in the absence of written instructions by the Company or the Intercreditor Agent (to the extent provided in accordance with the terms of the Collateral Agency Agreement). The Collateral Agent will not be liable for any loss resulting from any Permitted Investment or the sale or redemption thereof made in accordance with the terms of the Collateral Agency Agreement. If and when cash is required for disbursement in accordance with the Collateral Agency Agreement, the Collateral Agent is authorized, in the event the Company fails to direct the Collateral Agent to do so in a timely manner and to the extent necessary to make payments required pursuant to the Collateral Agency Agreement, to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Collateral Agent will deem reasonable and prudent under the circumstances. The Company acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Company the right to receive brokerage confirmations of security transactions as they occur, the Company specifically waives receipt of such confirmations to the extent permitted by law. The Collateral Agent will provide the Company periodic cash transaction statements which will include detail for all investment transactions made by the Collateral Agent under the Collateral Agency Agreement.

The Collateral Agent will have no obligation to invest or reinvest the funds if all or a portion of the funds is deposited with (or instructions with respect to the same are given to) the Collateral Agent after 11 a.m. (E.S.T. or E.D.T., as applicable) on the day of deposit. Instructions to invest or reinvest that are received after 11 a.m. (E.S.T. or E.D.T., as applicable) will be treated as if received on the following Business Day.

In the event the Collateral Agent does not receive investment instructions, the amounts held by the Collateral Agent pursuant to the provisions of the Collateral Agency Agreement will not be invested and the Collateral Agent will not incur any liability for interest or income thereon.

The parties to the Collateral Agency Agreement each acknowledge that non-deposit investment products are not obligations of or guaranteed, by U.S. Bank National Association nor any of its affiliates, are not FDIC insured, and are subject to investment risks, including the possible loss of principal amount invested in one or more of the money market funds made available by the Collateral Agent and initially selected by the Company.

Any investment direction contained in the Collateral Agency Agreement may be executed through an affiliated broker or dealer of the Collateral Agent and any such affiliated broker or dealer will be entitled to such broker’s or dealer’s usual and customary fees for such execution as agreed to by the Company. It is agreed and understood that the Collateral Agent may earn fees associated with the investments outlined above to the extent previously agreed with the Company. Neither the Collateral Agent nor its affiliates will have a duty to monitor the investment ratings of any Permitted Investments.

Investments may be held by the Collateral Agent directly or through any clearing agency or depository including the federal reserve/treasury book-entry system for United States and federal agency securities, and The Depository Trust Company. The Collateral Agent will not have any responsibility or liability for the actions or omissions to act on the part of any clearing agency.

**Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default**

Except as provided in the Collateral Agency Agreement, each withdrawal or transfer of funds from the Project Accounts (other than from the Construction Account (subject to certain exceptions with respect thereto, with respect to which a Funds Transfer Certificate will be provided), the Operating Account, the Other Operating Accounts or the Material Project Contract Accounts) by the Collateral Agent on behalf of the Company will be made pursuant to an executed Funds Transfer Certificate, which certificate will be provided and prepared by the Company and will contain a certification by the Company, as applicable, that such withdrawal or transfer complies with the requirements of the Collateral Agency Agreement.
Unless a shorter period is acceptable to the Collateral Agent, such Funds Transfer Certificate relating to each applicable Project Account (other than the Construction Account, the Operating Account, the Other Operating Accounts or the Material Project Contract Accounts) will be delivered to the Collateral Agent no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn or transferred. In the event that a Funds Transfer Certificate does not comply with the requirements of the Collateral Agency Agreement and the other Finance Documents, the Collateral Agent has the right to reject such certificate and the Company will not be entitled to cause the proposed withdrawal or transfer until it has submitted a revised and compliant certificate.

The Company will, in the absence of an Event of Default that has occurred and is continuing, be entitled to withdraw funds from all of the Project Accounts contemplated in the Collateral Agency Agreement for the purposes (and in accordance with the terms) set in the Collateral Agency Agreement.

Notwithstanding anything to the contrary contained in the Collateral Agency Agreement, upon receipt of a notice of an Event of Default and during the continuance of the related Event of Default, the Intercreditor Agent may (i) in connection with or following the taking of an Enforcement Action, without consent of the Company, instruct the Collateral Agent in writing to apply proceeds of the Project Accounts to the payment of Secured Obligations, in accordance with the terms of the Collateral Agency Agreement and the Intercreditor Agreement and in the order set forth in “—Application of Proceeds,” so long as such payments are on account of amounts due under the Finance Documents in respect of such Secured Obligations and (ii) at any time prior to the taking of an Enforcement Action, instruct the Collateral Agent to apply the proceeds of the Project Accounts in the order set forth in “—Flow of Funds—Revenue Account— On and After the RSA Date;” provided, that in the case of this clause (ii), amounts on deposit in the Construction Account, any Senior Debt Service Reserve Sub-Account and the TIFIA Debt Service Reserve Sub-Account may only be applied in accordance with the provisions of “—Description of Accounts—Construction Account,” “—Description of Accounts —Debt Service Reserve Account and Senior Debt Service Reserve Sub-Account,” and “—Description of Accounts—TIFIA Debt Service Reserve Sub-Account,” respectively.

See APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT— Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default” for further detail.

Flow of Funds

Construction Account – During the Construction Period through the End of Funding Date

Each withdrawal or transfer of funds from the Construction Account by the Collateral Agent on behalf of the Company in accordance with the Collateral Agency Agreement (other than with respect to certain transfers between Project Accounts and upon closure of the Construction Account as set forth in the Collateral Agency Agreement) will be made pursuant to an Approved Construction Requisition in accordance with the Collateral Agency Agreement. Amounts in the Construction Account will be transferred by the Collateral Agent as directed in the applicable Construction Requisition Certificate to pay Project Costs (or to the Operating Account or any Other Operating Account for the payment therefrom of Project Costs) in accordance with “—Description of Project Accounts—Construction Account” upon receipt by the Intercreditor Agent and the Collateral Agent of the following documents and satisfaction of the following conditions, as applicable, not later than the third (3rd) Business Day prior to the proposed Construction Funds Transfer Date (or such shorter period as is acceptable to the Collateral Agent and the Intercreditor Agent):

(i) to the extent applicable pursuant to the terms of this section, a duly executed Construction Requisition Certificate from the Company (1) setting forth the amount(s) requested to be transferred on such Construction Funds Transfer Date and the applicable accounts or payees to which such amount(s) will be transferred (with the description of each purpose therefor); and (2) certifying as to the following, as applicable, as of such date of transfer:

A. the use of any 2016 Bond proceeds and any proceeds of any future tax-exempt borrowings comprising Additional Parity Bonds (including, in each case, any Account Interest or other earnings thereon), if any, being withdrawn on such Construction Funds Transfer Date, complies with the Code and with the Tax Regulatory Agreement;
B. no Event of Default under the 2016 Loan Documents has occurred and is continuing (unless such disbursement will cure such Event of Default);

C. no Funding Shortfall exists; and

D. all amounts requisitioned in such Construction Requisition Certificate relate to Project Costs that have been incurred or are reasonably projected to be incurred within the next sixty (60) days in connection with the Project and none have been the basis for a prior requisition (including any requisition for transfers of such amounts to, or on deposit in, the Operating Account or any Other Operating Account) that has been paid;

(ii) except to the extent not required pursuant to the provisos of this clause (ii) and the following clause (iii), a duly executed Technical Advisor Certificate certifying that, in the reasonable opinion of the Lenders’ Technical Advisor:

A. for any funds to be applied to Project Costs for construction work under the Design-Build Contract, such funds are for payment in respect of actual Work completed or Work reasonably projected to be completed;

B. no Funding Shortfall exists;

C. all amounts requisitioned in the related Construction Requisition Certificate relate to Project Costs that have been incurred or are reasonably projected to be incurred within the next sixty (60) days in connection with the Project and none (including any such amounts requisitioned for transfers to, or on deposit in, the Operating Account or any Other Operating Account) have been the basis for a prior requisition that has been paid; and

D. Revenue Service Availability of the Project is reasonably expected to be achieved on or prior to the Long Stop Date;

provided, however, that upon a determination by the Lenders’ Technical Advisor that Revenue Service Availability of the Project will not occur on or prior to the Long Stop Date, a transfer from the Construction Account (or any sub-account thereof) will be allowed so long as Lenders’ Technical Advisor is satisfied with the Company’s remedial plan demonstrating that Revenue Service Availability can be achieved on or prior to the Long Stop Date, which satisfaction must be evidenced by certification thereof by the Lenders’ Technical Advisor; provided, further, however, that none of the foregoing requirements of this clause (ii) will apply to transfers on any Construction Funds Transfer Date of amounts with respect to Project Costs constituting administrative expenses of the Company, including personnel, insurance and lease expenses; and

(iii) withdrawal of funds from the 2016A Proceeds Sub-Account, the 2016B Proceeds Sub-Account, the 2016C Proceeds Sub-Account or the 2016D Proceeds Sub-Account will be on a pro rata basis among such accounts;

provided, further, that, with respect to the Project Costs described in sub-clauses (x) and (y) of this proviso, the requirement of sub-clause (1) of the foregoing clause (i) (and solely with respect to 2016 Bond proceeds and any proceeds of future tax-exempt borrowings comprising Additional Parity Bonds (including, in each case, any Account Interest or other earnings thereon), if any, being withdrawn on the respective date for a transfer, the requirement of sub-clause (2)(A) of the foregoing clause (i)) will be the sole condition(s) to transfer on any Construction Funds Transfer Date of amounts with respect to Project Costs (x) constituting the payment of interest on the Senior Secured Obligations or the TIFIA Loan, fees payable to the Collateral Agent, other Secured Parties or any rating agencies, or the costs of issuance of the Senior Secured Obligations or the TIFIA Loan or (y) being transferred on a Construction Funds Transfer Date on or after the RSA
Payment Date from amounts in the Construction Account (including any sub-account thereof) comprising the Construction Completion Amount.

Revenue Account – On and After the RSA Date

On and after the RSA Date, except for amounts required or permitted to be deposited in other Project Accounts pursuant to the Collateral Agency Agreement, all (i) Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”), including Availability Payments, (ii) Project Proceeds and (iii) any other amounts received by the Company from any source whatsoever (including transfers from other Project Accounts from time to time as required by the terms of the Collateral Agency Agreement), will be deposited into the Revenue Account. Pending such deposit, the Company will hold all such amounts coming into its possession in trust for the benefit of the Secured Parties.

Amounts will be transferred from the Revenue Account to the Special Lifecycle Payment Account at the direction of the Company pursuant to the Collateral Agency Agreement. In addition, at the instruction of the Company in accordance with a Funds Transfer Certificate by the Company, and subject to “—Application of Proceeds,” beginning with the first Monthly Transfer Date after the RSA Date, the Collateral Agent will make the following withdrawals, transfers and payments from the Revenue Account (and any sub-accounts thereof) as set forth in the applicable Funds Transfer Certificate on each Monthly Transfer Date or Restricted Payment Date, as applicable, in the following amounts and in the following order of priority (it being agreed that (i) no amount will be withdrawn on any date pursuant to any clause below (A) until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses will have been withdrawn or set aside or (B) in respect of any items for which amounts have previously been transferred and (ii) each such transfer will be made only to the extent there are sufficient amounts on deposit in the Revenue Account on such date to make any such transfer):

First, on each Monthly Transfer Date, to the Operating Account and any Other Operating Account, an aggregate amount not to exceed (together with amounts then on deposit therein allocated to the payment of O&M Expenditures (other than Renewal Expenditures) as further described in APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT—Description of Project Accounts—Operating Account”) the O&M Expenditures (other than Renewal Expenditures) then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date;

Second, on each Monthly Transfer Date, to the Operating Account and any Other Operating Account, after application of all funds then on deposit in the Rehabilitation Reserve Account toward any Renewal Expenditures, an aggregate amount not to exceed the Renewal Expenditures then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date solely to the extent amounts then on deposit in the Rehabilitation Reserve Account are insufficient to pay such Renewal Expenditures;

Third, on each Monthly Transfer Date, to any payments then due and payable by the Company to the Series 2016 Rebate Fund established under the Indenture or any similar rebate fund established with respect to any future tax-exempt borrowings comprising Additional Parity Bonds;
Fees, costs and expenses to the Secured Parties under the Finance Documents and the Rating Agencies

Fourth, on each Monthly Transfer Date, to the applicable payees and/or accounts for the payment of fees, costs and expenses then due and payable to the Secured Parties under the Finance Documents, if any, and to the payment of any costs of any Nationally Recognized Rating Agencies applicable to the Project then due and payable;

Fifth, on each Monthly Transfer Date, to the Senior Interest Payment Sub-Account of the Senior Debt Service Account, for payment in respect of the interest portion due on the outstanding Applicable Senior Secured Obligations (and any related Hedging Obligations, if any) on the next Interest Payment Date in an amount equal to (A) the total aggregate amount of interest to be paid in respect of the outstanding Applicable Senior Secured Obligations (and any related Hedging Obligations, if any) on the next Interest Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Interest Payment Date, but not counting such Interest Payment Date if it is a Monthly Transfer Date, to, and including, such next Interest Payment Date plus (B) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, an Interest Payment Date, any other amount required to make the amount credited to the Senior Interest Payment Sub-Account, taking into account the amount then on deposit in the Senior Interest Payment Sub-Account, equal to the amount required to pay the interest payment due on such Interest Payment Date on the Applicable Senior Secured Obligations (and any related Hedging Obligations, if any); provided, that on each Interest Payment Date, amounts on deposit in the Senior Interest Payment Sub-Account will be transferred by the Collateral Agent to the Trustee for deposit into the applicable sub-account of the Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be, or to any other applicable Secured Party (or representative or account thereof) for the payment of interest then due and payable on the relevant Applicable Senior Secured Obligations;

Sixth, on each Monthly Transfer Date, beginning no earlier than the date that is six (6) months prior to the first Principal Payment Date:

(a) to the Senior Principal Payment Sub-Account of the Senior Debt Service Account to make payments in respect of (A) scheduled principal payments and (B) mandatory sinking fund payments (collectively, the amounts referred to in clauses (A) and (B), the “Principal Related Payments”) applicable to the outstanding Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any (to the extent such Principal Related Payments are not paid or payable with amounts then available in the Revenue Service Availability Payment Account, the Final Completion Payment Account or the Special Lifecycle Payment Account in accordance with the terms hereof, as applicable) in an amount equal to (X) the total aggregate amount of such Principal Related Payments to be paid in respect of such Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any on the next Principal Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Principal Payment Date, but not counting such Principal Payment Date if it is a Monthly Transfer Date, to, and including, such next Principal Payment Date, plus (Y) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (Z) if such Monthly Transfer Date is, or is the last Monthly
Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the Senior Principal Payment Sub-Account, taking into account the amount then on deposit in the Senior Principal Payment Sub-Account, equal to the amount required to pay the Principal Related Payments due on such Principal Payment Date on the Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any; provided, that on each Principal Payment Date, amounts on deposit in the Senior Principal Payment Sub-Account will be transferred by the Collateral Agent to the Trustee for deposit into the applicable sub-account of the Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be, or to any other applicable Secured Party (or representative or account thereof) for the payment of Principal Related Payments then due and payable on the relevant Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations;

(b) to the Mandatory Prepayment Account to make payments in respect of mandatory prepayments and mandatory redemptions solely to the extent not payable from amounts on deposit in another Project Account pursuant to the terms hereof (collectively, the “Mandatory Payments”) of the outstanding Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any (and to the TIFIA Obligations on a pro rata basis with such Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any, solely to the extent required to be prepaid with amounts on deposit in the Revenue Account on a pro rata basis with any Senior Secured Obligations pursuant to “FINANCING FOR THE PROJECT—TIFIA Loan Agreement—Representations, Warranties and Covenants—Restrictions on Mandatory Prepayments from the Revenue Account”) (the TIFIA Obligations in such case being, the “Applicable TIFIA Obligations”) (to the extent such Mandatory Payments are not paid or payable with amounts then available in the Revenue Service Availability Payment Account, the Final Completion Payment Account or the Special Lifecycle Payment Account in accordance with the terms hereof, as applicable) in an amount equal to (X) the total aggregate amount of such Mandatory Payments to be paid in respect of such Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any (and the Applicable TIFIA Obligations, if any), on the next Principal Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Principal Payment Date, but not counting such Principal Payment Date if it is a Monthly Transfer Date, to, and including, such next Principal Payment Date, plus (Y) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (Z) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the applicable sub-accounts of the Mandatory Prepayment Account, taking into account the amount then on deposit in the applicable sub-accounts of the Mandatory Prepayment Account, equal to the amount required to pay the Mandatory Payments due on such Principal Payment Date on the Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any (and the Applicable TIFIA Obligations, if any);
Seventh, on each Monthly Transfer Date, to each sub-account of the Debt Service Reserve Account related to the Applicable Senior Secured Obligations, the amount, if any, necessary to fund such accounts so that the respective balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account, equals the applicable Debt Service Reserve Required Balance at such time;

Eighth, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, on each Monthly Transfer Date, to the TIFIA Interest Payment Sub-Account of the TIFIA Debt Service Account, an amount equal to (A) the total aggregate amount of interest to be paid in respect of outstanding TIFIA Obligations on the next Interest Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Interest Payment Date, but not counting such Interest Payment Date if it is a Monthly Transfer Date, to, and including, such next Interest Payment Date plus (B) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, an Interest Payment Date, any other amount required to make the amount credited to the TIFIA Interest Payment Sub-Account, taking into account the amount then on deposit in the TIFIA Interest Payment Sub-Account, equal to the amount required to pay the interest payment due on such Interest Payment Date on the TIFIA Obligations; provided, that on each Interest Payment Date, amounts on deposit in the TIFIA Interest Payment Sub-Account will be transferred by the Collateral Agent for the payment of interest then due and payable on the TIFIA Obligations;

Ninth, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, on each Monthly Transfer Date, to the TIFIA Principal Payment Sub-Account of the TIFIA Debt Service Account, an amount equal to (A) the total aggregate amount of any Principal Related Payments and Mandatory Payments to be paid in respect of such TIFIA Obligations on the next Principal Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Principal Payment Date, but not counting such Principal Payment Date if it is a Monthly Transfer Date, to, and including, such next Principal Payment Date, plus (B) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the TIFIA Principal Payment Sub-Account, taking into account the amount then on deposit in the TIFIA Principal Payment Sub-Account, equal to the amount required to pay the Principal Related Payments and Mandatory Payments due on such Principal Payment Date on the TIFIA Obligations; provided, that on each Principal Payment Date, amounts on deposit in the TIFIA Principal Payment Sub-Account will be transferred by the Collateral Agent for the payment of Principal Related Payments and Mandatory Payments then due and payable on the TIFIA Obligations;

Tenth, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, on each Monthly Transfer Date, to the TIFIA Debt Service Reserve Sub-Account of the Debt Service Reserve Account the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit
provided with respect to such Reserve Account, equals the TIFIA Debt Service Reserve Required Balance at such time;

Eleventh, on each Monthly Transfer Date, to the Rehabilitation Reserve Account the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account, equals the Rehabilitation Reserve Required Balance at such time;

Twelfth, on each Monthly Transfer Date, to the Senior Principal Payment Sub-Account for the payment of any Hedging Termination Obligations (other than Permitted Hedging Termination Obligations payable pursuant to clause “Sixth” above) with respect to the Applicable Senior Secured Obligations that are due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date; provided, that on each Principal Payment Date, amounts on deposit in the Senior Principal Payment Sub-Account will be transferred by the Collateral Agent for the payment of Hedging Termination Obligations (other than Permitted Hedging Termination Obligations) then due and payable;

Thirteenth, on each Monthly Transfer Date, to any sub-account of the Revenue Account established for the payment of interest on Permitted Subordinated Loans (if any), an amount not to exceed (together with amounts then on deposit therein) the interest projected to become due and payable on any outstanding Permitted Subordinated Loans on the next Interest Payment Date (or such monthly portion thereof in accordance with the relevant financing documents); provided, that on each Interest Payment Date, amounts on deposit in such sub-account will be transferred by the Collateral Agent for the payment of interest then due and payable on such Permitted Subordinated Loans;

Fourteenth, on each Monthly Transfer Date, to any sub-account of the Revenue Account established for the payment of principal on Permitted Subordinated Loans (if any), an amount not to exceed (together with amounts then on deposit therein) the Principal Related Payments projected to become due and payable on any outstanding Permitted Subordinated Loans on the next Principal Payment Date (or such monthly portion thereof in accordance with the relevant financing documents); provided, that on each Principal Payment Date, amounts on deposit in such sub-account will be transferred by the Collateral Agent for the payment of the Principal Related Payments then due and payable on such Permitted Subordinated Loans;

Fifteenth, on each Monthly Transfer Date, to the Operating Account and any Other Operating Account, the aggregate amount required to pay any Discretionary Capital Expenditures then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date;
Prepayment of Applicable Senior Secured Obligations
(and any related Hedging Termination Obligations)

Sixteenth, on each Monthly Transfer Date, to the Voluntary Prepayment Account, an amount determined at the election of the Company as indicated in the applicable Funds Transfer Certificate to be applied to the prepayment or redemption of the Applicable Senior Secured Obligations (and any related Hedging Termination Obligations) or the TIFIA Obligations, as applicable;

Applicable Excess Funds to Equity Lock-Up Account

Seventeenth, on each Restricted Payment Date, to the Equity Lock-up Account, all Applicable Excess Funds on deposit in the Revenue Account on the immediately preceding Semi-Annual Transfer Date if any of the Restricted Payment Conditions have not been satisfied as of the applicable Restricted Payment Condition Satisfaction Date; and

Applicable Excess Funds to Distribution Account

Eighteenth, on each Restricted Payment Date, subject to “—Description of Project Accounts—Distribution Account,” to the Distribution Account, all Applicable Excess Funds on deposit in the Revenue Account on the immediately preceding Semi-Annual Transfer Date; provided that each Restricted Payment Condition was satisfied as of the applicable Restricted Payment Condition Satisfaction Date.

If, on the date of any withdrawal or transfer from the Revenue Account for payment pursuant to any of clauses “Third,” “Fourth,” “Fifth,” “Sixth,” “Seventh” and “Twelfth” described above, the amount required to be withdrawn and transferred from the Revenue Account pursuant to such clause exceeds the amount then on deposit in or credited to the Revenue Account after the withdrawals and transfers made pursuant to all applicable preceding clauses are completed, the amount on deposit in or credited to the Revenue Account at the time of application pursuant to such clause will be transferred pro rata to each of the Persons (or Project Accounts) specified in such clause based on the respective amounts owed to such Persons (or otherwise required to be transferred) pursuant to such clause (including, upon and following the occurrence of a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, pursuant to clause “Seventh” above in accordance with the respective percentages of the deficiencies, as of such date of withdrawal or transfer, in the TIFIA Debt Service Reserve Required Balance, the 2016D Bonds Debt Service Reserve Required Balance and any other Senior Debt Service Reserve Required Balance, as applicable), as specified in the Funds Transfer Certificate or as otherwise determined by the Collateral Agent (acting on the instructions of the Intercreditor Agent); provided that (i) the payments described in this paragraph will be applied in accordance with the payment priorities set forth above and (ii) the payments due at a particular level of the Flow of Funds will be made in full before any payment is made at the next level.

After application of funds in the Revenue Account on any Monthly Transfer Date pursuant the Flow of Funds, to the extent any funds remain in the Revenue Account, such funds will remain in the Revenue Account for application in accordance with the Collateral Agency Agreement.

To the extent that the balance of funds on deposit in any Project Account with a required minimum balance exceeds such required minimum balance as of any Monthly Transfer Date, such excess funds will be transferred to the Revenue Account for application as so contemplated by the Flow of Funds, subject to the provisions of “—Description of Project Accounts—Rehabilitation Reserve Account” and “—Description of Project Accounts—Reserve Accounts; Reserve Letters of Credit.”

Application of Proceeds

Subject to the following paragraphs of this section, after the taking of an Enforcement Action, all Proceeds received by the Collateral Agent derived from the funds set forth in clauses (i)-(vi) below pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any
of the Security Documents will be applied as follows (provided, that any such proceeds which are to be used to pay
any amounts to any Holders of Bonds will be paid to the Trustee for deposit into the applicable sub-accounts of the
Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be):

(i) All amounts on deposit in, and all Proceeds attributable to, the 2016A Proceeds Sub-Account, the
2016B Proceeds Sub-Account, the 2016C Proceeds Sub-Account, the 2016D Proceeds Sub-Account and any other
Bond Proceeds Sub-Account, in each case, of the Construction Account will be transferred to the Trustee in
accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the
Security Agreement, first to pay for the pro rata payment of all accrued and unpaid interest on the applicable series
of Bonds with respect to such Bond Proceeds Sub-Account, and second, if any unpaid principal of any such Bonds is
due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts;

(ii) All amounts on deposit in, and all Proceeds attributable to any Additional Parity Bonds Proceeds
Account will be transferred to the Trustee in accordance with the Security Interest granted on such account and
Proceeds attributable thereto pursuant to the Security Agreement, first to pay for the pro rata payment of all accrued
and unpaid interest on the applicable series of Additional Parity Bonds with respect to such Additional Parity Bonds
Proceeds Account, and second, if any unpaid principal of any such Additional Parity Bonds is due and payable (by
acceleration or otherwise), to the pro rata payment of such principal amounts;

(iii) All amounts on deposit in, and all Proceeds attributable to, the TIFIA Loan Proceeds Sub-Account
of the Construction Account will be transferred to the TIFIA Lender in accordance with the Security Interests
granted on such account and Proceeds attributable thereto pursuant to the Security Agreement, first to pay for the
pro rata payment of all accrued and unpaid interest on the TIFIA Loan, and second, if any unpaid principal of the
TIFIA Loan is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts;

(iv) All amounts on deposit in, and all Proceeds attributable to, any additional sub-account of the
Construction Account established pursuant to the terms hereof for the deposit of proceeds of any Other Permitted
Senior Secured Indebtedness will be transferred to the relevant Secured Parties with respect to such sub-account in
accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the
Security Agreement, first to pay for the pro rata payment of all accrued and unpaid interest on the relevant Other
Permitted Senior Secured Indebtedness, and second, if any unpaid principal of any such Other Permitted Senior
Secured Indebtedness is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts;

(v) All amounts on deposit in, and all Proceeds attributable to, any sub-account of the Debt Service
Reserve Account will be transferred to the relevant Secured Parties with respect to such sub-account in accordance with
the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement,
first to pay for the pro rata payment of all accrued and unpaid interest on the relevant Secured Obligations and second,
if any unpaid principal of any such Secured Obligations is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts; and

(vi) All amounts on deposit in, and all Proceeds attributable to, any sub-account of the Mandatory
Prepayment Account will be transferred to the relevant Secured Parties with respect to such sub-account in accordance with
the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement first to pay for the pro rata payment of all accrued and unpaid interest on the relevant Secured Obligations and second, if any unpaid principal of any such Secured Obligations is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts.

Following the taking of an Enforcement Action, notwithstanding any provision contrary in the Collateral
Agency Agreement or any other Finance Document (but subject to certain provisions of the Collateral Agency
Agreement including those set forth in the preceding paragraph and in “—Description of Project Accounts—Debt
Service Reserve Account and Senior Debt Service Reserve Sub-Accounts,” “—Description of Project Accounts—
TIFIA Debt Service Reserve Sub-Account,” “—Description of Project Accounts—Loss Proceeds Account,” and “—
Description of Project Accounts—Mandatory Prepayment Account”), the Collateral Agent, as directed by the
Intercreditor Agent, will have the right to direct the application of all amounts on deposit in or credited to the Project
Accounts, and to otherwise deal with the Collateral, without the need for consent of, or any other action by, the
Company or any other Secured Party. Subject to the prior application of the funds as described in the preceding
paragraph, following the taking of an Enforcement Action, all Proceeds received by the Collateral Agent pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents, including Net Loss Proceeds, Termination Compensation, Asset Sale Proceeds or proceeds from the sale or disposition of Collateral or other Enforcement Action and amounts available in or otherwise transferred from the Project Accounts will be applied promptly by the Collateral Agent as directed by the Intercreditor Agent as follows (provided, that any such proceeds which are to be used to pay any amounts to the Holders of Bonds will be paid to the Trustee for deposit into the applicable sub-accounts of the Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be):

First, to the pro rata payment of the unpaid fees, administrative costs and expenses due and payable to the Secured Parties under the Finance Documents, if any;

Second, to the pro rata payment of all accrued and unpaid interest due and payable on all Applicable Senior Secured Obligations and Hedging Obligations held by any Hedge Providers;

Third, to the pro rata payment of (i) any unpaid principal of any Applicable Senior Secured Obligation that is due and payable (by acceleration or otherwise) and (ii) any Hedging Termination Obligations then due and payable to the Hedge Providers that are due and payable (by acceleration or otherwise);

Fourth, to the pro rata payment of all accrued and unpaid redemption or prepayment premiums due and payable, if any, on all Applicable Senior Secured Obligations;

Fifth, to the pro rata payment of all other amounts, if any, due and payable under the Finance Documents to the Senior Secured Parties with respect to any Applicable Senior Secured Obligations;

Sixth, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, to the payment of all amounts due and payable in respect of the TIFIA Obligations; and

Seventh, upon the payment in full of all Secured Obligations in accordance with clauses “First” through “Sixth” hereof, to pay to the Company, or as may be directed by the Company, or as a court of competent jurisdiction may direct, any Proceeds then remaining.

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PROJECT PARTICIPANTS

The Company

Purple Line Transit Partners LLC is a Delaware special purpose limited liability company, formed on January 20, 2016, for the purpose of undertaking the Project, which, among other things, includes entering into the P3 Agreement. Pursuant to a LLC Agreement, the Company will not engage in any activity unrelated to the Project. The table below sets forth the ownership of the Company.

<table>
<thead>
<tr>
<th>Sponsor</th>
<th>Amount</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meridiam Infrastructure Purple Line, LLC</td>
<td>$96,936,434</td>
<td>70%</td>
</tr>
<tr>
<td>Fluor Enterprises, Inc.</td>
<td>$20,772,093</td>
<td>15%</td>
</tr>
<tr>
<td>Star America Purple Line, LLC</td>
<td>$20,772,093</td>
<td>15%</td>
</tr>
</tbody>
</table>

Equity Participants

The following summaries of the Sponsors and the Sponsors’ parent companies, as applicable, are included solely to provide any potential investor in the 2016 Bonds with additional background regarding the technical and financial capabilities of each Sponsor and the source of the equity contributions as contemplated in the Equity Contribution Agreement and discussed in this Official Statement. Potential investors in the 2016 Bonds should note that, as described elsewhere in this Official Statement, the 2016 Bonds are payable from payments received from the Company under the Series 2016 Loan Agreement and the Company’s obligations thereunder are non-recourse obligations of the Company and in no event will all or any of the Sponsors or their parent companies have any obligation with respect to any payment related to the 2016 Bonds (except as relating to the Sponsors’ equity contributions solely to the extent contemplated in the Equity Contribution Agreement and described herein). Each Sponsor will commit to make certain equity investments in the Company pursuant to the Equity Contribution Agreement described herein, subject to the terms of such agreement. The obligation of each Sponsor to contribute equity to the Company under the Equity Contribution Agreement will be secured by an Equity Letter of Credit. See “FINANCING FOR THE PROJECT—Equity Contributions.”

None of the obligations in respect of the 2016 Bonds or any of the Transaction Documents (other than the Sponsors’ obligations under the Equity Contribution Agreement to the limited extent described below) will constitute obligations of, or be guaranteed by, the Sponsors or any of their respective affiliates, other than the Company. In addition, except for the obligations of the Sponsors under the Equity Contribution Agreement to the limited extent described below, none of the Sponsors or any of their respective affiliates, other than the Company, will be bound by the covenants set forth in the Finance Documents. Neither the Sponsors nor the Company will be required to provide to the holders of the 2016 Bonds updated information about the Sponsors or any of their respective affiliates (other than the Company).

Meridiam Infrastructure Purple Line, LLC

Overview. Meridiam Infrastructure Purple Line, LLC (“Meridiam”), as of March 31, 2016, is a wholly-owned subsidiary of Meridiam Infrastructure North America Fund II (“MNII Fund”), which together with managed co-investments, is an unlisted, close-ended $1 billion infrastructure fund whose investors are committed to providing capital as required by the MNII Fund Limited Partnership Agreement (the “LPA”) up to their initial commitment; this capital is drawn as needed by MNII Fund for project funding. The MNII Fund is a long term, socially aware infrastructure investment fund with a fixed 25 year fund life and a long term investment strategy in partnerships with its investor base and the public entities.

Unless stated otherwise, none of the financial information contained in this section has been audited or otherwise reviewed by auditors or accounting firms but rather has been derived from financial information available to Meridiam as of March 31, 2016.

Meridiam SAS. Meridiam SAS (“MSAS”) is the management holding company and is, directly or whose subsidiaries are, in charge of investment decisions as well as the on-going, long-term asset management of a
portfolio of infrastructure investments. MSAS has approximately $3.5 billion of assets under management and capital committed as of March 31, 2016. Meridiam Infrastructure North America Corporation (“MINA Corp”), a wholly-owned subsidiary of MSAS, is the Investment Advisor of MNII Fund and Meridiam. As of March 2012, MINA Corp is registered with the SEC, as a Registered Investment Adviser under the Investment Advisers Act of 1940, as amended. Primarily all the investments managed by MSAS and its subsidiaries are in greenfield public-private partnerships in the transportation, social, energy and environmental sectors throughout North and South America, Eastern and Western Europe and Africa. These investments make up a portfolio of more than 40 P3 assets of which nine are located in North America, including the Waterloo Light Rail Project in Canada which is a similar light rail project. With offices in New York, Toronto, Istanbul, Luxembourg and Paris, the MSAS team has more than 50 investment development and financing professionals dedicated to supporting the investment and management of their P3 investments. The table below includes a selection of Meridiam’s public-private partnership project experience.

<table>
<thead>
<tr>
<th>Project (Location)</th>
<th>Year Closed</th>
<th>Capital Cost</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port of Miami Tunnel (FL, USA)</td>
<td>2009</td>
<td>USD $903 million</td>
<td>Availability-based 1 mile tunnel under the Port of Miami. Completed in 2014 and open to traffic for over a year, a Meridiam Affiliate is the majority equity owner of the project. The public partner is the Florida Department of Transportation.</td>
</tr>
<tr>
<td>Waterloo Light Rail Project (ON, Canada)</td>
<td>2014</td>
<td>CAD $621 million</td>
<td>Availability-based light rail project under construction in Ontario, Canada. MNII Fund holds 35% of the project equity. The public partner for the project is the Region of Waterloo.</td>
</tr>
<tr>
<td>North Tarrant Express Segments 1 and 2, Segments 3A and 3B and IH-635 (LBJ) Managed Lanes (TX, USA)</td>
<td>2009, 2010, 2013</td>
<td>US $6+ billion (3 projects)</td>
<td>Three managed lanes projects in the Dallas-Fort Worth metroplex. The projects included the reconstruction of the existing corridors and the development of new managed lanes alongside the existing highway over 36 miles of corridor. LBJ and North Tarrant Express Segments 1 and 2 are both in operations. MNII Fund and Meridiam Affiliates own or manage over $300 million of equity in the three projects. The public partner is the Texas Department of Transportation.</td>
</tr>
<tr>
<td>Nottingham Express Transit Phase 2 (UK)</td>
<td>2011</td>
<td>GBP 589 million</td>
<td>A mixed availability and farebox revenue light rail project. The project included taking over an existing operation and construction of a new section of rail and opened in 2015. A Meridiam Affiliate is the largest shareholder with 30%. The public partner is the Nottingham City Council.</td>
</tr>
</tbody>
</table>

Meridiam Infrastructure North America Fund II. The MNII Fund is made up of four parallel vehicles, Meridiam Infrastructure North America Fund II, LP (MINAF II), Meridiam Infrastructure North America Fund II AIV, LP (MINAF II AIV), Meridiam Infrastructure North America Fund II AIV II, LP (MINAF II AIV II) and Meridiam Infrastructure North America Fund II (Domestic), LP (MINAF II Domestic). These four investment entities are providing all of the funding in the Company through Meridiam. The MNII Fund, managed by MINA Corp, is an unlisted, close-ended infrastructure fund whose investors are committed to providing capital as required by the LPA up to their initial commitment; this is drawn as needed by MNII Fund for project funding. As of March 31, 2016, approximately $513 million of the capital committed to the fund by investors is uncommitted to projects and available for future investments. All of MNII Fund’s investments are managed by MINA Corp and are currently valued using Level 3 inputs which are defined as “prices or valuations that require inputs that are both significant to the fair value measurement and are unobservable.” Unobservable inputs are inputs that reflect MINA Corp’s expectations about the assumptions market participants would use in pricing the asset or liability that is developed based on the best information available in the circumstances. Many factors, circumstances and events may affect the estimated fair value of MINA Corp’s investments, including but not limited to changes in operational and contractual risks and/or the legal and regulatory environment and fluctuations in foreign exchange rates.
**Meridiam Infrastructure Purple Line, LLC.** Meridiam is the special purpose vehicle which is a wholly-owned subsidiary of the MNII Fund. The Meridiam entity’s sole purpose is to make and hold the MNII Fund’s investment into the Company.

Below is a chart summarizing MNII Fund’s assets, liabilities and partners’ capital for fiscal years ending December 31, 2013, 2014 and 2015, extracted from MNII Fund’s audited financial statements for those years.

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td>255,099,068</td>
<td>347,298,447</td>
<td>335,399,829</td>
</tr>
<tr>
<td><strong>Investments</strong></td>
<td>244,406,143</td>
<td>244,472,497</td>
<td>315,410,749</td>
</tr>
<tr>
<td><strong>Other Assets</strong></td>
<td>10,692,925</td>
<td>102,825,950</td>
<td>19,989,080</td>
</tr>
<tr>
<td><strong>Liabilities</strong></td>
<td>16,877,791</td>
<td>44,389,772</td>
<td>51,208,183</td>
</tr>
<tr>
<td><strong>Partners’ Capital</strong></td>
<td>238,121,277</td>
<td>302,908,675</td>
<td>284,191,646</td>
</tr>
</tbody>
</table>

*Partners Capital represents the net asset value of assets under management*

**Fluor Enterprises, Inc.**

**Overview.** Fluor Enterprises is the principal operating subsidiary of Fluor which is one of the world’s largest engineering and construction services companies. Fluor employs approximately 59,000 people located in 30 countries across six continents. Fluor has executed, or has been part of teams that have executed, more than $40 billion of design-build projects over the past ten years, including the $1.4 billion high-speed rail line in the Netherlands, the $441 million Exposition Light Rail Transit Project in Los Angeles, and the $1.4 billion Denver Eagle rail transit project in Colorado.

Fluor is a holding company that owns the stock of a number of subsidiaries. Acting through these subsidiaries, Fluor is one of the largest professional services firms providing engineering, procurement, construction, fabrication and modularization, commissioning, O&M, and project management services on a global basis. Fluor is an integrated solutions provider for clients in a diverse set of industries worldwide including oil and gas, chemicals and petrochemicals, transportation, mining and metals, power, life sciences and manufacturing. Fluor is also a service provider to the U.S. federal government. Fluor operates in four principal business segments: Energy, Chemicals & Mining; Industrial, Infrastructure & Power; Maintenance, Modification & Asset Integrity; and Government. Fluor’s current credit ratings are A3 from Moody’s; A- from S&P; and BBB+ from Fitch.

The table below summarizes certain financial information of Fluor (NYSE: FLR) for fiscal years ending December 31, 2013, 2014 and 2015, extracted from Fluor’s audited financial statements for those years.

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td>27,351.6</td>
<td>21,531.6</td>
<td>18,114.0</td>
</tr>
<tr>
<td><strong>Net Earnings</strong></td>
<td>667.7</td>
<td>510.9</td>
<td>412.5</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td>8,323.9</td>
<td>8,194.4</td>
<td>7,631.5</td>
</tr>
<tr>
<td><strong>Total Equity</strong></td>
<td>3,757.0</td>
<td>3,110.9</td>
<td>2,997.3</td>
</tr>
<tr>
<td><strong>Total Debt</strong></td>
<td>526.4</td>
<td>1,020.3</td>
<td>992.7</td>
</tr>
</tbody>
</table>
Transportation Infrastructure Experience. Fluor’s history of engineering and constructing transportation projects includes both design-build and DBFOM projects. The following three highlighted projects show where Fluor Enterprises developed and invested in projects as a concession partner and managing partner.

<table>
<thead>
<tr>
<th>Project</th>
<th>Description/Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denver Eagle Transit Denver, CO</td>
<td>Design and construction of three separate rail lines, 14 stations and a rail maintenance facility as well as the provision of 66 commuter rail cars. Fluor is the managing partner of the design-build contract and of the O&amp;M contractor responsible for O&amp;M over the life of the concession. The first of the three rail lines, the University of Colorado A Line, opened for passenger service on April 22, 2016, offering service from downtown Denver out to the Denver airport. The other two rail lines are scheduled to open in the summer and fall of 2016, respectively. The concession is structured with Availability Payments over a 29 year operating period.</td>
</tr>
<tr>
<td>Capital Beltway (I-495) Express HOT Lanes Fairfax County, VA</td>
<td>This $1.48 billion project involved a 14-mile widening of the Capital Beltway, a major freeway serving the Washington, D.C. metropolitan area. It was named the 2008 Transport Deal of the Year by Infrastructure Journal magazine. The mainline configuration consists of four general purpose lanes and two high occupancy toll (HOT) lanes in each direction. Fluor was the managing partner of the design-build contractor.</td>
</tr>
<tr>
<td>I-95 Express HOT Lanes Fairfax, Stafford and Prince William Counties, VA</td>
<td>This $726 million project involved converting and extending an existing HOV facility to a managed lanes facility including providing multiple new access points, improved interchanges and an electronic toll system. Fluor was the managing partner of the design-build contractor.</td>
</tr>
</tbody>
</table>

Fluor has also been involved in various capacities in the projects detailed in the table below:

<table>
<thead>
<tr>
<th>Project/Client</th>
<th>Description/Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tappan Zee Bridge Replacement</td>
<td>Managing partner of a design-build team to replace the 3.1 mile Tappan Zee Bridge which crosses the Hudson River north of New York City. When awarded, the $3.142 billion project was the largest design-build transportation project to date in the US. The new bridge will include 8 general traffic lanes plus emergency lanes and extra wide shoulders for express bus service as well as a dedicated bicycle and pedestrian path and is expected to be complete in 2018.</td>
</tr>
<tr>
<td>Los Angeles Exposition Light Rail Transit Project</td>
<td>This new 9.6-mile addition to the Los Angeles County Metropolitan Transportation Authority’s (L.A. Metro) rail system extends from an existing Metro Rail station in downtown Los Angeles to a location near the intersection of Washington and National Boulevards in Culver City. Fluor was a design-build partner for this $677 million project.</td>
</tr>
<tr>
<td>San Francisco-Oakland Bay Bridge</td>
<td>Design-build partner for joint venture with American Bridge in constructing the $1.43 billion, 625-meter long Self-Anchored Suspension Span of the Bay Bridge, which opened in September 2013.</td>
</tr>
<tr>
<td>Project Management Oversight Program (PMOP) for the FTA</td>
<td>Oversight of $3.6 billion procurement program for new generation of 1,080 rail cars for New York City Transit Authority from development of specifications through car acceptance and start-up operations.</td>
</tr>
<tr>
<td>Oregon Bridge Delivery Program</td>
<td>Program and construction management for a $1.3 billion state-wide bridge replacement program from 2004 to 2015, which encompassed approximately 400 bridges, which was completed in June 2015.</td>
</tr>
</tbody>
</table>
Star America Purple Line, LLC

Overview. Star America Purple Line, LLC is the special purpose vehicle which, as of March 31, 2016, is a wholly-owned subsidiary of Star America Fund GP LLC (acting in its capacity as General Partner of Star America Infrastructure Fund, LP and Star America Infrastructure Fund Affiliates, LP ("Star America Fund I")) (collectively, “Star America”). Star America Purple Line, LLC’s sole purpose is to make and hold the Star America Fund GP LLC’s investment in the Company. Star America is an independent developer, investor, and manager of public infrastructure, focusing primarily on greenfield public-private partnership (“P3”) projects in North America. Star America individual team members have financed, underwrote the risk and/or managed the construction of more than 45 infrastructure projects valued at over $60 billion over the last 15 years, with the majority of those projects in the transportation sector. Star America Fund I aggregate capital commitments from its investors are $300 million.

Asset Portfolio. In North America, Star America currently manages three availability-based and one volumetric P3 projects, including its most recent investments into the Michigan Freeway Lighting Project and the SH 288 Toll Lanes Project. The Michigan Freeway Lighting Project was the first LED Lighting P3 project in the United States.

The table below includes a selection of Star America’s DBFOM project experience in North America. The size of the project indicates total project costs during construction.

<table>
<thead>
<tr>
<th>Project/Client/Location</th>
<th>Year Closed</th>
<th>Size</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Fraser Perimeter Road / British Columbia Ministry of Transportation / British Columbia, Canada</td>
<td>2010</td>
<td>CAD $715 million</td>
<td>New 25-mile highway in British Columbia that reached substantial completion six months ahead of schedule. Star America is an equity member.</td>
</tr>
<tr>
<td>Portsmouth Bypass / Ohio Department of Transportation / Portsmouth, Ohio, U.S.</td>
<td>2015</td>
<td>US $557 million</td>
<td>New 16-mile four-lane highway in Portsmouth, Ohio. Star America is an equity member.</td>
</tr>
<tr>
<td>Michigan Freeway Lighting Project / Michigan Department of Transportation / Michigan, U.S.</td>
<td>2015</td>
<td>US $49 million</td>
<td>A Project consisting of approximately 15,000 freeway lights in and around Detroit, Michigan. Star America is the lead equity member.</td>
</tr>
<tr>
<td>SH 288 Toll Lanes Project / Texas Department of Transportation / Texas, U.S.</td>
<td>2016</td>
<td>US $1.06 billion</td>
<td>The project consists of four 10.3-mile managed toll lane sections of SH 288 from US 59 to the Harris County line at Clear Creek in Harris County. Star America is an equity member.</td>
</tr>
</tbody>
</table>

The Contracting Authority

The Maryland Department of Transportation

MDOT was established as a principal department of the State government in 1971. The head of MDOT is the Secretary of Transportation (the “Secretary”) who is appointed by the Governor with the advice and consent of the Maryland Senate. MDOT has the responsibility for most State-owned transportation facilities and programs, exclusive of toll facilities. This responsibility includes the planning, financing, construction, operations and maintenance of various modes of transportation and carrying out various related licensing and administrative functions. MDOT’s five statutorily created transportation administrations are the Maryland Transit Administration (“MTA”), the Maryland Aviation Administration (“MAA”), the Maryland Port Administration (“MPA”), the Motor Vehicle Administration, and the State Highway Administration. MDOT’s mission is to be a customer-driven leader that delivers safe, sustainable, intelligent, and exceptional transportation solutions in order to connect customers to life’s opportunities.
The Secretary is empowered, on behalf of MDOT, to exercise or perform any power or duty that any of its administrations may exercise or perform. These powers and duties involve, among others, the operation of the Baltimore/Washington International Thurgood Marshall Airport, including the power to set landing fees and to rent space to airlines and concessionaires; the operation of various State-owned buildings and marine terminals in the Port of Baltimore, including the power to fix and collect rental and other fees for the use of these facilities; the construction and maintenance of the State’s highway system; the operation of all mass transit facilities in the Metropolitan Transit District (the “District”), including the operation of the bus and rail systems within the District, and the power to fix and collect the fares for these systems; the operation of the Maryland Area Regional Commuter (“MARC”) train service, including the power to fix and collect the fares for this system; the licensing and registration of all motor vehicles and motor vehicle operations in the State; and the power to acquire any property by purchase or condemnation that is necessary to exercise or perform these powers and duties.

The Maryland Transit Administration

The MTA operates local and commuter buses, light rail, subway, MARC train service, and a comprehensive Mobility/Paratransit system. The combined ridership for these services in fiscal year 2015 was nearly 116 million. Additionally, MTA directs funding and state-wide assistance to locally operated transit systems in each of Maryland’s 23 counties, Baltimore City, Annapolis and Ocean City.

The MTA operates the MARC commuter rail system by contract with Amtrak and Bombardier (operating on CSX railroad company lines). Amtrak operates commuter rail service from Perryville in Cecil County, Maryland to Washington, D.C. Bombardier operates commuter rail service from Baltimore City, Frederick, Maryland, and Martinsburg, West Virginia to Washington, D.C. MARC ridership exceeded 9.2 million in fiscal year 2015.

Project Funding

MDOT and MTA are collectively the “Contracting Authority” under the P3 Agreement, which is required to, among other things, pay to the Company Progress Payments, the RSA Payment, the Final Completion Payment, and Availability Payments (in addition to, in some cases, termination payments or other compensation amounts). There are three components of the Availability Payments under the P3 Agreement: (1) the general portion, which is intended to pay, among other things, the Company’s debt service on the Series 2016D Bonds (the “General Portion”); (2) the operational and maintenance portion, which is intended to fund the operations and maintenance of the Purple Line; and (3) the Lifecycle Payment, which is intended to pay in part for costs related to Renewal Work and in part for the payment of debt service on Series 2016C Bonds. See “PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement” for additional information relating to payments to be made pursuant to the P3 Agreement.

In addition to the revenues available from MDOT’s TTF discussed below, it is currently anticipated that MDOT will receive additional funds allocated to pay costs of the Project, including the following: (i) over $300,000,000 in cash and in-kind payments from Prince George’s and Montgomery Counties; (ii) approximately $900,000,000 in Federal Transit Administration Section 5309 Capital Investment Grant (New Starts) funds from the Federal Transit Administration, $200,000,000 of which has already been allocated to the Project from fiscal year 2015 and 2016 appropriations and $125,000,000 of which has been recommended for allocation to the Project in the President’s fiscal year 2017 federal budget; and (iii) approximately $500,000 from the University of Maryland (collectively, the “Additional Funding Sources”).

All payments to be made under the P3 Agreement are subject in each year to appropriation by the General Assembly of Maryland, which meets annually. The sources of funds appropriated to make all payments under the P3 Agreement are not limited to any particular source under the terms of the P3 Agreement. Rather, they will be paid from amounts on deposit in the TTF, which was established in 1971 pursuant to Chapter 526 of the Laws of Maryland of 1970 codified as Section 3-216 of the Transportation Article of the Annotated Code of Maryland. The TTF is generally credited with taxes, fees, charges, bond proceeds, federal grants for transportation purposes and other receipts (excluding passenger facility charges and rental car customer facility charges and, to the extent required for debt service on obligations issued on behalf of MDOT by the Maryland Transportation Authority, certain parking revenues) of MDOT as shown in APPENDIX A—“AUDITED FINANCIAL STATEMENTS FOR THE MARYLAND DEPARTMENT OF TRANSPORTATION.”
The allocation of total taxes and fees (“Highway User Revenues”) described below is currently 90.4% to MDOT and 9.6% to pay allocations to the counties, municipalities and Baltimore City. Currently, Highway User Revenues allocated to MDOT and deposited into the TTF include the following taxes and fees after the deduction of certain programmatic expenses provided by law:

1. Motor Vehicle Fuel Tax and Fees – These taxes and fees consist of the following: (a) the 23 1/2¢ on each gallon other than aviation gasoline and 24 1/4¢ on each gallon of special fuels other than turbine fuel after deductions for certain refunds and collection costs and a 2.3% distribution to the Chesapeake Bay 2010 Trust Fund; and/or General Fund and a .5% distribution to the Waterway Improvement Fund; and (b) the fee for a 15-day trip permit for a commercial vehicle at an amount equal to the tax rate on special fuel other than turbine fuel, in effect at the time the permit is issued, and payable on 174 gallons of motor vehicle fuel.

2. Motor Vehicle Titling Tax – Two-thirds of the excise tax imposed at the rate of 6% of the fair market value, excluding trade in allowance, of certain motor vehicles for which certificates of title are issued.

3. Sales and Use Tax – 80% of 45% of the revenues from the collection of the Sales and Use Tax on short-term vehicle rentals.

4. Motor Vehicle Registration Fees – A registration fee on all motor vehicles that ranges from $2.50 to $1,800.00 per vehicle.

5. Corporation Income Tax – For fiscal year 2017 and future fiscal years, 17.2% of the revenues derived from the State’s 8.25% corporation income tax after certain General Fund reductions.

The following revenues of MDOT are not Highway User Revenues (i.e., not shared with the local governments) and are credited to the TTF:

1. Motor Vehicle Titling Tax – One-third of the excise tax imposed at the rate of 6% of the fair market value, excluding trade in allowance, of certain motor vehicles for which certificates of title are issued. (see Note 2 above “Motor Vehicle Titling Tax”)

2. Motor Vehicle Fuel Tax – The following increases to the motor fuel tax were enacted in the 2013 session of the General Assembly:

   (a) Effective July 1, 2013, there is an annual adjustment to the motor fuel tax in excess of the Base Tax Rate. The increases in the tax are indexed to the Consumer Price Index (the “CPI”), compounding with each adjustment. The annual increase may not be greater than 8%. While the Base Tax Rate is part of Highway User Revenues, the adjustments are not.

   (b) Effective July 1, 2013, there is an increase in the motor fuel tax attributable to a sales and use tax equivalent on motor fuel based upon the product of the average annual retail price of motor fuel, less state and federal taxes, multiplied by specified percentage rates. The percentage beginning July 1, 2013 was 1%, and increased to 2% on January 1, 2015, 3% on July 1, 2015 and 4% on January 1, 2016.

3. Sales and Use Tax Revenues – MDOT receives 20% of 45% of the sales and use tax revenues on short-term vehicle rentals.

4. Operating Revenues – Revenues of the TTF are produced by operations of the MPA, the MTA and the MAA. Under legislation enacted in the 2008 Session of the General Assembly, the MTA must recover from fares and other operating revenues at least 35% of the total operating costs for the MTA’s bus, light rail and Metro railway services in the Baltimore Region and all MARC passenger railroad services provided under contracts with CSX and Amtrak. For fiscal year 2015 the bus, light rail and subway systems combined achieved a 25% fare box recovery. The MARC fare box recovery for fiscal year 2015 is
Beginning with Fiscal Year 2015, the MTA is required to increase base fare prices at specified intervals based on the change in the CPI.

5. Other Revenues – All other revenues include other taxes, fees, charges, and revenues of every kind collected or received by, paid or appropriated to, or to be credited to the TTF for MDOT in the exercise of its rights, powers, duties, obligations or functions.

MDOT, may (but has no obligation to), establish other accounts within the TTF to allow MDOT to account for revenues from particular sources within the TTF, including sources other than tax revenues, that are used to pay portions of the payments under the P3 Agreement. All funds within the TTF are, however, available to MDOT to make all payments under the P3 Agreement, subject to appropriation.

From time to time, there are legislative proposals in the General Assembly that, if enacted, could alter MDOT’s share of the taxes and fees discussed above. All taxes described above are irrevocably pledged to (i) the payment of debt service on MDOT’s Consolidated Transportation Bonds and (ii) the payment of debt service on the Maryland Transportation Authority’s Grant and Revenue Anticipation Bonds (the “GARVEE Bonds”). The primary source of payment for the GARVEE Bonds is MDOT’s future federal highway aid, but funds in the TTF are pledged to payment of the debt service on the GARVEE Bonds and will be used to make debt service payments on the GARVEE Bonds if the federal aid pledged to the GARVEE Bonds is insufficient to meet the debt service requirements on such bonds. It is not currently anticipated that funds from the TTF will be needed for the payment of the GARVEE Bonds. See table in APPENDIX A—“AUDITED FINANCIAL STATEMENTS FOR THE MARYLAND DEPARTMENT OF TRANSPORTATION” entitled “—Maryland Department of Transportation—Transportation Trust Fund—Taxes Pledged to Bonds and Net Revenues as Defined for Purposes of the Bond Coverage Test.”

Federal aid, representing nineteen percent (19%) of the total funding in the TTF, supports the multimodal administrations capital investments in the current six year Consolidated Transportation Program discussed below. Under the Fixing America’s Surface Transportation Act, enacted by the federal government in December 2015, MDOT receives federal aid for the highway program, primarily for interstate, primary, secondary and urban systems, bridge replacement, highway safety, and congestion mitigation/air quality improvement. The Federal Transit Administration provides transit operating and capital assistance for bus, metro, light rail, and commuter rail. Federal grants are also provided for rural areas as well as elderly and handicapped persons. Federal entitlement and discretionary funding for airport projects are provided by the Federal Aviation Administration through the Airport Improvement Program. Such federal funds will not be used to make any payments on the TIFIA Loan.

All expenditures of MDOT are paid from the TTF, and after payment of debt service on MDOT’s bonds (and potentially the GARVEE Bonds) discussed above, MDOT may use funds in the TTF for any lawful purpose related to the exercise of its powers, duties and obligations, including making payments to the Company pursuant to the P3 Agreement. See APPENDIX A—“AUDITED FINANCIAL STATEMENTS FOR THE MARYLAND DEPARTMENT OF TRANSPORTATION” for a discussion of current MDOT debt service requirements. Unexpended funds remaining in the TTF at the close of each fiscal year do not revert to the General Fund of the State but remain in the TTF.

It is currently expected that the General Portion of the Availability Payments attributable to debt service on the Series 2016 Bonds, as well as a portion of the Lifecycle Payments, will be paid, first, from fares derived from the Purple Line, and second, from fares derived from MARC train service; however, MDOT is not required to use such funds to make those payments and may use any source of funds available to it and deposited in the TTF (after MDOT debt service requirements are satisfied) to make such payments. It is also currently anticipated that Additional Funding Sources will be available and allocated by MDOT to fund the Progress Payments, RSA Payment and the Final Completion Payment under the P3 Agreement; however, while all amounts received from all Additional Funding Sources will be required to be used on specified portions of the Project, MDOT is not required to use such funds to make any payments under the P3 Agreement and may use any source of funds available to it and deposited in the TTF (after MDOT debt service requirements are satisfied) to make such payments.

As of the date hereof, the Additional Funding Sources (although in part allocated to the Project as discussed above) have not been received by and/or are not able to be used by MDOT, and there is no assurance that such funds will be available to MDOT in the future. Payment of such amounts is subject to certain conditions and restrictions,
including, with respect to the Federal Transit Administration New Starts funds allocated as discussed above and all future amounts allocated for the Project, execution of a New Starts Full Funding Grant Agreement. Should any of the Additional Funding Sources be unavailable to MDOT for any reason, however, MDOT will still be required to make all payments to the Company pursuant to and in accordance with the terms of the P3 Agreement from other sources of funds legally available to MDOT. For more information regarding MDOT, its sources of revenue and its expenses, see APPENDIX A—“AUDITED FINANCIAL STATEMENTS FOR THE MARYLAND DEPARTMENT OF TRANSPORTATION.”

For a discussion regarding the rights and remedies available to the Company in the event of a failure to obtain a New Starts Full Funding Grant Agreement, see “THE PRINCIPAL PROJECT DOCUMENTS—The P3 Agreement—Termination of the P3 Agreement.”

Additional Information

Each year, MDOT prepares a Consolidated Transportation Program (“CTP”), which contains estimates of expenditures for operating, constructing, and improving transportation facilities during the current year, budget request year and the succeeding four-year period. Each year, the CTP is developed in accordance with the current projection of six-year financial resources. The entire CTP is available on MDOT’s website at www.mdot.maryland.gov (this inactive textual reference is not a hyperlink, and this website is not incorporated herein).

Additional information on MDOT is also publicly available at www.mdot.maryland.gov (this inactive textual reference is not a hyperlink, and this website is not incorporated herein), as well as pursuant to the various filings on EMMA related to MDOT bond issuances.

Except for the information referred to above, no information available on or through the website referred to above shall be deemed to be part of or incorporated in this Official Statement.

MDOT is not a party to any of the Finance Documents, other than the direct agreement between the Contracting Authority, the Company and the Collateral Agent, and is not subject to any of the covenants or other restrictions contained in any of the other Finance Documents. MDOT is not restricted from issuing additional bonds or incurring any other debt which may be supported by or secured by revenues contained in the TTF and the payment of which will be senior to any of the payments to be made by MDOT to the Company pursuant to the P3 Agreement.

Appropriation by the General Assembly

All payments required to be made to the Company pursuant to the P3 Agreement are subject in each year to appropriation by the General Assembly. The General Assembly meets annually for a ninety-day session beginning the second Wednesday in January.

The Contracting Authority has covenanted under the P3 Agreement that MDOT shall prepare before the end of each fiscal year, its annual budget request submission to the Governor and include funds necessary to make scheduled payments to the Company for the coming Fiscal Year. The Contracting Authority will use its best efforts to obtain the authorization and appropriation of all necessary funds before the beginning of the coming Fiscal Year.

All obligations of the Contracting Authority are subject to applicable law and appropriations by the General Assembly. The obligation of the Contracting Authority to make payments under the P3 Agreement does not constitute an indebtedness of the Contracting Authority or the State and does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. Furthermore, the Contracting Authority has no taxing power and the Company has no right to have taxes levied or to compel appropriations by the General Assembly for any payment under the P3 Agreement.

If the Contracting Authority becomes aware that it will not obtain appropriations for any Fiscal Year sufficient to pay all compensation owing to the Company under the P3 Agreement, the Contracting Authority will promptly notify the Company regarding the anticipated shortfall and will consult with the Company regarding the
situation and possible solutions. If the Contracting Authority determines that it will not have funds available to make any of the payments owing, the Contracting Authority will suspend all Work. If the Contracting Authority determines that there will be a partial shortfall, the Contracting Authority will suspend all or a portion of the Work so as to ensure that the Contracting Authority has sufficient funds to make payments owing for Work performed. Any such suspension will be considered a Contracting Authority Change. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally—Payments from the Contracting Authority” and “RISK FACTORS—Risks Relating to the Company and the Contracting Authority—Appropriation Risk.”

The General Assembly is not obligated under the P3 Agreement to make any appropriation, or to make sufficient appropriations, to pay Progress Payments, the RSA Payment, the Final Completion Payment or Availability Payments (in addition to, in some cases, termination payments or other compensation amounts) in any Fiscal Year.

**Budgetary System**

The Maryland Constitution governs the system for making appropriations from the State Treasury and requires the submission and enactment of an annual balanced budget. Under the Maryland Constitution, Article III, § 52, the Governor is responsible for the preparation and introduction of the State’s annual budget to the General Assembly on the third Wednesday in January. The Maryland Constitution requires the Governor to submit a balanced budget, and in preparing the budget, the Governor is statutorily required to use revenue estimates reported by the Board of Revenue Estimates or explain the use of different estimates. The members of the Board of Revenue Estimates are the Comptroller, the Treasurer and the Secretary of Budget and Management.

The State Constitution requires the Governor to include appropriations for certain matters, including specifically an appropriation to pay and discharge the principal and interest of the debt of the State in conformity with Article III, § 34 of the State Constitution and all laws enacted pursuant thereto. Except for the General Assembly’s own budget and the Judiciary’s budget, the General Assembly cannot increase the Governor’s proposed budget, but may reduce it.

Passage of the State’s budget is constitutionally prioritized. If the budget has not been enacted seven days before the end of session (or the 83rd day of the session), the Constitution requires that the Governor issue a proclamation extending the session. If the budget has not been enacted by the 90th day of the session, the General Assembly cannot consider any matter except the budget. This places the normal budget deadline in early April, almost three months before the start of the next fiscal year. In the past 50 years, the latest date of budget adoption was in 1992 on the 94th day of the session.

State expenditures are made pursuant to the appropriations in the annual budget, as amended from time to time by budget amendment. The various units of State government may, with the Governor’s approval, amend the appropriations for particular programs in their individual budgets funded from the General Fund, provided they do not exceed their total general fund appropriations as contained in the annual budget. Additionally, appropriations for programs funded in whole or in part from funds other than the General Fund may permit expenditures in excess of original appropriations to the extent that revenues from the particular non-General Fund sources exceed original budget estimates and the additional expenditures are approved by the Governor.

The Bond Issuer

The Bond Issuer is a body politic and corporate and is constituted as an instrumentality created pursuant to the Act. The Bond Issuer was established by statute in 1984 to assist in and complement existing programs of the Maryland Department of Commerce, by, among other things, providing direct property development capability for economic development purposes. Pursuant to the terms of the Act, the Bond Issuer is authorized to issue revenue bonds for projects (as defined in the Act), including the Project.

Membership and Organization. The Act provides that the Bond Issuer shall be managed by a Board of Directors consisting of twelve (12) residents of the State. The Secretaries of Commerce and Transportation serve as ex-officio voting Directors. The remaining ten members of the Board are appointed by the Governor with the advice and consent of the Senate to four-year terms. Two of these ten are to be representatives of local government, three are to be knowledgeable in real estate or commercial financing, three are to be knowledgeable in industrial development or industrial relations, and two are to be members of the general public. The Board of Directors elects a chair, vice chair, and treasurer from among its members. Subject to the approval of the Governor, the Board appoints an Executive Director who serves at the pleasure of the Board as the chief administrative officer of the Bond Issuer, managing its administrative affairs and technical activities in accordance with the policies and procedures established by the Board. In addition to the Executive Director, the Bond Issuer has seven full-time employees and one part-time professional employee.

Robert C. Brennan was appointed the Executive Director of the Bond Issuer in May, 2004. Prior to his appointment, Mr. Brennan served in the Maryland Department of Business and Economic Development (now known as the Maryland Department of Commerce) as the Assistant Secretary for the Rural Regions in Maryland and administered the Department’s financing programs. Mr. Brennan began his professional career as an asset-based lender with Maryland National Industrial Finance, and he spent twenty years in the commercial banking and leasing industry. Prior to leaving the field of banking, Mr. Brennan held the title of Senior Vice President of First Fidelity Bank.

The members of the Board of Directors of the Bond Issuer as of the date of this Official Statement are listed below. Unless removed, members of the Board of Directors serve until reappointed or a successor is appointed and confirmed.

- **Scott E. Dorsey**, Chairman, term expires June 30, 2016, Merritt Properties, LLC.
- **Thomas Kingston**, Vice Chairman, term expires June 30, 2018.
- **Anita Jackson**, Treasurer, term expires June 30, 2016, Baltimore Gas & Electric.
- **David Schellhardt**, term expires June 30, 2019, American Mechanical Services.
- **R. Michael Gill**, ex-officio, Secretary of Commerce.
- **Peter Rahn**, ex-officio, Secretary of Transportation.
- **Frederick J. Puente**, term expires June 30, 2016, Blind Industries and Services of Maryland.
- **Barbara G. Buehl**, term expires June 30, 2016, Allegany County Department of Tourism.
- **Barry Glassman**, term expires June 30, 2018, County Executive, Harford County, Maryland.
Powers. The Act authorizes the Bond Issuer, among other things, to acquire, improve, develop, manage, market, maintain, lease as lessor or as lessee and operate any project (as defined in the Act) in the State; to acquire, purchase, hold, lease as lessee, and use any property necessary or convenient to carry out its purposes; to borrow money and issue bonds to finance any part of the cost of its projects; to secure the payment of such borrowing by pledge of or deed of trust on its properties or revenues; to accept loans, grants or assistance of any kind from the federal government, a governmental unit, or a private source; to fix and collect rates, rentals, fees and charges for services and facilities it provides or makes available; and to do all things necessary or convenient to carry out the powers expressly granted by the Act.

Bonds and Notes. As of June 30, 2015, the Bond Issuer had total outstanding bonds and notes of approximately $2,192,654,817 including indebtedness with respect to over 95 projects of various types, including mortgages, notes, revenue bonds, lease revenue bonds, industrial revenue bonds, adjustable rate pooled financing revenue bonds, and first mortgage revenue bonds. The Bond Issuer is also a party to direct financing leases and operating leases.

The several series of outstanding bonds and notes issued by the Bond Issuer are limited obligations of the Bond Issuer, payable solely from revenues of the Bond Issuer received in connection with the respective project financed or refinanced, and do not constitute general obligations of the Bond Issuer, and the full faith and credit of the Bond Issuer is not pledged to the payment of the principal or Redemption Price of and interest on these series of bonds. Although certain revenue bonds issued by the Bond Issuer have been in default as to principal and interest, the sources of payment for such defaulted bonds are separate and distinct from the source of payment for the 2016 Bonds.

Assets of the Bond Issuer other than the Trust Estate are not available to satisfy claims of holders of the 2016 Bonds. Property and funds held by or mortgaged to the Bond Issuer for a particular issue of bonds are not available to satisfy claims of holders of other issues of the Bond Issuer’s bonds. The Bond Issuer has no taxing power.

The Bond Issuer intends to issue other series of bonds and notes for the purpose of financing and refinancing projects, and each such series will be issued pursuant to a resolution or trust agreement separate and apart from any other resolution or trust agreement, except to the extent a series of bonds may be issued on a parity with bonds of another series if permitted by the applicable resolution or trust agreement or issued pursuant to a general bond resolution of the Bond Issuer.

NOTWITHSTANDING ANYTHING IN THE INDENTURE CONTAINED TO THE CONTRARY, THE BOND ISSUER SHALL IN NO WAY BE LIABLE FOR ANY PAYMENT REQUIRED TO BE MADE UNDER THE INDENTURE (INCLUDING, WITHOUT LIMITATION, PRINCIPAL OF AND INTEREST ON THE 2016 BONDS AND OPERATING EXPENSES OF THE PROJECT) EXCEPT FROM REVENUES OF THE PROJECT, IF ANY, MADE AVAILABLE THEREFOR PURSUANT TO THE TERMS OF THE INDENTURE, AND ANY CLAIM BASED ON OR IN RESPECT OF ANY LIABILITY OF THE BOND ISSUER FOR (I) THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON, OR THE REDEMPTION PRICE OF, THE 2016 BONDS, OR (II) THE PERFORMANCE OR PAYMENT OF ANY OTHER AMOUNT, COVENANT, TERM, OR CONDITION CONTAINED IN THE INDENTURE, THE DEED OF TRUST, OR ANY OTHER DOCUMENT EXECUTED AND DELIVERED IN CONNECTION WITH THE 2016 BONDS SHALL BE PAID SOLELY OUT OF, AND ENFORCED SOLELY AGAINST, SUCH REVENUES TO THE EXTENT AVAILABLE UNDER THE INDENTURE AND, IN EITHER CASE, NOT AGAINST ANY OTHER ASSETS, PROPERTIES, OR FUNDS OF THE BOND ISSUER OR AGAINST ANY ASSETS, PROPERTIES, OR FUNDS OF (A) ANY DIRECTOR, OFFICER, EMPLOYEE, SUCCESSOR, ASSIGN, OR AGENT OF THE BOND ISSUER, OR (B) ANY OTHER PERSON, CORPORATION, OR OTHER ENTITY AFFILIATED WITH ANY OF THE FOREGOING, INCLUDING, WITHOUT LIMITATION, THE STATE, ANY POLITICAL SUBDIVISION THEREOF, OR ANY AGENCY, PUBLIC BODY, OR INSTRUMENTALITY THEREOF.

U.S. Department of Transportation and TIFIA

TIFIA is a federal credit program under which the United State Department of Transportation, acting by and through the Federal Highway Administrator (the “TIFIA Lender”), may provide credit assistance to major
transportation investment of critical or national significance, such as inter-modal facilities, border crossing infrastructure, highway trade corridors, and transit passenger rails facilities with regional and national benefit. The TIFIA program is designed to fill market gaps and leverage substantial private co-investment by providing supplemental and typically subordinate capital and credit rather than grants.

As part of the financing for the Project, the TIFIA Lender will provide the TIFIA Loan to the Company under the authority granted to the TIFIA Lender by TIFIA. For a more detailed description of the TIFIA Loan, see “FINANCING FOR THE PROJECT—TIFIA Loan Agreement—Conditionally Subordinated Debt – TIFIA Loan.”

**Design-Build Contractor**

The Company has contracted with Purple Line Transit Constructors, LLC to design and construct the Project. The Design-Build Contractor is a Delaware limited liability company (qualified to do business in Maryland) whose members are Fluor Enterprises (50%), Lane (30%) and Traylor (20%) for which Fluor Enterprises will act as the managing partner. For additional information, see “PRINCIPAL PROJECT AGREEMENTS—Design-Build Contract” and APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.”

**Fluor Enterprises, Inc.** Information about Fluor Enterprises’ transportation experience and its financial capability is described above under “PROJECT PARTICIPANTS—Equity Participants—Fluor Enterprises, Inc.”

**The Lane Construction Corporation.** Founded in 1890, Lane is one of America’s leading construction companies, specializing in heavy civil construction services and products in the transportation, infrastructure and energy sectors. It is a wholly owned indirect subsidiary of Salini Impregilo S.p.A., a global engineering and construction company listed on the Milan Stock Exchange, Italy. Certain financial information of Salini is provided below under “—Design-Build Guarantors— Salini Impregilo S.p.A.”

Lane’s capabilities include participation in P3 projects under a wide range of procurement models; large, complex design-build and bid-build projects; as well as the ability to produce and install asphalt, aggregates and concrete.

Lane’s 4,600 employees team with customers and partners on diverse projects including rail, highways, bridges, mass transit, airports, energy and power, and racetracks. With expertise in the fields of engineering, procurement and construction project management, Lane has the proven capacity to handle multiple, large-scale projects and to quickly mobilize resources to staff any project.

Certain of Lane’s projects in the United States are described in the chart below. Unless otherwise indicated, the value of each project indicates the final design-build contract amount.

<table>
<thead>
<tr>
<th>Project/Client</th>
<th>Description/Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Charlotte LYNX Blue Line Extension, NC</td>
<td>The LYNX Blue Line Extension - Northeast Corridor Light Rail Project extends the existing LYNX Blue Line from the 7th Street Station in Center City Charlotte to the University of North Carolina at Charlotte (UNCC) campus. The 9.3-mile extension includes 11 new stations and approximately 3,100 parking spaces at 4 stations. The entire program is approximately $1.6 billion in construction, of which Lane is providing civil and roadway work under a contract with a forecasted final value of $138 million as of June 1, 2016. The work is comprised of heavy civil infrastructure improvements necessary to lay the final 4.8 miles of track, the majority of which will run down the median of N. Tryon Street in Charlotte.</td>
</tr>
<tr>
<td>Capital Beltway (I-495) Express HOT Lanes, Fairfax, VA</td>
<td>This $1.48 billion project involved a 14-mile widening of the Capital Beltway, a major freeway serving the Washington, D.C. metropolitan area. It was named the 2008 Transport Deal of the Year by <em>Infrastructure Journal</em> magazine. The mainline configuration consists of four general purpose lanes and two high occupancy toll (HOT) lanes in each direction. Lane was a 35% member of the design-build joint venture alongside Fluor.</td>
</tr>
<tr>
<td>Project/Client</td>
<td>Description/Role</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------</td>
</tr>
<tr>
<td>I-95 Express HOT Lanes</td>
<td>This $726 million project involved converting and extending an existing HOV facility to a managed lanes facilities including providing multiple new access points, improved interchanges and an electronic toll system. Lane was a 35% member of the design-build joint venture alongside Fluor.</td>
</tr>
<tr>
<td>MWAA Corridor Metrorail Project – Phase 1</td>
<td>This 23.1-mile extension of the Metrorail system extends from East Falls Church to Washington Dulles International Airport west to Ashburn, and was constructed in the median of the Dulles International Airport Access Highway and Dulles Connector Road. Phase 1 of the project includes an 11.6 mile extension and five new Metro stations. As part of a $2.2 billion phase 1 program, Lane was responsible for adjusting, relocating, and implementing utility systems in advance of the road improvement and Metrorail facilities construction work, early MEP at five Metro stations, rail maintenance yard construction and pedestrian bridges valued at $137 million in contracts.</td>
</tr>
<tr>
<td>WMATA Blue Line Extension Largo to Addison Route, MD</td>
<td>This project, which had a total WMATA program cost of $456 million, involved a 3.1 mile, two-station extension of the Blue Line. It was the first Metro line to extend beyond the Capital Beltway in Prince George’s County, MD. Lane was part of a CJV team for the complete design &amp; construction of a 3.1-mile mass transit cut-and-cover line and aerial structures under a $234.6 million contract. The new construction of the Largo Line consists of double box cut and cover structure along with more than 10,000 feet of retained cut structure and multiple span viaduct aerial structures connecting with the approaches to the two new in-line stations at Morgan and Largo Center.</td>
</tr>
</tbody>
</table>

**Traylor Bros, Inc.** Traylor is a U.S.-based heavy civil contractor with a 20% interest in the Design-Build Contractor. Traylor was founded by William F. Traylor in 1946, finding success by taking on—and succeeding with—challenging projects. Traylor is one of the nation’s leading heavy civil contractors. With 70 years of success, Traylor has a staff of dedicated professionals employing some of the most innovative construction techniques in the industry to build landmark bridges, tunnels, and marine structures. Traylor is one of the most highly regarded tunneling contractors in the nation, ranked #68 in the Top 100 Design-Build Contractors and #202 in the Top 400 Contractors by Engineering News-Record magazine in 2015.

The table below summarizes certain financial information of Traylor for fiscal years ending December 31, 2013, 2014 and 2015, extracted from Traylor’s audited financial statements for those years.

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands / U.S. dollars)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Revenue</td>
<td>319,030</td>
<td>318,011</td>
<td>323,179</td>
</tr>
<tr>
<td>Net Earnings</td>
<td>33,049</td>
<td>1,798</td>
<td>(4,983)</td>
</tr>
<tr>
<td>Total Assets</td>
<td>400,349</td>
<td>340,624</td>
<td>416,922</td>
</tr>
<tr>
<td>Total Equity</td>
<td>203,213</td>
<td>203,011</td>
<td>197,028</td>
</tr>
<tr>
<td>Total Debt</td>
<td>31,696</td>
<td>23,772</td>
<td>15,848</td>
</tr>
</tbody>
</table>

Working with state-of-the-art technology involving soft ground, hard rock, and drill-and-shoot tunnel projects, Traylor has built more than 110 tunnels, including three of the most technically demanding soft-ground tunnels in North America, and more than 90 miles of hard rock tunnels utilizing tunnel boring machines. Traylor’s success has been built on careful attention to methods, equipment, and the design of special support schemes for equipment and excavation. Traylor has developed a reputation for innovation by providing the highest quality construction services on the most challenging tunneling projects. Traylor has played a significant role in the various transit projects involving tunneling as detailed in the table below. The value of each project indicates the final design-build contract amount.
<table>
<thead>
<tr>
<th>Project</th>
<th>Client</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Westside Subway Extension Project, Section 1</td>
<td>Los Angeles County Metropolitan Transportation Authority, Los Angeles, CA</td>
<td>Traylor is a partner in Skanska-Traylor-Shea, a joint venture, performing the $1.6 billion design-build of the Westside Subway Extension, Section 1, in downtown Los Angeles. This project will add 3.92 miles from Wilshire Center to Westwood and includes train control and signals, communications, traction power supply and distribution, and fare collection systems.</td>
</tr>
<tr>
<td>Regional Connector Transit Project</td>
<td>Los Angeles County Metropolitan Transportation Authority, Los Angeles, CA</td>
<td>Traylor is a partner in Regional Connector Constructors. The $957 million project will extend from the Metro Gold Line Little Tokyo/Arts District Station to the 7th Street/Metro Center Station in downtown Los Angeles. Traylor has primary responsibility for the tunnel which will be 9,450 linear feet long and 20 feet, 7 inches in inner diameter.</td>
</tr>
<tr>
<td>Queens Bored Tunnels East Side Access Project</td>
<td>New York City Metropolitan Transportation Authority, New York, NY</td>
<td>In a joint venture with Granite and Frontier-Kemper, Traylor led the second largest contract ($777 million) in the system of tunnels connecting the Long Island Railroad commuter lines in Queens to Grand Central Terminal in Manhattan. The project included the construction of four 19-foot-diameter railway tunnels totaling approximately two miles in length.</td>
</tr>
<tr>
<td>University Link Light Rail U220 Tunnel</td>
<td>Central Puget Sound Regional Transit Authority, Seattle, WA</td>
<td>Traylor led a joint venture with Frontier-Kemper in the $315 million construction of this 3.15-mile extension of Sound Transit’s light rail system in Seattle, including a 200-foot deep shaft, pressurized face techniques, and a cast-in-place concrete final lining.</td>
</tr>
<tr>
<td>Metro Gold Line Eastside Light Rail Extension</td>
<td>Los Angeles County Metropolitan Transportation Authority, Los Angeles, CA</td>
<td>In another Traylor-led joint venture with Frontier-Kemper, this $121 million project involved twin subway tunnels (each 7,500 linear feet and 21 feet in diameter) through a congested urban environment using earth pressure balance methodologies.</td>
</tr>
<tr>
<td>Metro Red Line</td>
<td>Los Angeles County Metropolitan Transportation Authority, Los Angeles, CA</td>
<td>Traylor led the construction of this new line connecting downtown Los Angeles to North Hollywood. The $157 million project entailed tunnel construction in soft ground, mixed face, and rock, and included boring and finishing the 12,300-foot twin tunnel line structures.</td>
</tr>
<tr>
<td>St. Clair River Railway Tunnel</td>
<td>St. Clair Tunnel Construction Company, Sarnia</td>
<td>The purpose of this $49 million project by a Traylor-led joint venture was to construct a tunnel to divert tracks under the St. Clair River from Sarnia, Ontario, Canada, to Port Huron, Michigan. The railway tunnel is 6,600 feet long with an excavated diameter of 31 feet.</td>
</tr>
</tbody>
</table>

**Design-Build Guarantors**

The Design-Build Contractor has provided parent company guaranties in favor of the Company from Fluor, Salini, and Traylor, each guaranteeing all of the Design-Build Contractor’s obligations to the Company under the Design-Build Contract and such obligations to the Company under the Interface Agreement. *Fluor Corporation.* Information about Fluor’s financial capability is described above under “PROJECT PARTICIPANTS—Equity Participants—Fluor Enterprises, Inc.”
Salini Impregilo S.p.A.

Overview. Salini Impregilo S.p.A. and its subsidiaries (the “Salini Group”) is an industrial group specializing in the construction of large, complex projects globally. Headquartered in Milan, Italy, the Salini Group operates in more than 50 countries with 35,000 employees, has annual revenue of €4.7 billion and a backlog of more than €33 billion.

The Salini Group have executed more than 257 dams & hydroelectric projects, 1,450 kilometers of underground works, 6,830 kilometers of railways, 400 kilometers of metro systems, 51,600 kilometers of roadways, and 350 kilometers of bridges & viaducts. Notable current projects include the €3.356 billion Panama Canal third locks expansion, the €220 million Sydney Metro Northwest extension, the €377 million, 55 kilometer long Brenner Base Tunnel (rail) between Italy and Austria, the €1.1 billion Copenhagen Cityringen Metro line, the €1.1 billion Thessaloniki Metro project in Athens (Greece), the €408 million Metro B-Line extension in Rome (Italy), the €964 million Milan Metro Line 4, the €4.65 billion Terzo Valico dei Giovia high speed rail project in Italy, the €1.8 billion Red Line North Underground project in Doha (Qatar), the €3.72 billion Line 3 Underground project in Riyadh (Saudi Arabia), and the €2.0 billion San Gotthard Tunnel (rail) project in Switzerland.

According to Engineering News-Record magazine, Salini is ranked thirtieth in the Top 250 International Contractors list (overseas revenue) in 2015. These rankings are based on 2014 revenue and exclude earnings for Lane.

Salini’s current credit ratings are BB+ (Stable) from S&P; BB (Stable) from Fitch.

Below is a chart summarizing certain financial information of the Salini Group for fiscal years ending December 31, 2013, 2014 and 2015, extracted from the audited financial statements for those years, unless otherwise indicated. The Salini Group’s consolidated financial statements include the financial statements of Salini and the Italian and foreign operating companies controlled directly or indirectly by Salini, including Lane.

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in millions / Euros)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Revenue................</td>
<td>3,262.4</td>
<td>4,241.5</td>
<td>4,738.9</td>
</tr>
<tr>
<td>Net Income...................</td>
<td>156.2</td>
<td>103.1</td>
<td>82.2</td>
</tr>
<tr>
<td>Total Assets.................</td>
<td>6,773.6</td>
<td>6,669.6</td>
<td>7,302.2</td>
</tr>
<tr>
<td>Total Equity.................</td>
<td>921.4</td>
<td>1,186.4</td>
<td>1,216.9</td>
</tr>
<tr>
<td>Total Debt...................</td>
<td>1,731.3</td>
<td>1,426.9</td>
<td>1,820.2</td>
</tr>
</tbody>
</table>

Traylor Bros., Inc. Information about Traylor’s financial capability is described above under “PROJECT PARTICIPANTS—Design-Build Contractor—Traylor Bros., Inc.”

O&M Contractor

The Company has contracted with the O&M Contractor to provide commuter rail network O&M for the Project for the term of the P3 Agreement. Fluor Enterprises (40%), ACI (40%), and CAF USA (20%) are the members of the O&M Contractor and will provide the rail network O&M for the concession life of the Project.

Fluor Enterprises, Inc. Fluor Enterprises is a member of the O&M Contractor, providing an effective transition from the design-build phase of the Project to the O&M phase of the Project. In addition, Fluor Enterprises brings O&M experience and expertise spanning multi-modal projects, including transit, to the partnership through their current projects in North America and Europe. Information about Fluor Enterprises’ transportation experience and its financial capability is described above under “PROJECT PARTICIPANTS—Equity Participants—Fluor Enterprises, Inc.” The following projects are representative of Fluor Enterprises’ O&M experience.
<table>
<thead>
<tr>
<th>Project/Client</th>
<th>Description/Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denver Eagle Transit Denver, CO</td>
<td>Fluor Enterprises is a member of the Denver Transit Partners (&quot;DTP&quot;) public-private partnership team that won an international competitive bid award of the DBFOM “FasTracks” electrified commuter rail transportation services. Fluor Enterprises is the Managing Partner of Denver Transit Operators (&quot;DTO&quot;), the O&amp;M entity of DTP and, under a concession agreement, will operate and maintain rail service on three commuter rail lines for 29 years. The first of the three rail lines, the University of Colorado A Line, opened for passenger service on April 22, 2016, offering service from downtown Denver out to the Denver airport. The other two rail lines are scheduled to open in the summer and fall of 2016, respectively.</td>
</tr>
<tr>
<td>The Highways Agency, Nationwide, England</td>
<td>This is a ten year public-private partnership contract to provide O&amp;M on an intelligent transportation system throughout the motorways in England. This Fluor Enterprises-led project includes small capital projects for upgrades and replacements of technology equipment as well as a 24/7 operations center.</td>
</tr>
<tr>
<td>Infrastructure Ontario, Right Honourable Herb Gray Parkway, Windsor, CA</td>
<td>Fluor Enterprises is a partner in the operation and maintenance of the 6.8 mile Right Honourable Herb Gray Parkway that includes 11 tunnels, monitoring and maintenance of critical habitat and species at risk, and a walking trail with numerous pedestrian bridges.</td>
</tr>
</tbody>
</table>

**Alternate Concepts, Inc.** Established in 1989 and based in Boston, Massachusetts, ACI is a nationally recognized private operator of multi-modal passenger services, including bus, light rail, rapid transit and commuter rail. ACI was founded by James. F. O’Leary, who previously served as the General Manager of the Massachusetts Bay Transportation Authority during a period of expansion and modernization of the nation’s oldest public transit system. ACI has an outstanding record of service quality, safety and customer satisfaction.

ACI currently has 470 employees and three active rail operations contracts involving the movement of over 122,000 trains annually and carrying over 24 million passengers a year. Over the past 27 years, ACI has maintained positive client relationships with leading transportation agencies, including the provision of service on the following contracts.

<table>
<thead>
<tr>
<th>Project/Client</th>
<th>Description/Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Puerto Rico Highway and Transportation Authority, San Juan, Puerto Rico</td>
<td>Since its initial opening as a design-build-operate-maintain new rail start project in 2006, ACI has been the operator and maintainer of the first-ever rail service on the island of Puerto Rico, utilizing a fleet of 74 rail subway cars and carrying over 10 million passengers annually. ACI has recently been awarded a new 15 year contract to continue as the Tren Urbano O&amp;M provider from June 2016 through May 2032.</td>
</tr>
<tr>
<td>Valley Metro Rail, Inc., Phoenix, AZ</td>
<td>Since the first opening of the new rail line in 2008, ACI has been the operator of the light rail system in Phoenix, AZ, transporting an average of 50,000 riders per weekday. ACI has managed two additional successful start-ups as the system has expanded due to its success: the August 2015 three-mile extension to Central Mesa and the March 2016 three-mile Northwest extension.</td>
</tr>
<tr>
<td>RTD, Denver, CO</td>
<td>ACI is a member of the DTP public-private partnership team that won an international competitive bid award of the DBFOM “FasTracks” electrified commuter rail transportation services. DTO is the O&amp;M entity of DTP and, under a concession agreement, will operate and maintain rail service on these lines for 29 years. ACI is a partner in DTO with Balfour Beatty and Fluor for the O&amp;M services. The first of the three rail lines, the University of Colorado A Line, opened for passenger service on April 22, 2016, offering service from downtown Denver out to the Denver airport. The other two rail lines are scheduled to open in the summer and fall of 2016, respectively.</td>
</tr>
</tbody>
</table>
**Project/Client**

<table>
<thead>
<tr>
<th>Massachusetts Bay Transportation Authority (MBTA), Boston, MA</th>
</tr>
</thead>
</table>

**Description/Role**

For the decade from 2003 through 2014, ACI served as the local partner in the Massachusetts Bay Commuter Railroad Company’s (MBCR) contract with the MBTA to provide commuter rail services in Eastern Massachusetts and Rhode Island, transporting approximately 140,000 daily passengers or 41 million passengers per year; and maintaining 129 commuter rail stations, 636 miles of right-of-way and track, 410 passenger coaches and 84 locomotives. This contract is currently the largest contracted rail transportation service in North America.

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**CAF USA, Inc.** Information regarding CAF USA’s experience is described below under “—Equipment Provider.”

**O&M Guarantors**

The O&M Contractor will provide parent company guaranties in favor of the Company from Fluor, ACI and CAF (collectively, the “O&M Guarantors”), each guaranteeing all of the O&M Contractor’s obligations to the Company under the O&M Contract and such obligations to the Company under the Interface Agreement.

**Fluor Corporation.** Information about Fluor’s transportation experience and its financial capability is described above under “PROJECT PARTICIPANTS—Equity Participants—Fluor Enterprises, Inc.”

**Alternate Concepts, Inc.** Information about ACI’s transportation experience is described above under “PROJECT PARTICIPANTS—O&M Contractor—Alternate Concepts, Inc.”

**Construcciones y Auxiliar de Ferrocarriles, S.A.** CAF is one of the leading companies in the design, manufacturing, supply and maintenance of railway components and equipment worldwide. CAF offers maintenance services for all types of rolling stock, both for their own trains and for other manufacturers’ trains.

CAF’s knowledge of the railway transportation market allows the development and implementation of innovative maintenance technologies and strategies to maximize the quality parameters and reduce life cycle costs of the trains. Maintenance services include corrective and preventive maintenance, overhauls, on-rail assistance and staff training.

Maintenance projects include contracts with Metro de Madrid, Bilbao Tram, Zaragoza Tram and Metro de Sevilla in Spain, Ferrocarril Suburbano in Mexico and Edinburgh Tram in the UK.

CAF is the ultimate parent company of CAF USA.

**Equipment Provider**

The Design-Build Contractor and the O&M Contractor will enter, on or before Financial Close, into a contract with CAF USA to provide all of the electric rail cars for the Purple Line. CAF USA is a Delaware corporation in operation since 1998 and a fully owned subsidiary of CAF. CAF has been designing and manufacturing rail vehicles since 1917, and has design capabilities and expertise in all types of rail vehicles including high speed, heavy rail, light rail and streetcars.

CAF’s main manufacturing facility and its research and development department are in Beasain, Spain, with other manufacturing facilities worldwide including Irun, Linares, Zaragoza and Castejon (Spain), Bagneres (France), Hortolândia (Brazil), Huehuetoca (Mexico) and Elmira, New York (USA). The number of CAF Group employees worldwide totals over 7,700.

CAF USA’s manufacturing plant is the state-of-the-art facility in Elmira, New York with carshell manufacturing capability and testing capabilities including a climate chamber and test track.

CAF USA has supplied or is supplying various type of railcar vehicles to the following agencies or cities within the United States:
• Washington Metropolitan Area Transit Authority (192 heavy rail Metro cars)
• Sacramento Regional Transit (40 Light Rail Vehicles)
• Port Authority of Allegheny County (28 new Light Rail Vehicles & refurbishment of 15 Light Rail Vehicles)
• Metropolitan Transit Authority of Harris County - Houston Metro (39 Light Rail Vehicles)
• National Railroad Passenger Corporation – AMTRAK (130 Passenger coaches)
• City of Cincinnati (5 Streetcars)
• City of Kansas City (4 Streetcars)
• Massachusetts Bay Transportation Authority (24 Light Rail Vehicles).
THE PRINCIPAL PROJECT DOCUMENTS

The following is a summary of the Principal Project Documents relating to the Project and is not a full statement of the terms of each of such agreements. Accordingly, the following summaries are qualified in their entirety by reference to such agreements and are subject to the full text of such agreements. A copy of each of the agreements is available, free of charge, upon request from the Company or the Trustee. The following summary should be read in conjunction with the section “RISK FACTORS.” For the purposes of the following section, the term “Project” has the meaning provided to such term in the P3 Agreement and included in APPENDIX B—“DEFINITIONS OF TERMS.” Unless otherwise stated, any reference in this Official Statement to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.

The P3 Agreement

The Company entered into the P3 Agreement with the Contracting Authority for the design, construction, financing, operation and maintenance of the Purple Line.

Rights and Obligations of the Company

Concession

The Company has agreed, as and when required by the P3 Agreement, to finance, develop, design, construct, equip, supply LRVs for, operate and maintain the Purple Line, including performance of Renewal Work and handback of the Purple Line at the end of the Term, and to perform such other activities relating to the foregoing for the Purple Line.

Project Right-Of-Way

The Contracting Authority has agreed to grant to the Company and related entities the right to enter onto any real property, improvements and fixtures within the lines delineating the right of way boundaries in the right-of-way maps, as such boundaries may be modified from time to time, and at such times indicated, in accordance with the Contract Documents during the Term.

Term

The Term will end 30 years after the earlier of the Revenue Service Availability (RSA) Deadline and the date of issuance of the Certificate of Revenue Service Availability by the Independent Engineer, subject to (a) the right of the Parties to terminate the P3 Agreement early in accordance with the P3 Agreement or otherwise at law and (b) the effect of Extended Delays on the Term. Notwithstanding any of the above, the Term will end 30 years after the Extended Delay Payment Date.

The RSA Deadline is 2,092 days following the date on which Financial Close occurs, unless (a) the Contracting Authority issues an agreed limited NTP and (b) Financial Close occurs prior to June 18, 2016, in which case the RSA Deadline is March 11, 2022, as such deadline may be extended in accordance with the applicable provisions of the P3 Agreement.

Provisions Relating to Financing of Company’s Obligations

Security

The Company may grant security interests in or assign all right, title and interest of the Company in, to, under or derived from the P3 Agreement and the other Contract Documents (the “Company’s Interest”) to Lenders for purposes of securing the Project Debt, if the funds advanced are obligated to be used exclusively for the purposes of: (a) developing, designing, constructing, supplying and equipping the Purple Line (including LRVs), and operating and maintaining the Purple Line, including making payments to Utility Owners, or performing other Work; (b) paying interest and principal on Project Debt; (c) paying reasonable development fees to Concessionaire-Related Entities for services related to the Project; (d) paying fees and premiums to any Lender of the Project Debt or such Lender’s agents; (e) paying costs and fees in connection with the closing and administering of any permitted
Project Debt; (f) making payments due under the Contract Documents to the Contracting Authority or any other Person; (g) making payment of Taxes; (h) funding reserves required under the P3 Agreement, Funding Agreements or Security Documents, applicable securities laws, or Environmental Laws; (i) making permitted Distributions; and (j) refinancing any Project Debt in connection with the purposes in clauses (a) through (i) above. The Security Documents collectively must encumber the entire Company’s Interest, but this will not affect the Company’s ability to enter into Subordinate Security Documents as permitted by the Funding Agreements or equipment lease financing. The Company will not pledge or encumber the Company’s Interest or any portion of such interest, to secure any indebtedness of any Person other than (a) the Company, (b) any special purpose entity that owns the Company but no other assets and has purposes and powers limited to the Project and Work, (c) a special purpose entity subsidiary owned by either the Company or a the special purpose entity described in clause (b), or (d) the PABs Issuer.

Refinancing

For all Refinancings other than Exempt Refinancings and Rescue Refinancings, the Contracting Authority’s prior written approval is required. The Contracting Authority will have no obligations or liabilities in connection with any Refinancing other than its obligations relating to Lender’s rights in the Direct Agreement. Other than an Exempt Refinancing and a Rescue Refinancing, no Refinancing is permitted before the Final Completion Date, except to the extent the Company demonstrates to the Contracting Authority’s reasonable satisfaction that (a) the Committed Investment will not decrease as a result of the Refinancing to a level below the certain equity requirements, and (b) the Refinancing will produce Refinancing Gain that will be shared with the Contracting Authority under the P3 Agreement.

Lenders’ Rights under the Direct Agreement

The rights of the Contracting Authority under the Concessionaire Default and Termination provisions are subject to the terms of any Direct Agreement.

Design and Construction

The Company will: (a) diligently progress performance of all construction-related Work with the goal of achieving Revenue Service Availability and Final Completion by the applicable Contract Deadlines; (b) carry out or do all things necessary to perform the D&C Work and design and construct the Purple Line in accordance with the Contract Documents and Good Industry Practice; (c) ensure that each of the following is fit for its intended function and uses: (i) all goods, equipment, consumables, and materials used or supplied by each entity related to the Company in connection with the Project and the D&C Work and (ii) those LRV components obtained as part of the D&C Work; (d) provide maintenance and other services; (e) ensure adequate materials, equipment and resources are available to ensure compliance with the requirements of the Contract Documents under normal conditions and reasonable anticipated abnormal conditions; (f) ensure all materials and equipment are of good quality and new unless otherwise expressly stated; (g) ensure the Purple Line will be free of defects, including design defects, errors and omissions; (h) ensure the Site is kept in a neat and clean condition at all times; (i) cooperate with the Contracting Authority and Authorities Having Jurisdiction in all matters relating to the D&C Work, including their review, inspection and oversight of D&C Work; and (j) remove and replace Nonconforming Work and/or materials, whether discovered or rejected by the Contracting Authority or the Company, or otherwise remedy such Nonconforming Work and/or materials in an acceptable manner approved, in advance, by the Contracting Authority.

Design-Build Period Progress Payments

The Contracting Authority will make payments for the D&C Work following receipt of periodic requests for payment submitted by the Company subject to certain withholding or reduction provisions. The amount payable is equal to eighty-five percent (85%) of the value of D&C Work eligible for Progress Payments performed during the period covered by the invoice, cannot exceed the maximum payment curve attached to the P3 Agreement and may be reduced in accordance with the Contract Documents.

Upon receipt of the Company’s final invoice, together with all supporting materials, by the Contracting Authority’s Authorized Representative and verification by the Contracting Authority’s Authorized Representative that certain material is stored at the approved location, the Contracting Authority’s Authorized Representative will
authorize payment. The Company will pay the material provider the amount shown on the invoice within ten (10) days of receipt of payment from the Contracting Authority. Evidence of payment will be provided to the Contracting Authority. Failure to make invoice payments as specified will be cause to deduct the monies from future estimates and/or deny future stored materials invoices. Progress Payments will be used to pay Project Costs and to pay interest on the 2016 Bonds but not to repay the principal of the 2016 Bonds.

**Governmental Approvals**

The Contracting Authority is responsible for obtaining the Contracting Authority-Provided Approvals, which means the Governmental Approvals identified in the P3 Agreement. The Contracting Authority is responsible, subject to certain limitations, for costs of litigation relating to the Contracting Authority-Provided Approvals. The Company will obtain all Governmental Approvals required for the Project and the Work, other than the Contracting Authority-Provided Approvals, and will bear the risk of any delay in obtaining such approvals as well as the risk of conditions imposed on performance of the Work by such approvals. For additional information about the current status of these Governmental Approvals, see “THE PURPLE LINE LIGHT RAIL PROJECT—Environmental Litigation and Permits.”

**Utilities**

The Company will ensure completion of all Utility Adjustments necessary to accommodate the Purple Line are completed in accordance with the Project Schedule and the requirements of the Contract Documents; conduct reasonable site investigation and exploration before commencement of Construction Work in any particular area to correctly identify all Utilities in the area; include in the design all utilities to ensure that Utility services are not mistakenly disrupted by the Construction Work; ensure that all Utility Work performed by Concessionaire-Related Entities complies with the Contract Documents; and coordinate, monitor and otherwise undertake appropriate efforts to ensure timely performance of Utility Work by Utility Owners, in coordination with the D&C Work, and in compliance with the standards and other applicable requirements specified in the Contract Documents and Contracting Authority Utility Agreements. The Company is responsible for proper completion of the Utility Work required for the Purple Line, in accordance with the Contract Documents. The Company will be responsible for: all costs of Utility Work performed by Concessionaire-Related Entities; all payments owing to Utility Owners for Utility Work under Concessionaire Utility Agreements (if any); a share of the costs of acquisition of property required for Utility Easements; all costs of Incidental Utility Work; and all costs of materials furnished by Utility Owners under Contracting Authority Utility Agreements.

**Completion**

**Revenue Service Availability Deadline**

The Company will exercise its best efforts to achieve Revenue Service Availability on or before the RSA Deadline. Revenue Service Availability means that all D&C Work is complete (except for Punch List items), and all other prerequisites for start of Revenue Service have been met. Failure to achieve Revenue Service Availability by the Long Stop Date is a Concessionaire Default.

The Independent Engineer’s Certificate of Revenue Service Availability may be issued only after satisfaction of certain conditions to Revenue Service Availability. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT”.

**Final Completion**

Promptly after achieving Revenue Service Availability, the Company will perform all remaining D&C Work, and achieve Final Completion.

**Final Completion Deadline**

The Final Completion Deadline is the date by which the Company must achieve Final Completion, as such date may be extended under the terms of the P3 Agreement, initially set at 24 months following the RSA Date.
**Operation and Maintenance**

The Company is responsible for performance of O&M Work in accordance with requirements specified in the Contract Documents. O&M Work means Work to be performed during the O&M Period, including Technology Enhancements, Operations Work, Maintenance Work, supply of the Renewal Work, but excluding any D&C Work remaining to be performed following Revenue Service Availability. The Company will obtain (as applicable), maintain, repair and replace elements of the System as appropriate throughout the duration of the O&M Period, including maintenance, repair and replacement of consumable and life-expired items and rehabilitation or overhaul of the LRVs. See “THE PRINCIPAL PROJECT DOCUMENTS—The O&M Contract” and APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT.”

**Security and Incident Response**

The Company is responsible for the security of the Purple Line and safety and security of the workers and public throughout the Term. The Company will be responsible for site security and will take measures, consistent with Good Industry Practice, to prevent damage to or destruction of Purple Line improvements by any third party or by any Force Majeure Event. The Maryland State Police or other State law enforcement services will provide law enforcement services.

**Power Supply**

Subject, in certain cases, to adjustments to the operational component of the Availability Payments, the Contracting Authority is responsible for directly paying for electrical power required for Purple Line System operations, including electrical power required for Purple Line System facilities and platforms as well as traction power. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT.” The Contracting Authority is responsible for working with the electric power provider to establish electrical power rates and fees prior to the start of Trial Running. From and after start-up of permanent power service, the Company will take appropriate steps to ensure efficient energy usage and will otherwise conform to the approved Energy Management Plan.

**Fare Collection and Fare System**

The Company will be responsible for operations and maintenance of the Fare System Equipment; stocking ticket vending machines, collecting cash from such machines, depositing cash receipts and arranging for proceeds of credit and other electronic transactions to be deposited into a designated Contracting Authority account; maintaining generally accepted fiscal controls and procedures in accordance with the Contracting Authority and State of Maryland requirements; providing accounting reports regarding all transactions and deposits; and monitoring the Fare System Equipment, and providing reports regarding, any intrusion or tampering with said equipment.

**Noncompliance Points System**

A Noncompliance Point system will be used to measure the Company’s performance levels and trigger certain remedies in parallel with the Payment Mechanism. The Company will establish and maintain an electronic database of Activity Noncompliance Occurrences, Activity Noncompliance Events and Operations Availability Noncompliance Events. The Contracting Authority may assess Noncompliance Points if a Noncompliance Event has occurred and (a) the electronic database or monthly Performance Monitoring Report indicates a Noncompliance Event has occurred, (b) the Contracting Authority is notified or otherwise becomes aware of a Noncompliance Event, or (c) the Contracting Authority serves Notice of Determination.

In addition to Noncompliance Points, Noncompliance Events will also result in Deductions from Monthly Availability Payments. The Contracting Authority has certain rights to increase Oversight, “step-in” rights and rights to require Company to replace the O&M Contractor relating to accumulation of Noncompliance Points

**Remedial Plan**

With respect to certain types of Concessionaire Defaults, the Contracting Authority will defer exercise of its termination remedy so as to allow the Company to take action, but the Company acknowledges and agrees that
the Contracting Authority has the right to terminate if the Company fails to take action in accordance with Remedial Plan provisions. In order to mitigate adverse impacts, if the Company fails to cure a Remedial Plan Default within the initial cure period for such default or the Company accumulates (i) 2,400 Noncompliance Points for Operations Availability Noncompliance Events in any one Payment Period, or (ii) 1,440 Noncompliance Points for Activity Noncompliance Events in any one Payment Period, or (iii) a combination of 4,800 Noncompliance Points for all Noncompliance Events over the course of three consecutive Payment Periods (determined on a rolling basis); then the Contracting Authority may require the Company to prepare and submit a Remedial Plan for Contracting Authority approval.

Within fifteen (15) days after the Company’s receipt of notice from the Contracting Authority requiring a Remedial Plan to be submitted, the Company will prepare a Remedial Plan, and submit it to the Contracting Authority for approval. The Remedial Plan will include a schedule for specific actions to be taken by the Company to improve its performance and will provide for the Company to take appropriate action to improve the Company’s quality management practices, plans and procedures. Following approval of a Remedial Plan by the Contracting Authority, the Company will implement all remedial actions required by the plan. Upon the Company’s satisfaction of such requirements, (a) the uncured Remedial Plan Default will be cured and (b) the Contracting Authority will reduce by 25% the number of accumulated Noncompliance Points assessed that resulted in the requirement to implement a Remedial Plan. The Company’s failure to comply with such Remedial Plan provisions will constitute a material Concessionaire Default which the Contracting Authority may determine is a Default Termination Event without allowing any additional cure period.

Payments to the Company

The Company is compensated by the Contracting Authority pursuant to the P3 Agreement through the Progress Payments, the RSA Payment, the Final Completion Payment and Availability Payments. See “FINANCING FOR THE PROJECT—Progress Payments, RSA Payment, Final Completion Payment and Availability Payments; Other Sources of Funding.”

Payments during Design-Build Period

The Contracting Authority will make payments for the D&C Work following receipt of periodic requests for payment submitted by the Company subject to withholding or reduction. The Contracting Authority will make Progress Payments based on monthly invoices submitted during the Design-Build Period, based on progress determinations, equal to eighty-five percent (85%) of the value of D&C Work eligible for Progress Payments performed during the period covered by the invoice. Progress determinations will be based on substantiated progress and the approved Schedule of Values. Payments for the LRVs will be made based on specified milestones as described below. Additional payments will be made from specified Allowances, equal to 100% of the value of the Allowance Work during the period. The following chart provides information regarding the value of various components of the D&C Work:

| A. Hazardous Materials Remediation Allowance | $70,000.00 |
| B. Art in Transit Allowance                  | $6,070,000.00 |
| C. Fare System Allowance                     | $15,000,000.00 |
| D. Total Value of D&C Design Services        | $103,045,092.62 |
| E. Total Value of D&C Construction Services  | $1,647,784,519.02 |
| F. Total Value of Demolition Pricing          | $595,000.00 |
| G. Total Value of D&C Construction Work (sum of items E and F) | $1,648,379,519.02 |
| H. Number of LRVs in initial order           | 25 |
| I. Individual LRV price                      | $8,254,047.13 |
| J. Total price for initial LRV order         | $206,351,178.36 |
Payments equal to eighty-five percent (85%) of the milestone amounts stated below will be made upon completion of each LRV Supply Milestone, subject to the annual cap on payments.

<table>
<thead>
<tr>
<th>LRV Supply Milestone</th>
<th>Unit of Payment</th>
<th>LRV Supply Milestone Payment Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobilization; LRV management plan, QA assurance program</td>
<td>Lump sum</td>
<td>$6,190,535.51</td>
<td>$6,190,535.51</td>
</tr>
<tr>
<td>Review and Comment of the detailed engineering and production schedules, and Preliminary Design with arrangement drawings</td>
<td>Lump Sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Review and Comment on Final Design Submittals</td>
<td>Lump Sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Prototype factory test</td>
<td>Lump sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Begin assembly of each LRV (except prototype and the O&amp;M Spare LRV)</td>
<td>Per LRV</td>
<td>$2,063,511.78</td>
<td>$51,587,794.50</td>
</tr>
<tr>
<td>Prototype field test</td>
<td>Lump sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Complete assembly and factory test of each LRV (except prototype and the O&amp;M Spare LRV)</td>
<td>Per LRV</td>
<td>$2,641,295.08</td>
<td>$66,032,377.00</td>
</tr>
<tr>
<td>Provision of manuals, training and test equipment</td>
<td>Lump sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Successful completion of performance verification testing of each LRV (including prototype but excluding the O&amp;M Spare LRV)</td>
<td>Per LRV</td>
<td>$1,238,107.07</td>
<td>$30,952,676.75</td>
</tr>
<tr>
<td>TOTAL LRV ORDER PRICE</td>
<td></td>
<td></td>
<td>$206,351,178.36</td>
</tr>
</tbody>
</table>

The cumulative amount of Progress Payments made by the Contracting Authority as of any date, in combination with mobilization payments and Allowance payments may not exceed the cumulative D&C Payment Cap.
D&C Payment Cap

<table>
<thead>
<tr>
<th>Year</th>
<th>Annual Amount¹</th>
<th>Cumulative D&amp;C Payment Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year 2016</td>
<td>$190,000,000</td>
<td>$190,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2017</td>
<td>$220,000,000</td>
<td>$410,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2018</td>
<td>$220,000,000</td>
<td>$630,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2019</td>
<td>$180,000,000</td>
<td>$810,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2020</td>
<td>$50,000,000</td>
<td>$860,000,000</td>
</tr>
</tbody>
</table>

¹ Any unearned Annual Amount may be rolled forward and earned in a subsequent Fiscal Year.

RSA Payment and Final Completion Payment

The RSA Payment, in the amount of $100,000,000, is payable following issuance of the Independent Engineer’s Certificate of Revenue Service Availability. The Final Completion Payment, in the amount of $30,000,000, is payable following achievement of Final Completion, as certified by the Contracting Authority, or as determined pursuant to Dispute Resolution Procedures.

As an inducement to the Company to achieve certain goals, the Contracting Authority has established a monetary incentive payment program applicable to certain Work for performance that meets or exceeds prescribed criteria.

Lifecycle Payment

Lifecycle Payment means the relevant portion of each Availability Payment allocable to anticipated costs (and directly related contingencies and reserves) with respect to Renewal Work or the Special Lifecycle Payments.

Special Lifecycle Payment means, with respect to each Contract Month, the amount scheduled for such Contract Month as set forth in the table below, representing amounts required for the payment of debt service on Project Debt incurred by the Company to finance the O&M Spare LRV, those non-revenue service vehicles, spare parts, spare components, spare equipment, tools, materials, expendables and consumables necessary for operation and maintenance of the Purple Line during the O&M Period that were not delivered to the Contracting Authority at or prior to Revenue Service Availability as identified in the Operating Plan, Asset Management Plan, Maintenance Plan and maintenance manuals.

<table>
<thead>
<tr>
<th>Contract Month</th>
<th>Special Lifecycle Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>3,437,871.13</td>
</tr>
<tr>
<td>17</td>
<td>3,437,871.13</td>
</tr>
<tr>
<td>23</td>
<td>3,437,871.13</td>
</tr>
<tr>
<td>29</td>
<td>3,437,871.13</td>
</tr>
<tr>
<td>35</td>
<td>3,437,871.13</td>
</tr>
<tr>
<td>41</td>
<td>3,437,871.13</td>
</tr>
<tr>
<td>47</td>
<td>3,437,871.13</td>
</tr>
<tr>
<td>53</td>
<td>3,437,871.13</td>
</tr>
</tbody>
</table>

The Monthly Lifecycle Payment will be the sum of the Lifecycle Payment, the Non-LRV Lifecycle Payment (each escalated by the applicable escalation factor) and the Special Lifecycle Payment. The Monthly Lifecycle Payment (other than the Non-LRV Lifecycle Payment and Special Lifecycle Payment portions) will be subject to adjustments based on the Contracting Authority’s exercise of its LRV Options.
**Availability Payments**

The Contracting Authority will pay Availability Payments to the Company during the O&M Period. The obligation of the Contracting Authority to make Availability Payments is based on, and is subject to, the Purple Line being open for public transit as measured through the Company’s compliance with the Contract Documents.

The Monthly Availability Payment will be calculated and earned by the Company according to the following methodology, as summarized below:

\[
MAP_n = MAPGn + (MAPO_n \times ESCOn) + (MAPM_n \times ESCM_n) + (I \times ESCG_n) + LCP_n - \Sigma D + PSGS + QVA
\]

**Where:**

- \( MAP_n \) means the Monthly Availability Payment for the relevant Contract Month calculated in accordance with the above formula.
- \( MAPGn \) means the general portion of the Monthly Availability Payment for the relevant Contract Month (no escalation).
- \( MAPO_n \) means the operational portion of the Monthly Availability Payment as set out in the column headed “MAPO\(_n\)” in the table below.
- \( ESCOn \) means the Operations Escalation Factor applicable to the relevant Contract Year.
- \( MAPM_n \) means the maintenance portion of the Monthly Availability Payment as set out in the column headed “MAPM\(_n\)” in the table below.
- \( ESCM_n \) means the Maintenance Escalation Factor applicable to the relevant Contract Year.
- \( I \) means the Insurance Payment for the relevant Contract Month.
- \( ESCG_n \) means the General Escalation Factor applicable to the relevant Contract Year.
- \( LCP_n \) means the Lifecycle Payment for the relevant Contract Month as such amount may be adjusted under the terms of the P3 Agreement, as summarized above.
- \( \Sigma D \) means the sum of all Deductions for the relevant Contract Month for Noncompliance Events.
- \( PSGS \) means any addition/ or deduction arising pursuant to the calculation of Electricity Painshare/Gainshare.
- \( QVA \) means the Quarterly Volume Adjustment in the months where it is applicable.

### Monthly Availability Payment Inputs

<table>
<thead>
<tr>
<th>Calendar Month</th>
<th>Service Level 1</th>
<th>Service Level 2</th>
<th>Service Level 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>MAPO(_n)</td>
<td>MAPM(_n)</td>
<td>MAPO(_n)</td>
</tr>
<tr>
<td>Jan</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>Feb</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>Mar</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>Apr</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>May</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>June</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>July</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>Aug</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>Sept</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>Oct</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>Nov</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
<tr>
<td>Dec</td>
<td>1,286,275.33</td>
<td>1,410,592.57</td>
<td>1,329,935.56</td>
</tr>
</tbody>
</table>
The Monthly Availability Payment may be subject to adjustments for the actual number of days in the relevant Contract Month (only for the first and last month of the O&M Period), a Quarterly Operating Volume Adjustment, and a Quarterly Maintenance Volume Adjustment.

Adjustments to the Availability Payments establish differential payments for different Service Levels that may be provided by the Company if directed by the Contracting Authority. The Availability Payments will be subject to deductions for Noncompliance Events and other adjustments and withholdings resulting from other provisions under the P3 Agreement, subject to the limitation on adjustments established in the P3 Agreement.

**Appropriations**

The Contracting Authority will prepare, before the end of each fiscal year, its annual budget request submission to the Governor and include in its budget request funds necessary to make scheduled payments to the Company for the coming fiscal year. The Contracting Authority will use its best efforts to obtain the authorization and appropriation of all necessary funds before the beginning of the coming fiscal year. If the Contracting Authority becomes aware that it will not obtain appropriations for any fiscal year sufficient, in combination with other available funds, to pay all compensation owing to the Company under the P3 Agreement for such year, the Contracting Authority will promptly notify the Company regarding the anticipated shortfall, and will consult with the Company to discuss the situation and possible solutions. If the Contracting Authority determines that it will not have funds available to make any of the payments owing, the Contracting Authority will suspend all Work. If the Contracting Authority determines that there will be a partial shortfall, the Contracting Authority will suspend all or a portion of the Work so as to ensure that the Contracting Authority has sufficient funds to make payments owing for Work performed. Any such suspension will be considered a Contracting Authority Change. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Sources of Payment Generally—Payments from the Contracting Authority” and “RISK FACTORS—Risks Relating to the Company and the Contracting Authority—Appropriation Risk.”

**LRV Provisions**

**LRV Options**

The Contracting Authority has three separate options to require the Company to purchase Option LRVs and commission said LRVs: (a) LRV Option A for the committed number of additional LRVs required for a change from Service Level 1 to Service Level 2; (b) LRV Option B for the committed number of additional LRVs required to enable the Company to meet the Peak Period Headways for Service Level 1 or Service Level 2, as applicable, if the combined traffic signal and traffic congestion delay value is 1.00 through 6.00 minutes higher than Bid Combined Tsc in a Peak Period; and (c) LRV Option C for the committed number of additional LRVs required to enable the Company to meet the Peak Period Headways for Service Level 1 or Service Level 2, as applicable, if Actual Combined Tsc (as defined below) is 6.01 through 12.00 minutes higher than Bid Combined Tsc in a Peak Period. LRV Option A may be exercised at any time during the period starting at Financial Close and ending on the seventh anniversary of Commercial Close. LRV Options B, and C may only be exercised during the period starting on the fifth anniversary of Commercial Close and ending on the seventh anniversary of Commercial Close.

LRV Option A includes five additional LRVs: option price of $9,234,296 per LRV, subject to escalation.

LRV Option B includes one additional LRV: option price of $13,796,112, subject to escalation; provided that if LRV Options A and B are exercised concurrently, the price per LRV under LRV Option B will be the same price that applies under LRV Option A.

LRV Option C includes two additional LRVs: option price of $10,931,144 per LRV, subject to escalation; provided that if LRV Options A and C are exercised concurrently, the price per LRV under this LRV Option C will be the same price that applies under LRV Option A.

For a discussion of CAF USA’s delivery of the LRVs subject to the LRV Options, see “PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract.”
Intellectual Property Rights

Except for Concessionaire Intellectual Property, all Intellectual Property, all work product and other related materials, including all Submittals and other materials specifically developed under the Contract Documents, all physical construction and equipment itself and from data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, records, film, tape, articles, memoranda, correspondence and other documents created or collected under the terms of the P3 Agreement or otherwise developed under the P3 Agreement, made by the Company related to the RFP (including the Proposal), exchanges of information during the pre-proposal and post-proposal periods and other work product and other related materials that disclose Intellectual Property, have been specially ordered and commissioned by the Contracting Authority, and will be considered a work-made-for-hire, as that term is defined in Section 101 of Title 17 of the U.S. Code (Copyright Law).

All Concessionaire Intellectual Property will remain exclusively the property of the Company, its Affiliates or Contractors, as applicable, subject to the Contracting Authority’s rights as stated in the Contract Documents, including the license specified below.

The Company grants to the Contracting Authority a perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Concessionaire Intellectual Property solely in connection with the Purple Line; provided that the Contracting Authority may exercise such license only at specified times.

Insurance

At a minimum, the Company will procure or cause to be procured and keep in effect certain Insurance Policies. Each Insurance Policy will be procured from an insurer that qualifies as an Eligible Insurer or, with respect to certain excess Insurance Policies, as a Surplus Lines Insurer, at the time of policy placement and throughout the coverage term, unless the Contracting Authority approves otherwise in writing.

Deductibles and Self-Insured Retentions

The Contracting Authority’s liability for insurance deductibles is limited to the amounts, if any, included as part of a Compensation Amount or Termination Compensation and deductibles paid with respect to claims under the Additional Excess Liability Insurance Policy or Policies. The Contracting Authority will have no liability for amounts in excess of the coverage required or provided, except to the extent expressly permitted under the P3 Agreement. “Deductible” includes a self-insured retention and/or any co-insurance.

If an Insurance Policy provides coverage with respect to an occurrence or event other than a Relief Event, then the Company will pay all insurance deductibles, and the Contracting Authority will have no liability for deductibles or claim amounts in excess of the required coverage.

With respect to an occurrence or event other than a Relief Event, the Contracting Authority may elect to advance or pay a deductible or any claim amount in excess of the required or provided coverage, in which case the Contracting Authority will have the right to recover such payment, in full, through deductions from the Availability Payments, direct billing, or any other method deemed appropriate by the Contracting Authority.

Primary Coverage

Each Insurance Policy will provide expressly that its coverage is primary and noncontributory with respect to all insureds, except for coverage that is specifically denominated as excess coverage to a specified Insurance Policy required under the Contract Documents. Any excess coverage will provide expressly that it will become primary and noncontributory once the policy limits of the specified Insurance Policy are eroded. If, in connection with the Project, the Company procures any additional or other insurance or expressly self-insures beyond the specifications in the Contract Documents (excluding excess coverage contemplated above), then the Insured Parties will be named as an additional insured.
Contractor Insurance Requirements

If the Company and/or any Contractor fails to procure and keep in effect the Contractor’s insurance required of it under the P3 Agreement and the Contracting Authority provides Notice of a Concessionaire Default for such failure, the Company may, within the applicable cure period, cure such Concessionaire Default by (i) procuring or causing such Contractor to obtain the requisite insurance and providing the Contracting Authority proof of insurance, or (ii) terminating the Contractor and removing its personnel from the worksite. In connection with any such cure, the Company will be responsible for ensuring there is no gap or interruption in coverage. A consolidated insurance program, with the Contracting Authority’s prior approval, is acceptable to satisfy all insurance requirements, provided that it otherwise meets all requirements.

Policies with Insureds in Addition to the Company

Except with respect to professional errors and omissions Insurance Policies, all Insurance Policies that are required to insure named insureds in addition to the Company will comply with the following provisions:

Each Insurance Policy will contain a separation of insureds provision such that the Insurance Policy will be written or endorsed so that (i) no acts or omissions of an insured will cancel or diminish coverage of any other insureds and (ii) insurance will apply separately to each named insured, except with respect to the erosion of the specified limits of the insurer’s liability.

The Insurance Policy will be written so that any failure on the part of a named insured to comply with reporting or notice provisions or other conditions of the Insurance Policies, any breach of a warranty included in such Insurance Policy, any action or inaction of a named insured or others, or any change in the ownership or control of the Company or the Company’s Interest will not affect coverage provided to the other named insureds.

Adjustments in Coverage Amounts

At least once every five years during the O&M Period, the Company will retain an independent, unaffiliated, qualified and reputable insurance broker or advisor not involved in the Project and experienced in insurance brokerage and underwriting practices for major transportation facility projects, to prepare a report analyzing the policy limits and deductibles currently in place and recommending any adjustments to such limits and deductibles having regard to (i) the nature of the Project and the Work, (ii) the Insurance Policies which the Company has placed, or caused to be placed, at that time and the risks insured under those Insurance Policies; (iii) the risks sought to be insured, (iv) the terms on which insurance is available, (v) the commercial reasonableness of those terms, (vi) the insurances and risk management practices generally applying in industry with respect to the required Insurance Policies and other insurance coverages, (vii) any events that have an impact on the cost of procuring insurance in the global insurance market generally, and (viii) other factors which the Contracting Authority and the Company may agree to be appropriate.

If the report shows an increase or decrease in premiums by more than 30% from the premiums charged for the corresponding Insurance Policy during the preceding period, the Parties will consider changes in the policy limits or deductibles to reduce the premiums. If the Parties fail to agree upon any adjustment, the Contracting Authority will determine the adjustment, subject to the Dispute Resolution Procedures.

Unavailability of Required Coverages

If the Company demonstrates to the Contracting Authority’s reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to procure the required Insurance Policy coverages, and if despite such diligent efforts and through no fault of the Company any Insurance Unavailability exists or occurs, the Contracting Authority may seek out, through review of the global insurance and reinsurance markets, coverage at Commercially Reasonable Insurance Rates. If coverage is found, the Company will place such insurance at the premium negotiated by the Contracting Authority, not to exceed Commercially Reasonable Insurance Rates, so long as such coverage complies with the applicable prescriptions, following which the relevant Insurance Unavailability will no longer exist. If the Contracting Authority is unsuccessful in identifying coverage, the Contracting Authority will consider in good faith approving alternative insurance packages and programs presented by or through the
Company that provide coverage as comparable to that contemplated in the P3 Agreement as is possible under then-existing insurance market conditions.

If the Contracting Authority approves alternative insurance requirements because of Insurance Unavailability, then (a) subject to certain limitations under the P3 Agreement, the Contracting Authority will be responsible for any loss to the extent that the unavailable Insurance Policy or portion thereof would have covered the loss, for the duration of the Insurance Unavailability and (b) the Contracting Authority will be entitled to a reduction in the Monthly Availability Payments totaling 100% of the insurance premiums that the Company avoids as a result of the modification of the insurance requirements. In determining the Company’s avoided insurance premiums, the Parties will calculate the amount of insurance premiums the Company would have been obligated to pay (up to the Commercially Reasonable Insurance Rates) had there been no modification of insurance requirements; provided that if relevant comparison data is not then available, it will be assumed that the Company would have been obligated to pay 100% of the total avoided insurance premiums up to the greater of (A) the Commercially Reasonable Insurance Rates or (B) the premiums assumed in the Financial Model.

If the required Insurance Policies are available from insurers meeting the financial requirements but not at Commercially Reasonable Insurance Rates, then the Contracting Authority may by notice to the Company elect not to approve modification of insurance requirements and to pay 100% of the premiums that exceed the Commercially Reasonable Insurance Rates.

In the event of Insurance Unavailability, the Contracting Authority may elect to instead terminate the P3 Agreement under the applicable termination provisions. The Company may elect to continue the P3 Agreement, subject to assumption of certain risks. Further provisions relating to termination apply, should an uninsured event, due to Insurance Unavailability, occur after the Company elects to continue the P3 Agreement.

Insurance Premium Benchmarking

The P3 Agreement allocates the risk between the Contracting Authority and the Company of certain significant increases in insurance premiums for Insurance Policies (excluding “stand-alone” Terrorism Insurance Policy/ies) specified during the O&M Period for the period starting on the first anniversary of the O&M Commencement Date and ending at the end of the Term (“Benchmarking Term”), on a Line-by-Line basis, through an insurance benchmarking process. Certain Insurance Policies may be placed for multi-year terms. At least once every three years during the Benchmarking Term, the Parties will complete the benchmarking process as to each O&M Period Insurance Policy (excluding “stand-alone” Terrorism Insurance Policy/ies). Each Party has the right to require benchmarking to be undertaken more than once every three years during the Benchmarking Term, but no more frequently than annually.

Company Indemnity

The Company will fully indemnify and hold harmless the Contracting Authority, the State, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees, and, to the extent required by any Utility Agreement or Third Party Agreement, the Utility Owner or Third Party that is a party to such agreement (the “Indemnified Parties”), from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys’ and expert witness fees and costs, arising out of, relating to or resulting from:

(a) any act, omission, neglect or misconduct of the Company or any Concessionaire-Related Entity in the manner or method of executing said Work satisfactorily or due to the failure to perform the Work,

(b) the failure or alleged failure by any Concessionaire-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws relating to the performance of the Work;

(c) any Concessionaire-Related Entity’s performance of, or failure to perform, the obligations under any Utility Agreement;
(d) any Concessionaire-Related Entity’s breach of or failure to perform an obligation that the Contracting Authority owes to a third party under Law or under any agreement between the Contracting Authority and a third party, where performance of the obligation is delegated to the Company, or the acts or omissions of any Concessionaire-Related Entity which render the Contracting Authority unable to perform or abide by an obligation that the Contracting Authority owes to a third party under any agreement between the Contracting Authority and a third party, provided the agreement was previously disclosed or known to the Company;

(e) any alleged infringement or other allegedly improper appropriation or use of Intellectual Property in performance of the Work, or arising out of, relating to or resulting from any use in connection with the Project of methods, processes, designs, information or other items furnished or communicated to the Contracting Authority or another Indemnified Party under the Contract Documents; provided that this indemnity will not apply to any infringement resulting from the Contracting Authority’s failure to comply with specific written instructions regarding use provided to the Contracting Authority by the Company that are consistent with the Company’s obligations to convey and license Concessionaire Intellectual Property under the P3 Agreement;

(f) any Company Release of Hazardous Materials and any liabilities resulting therefrom;

(g) any fines or penalties imposed on the Contracting Authority by any Authority Having Jurisdiction arising out of, relating to or resulting from the Company’s breach of or failure to comply with applicable requirements of the Contract Documents;

(h) any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Concessionaire-Related Entity with respect to any payment for the Work made to or earned by such Concessionaire-Related Entity under the Contract Documents;

(i) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Concessionaire-Related Entity to comply with Good Industry Practice, requirements of the Contract Documents, the Project Management Plan or O&M Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Work, (ii) the intentional misconduct or negligence of any Concessionaire-Related Entity in connection with the performance of the Work, or (iii) unauthorized physical entry onto or encroachment upon another’s property by any Concessionaire-Related Entity in connection with the performance of the Work.

The Company will indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys’ fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Contract Drawings or Reference Documents, except to the extent that an error, omission, inconsistency or other defect in the Design Documents is directly attributable to an error, omission, inconsistency or other defect in the Contract Drawings and the Company did not act negligently in finalizing the design of the Purple Line.

Changes

Changes—Conducting Authority Changes

The Contracting Authority may, at any time and from time to time, without notice to any Lender or Surety, authorize and/or require, under a Change Order or other Modification, changes to the Work, changes to requirements of the Technical Provisions, changes in the Service Plan and changes relating to Betterments, except the Contracting Authority has no right to require any change that would give rise to a threat to health and safety or would be inconsistent with Law.

Changes in service directed by the Contracting Authority in accordance with the provisions described in “—Changes—Service Changes” do not require a Change Order except as specified. A negotiated Modification would be required in connection with establishment of a Service Level higher than Service Level 3 as well as for certain equitable adjustments to the Availability Payments and for the reduction of Service Level by the Contracting Authority that would result in the number of LRVs available for service being greater than the number of LRVs required to deliver the reduced Service Level.
The Contracting Authority (a) may agree with one or more Third Parties or Utility Owners to modify the Third Party Agreements or Contracting Authority Utility Agreements (including modifying assumed terms and conditions of such agreements set forth in the Technical Provisions), and (b) may identify a new Third Party at any time.

**Payments and Credits**

If a Change Order issued involves a net increase in the costs of Work to be performed during the Design-Build Period, the Change Order will provide for the Compensation Amount to be paid as specified in the P3 Agreement. If the Change Order involves a net increase in the costs of Work to be performed during the O&M Period, the Contracting Authority will pay the Compensation Amount through adjustments to the Availability Payments, calculated to result in a neutral monthly cash flow for the Company.

If a Change Order involves a net reduction in costs of Work, the Change Order will provide for the credit to be applied either to payments during the Design-Build Period or to Availability Payments, as applicable, as the savings accrue.

If a Change Order issued affects the Company’s cost of supplying Option LRVs, the Change Order will either provide for an increase in the LRV Option Price to pass through the additional costs to the Contracting Authority or a reduction in the LRV Option to pass through the reduction in costs to the Contracting Authority.

**Relief Events**

Relief Events are (1) Contracting Authority Changes and (2) any of the following events to the extent that the event materially and adversely affects performance of the Company’s obligations under the Contract Documents, in each case subject to the requirements, limitations and deductibles in the P3 Agreement:

(a) Contracting Authority-Caused Delay;
(b) Discovery of Differing Site Conditions;
(c) Discovery on or under the Site (excluding Additional Properties and Project-Specific Locations) of any paleontological or cultural (including archaeological and historical) resources;
(d) Discovery at, near or on the Project right-of-way of any Threatened or Endangered Species, to the extent that the Company is required to stop the Work or perform Extra Work as a result of the discovery;
(e) Discovery that the Utility Information is Materially Inaccurate with respect to any underground utility facility (excluding Service Lines), except where the existence of a Utility in the correct location and/or size, as applicable, was known to the Company as of the Setting Date, or would have become known to the Company as of the Setting Date by undertaking reasonable inquiry, prior to the Setting Date, with Utility Owners, including by requesting and reviewing Utility plans provided by Utility Owners;
(f) Discovery of Hazardous Waste required by applicable Law to be recycled, treated, stored or disposed pursuant to an applicable statutory law, discovered during or in connection with the demolition of buildings, fixtures or other improvements, in the categories for which unit prices are provided in the P3 Agreement;
(g) (i) discovery of Pre-Existing Hazardous Materials within the Site, excluding Known or Suspected Hazardous Materials and excluding Hazardous Materials within Additional Properties and Project-Specific Locations, or (ii) any sudden spill of Hazardous Material by a Person other than a Concessionaire-Related Entity not covered by item (f) above which occurs during the Term and (A) renders use of the Transitway, roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation or (B)(1) is required by applicable Law to be recycled, treated or stored, or (2) is required by applicable Law to be disposed at a “Designated Facility” as defined in COMAR 26.13.01.03;
(h) With respect to D&C Work: (1) Discriminatory Changes in Law, and (2) any other Change in Law that (A) requires a material modification in the Purple Line design, (B) results in imposition of additional mitigation requirements on the Purple Line respecting (i) impacts on paleontological, biological or cultural (including
archaeological and historical) resources or (ii) other environmental impacts, or (C) prevents renewal of any Governmental Approval;

(i) With respect to O&M Work: (1) Changes in Law, excluding changes in federal Law other than (A) changes in federal Law to the extent specified as a non-discriminatory change, (B) changes in federal Law that materially modify tasks to be performed by O&M personnel and (C) any change in federal Law requiring execution of a labor agreement for the Project; (2) Discriminatory Changes in O&M Standards; (3) Non-Discriminatory Changes in O&M Standards to the extent specified; (4) Changes in Transitway traffic signal timing affecting Station-to-Station run times; and (5) Changes in traffic signal Priority or Preemption in the Transitway affecting Station-to-Station run times;

(j) Permanent and planned power network change in voltage by the Utility Owner supplying electricity to the Purple Line System that has a material adverse effect on LRT operations;

(k) Any change in the Work or delay to or interference with the Work directly attributable to projects undertaken by Third Parties within the Project right-of-way during the Design-Build Period that are not identified in (i) the Contract Documents or (ii) any Third Party’s formal, approved budget document for capital projects as of the Setting Date;

(l) During the Design-Build Period, damage to improvements or project assets at the Site (excluding Additional Properties and Project-Specific Locations) due to Force Majeure Events, to the extent that (i) the damage is due to an event that is not of a type required to be covered by insurance under the Contract Documents (including self-insurance if the Contracting Authority has agreed to self-insure as specified in the terms of the P3 Agreement where the Company is unable to obtain insurance as described in the P3 Agreement), or (ii) the costs of repair or replacement exceed the insurance limits;

(m) During the O&M Period, solely for the purposes of determining the Contracting Authority’s responsibility and, subject to certain limitations and obligations, damage to improvements or project assets due to Force Majeure Events or other events beyond the Company’s reasonable control;

(n) Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any portion of the Work;

(o) Occurrence of a Utility Owner Delay; and

(p) Assessment of sales or use tax on LRVs;

except to the extent that the event or consequences of the event (i) arose out of (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission by a Concessionaire-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Concessionaire-Related Entity, or (ii) could reasonably have been avoided by any Concessionaire-Related Entity.

Time Extension

The Company will be entitled to extension of applicable Contract Deadlines by the period that a Relief Event or Force Majeure Event results in a delay to the Critical Path required to achieve Revenue Service Availability or Final Completion, as applicable, beyond the original Contract Deadline, subject to certain limitations and satisfaction of relevant conditions or requirements set forth in the Contract Documents.

If the credit agreement for the TIFIA Loan fills in the blanks in clause (a)(ii) of the definition of “Development Default” in the TIFIA Term Sheet with a number greater than zero (i.e. if the TIFIA Loan provides that the Company will be in default for failure to achieve “Substantial Completion” earlier than 12 months after the RSA Deadline), then the Long Stop Date will be extended by the same number of months.
**Force Majeure Events**

Force Majeure Events mean the following events, in each case beyond the control of the Parties, to the extent that the event delays the Critical Path (with respect to the D&C Work) or materially and adversely impacts the Company’s ability to meet its obligations (with respect to the O&M Work):

(a) Act of war, invasion, armed conflict, violent act of foreign enemy, military or armed blockade regardless of location, or any military or armed takeover of the Purple Line or the Site;

(b) Any act of terrorism, riot, insurrection, civil commotion or sabotage that (i) causes direct physical damage to the Purple Line, the Work or the Site or (ii) otherwise directly causes substantial interruption to Construction Work, manufacturing or assembly of LRVs or O&M Work;

(c) Nuclear explosion that (i) causes direct physical damage to the Purple Line or the Site, or (ii) causes radioactive contamination of the Purple Line or the Site requiring Hazardous Materials Management, (iii) otherwise directly causes substantial interruption to Construction Work, manufacturing or assembly of LRVs or O&M Work;

(d) Fire or explosion directly impacting the physical improvements of the Purple Line or performance of Work at the Site;

(e) Flood, earthquake or landslide (i) resulting in material damage to (A) Purple Line improvements or (B) the primary LRV assembly facility identified in the Proposal, or (ii) otherwise causing an Unplanned Service Interruption during the O&M Period;

(f) Any national or regional strike not specific to the Company, acts or omissions of a port or transportation authority, unavailability or shortages of materials that directly causes interruption to construction or direct losses during operation of the Purple Line;

(g) Quarantine affecting Work to be performed by the Company;

(h) Unusually severe weather (including tornados and any storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration’s National Hurricane Center or similar body) resulting in material damage to (i) Purple Line improvements or (ii) the primary LRV assembly facility identified in the Proposal;

(i) Any other event within the Project right-of-way limits that has a material adverse impact on the Work and that arises from a state of emergency declared by the Maryland Governor, but excluding Emergencies consisting of or arising out of traffic accidents;

(j) Changes in Law that do not qualify as Relief Events but nevertheless result in a delay to the Critical Path;

(k) Any delay by a Third Party in performance of its obligations under a Third Party Agreement that is excused due to occurrence of a force majeure event under the terms of the Third Party Agreement;

(l) Any delay in performance of Utility Work by a Utility Owner excused due to the occurrence of a force majeure event under the terms of the relevant Contracting Authority Utility Agreement;

(m) Any delay in approval of the NPS Special Use Permit beyond one hundred eighty (180) days from the date that NPS acknowledges receipt of the Company’s complete and conforming application for such permit, meeting NPS quality requirements and including all supplemental information requested by NPS following receipt of the initial application package; and

(n) Any protest specifically against the Purple Line System during the Design-Build Period that directly causes substantial interruption to Construction Work;
except to the extent that the event or consequences of the event arose out of any act, omission, negligence, recklessness, willful misconduct, breach of contract or violation of applicable laws by any Concessionaire-Related Entity, or could reasonably have been avoided by the exercise of caution, due diligence, or reasonable efforts by any Concessionaire-Related Entity.

**Non-Concessionaire Caused Disruption**

Non-Concessionaire Caused Disruption means any of the following events occurring in the O&M Period:

(a) an order issued by the Contracting Authority or an agent of the Contracting Authority which affects service, including an order to slow down or stop train service on the System;

(b) any change in service required to accommodate performance of work (i) by a Utility Owner pursuant to a permit issued by an Authority Having Jurisdiction or (ii) by a Third Party, provided the Contracting Authority has agreed in writing to the service change;

(c) a derailment, grade crossing accident, collision or any other accident involving LRVs;

(d) obstruction of any grade crossing or the Transitway caused by third parties, excluding obstructions due to vehicular or pedestrian traffic;

(e) on-board Train passenger activity during Revenue Service Hours that causes interruption to System operations, including requests for an emergency stop of the Train or sick or injured passengers requiring medical attention;

(f) failure of any Non-Concessionaire Contractor to comply with the Company’s reasonable instructions regarding coordination, scheduling, or safety, or any unlawful or negligent act of a Non-Concessionaire Contractor;

(g) disruptions due to trespassers (including suicide attempts and blockages of the Transitway in connection with an unlawful demonstration) or other criminal action by third parties;

(h) (i) power network change in voltage or (ii) loss of electrical supply to two or more traction power substations concurrently due to a failure of the electricity supplier, that, in either case, has a material adverse effect on LRT operations;

(i) actions of governmental authorities or emergency response personnel who require access to the System, interrupting operation of the System;

(j) delay in or suspension of service required by police or other public official having jurisdiction, or reasonably occurring in anticipation of the response of police or such public official (for example, suspension due to suspicious luggage or package);

(k) to the extent that the event is not covered by insurance and relief from Deductions is not already provided in the P3 Agreement, disruptions due to (i) Relief Events or Force Majeure Events, or (ii) excluding facilities providing electrical power to the System (which are addressed in clause (h) above), any unexpected damage to a Utility (A) serving the Purple Line and located within the Project right-of-way or (B) located within the Transitway or at a Station serving LRVs for the Purple Line System;

(l) the Contracting Authority’s failure to perform or observe any of its material covenants or obligations under the P3 Agreement or the Contract Documents or to comply with Law or Governmental Approvals; and

(m) reduction in service during an unusually severe weather event, to ensure compliance with Safety Standards; so long as the Company notifies the Contracting Authority, as soon as practicable before or during the event (or if earlier notification is impracticable, promptly after commencing the reduction in service);
except to the extent such event or consequences of the event (i) arose out of (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission by a Concessionaire-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Concessionaire-Related Entity, or (ii) could reasonably have been avoided by the Company.

**Excuse from Compliance**

Except as expressly provided in the P3 Agreement, where a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, the obligations of each Party which are affected by the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption will be suspended, but only to the extent that, and for so long as the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption prevents that Party from meeting its obligations in accordance with the P3 Agreement.

A Party’s failure to perform its obligations in accordance with the P3 Agreement which are suspended in accordance: (a) will not be a breach of the P3 Agreement, a Concessionaire Default, a Default Termination Event or give rise to a right to terminate other than either Party’s right to terminate the P3 Agreement for an Extended Delay; (b) will not result in the accrual of Noncompliance Points; (c) will not result in Deductions being applied or OTP Factors being allocated in the case of a suspension as a result of (i) a Relief Event; (ii) an event set out in clause (a), (i), (j) or (l) of the definition of Non-Concessionaire Caused Disruption; or (iii) the initial 48 hours of any Grace Period Event or combination of Grace Period Event(s) during a thirty (30)-day period (each a “Relevant Event”); and (d) during a thirty (30)-day period in which a suspension occurs due to a Grace Period Event, following expiration of the initial forty-eight (48)-hour grace period (the “Grace Period”), Deductions may be applied or OTP Factors may be allocated. The total of such Deductions and OTP Factors may not reduce the Availability Payment below the sum of (a) the Partial Service Payment and (b) the value of scheduled principal repayments and interest on the Company’s Project Debt obligations for the relevant period.

If any Activity Noncompliance Occurrence is directly attributable to a Relevant Event, the obligations of the Company will be suspended by extending the Response Time, Rectification Time or Application (Maximum Exposure) Time applicable to such Activity Noncompliance Occurrence. If no Response Time, Rectification Time or Application (Maximum Exposure) Time applies to the Activity Noncompliance Occurrence, the corresponding Activity Noncompliance Event will be deferred. The extension or deferral will be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of the relevant Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption on the Company’s ability to respond to or rectify (as applicable), availability of temporary remedial measures, and need for rapid action due to impact of the Activity Noncompliance Occurrence on safety or traffic movement.

If any Operations Availability Noncompliance Event is directly attributable to a Relevant Event, the Company will not be allocated OTP Factors.

If any Operations Availability Noncompliance Event is directly attributable to a Grace Period Event and continues after expiration of the Grace Period, then: (a) for the first thirteen (13) days following the expiration of the Grace Period only 10% of the applicable OTP Factors may be allocated to the Company; (b) for the next fifteen (15) days following the time period in clause (a) above, only 5% of the applicable OTP Factors may be allocated to the Company; and (c) if the Operations Availability Noncompliance Event continues beyond the time period under clause (b) above, a new Operations Availability Noncompliance Event will be deemed to start on the day after expiry of such time period and the Operations Availability Noncompliance Event will be subject to a new Grace Period and OTP Factor reductions in accordance with clause (a) and clause (b) above until the Operations Availability Noncompliance Event ceases to be directly attributable to the Grace Period Event.

**Concessionaire Default**

Concessionaire Defaults include the following, among others:

(a) Subject to excused obligation provisions, the Company fails to achieve Financial Close by the Financial Close Deadline.
(b) The Company fails to commence Work promptly following Financial Close or to diligently prosecute the Work to completion in accordance with the Contract Documents;

(c) The Company abandons all or a material part of the Purple Line;

(d) The Company fails to achieve (i) Revenue Service Availability by the Long Stop Date, or (ii) Final Completion by the Final Completion Deadline;

(e) The Company (i) fails to make any payment owing to the Contracting Authority under the Contract Documents when due, (ii) fails to collect, deposit and account for fare revenues as required by the Contract Documents, or (iii) fails to deposit other funds into any custodial account, trust account or other reserve or account as required by the Contract Documents;

(f) Any representation or warranty in the Contract Documents, or the Company’s Statement of Qualification (which representations and warranties of the Company are incorporated into the Proposal explicitly or by reference) made by the Company is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or any certificate, schedule, report, instrument or other document delivered by or on behalf of the Company to the Contracting Authority under the Contract Documents is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(g) Subject to insurance unavailability provisions, the Company fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of relevant parties, or the Company fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;

(h) (i) The Company makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Contract Documents, the Project or the Company’s Interest in violation of the limitations on assignment or transfer under the P3 Agreement, (ii) there occurs an Equity Transfer or a Change of Ownership not permitted under the P3 Agreement, or (iii) any other violation of the limitations on assignment or transfer under the P3 Agreement occurs;

(i) Unless excused due to occurrence of a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, the Company fails to timely observe or perform, or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the Company under the Contract Documents, including failure to pay for or perform the Design Work, Construction Work, O&M Work or any portion thereof in accordance with the Contract Documents, provided that any failure to provide Option LRVs by the applicable deadline and any failure that constitutes a Noncompliance Event or Activity Noncompliance Occurrence is not considered a default under this paragraph (i) although such failure may become an Event of Default;

(j) Unless continued performance of the P3 Agreement is permitted under the terms of a debarment agreement with the State, and after any rights of appeal have been exhausted, if the Company, any Equity Member, any Controlling Affiliate of the Company, any Prime Contractor or LRV Supplier (i) is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a State department or agency or (ii) has not dismissed any subcontractor whose work is not substantially complete and who is determined disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal or a State department or agency.

(k) If a Remedial Plan is required, (i) the Company fails to timely deliver to the Contracting Authority a Remedial Plan meeting the requirements of said section or (ii) the Company fails to fully comply with the schedule or specific elements of, or actions required under, the approved Remedial Plan;

(l) The Company fails to comply with the Contracting Authority’s order to suspend Work within the time reasonably allowed in such order;
(m) The Company commences a voluntary case seeking liquidation, reorganization or other relief with respect to the Company or the Company’s debts under any U.S. or foreign bankruptcy, insolvency or other similar Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(n) An involuntary case is commenced against the Company seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such the Company or the Company’s debts under any U.S. or foreign bankruptcy, insolvency or other similar Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case will not be contested by it in good faith or will remain undismissed and unstayed for a period of sixty (60) days;

(o) In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to the Company or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law, the P3 Agreement or any of the other Contract Documents, is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;

(p) Any voluntary or involuntary case or other act or event described in clause (m) or (n) will occur (and in the case of an involuntary case will not be contested in good faith or will remain undismissed and unstayed for a period of sixty (60) days) with respect to (i) any Equity Member, partner or joint venture member of the Company (unless said Person has fully met all financial obligations owing to the Company in the form of a Committed Investment and payments or transfers of money or property previously made to or for the benefit of the Company are not subject to Sections 544, 547, 548, or 550 of the Bankruptcy Code or any similar applicable state or federal law respecting the avoidance or recovery of preferences or fraudulent transfers, including any applicable enactment of the Uniform Fraudulent Transfer Act), (ii) any Equity Member, partner or joint venture member of the Company for whom transfer of ownership or management authority would constitute a Change of Ownership, or (iii) any Guarantor of material Company obligations to the Contracting Authority under the Contract Documents, unless another Guarantor of the same material Company obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty;

(q) The Company draws against any custodial account, trust account, allowance or other reserve or account in violation of the Contract Documents or makes a false or materially misleading representation in connection with a draw against any such account, allowance or reserve;

(r) The Company fails to comply with any applicable Governmental Approval or Law;

(s) Any use of the Purple Line that violates requirements of applicable Governmental Approvals or Laws or otherwise is not permitted under the Contract Documents;

(t) The Company receives a total of 14,640 or more Noncompliance Points over the course of three consecutive Payment Periods (determined on a rolling basis);

(u) The Company receives a total of 24,240 or more Noncompliance Points over the course of six consecutive Payment Periods (determined on a rolling basis); or

(v) The Company receives a total of 33,720 or more Noncompliance Points over the course of 12 consecutive Payment Periods (determined on a rolling basis).

Cure Period and Remedies

The Company has certain rights to receive notice and opportunity to cure before the Contracting Authority may exercise its right to terminate the P3 Agreement. The Contracting Authority remedies in the event of a Concessionaire Default include, among others: termination of the P3 Agreement, as described below; immediate
Contracting Authority entry to cure wrongful use; step-in rights; any and all damages available at law; right to make demand upon, drawn on and enforce and collect performance security; and suspension of the Work. Certain of the Contracting Authority’s remedies with respect to Concessionaire Defaults are subject to the rights of the Collateral Agent under the P3 Direct Agreement.

Termination of the P3 Agreement

Termination for Convenience

The Contracting Authority may terminate the P3 Agreement in whole, but not in part, if the Contracting Authority determines, in its discretion, that termination is in the Contracting Authority’s best interest (a “Termination for Convenience”). Termination of the P3 Agreement will not relieve the Company or any Guarantor or Surety of its obligation for any claims arising before termination.

In the event of a Termination for Convenience, the Company will be entitled to compensation. The Contracting Authority will pay compensation to the Company or to the Collateral Agent, in an amount equal to (a) the Project Debt Termination Amount (as defined below under “—Termination Compensation for Termination for Extended Delay, Insurance Unavailability or Court Ruling”) plus the Termination for Convenience Amount plus Contract Termination Costs, less (b) available Credit Balances and Insurance Proceeds, to the extent not already taken account in calculating any of the amounts included in item (a).

The Termination for Convenience Amount will be calculated as the net present value of the anticipated future nominal Distributions (Post-Tax on the part of the Company but pre-tax on the part of the Equity Members) from drawn share capital and payments on any Subordinate Debt as of the Early Termination Date based on an appraisal by an independent third party expert appraiser that is nationally recognized for the conduct of valuation exercises. The appraisal will be provided within ninety (90) days of the appointment by both Parties of such independent appraiser (provided that if the Parties fail to agree on the identity of such independent appraiser and fail to complete such appointment by the fifteenth (15th) business day following the Termination Date, either Party may request the financial DRB to select and appoint such independent appraiser within fifteen (15) Business Days of such request). For purposes of the calculation of such net present value, the Parties will instruct the independent appraiser to:

(a) utilize a discount rate that is based on both (i) the performance of the Purple Line and projects in the United States of America employing a similar approach to risk allocation (including credit risk) and a similar payment mechanism (including the absence of any transfer of usage risk to the Company) and (ii) the assumption that no event has occurred for which Termination Compensation is payable and the equity interests of the Equity Members of the Company are freely transferable and are being sold in the open market; and

(b) estimate the anticipated future nominal Distributions based on the performance of the project up to the Early Termination Date employing an approach that considers the most recent Financial Model Update and making any adjustments for positive or negative operating performance that is not yet reflected in the Financial Model Update.

Termination for Extended Delay

Either Party, following consultation with the other Party, may deliver to the other Party notice of its conditional election to terminate the P3 Agreement if an Extended Delay has occurred and is continuing.

If the Contracting Authority gives notice of conditional election to terminate for Extended Delay, then the Company will either accept such notice or give notice to the Contracting Authority to continue performing its obligations under the P3 Agreement and without limiting any of the Contracting Authority’s other rights under the P3 Agreement. The Company will deliver to the Contracting Authority notice of the Company’s choice within 30 days after its receipt of notice from the Contracting Authority. The Company may also dispute the Contracting Authority’s right to terminate, in which case the notice will state that the Company elects to continue to perform its obligations under the P3 Agreement pending resolution of the Dispute subject to the provisions described below. If the Company does not deliver such notice within such 30-day period, then the Company will be deemed to have accepted the Contracting Authority’s election to terminate the P3 Agreement.
If the Company delivers timely notice (1) choosing to continue performing its obligations under the P3 Agreement following receipt of a conditional election to terminate for an Extended Delay, without disputing the Contracting Authority’s right to terminate or (2) disputing the Contracting Authority’s right to terminate, then:

(a) The Contracting Authority will have no obligation to compensate the Company for any costs of restoration, repair or replacement arising out of, relating to or resulting from the Extended Delay;

(b) The Contracting Authority will have no obligation to compensate the Company for any loss of Availability Payments and/or, if applicable, for any other Incremental Costs or Delay Costs arising out of, relating to or resulting from the continuation of the Extended Delay beyond the date of the Contracting Authority’s notice;

(c) If the Extended Delay commences before the Revenue Service Availability Date and results in a delay to the Critical Path, then the provisions of the P3 Agreement concerning time extensions and payment of Delay Interest for delays due to Force Majeure Events will apply; and

(d) The P3 Agreement will continue in full force and effect and the Contracting Authority’s election to terminate for an Extended Delay will not take effect.

If the Company gives notice of conditional election to terminate, then the Contracting Authority may either accept such notice or continue the P3 Agreement in effect by delivering to the Company notice of the Contracting Authority’s choice within thirty (30) days after the Company delivers its notice. If the Contracting Authority wishes to dispute the Company’s right to terminate, then it will include in its notice both the Contracting Authority’s choice and a notice of dispute, in which case the Contracting Authority’s choice will be contingent upon resolution of the Dispute in favor of the Company. If the Contracting Authority does not deliver such notice within such thirty (30)-day period, then it will be deemed to have accepted the Company’s election to terminate the P3 Agreement.

If the Contracting Authority delivers timely notice choosing to continue the P3 Agreement in effect, then the following provisions will apply:

(a) For an Extended Delay for an Extended DB Force Majeure Event or Extended OM Force Majeure Event that has resulted in damage or loss to a material portion of the Purple Line that the Contracting Authority has determined is not in the public interest to repair or replace, the Contracting Authority will pay or reimburse the Company an amount equal to (without double counting):

(i) The Incremental Costs to repair, restore or replace any physical loss or damage to the Purple Line and Delay Costs, if any, directly caused by the Extended Delay which are not excluded under the provisions for compensation for Relief Events in general and are incurred after the date the Company delivers its notice of conditional election to terminate; plus

(ii) The sum of (A) the greater of (x) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried and provides coverage to pay, reimburse or provide for any of the foregoing costs and losses or (y) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring the Company under policies solely with respect to the Purple Line and the Work, regardless of whether required to be carried, and that provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, and (B) the foregoing costs and losses that the Company is deemed to have self-insured.

(b) The Company’s rights to an extension of time, compensation, excuse from compliance and other relief under Contracting Authority Changes and Relief Events will continue to apply with respect to the Extended Delay.

(c) The P3 Agreement will continue in full force and effect and the Company’s election to terminate for an Extended Delay will not take effect.

If any Extended Delay results in three hundred sixty-five (365) or more days of Critical Path delay, either Party may deliver to the other Party a notice of its unconditional election to terminate the P3 Agreement, in which case neither Party will have any further option to continue the P3 Agreement in effect. If the Company previously
provided a notice of conditional election to terminate for Extended Delay and the Contracting Authority opted to continue the P3 Agreement in effect, the Company’s right to issue a notice of unconditional election to terminate will not accrue unless and until an additional three hundred sixty-five (365) days of Extended Delays have accumulated after the date of the Company’s notice of conditional election to terminate.

If a Termination Due to Extended Delay occurs, the Company will be entitled to compensation as described below.

*Termination for Insurance Unavailability*

If it becomes apparent that insurance required under the Contract Documents is not available as described in the definition of “Insurance Unavailability”, the Contracting Authority may deliver to the Company notice of its conditional election to terminate the P3 Agreement for Insurance Unavailability.

If the Contracting Authority gives notice of conditional election to terminate for Insurance Unavailability, then the Company will either accept such notice or give notice to the Contracting Authority to continue performing its obligations under the P3 Agreement and without limiting any of the Contracting Authority’s other rights under P3 Agreement. The Company will deliver to the Contracting Authority notice of the Company’s choice within thirty (30) days after its receipt of notice from the Contracting Authority. The Company may also dispute the Contracting Authority’s right to terminate, in which case the notice will state that the Company elects to continue to perform its obligations under the P3 Agreement pending resolution of the Dispute subject to the provisions described below. If the Company does not deliver such notice within such thirty (30)-day period, then the Company will be deemed to have accepted the Contracting Authority’s election to terminate the P3 Agreement.

If the Company delivers timely notice (1) choosing to continue performing its obligations under the P3 Agreement following receipt of a conditional election to terminate for Insurance Unavailability, without disputing the Contracting Authority’s right to terminate or (2) disputing the Contracting Authority’s right to terminate, then:

(a) The Contracting Authority will have no liability to any Concessionaire-Related Entity, Collateral Agent or Lender for harm or loss from the risks that are the subject of Insurance Unavailability;

(b) The Company may request that the Contracting Authority reimburse the Company up to the full amount of insurance coverage that the Company would have been obligated to carry had such coverage been commercially available, and on the terms, and subject to the conditions, of such insurance coverage except to the extent caused by the fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the Contract Documents of or by any Concessionaire-Related Entity, Collateral Agent or Lender;

(c) The Company will credit to the Contracting Authority, as part of the insurance adjustment to the Payment Mechanism, all insurance premiums reflected in the most recent Financial Model Update that are the subject of, and during the period of, Insurance Unavailability;

(d) The Company will promptly and diligently repair and restore all damage and destruction to the Purple Line arising out of, relating to or resulting from Losses born of risks that are not covered by insurance due to Insurance Unavailability, in order to put the Purple Line in a safe, good and sound condition in compliance with all applicable requirements of the Contract Documents; and

(e) The P3 Agreement will continue in full force and effect and the Contracting Authority’s election to terminate on the basis of Insurance Unavailability will not take effect.

If the Contracting Authority delivers to the Company notice of its conditional election to terminate P3 Agreement for Insurance Unavailability, and if the Company delivers timely notice choosing to continue to perform its obligations under the P3 Agreement, and if during the period of such Insurance Unavailability (during which the Contracting Authority is the insurer of last resort), the Purple Line suffers a Loss for which the Insurance Policy that was the subject of the Insurance Unavailability would have been in place, but for the Insurance Unavailability, and such Loss (or a reasonable estimate of such Loss, determined by the Contracting Authority) exceeds $50,000,000, then the Contracting Authority will have the unconditional right to terminate the P3 Agreement for Insurance
Unavailability by notice to the Company. Compensation for such termination will be in an amount equal to the Project Debt Termination Amount, described below.

Termination Due to Court Ruling

If grounds for Termination Due to Court Ruling exist, either Party has the right to terminate. Termination Due to Court Ruling means either:

(a) Inability of the Parties to reach agreement regarding modifications to the Contract Documents to return the Parties to the benefits of their original bargain following a court ruling holding that any material provision of the Contract Documents is unenforceable or invalid; or

(b) Issuance of a final, non-appealable order by a court of competent jurisdiction (i) permanently enjoining or prohibiting performance or completion of the Construction Work for a material portion of the Purple Line, except where such injunction or prohibition is attributable to the Company’s acts, omissions, negligence, willful misconduct, fraud, breach of an obligation under the Contract Documents or violation of Law or an applicable Governmental Approval, or (ii) requiring the Contracting Authority, on its own or in concert with FTA, to undertake additional or supplemental evaluations, studies or other work under Environmental Approvals that, in the Contracting Authority’s discretion, is impracticable in light of the purpose and intent of the P3 Agreement.

Any Party that wishes to terminate will consult with the other before delivering a termination notice. Any notice of Termination Due to Court Ruling will be effective ten (10) Business Days after delivery unless (a) a later date is specified in the notice, (b) the notice is withdrawn or (c) within said ten (10)-day period the other Party delivers an objection to the first Party contesting the first Party’s right to terminate. Any disagreement regarding the right to terminate will be resolved under the Dispute Resolution Procedures.

If a Termination Due to Court Ruling occurs, the Company will be entitled to compensation as described below.

Termination Compensation for Termination for Extended Delay, Insurance Unavailability or Court Ruling

If either Party accepts the other Party’s conditional election to terminate, or if either Party delivers notice of its unconditional election to terminate, then the P3 Agreement will be deemed terminated on an Early Termination Date; and the Company will be entitled to compensation. If the P3 Agreement is terminated for Extended Delay, Insurance Unavailability or a Court Ruling, the Contracting Authority will pay compensation to the Company (or to Collateral Agent or the Company’s Lenders, as applicable) in an amount equal to (a) the Project Debt Termination Amount plus the Outstanding Committed Investment plus Contract Termination Costs, less (b) available Credit Balances and Insurance Proceeds, to the extent not already taken account in calculating any of the amounts included in item (a).

“Project Debt Termination Amount” means A plus B minus the sum of C, D and E, where:

A = All outstanding principal (including principal resulting from the capitalization of interest during the Design-Build Period) of the Project Debt other than Subordinate Debt and accrued but unpaid interest on Project Debt other than Subordinate Debt;

B = All Breakage Costs payable by the Company as a result of prepayment of the outstanding amounts of such Project Debt, subject to the obligation of the Company and each of the Lenders to take reasonable steps to mitigate damages included in the amounts payable;

C = Any amounts payable to or for the benefit of the Company resulting from prepayment of outstanding Project Debt (including credits payable to the Company under swap agreements), unless already accounted for in B;

D = The sum of any amounts included in A or B that did not accumulate as a result of a Contracting Authority Default and that are based on or include (i) accrued interest that the Company failed to pay when due, including any such interest that has been added to principal, or (ii) increased rates of interest based on a default, late charges and penalties, including any such items added to principal; and
E = Any portion of Availability Payments previously made by the Contracting Authority intended to be used to pay Project Debt but not yet applied for that purpose.

**Termination for Concessionaire Default**

Any Concessionaire Default except for failure to achieve Financial Close by the Financial Close Deadline would result in material and substantial harm to the Contracting Authority’s rights and interests under the P3 Agreement and therefore constitutes a material Concessionaire Default justifying termination of the P3 Agreement, unless fully and completely cured within the applicable cure period, any extended cure period available or any cure period available to a Lender under a Direct Agreement. A Concessionaire Default will be considered a “Default Termination Event” if not fully and completely cured prior to expiration of the relevant cure period (if any), or immediately if the Concessionaire Default is not subject to cure.

A Default Termination Event will, subject to the provisions of the Direct Agreement and provisions regarding the breach by the Company and the Contracting Authority of representation or warranties in Contract Documents or Contracting Authority Default, entitle the Contracting Authority, at its sole election, to terminate the P3 Agreement and the other Contract Documents by delivering notice of termination to (a) the Company and (b) if applicable, the Collateral Agent under the Direct Agreement.

If the Contracting Authority issues notice of termination of the P3 Agreement due to a Default Termination Event, or if the Company terminates the P3 Agreement on grounds or in circumstances beyond the Company’s termination rights under the P3 Agreement, the Company will be entitled to compensation, as described below.

**Termination Compensation for Concessionaire Default During Design-Build Period**

If the P3 Agreement is terminated before the Revenue Service Availability Date, and no Lender has duly exercised and consummated an option to obtain New Agreements from the Contracting Authority under any Direct Agreement, then the Contracting Authority will pay compensation to the Company (or to Collateral Agent or the Company’s Lenders, as applicable). The Contracting Authority may determine the amount payable using the Market Re-Solicitation Method if a Liquid Market exists and otherwise will use the Desktop Method described below to make such determination.

If the Contracting Authority elects to remarket the P3 Agreement, it will follow the Resolicitation Process, determine the Adjusted Resolicited Agreement Price and notify the Company regarding the amount. If the Adjusted Resolicited Agreement Price is a positive amount, the Termination Compensation will be equal to the Adjusted Resolicited Agreement Price. In such event, the Contracting Authority will coordinate with the Company to determine compensation owing to the Company, with the goal of incorporating such compensation into the closing for the resolicited agreement. If the Parties are unable to reach agreement prior to such closing regarding any amounts payable at closing, closing will proceed and the disputed amount(s) will be subject to the Dispute Resolution Procedures and, upon closing, held in escrow pending resolution of the Dispute. If the Adjusted Resolicited Agreement Price is zero or is a negative amount, then the Contracting Authority will have no obligation to make any payment to the Company. If the Adjusted Resolicited Agreement Price is a negative amount, then the Company will, within thirty (30) days after receipt of an invoice from the Contracting Authority, pay to the Contracting Authority the dollar amount equal to the absolute value of the negative amount.

The amount payable to the Company will be determined using a desktop method if the Contracting Authority elects not to remarket the P3 Agreement or if, after seeking to remarket the P3 Agreement, the Contracting Authority (a) does not receive any Qualifying Proposals for the P3 Agreement or, even though the Contracting Authority has received at least one Qualifying Proposal, it cannot come to terms with a selected counterparty so as to enter into a Resolicited Agreement or (b) the selected counterparty otherwise fails or refuses to enter into a Resolicited Agreement. In such event the Contracting Authority will promptly notify the Company that Termination Compensation will be determined based on a Desktop Method and will proceed to determine the Estimated Fair Value of the P3 Agreement as described below. The Company is responsible for providing data to the Contracting Authority to enable the calculation to be made, including backup information and certifications from the Company (or from Collateral Agent or the Company’s Lenders, as applicable) and Collateral Agent stating that the data and information provided is complete and accurate. Within sixty (60) days after receipt of all necessary data, the Contracting Authority will complete the calculation and will notify the Company in writing of the Adjusted
Estimated Fair Value owing, with backup information regarding the calculation. If the transition plan developed
requires the Company to perform Work during the period between the Termination Date and the Termination
Compensation Date, the Contracting Authority will pay to the Company the Post-Termination Services Amount on a
monthly basis in arrears until (i) the Contracting Authority directs the Company to stop Work or (ii) if no such
direction is provided, completion of all remaining Work required to be performed by the Company under the
transition plan. Within ninety (90) days after the date of delivery of the notice the Contracting Authority will pay the
Adjusted Estimated Fair Value.

The Adjusted Estimated Fair Value will be the least of the following:

(a) the Adjusted Estimated Fair Value calculated by using an Estimated Fair Value that is equal to the
Project Adjusted Costs;

(b) the Adjusted Estimated Fair Value calculated by using an Estimated Fair Value that is equal to the
costs shown in the Company’s Work Breakdown Structure, multiplied by the percentage of completion minus the
sum of Progress Payments, the RSA Payment, the Final Completion Payment and any unscheduled payments
(including those related to Relief Events and Change Orders) previously paid for Work made by the Contracting
Authority to the Company; and

(c) 80% of the Project Debt Termination Amount.

Termination Compensation for Concessionaire Default During O&M Period

If a termination occurs for Concessionaire Default on or after the Revenue Service Availability Date, and
no Lender has duly exercised and consummated an option to obtain New Agreements from the Contracting
Authority pursuant to the Direct Agreement, then the Contracting Authority will pay compensation to the Company
(or to Collateral Agent or the Company’s Lenders, as applicable). The Contracting Authority may determine the
amount payable using the Market Re-Solicitation Method if a Liquid Market exists and otherwise will use the
Desktop Method described below to make such determination.

If the Contracting Authority elects to use the Market Re-Solicitation Method, then Termination
Compensation will be determined and will be due and payable as stated above for compensation during the Design-
Build Period.

If the Contracting Authority elects to use the Desktop Method, then Termination Compensation will be
determined and will be due and payable as stated above for compensation during the Design-Build Period, except
that the Adjusted Estimated Fair Value will be the lesser of:

(a) Adjusted Estimated Fair Value calculated by using an Estimated Fair Value that is equal to the
Project Adjusted Costs plus the sum of capitalized interest during the Design-Build Period minus
(i) the total Project Debt principal repaid on the portion of Project Adjusted Costs funded with
Project Debt (excluding principal repayments on the portion of the Project Debt that is repaid from
the RSA Payment or the Final Completion Payment); minus (ii) the value of the Project Adjusted
Costs funded with Committed Investment determined using a straight line amortization schedule
over 30 years commencing on the RSA Date; and

(b) 80% of the Project Debt Termination Amount.

Notwithstanding anything to the contrary in the Contract Documents, termination of the P3 Agreement will
not give rise to Termination Compensation if any Lender enters into New Agreements from the Contracting
Authority pursuant to the P3 Direct Agreement.

Company Rights to Terminate

The Company may terminate the P3 Agreement in the event of a Contracting Authority Default involving
an undisputed payment of $1 million or more if the Contracting Authority has failed to cure such default following
delivery of certain warning notices. The Company will provide a warning notice to the Contracting Authority at
least fifteen (15) days before terminating, which notice may not be delivered until thirty (30) days after delivery of
the notice for Contracting Authority Default. The Company will provide a second warning notice to the Contracting Authority at least five (5) days before terminating, which notice may not be delivered until ten (10) days after delivery of the first warning notice. If the Contracting Authority fails to effect cure within five days after the date of delivery of the second warning notice, the Company will have the right to terminate the P3 Agreement by delivery of notice to that effect to the Contracting Authority delivered at any time before the default is cured.

If any order to suspend all or a material portion of the Work is issued (or deemed issued) by the Contracting Authority for its convenience and continues for a period of two hundred seventy (270) days or more, the Company may terminate the P3 Agreement, effective immediately upon delivery of notice of termination to the Contracting Authority delivered at any time before the suspension is lifted.

If the Company’s Financial Proposal includes a TIFIA Loan, and (a) USDOT requires execution of the “New Starts Full Funding Grant Agreement” as a requirement for draw on such TIFIA Loan, (b) the Contracting Authority fails to execute the “New Starts Full Funding Grant Agreement” prior to May 17, 2018, and (c) the Contracting Authority and the Company have not agreed, in writing, and subject to any approval rights of Lenders then holding Project Debt (other than the TIFIA Loan), upon alternative arrangements with respect to the “New Starts Grant Agreement” prior to April 2, 2018, then the Company may terminate the P3 Agreement, effective immediately upon the Contracting Authority’s receipt of the Company’s notice of termination delivered at any time on or after such date.

In the event of a Company termination, the Company will be entitled to compensation due and payable and determined in accordance with the calculation described above for Termination for Convenience. Any Dispute arising out of the determination of such compensation will be resolved under the Dispute Resolution Procedures.

The Company may not terminate the P3 Agreement for a Contracting Authority Default involving an undisputed payment of $1 million or more if, at the time the Company’s right to terminate would arise, circumstances exist entitling either party to terminate the P3 Agreement under certain other provisions.

**Handback Requirements**

No later than five calendar years before the end of the Term or within a reasonable period before any Early Termination Date, the Company and the Contracting Authority will jointly (a) identify the Renewal Work required for the Purple Line to be in the condition and meet all of the requirements for Residual Life at the conclusion of the Term specified in the Handback Requirements and (b) determine the schedule (and the Company’s estimated budget) for the performance, the Contracting Authority inspection and the Company completion of all such Renewal Work. Such information and schedule for Renewal Work during the five calendar years before the end of the Term or the remaining period before any Early Termination Date will become the Handback Renewal Work Plan and be a separate document from, but complementary to, the Asset Management Plan. No later than ninety (90) days before the beginning of each subsequent calendar year, the Company will update the Handback Renewal Work Plan and provide the update to the Contracting Authority. Following delivery of the update the Parties will meet to discuss whether any changes should be made to the scope or schedule for performance of the Renewal Work.

Subject to the handback inspection provisions described in “—Handback Requirements; the Contracting Authority’s Right to Self-Perform and Recover Costs” below, all Handback Renewal Work will be completed no later than the earlier of the date of the expiration of the Term and the Early Termination Date.

**Handback Requirements; the Contracting Authority’s Right to Self-Perform and Recover Costs**

On or before the date of Handback, and as a condition to acceptance of Handback by the Contracting Authority, the Company will, and will cause its Contractors to, deliver all specialized equipment used in operation and maintenance of the System, which, in each case, will be mechanically, electrically and structurally sound, as applicable, and ready for and capable of being operated, and otherwise used safely, in the normal course of business by the Contracting Authority after Handback.

If, before or at the end of the Term, the Contracting Authority determines that the Purple Line does not comply with any Handback Requirement, or Renewal Work is not timely or properly performed, then, in addition to the Contracting Authority’s rights under the Contract Documents, the Company will be liable for the Contracting
Authority’s Recoverable Costs incurred in bringing the Purple Line into compliance with such Handback Requirement(s). In recovering such amounts, the Contracting Authority may (a) reduce any Availability Payment then due and owing from the Contracting Authority to the Company, (b) invoice the Company for such amount, as a lump sum payment, (c) set off such amount against any other amount then due and owing from the Contracting Authority to the Company, (d) draw against funds withheld under the Handback Requirements holdback provisions (as described in “—Scope of Services—Handback”) or against the letter of credit that the Company may provide to secure its obligation to perform Renewal Work, (e) require funds in the reserve account described below to be used to pay for required Renewal Work, or (f) any combination of (a) through (e).

Dispute Resolution

The Parties will designate a Technical DRB to address technical issues, and a Financial DRB to address financial issues arising during the Term. A Dispute may be referred to either, both or a joint session of the DRBs, depending on the nature of the issues in dispute. In the case of an individual session of the Technical DRB or Financial DRB, the DRB will be composed of three independent members, one selected by the Company, one selected by the Contracting Authority, and the third selected by the first two members. In the case of a joint session of the Technical DRB and Financial DRB, the DRB will be composed of (a) three members selected as for an individual session above; or (b) where the Parties agree, five independent members, two selected by the Company, two selected by the Contracting Authority, and the fifth selected by the first four members.

The Parties will have the right to submit written evidence to the DRB regarding the Dispute, and will be given an opportunity to respond to the evidence presented by the other, including participating in a hearing to the extent the DRB calls one in relation to a particular Dispute. The DRB will have sixty (60) days to provide notice of its decision and summary of reasons for the decision reached.

A limited category of Disputes will be outside of the jurisdiction of the DRBs and will be directly referred to the MDOT Secretary for resolution rather than a DRB. The following Disputes are outside of the jurisdiction of the DRBs: (a) the interpretation or application of the Contracting Authority codes and standards over which the Contracting Authority has jurisdiction for enforcement in its capacity as a regulator, and (b) Disputes involving interpretation of federal or State Law or policies.

The decision of the DRB is not binding. Unless both Parties agree in writing to the contrary, the decision of the DRB will not be admissible in any judicial proceeding. Referral of a matter to the DRB is not mandatory and does not waive the requirements to file timely notice of Claim(s).

Assignment and Transfer

The Company will provide all information and complete all such actions required by the Contracting Authority to enable the Contracting Authority to comply with the statutory requirements of the Act and/or seek the Contracting Authority and Board of Public Works approval in connection with any Change of Ownership.

The Company will not voluntarily or involuntarily effect or allow any Change of Ownership unless (a) it has been approved by the Contracting Authority in writing and is otherwise in compliance with applicable restrictions on a Change of Ownership, including any restrictions that may be imposed by the Contracting Authority and/or the Board of Public Works, or (b) it is a pre-approved Change of Ownership identified below.

Any purported voluntary or involuntary assignment, sale, assignment, financing, grant of security interest, hypothecation, conveyance, transfer of interest, pledge, mortgage, encumbrance, grant of right of entry, or grant of other use, special use or right to, management or control of the Purple Line or the Company’s Interest or other change (“Equity Change(s)”) in violation of assignment provisions will be null and void ab initio, and the Contracting Authority, at its option, may declare any such attempted action to be a material Concessionaire Default.

Except for certain Equity Changes specified in the P3 Agreement, the Company will provide a written request for approval, accompanied by all information the Contracting Authority may deem relevant to the request for approval. The Contracting Authority may evaluate and require qualification of any entity(ies) involved, including a determination of whether the Equity Change would increase or decrease project risk for the Contracting Authority, positively or negatively affect the ability of the Company or Purple Line to perform, and a review and approval of
the identity, financial resources, qualifications, experience, technical capacity, potential conflicts of interest, and responsibility of any entity(ies) involved.

Certain remote Equity Changes are pre-approved, and are subject to the conditions as described below under “—Remote Equity Changes and Equity Changes Required for Financing.” In addition, the Contracting Authority may consider requests for an Equity Change prior to two years after the Revenue Service Availability Date when such Equity Change is in the best interest of the Contracting Authority and the Contracting Authority receives a 50% share in any positive net proceeds at the time of the Equity Change; provided, however, that any consideration of Company requests for Equity Changes prior to two years after the Revenue Service Availability Date remains subject to certain restrictions.

Assignment by the Contracting Authority

The Contracting Authority may assign all or any portion of its right, title and interest in the Contract Documents, Payment Bonds and Performance Security, guarantees, letters of credit and other security for payment or performance, (a) with ten (10) days’ prior notice to the Company but without the Company’s consent, to any other Governmental Entity of the State that succeeds to the governmental powers and authority of the Contracting Authority by operation of law and (b) to others with the prior written consent of the Company.

Assumption

Each transferee of the Company’s Interest, including any Person who acquires the Company’s Interest through foreclosure, transfer in lieu of foreclosure or similar proceeding, will execute and deliver to the Contracting Authority an assumption agreement in form acceptable to the Contracting Authority, providing that the transferee takes the Company’s Interest subject to, and will be bound by, the Project Management Plan, including Concessionaire’s Design Quality Plan and Construction Quality Plan, the O&M Management Plan, the Key Contracts, the Utility Agreements, the Governmental Approvals, all agreements between the transferor and third parties, and all agreements between the transferor and Governmental Entities with jurisdiction over the Purple Line or the Work, except to the extent otherwise approved by the Contracting Authority.

Governing Law and Jurisdiction

The Company consents to jurisdiction in the courts of the State or the U.S. District Court for the District of Maryland, with respect to any claim that the Contracting Authority may have against the Company arising out of, relating to or resulting from any matter relating to the P3 Agreement. The Company waives any defense of forum non conveniens. The P3 Agreement will be construed and interpreted in accordance with the laws of the State, except to the extent that United States federal law otherwise applies. Disputes arising out of, relating to or resulting from the P3 Agreement will be determined by a competent State court in the State, unless a Maryland court lacks jurisdiction over the action, in which case the matter will be submitted to the U.S. District Court for the District of Maryland, assuming it has jurisdiction.

First Amendment to the P3 Agreement

The Contracting Authority and the Company expect to execute, on or before Financial Close, the first amendment to the P3 Agreement, currently in draft form, which amendment clarifies and updates provisions of the P3 Agreement. Consistent with the Collateral Agency Agreement structure, the amendment would allow the Collateral Agent, rather than the Contracting Authority to be the beneficiary of any letter of credit provided in lieu of direct investment by Sponsors in the Company (thus amending the definition of Committed Investment). The amendment would also clarify that the Rehabilitation Reserve Account established and funded by the Company pursuant to the TIFIA Loan Agreement is the same reserve account initially referred to as the handback reserve account for the purposes of the P3 Agreement. See APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Handback Requirements—Handback Requirements Holdback.” In addition, the amendment will document the revised values for the general portion (i.e., “MAPG”) of the Availability Payments to account for the changes in the benchmark interest rates and credit spreads from the rates the Company submitted in its proposal to the Contracting Authority.
The foregoing is a summary of certain provisions of the draft first amendment to the P3 Agreement and is not a full statement of the terms of such amendment. Accordingly, the foregoing summary is qualified in its entirety by reference to such amendment and is subject to the full text of the final amendment to be executed on or prior to Financial Close. A copy of such amendment will be available following its execution, free of charge, upon request from the Company or the Trustee.

The Design-Build Contract

Design and construction work for the Project will be undertaken by the Design-Build Contractor pursuant to the Design-Build Contract, dated as of April 7, 2016, between the Company and the Design-Build Contractor. The Design-Build Contract includes, on a fixed-price, lump-sum, date-certain, turn-key basis, substantially all work and services required or appropriate in connection with the design and construction of the Purple Line (including performing the Company’s obligations with respect to design and construction under the P3 Agreement), except to the extent expressly excluded in the Design-Build Contract.

Scope of Work

The Design-Build Contractor is responsible for the design, engineering, procurement, construction, commissioning, start-up, demonstration, testing and completion of the Project, including the provision of all materials, equipment, machinery, tools, labor, supervision, transportation, administration, training and other services and items necessary to complete the Project generally described in or reasonably inferable from the P3 Agreement and the Design-Build Contract, in accordance with all applicable laws, governmental approvals, good industry practice, the requirements of the P3 Agreement, the other requirements specified in the Design-Build Contract and the other Contract Documents.

Subject to limited exceptions specified in the Design-Build Contract, the scope of the work under the Design-Build Contract (the “DB Work”) includes:

Supply of LRVs and Fare System Equipment

The Design-Build Contractor is required under the Design-Build Contract to procure LRVs (including option LRVs) from the LRV Supplier meeting the requirements of the Contract Documents and ensure that LRVs are properly integrated with the system. The Design-Build Contractor is also required to supply and install a fare collection system and ensure that the fare collection system meets the requirements of the Contract Documents, that it is integrated with the system, properly interfaces with the Contracting Authority’s accounting system and WMATA’s New Electronic Payment Program and enables the Company to meet the performance requirements relating to fare collection. In addition, the Design-Build Contractor is obligated to deliver the O&M Spare LRV to the Contracting Authority, on behalf of the Company, within the time required by the Design-Build Contract. The Design-Build Contractor is responsible for correcting all fleet defects in the LRVs, option LRVs (the delivery of which is the Design-Build Contractor’s responsibility under the Design-Build Contract) and perform the successful commissioning, testing and acceptance of all components of the DB Work, including operational readiness of the LRVs, subsystems and fare system equipment, as set forth in the Design-Build Contract.

Acquisition of Real Property

Under the P3 Agreement, the Contracting Authority has identified certain property to be used for the Project, and the Contracting Authority is required under the P3 Agreement to acquire, at its cost, the Project right-of-way and certain other property in the time periods identified in a property acquisition schedule. If the Design-Build Contractor considers that additional real property interests are required for the permanent system improvements or third-party work and were erroneously excluded from the property acquisition schedule, the Design-Build Contractor may request that the Company seek that the Contracting Authority, at its cost, acquire these additional real property interests, and the Contracting Authority has agreed under the P3 Agreement to add such real property interests to the property acquisition schedule if it determines that such real property interests are necessary. In addition, the Design-Build Contractor is solely responsible for the acquisition of (and costs relating to) temporary property interests. Real property required for utility easements will be considered an additional property for which the Design-Build Contractor is required to pay fifty percent (50%) of the acquisition costs. If it is impracticable to design the Project to avoid the need for the additional utility easement or if the utility easement is required as the
result of an unreasonable refusal or delay by the utility owner to approve placement of utility adjustments, then the Contracting Authority agreed under the P3 Agreement to be responsible for the costs of acquiring such real property.

**Utilities**

The Design-Build Contractor is responsible for (a) ensuring that all utility adjustments necessary to accommodate the Project are completed in accordance with the Project schedule and the requirements of the Contract Documents; (b) conducting reasonable site investigation and exploration before commencement of the DB Work in any particular area to correctly identify all utilities in the area; (c) including in the design of the Purple Line all utilities identified by the Design-Build Contractor to ensure that utility services are not mistakenly disrupted by the construction portion of the DB Work; and (d) coordinating, monitoring and otherwise undertaking appropriate efforts to ensure timely performance of utility work by utility owners, in coordination with the DB Work, and in compliance with the requirements specified in the Contract Documents and the Contracting Authority’s utility agreements.

Subject to certain limitations in the Design-Build Contract, the Design-Build Contractor is responsible for proper completion of all utility work required for the Project, in accordance with the Contract Documents, regardless of the nature or provisions of the utility agreements and regardless of whether the Design-Build Contractor or its subcontractors, or the utility owner or its contractors, are performing the utility work. Under the Design-Build Contract, the Design-Build Contractor will not be permitted any extension of time for delays associated with utility work, and no additional compensation will be allowed relating to utility work, except to the extent specifically permitted by the Contract Documents. Subject to the requirements and limitations contained in the Design-Build Contract, the risk of additional costs directly attributable to a utility owner’s delays will be shared between the Contracting Authority and the Design-Build Contractor in accordance with the Design-Build Contract. For a more detailed description, see APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Relief Event, Force Majeure Event and Non-Company Caused Disruption Claim Process—Utility Owner Delays.”

**Hazardous Materials**

Subject to certain exceptions set forth in the Design-Build Contract, the Design-Build Contractor is required to perform all hazardous materials management required in connection with the DB Work in accordance with the Design-Build Contract. If the Design-Build Contractor fails to undertake the hazardous materials management required under the Design-Build Contract within a reasonable time after discovery of hazardous materials in accordance with the Design-Build Contract, the Company may notify the Design-Build Contractor that it will undertake the hazardous materials management itself. The Contracting Authority under the P3 Agreement may also undertake the hazardous materials management and the Company or the Contracting Authority, as applicable, may draw against the hazardous materials remediation allowance for costs that would have been payable to the Design-Build Contractor from the allowance. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Contract Price and Payments—Contract Price.”

The Design-Build Contractor is also responsible, on behalf of the Company, until the DB RSA Date, for the management of all pre-existing hazardous materials encountered in connection with the Project, in compliance with applicable law, subject to certain limitations set forth in the Design-Build Contract. The Design-Build Contractor bears all risk of the Company under the P3 Agreement associated with the discovery of hazardous materials within the site during the time set forth in the Design-Build Contract, except that the Design-Build Contractor is entitled to compensation for hazardous materials management that is payable by the Contracting Authority under the P3 Agreement and, in turn, payable by the Company to the Design-Build Contractor under the Design-Build Contract, for losses arising from the management of pre-existing hazardous materials or from the hazardous materials allowance. In addition, the Design-Build Contractor shares the risk with the Contracting Authority relating to certain hazardous waste conditions relating to the demolition. For a more detailed description of these shared risks, see APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Relief Event, Force Majeure Event and Non Company Caused Disruption Claim Process—Hazardous Materials Relief Events.”
Site Conditions

The Design-Build Contractor acknowledged in the Design-Build Contract that it has investigated and satisfied itself as to the conditions affecting the DB Work, including as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including the results of exploratory work and other information provided to the Design-Build Contractor. Subject to certain exceptions specified in the Design-Build Contract, the Design-Build Contractor is not entitled under the Design-Build Contract to claim that any condition constitutes a differing site condition or that discovery of any paleontological or cultural (including archaeological and historic) resources, or threatened or endangered species constitutes a Relief Event if the Design-Build Contractor had actual knowledge regarding such conditions or resources as of the proposal date or such condition or resource would have become known to the Design-Build Contractor based on a reasonable investigation of the area before the Setting Date and review of other information available to the Design-Build Contractor, consistent with good industry practice, but the Design-Build Contractor may rely upon the determination of “no effect” on any endangered species by federal agencies as included in the Record of Decision. Notwithstanding the foregoing, the resolution of certain litigation regarding threatened or endangered species may entitle the Design-Build Contractor to relief. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Scope of Work—Site Conditions.”

Governmental Approvals

The Design-Build Contractor is responsible for obtaining all governmental approvals required for the DB Work, other than approvals provided by the Contracting Authority, and bears the risk of any delay in obtaining approvals, as well as the risk of conditions imposed on performance of the DB Work by the approvals.

Maintenance of Traffic

Other than with respect to the Company’s contractors (excluding the O&M Contractor), the Design-Build Contractor is required, to the extent required by the P3 Agreement, up until the DB RSA Date, to maintain traffic so as to ensure the safe and efficient passage of all pedestrians, bicycles and vehicular traffic through and around work areas, while maintaining safety and accessibility for all workers on the Project and minimizing adverse impacts on residents, visitors, businesses and road users. The Design-Build Contractor is required to conduct the DB Work at all times in a manner and in a sequence as will assure the least obstruction to all forms of traffic and minimal interference with the public. To the extent assessed by the Contracting Authority, the Design-Build Contractor will be liable for and pay to the Company (who will in turn pay the same over to the Contracting Authority) liquidated damages in accordance with the P3 Agreement with respect to low traffic control ratings received by the Design-Build Contractor during the Design-Build Period and for any failure of the Design-Build Contractor to restore full traffic capacity as described in the P3 Agreement.

Back-to-Back Relief Provisions

Under the Design-Build Contract, subject to certain exceptions (including with respect to Company-caused delays and any Company’s DB Work suspension), the Design-Build Contractor is only entitled to compensation or relief in the event and only to the extent that the Company actually receives the corresponding compensation or relief under the P3 Agreement. If the Company’s failure to receive payment or other relief to which it is otherwise entitled under the P3 Agreement (and to which the Design-Build Contractor is entitled under the Design-Build Contract) is solely a result of the Company’s failure to comply with its obligations under the Design-Build Contract and the P3 Agreement that is not attributable to the Design-Build Contractor, then the Design-Build Contractor is entitled to payment or other relief from the Company under the Design-Build Contract that the Design-Build Contractor would be otherwise entitled but for the Company’s failure to so comply.

Schedule of Performance

The Design-Build Contractor is required to the complete the DB Work by the specified deadlines set forth in the Design-Build Contract, subject only to extensions of time as expressly permitted in the Design-Build Contract. The Design-Build Contractor guarantees that DB Revenue Service Availability will occur on or before the Guaranteed DB RSA Date. Failure to achieve DB Revenue Service Availability by the Guaranteed DB Long Stop
Date is a Design-Build Contractor’s default under the Design-Build Contract. DB Revenue Service Availability under the Design-Build Contract is achieved when the Design-Build Contractor has satisfied the specified requirements set forth in the Design-Build Contract such that the Company can operate the system, as evidenced by the Company’s delivery to the Design-Build Contractor of the fully countersigned DB Revenue Service Availability certificate pursuant to the Design-Build Contract. To the extent the Design-Build Contractor falls behind the schedule of performance, it may, under the Design-Build Contract, be required to submit to the Contracting Authority and/or the Company a recovery schedule and/or remedial plan. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Schedule of Performance.”

**Contract Price and Payments**

The Design-Build Contract provides for a firm, fixed-price, lump sum contract price in the amount of $2,009,873,600. The contract price is not subject to adjustment for any reason other than pursuant to a scope change order authorized by the Company or that the Design-Build Contractor is entitled to claim as set forth in the Design-Build Contract, or as determined through the dispute resolution procedures under the Design-Build Contract.

Subject to the terms of the Design-Build Contract, the contract price includes the following allowances: (a) a fare system allowance in the amount of $15,000,000 to reimburse the Design-Build Contractor for amounts paid by the Design-Build Contractor for certain DB Work activities related to the fare system, without markup; (b) a hazardous material remediation allowance in an initial amount of $70,000 for the cost of remediation of hazardous materials; and (c) an allowance for the cost of art in transit in the amount of $6,070,000 to reimburse the Design-Build Contractor for the stipends payable to shortlisted artists and amounts paid to selected artists for their work product and the costs of transportation and installation of the art product, without markup.

The contract price is payable in monthly installments based on the completion of performance elements of the DB Work as specified in the payment and values schedule, subject to the maximum cumulative payment curve, based on the components described in the Design-Build Contract. The Design-Build Contractor is required to submit to the Company a monthly request for payment consisting of the documentation required by the Design-Build Contract, including interim lien and claim waivers, a monthly progress report and any other items that the Contracting Authority requires the Company to submit under the P3 Agreement or the Lenders under the financing documents. Subject to certain limitations set forth in the Design-Build Contract, the Company may withhold all or part of any scheduled payment under certain circumstances, including if a lien has been established against the Project or if the Design-Build Contractor has failed to make payments owing to the Company under the Design-Build Contract. For a detailed description of payments and withholdings under the Design-Build Contract, see APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Contract Price and Payments—Payments.”

**Performance Security**

**Performance and Payment Bonds.** Concurrently with Financial Close, and in no event later than the start of DB Work included in the construction work under the P3 Agreement, the Design-Build Contractor is required to obtain and deliver to the Company (a) one or more payment bonds with an aggregate value equal to 55% of the total value of D&C construction work specified in the P3 Agreement and (b) separate performance security in the form of a surety bond in the same aggregate amount, in each case in accordance with the Design-Build Contract; each with multiple obligee riders naming the Contracting Authority and the Collateral Agent as additional obligees. The performance security in the form of a surety bond must cover the Design-Build Contractor’s obligations under the Design-Build Contract and remain in force until those obligations have been fulfilled. The payment bond(s) and performance security in the form of a surety bond is required to be issued by a surety or insurance company, as applicable, meeting the requirements of applicable law, licensed or authorized to do business in the State and rated at least “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating.

**Letters of Credit.** The Design-Build Contractor is also obligated to provide to the Company, on or before Financial Close, one or more letters of credit, in an initial aggregate amount equal to 50% of potential (a) DB Revenue Service Availability liquidated damages payable up to the Guaranteed DB Long Stop Date and (b) DB Final Completion delay liquidated damages payable up to the DB Final Completion Deadline, to secure performance of the Design-Build Contractor’s obligations to the Company under the Design-Build Contract. The Design-Build
Contract requires that the letters of credit be issued by a commercial bank or trust company that (a) has a combined capital and surplus of at least $5,000,000,000 U.S. Dollars, (b) is a national banking association, a state bank chartered in one of the states of the United States or the United States branch of a foreign bank, (c) has a senior unsecured long-term credit rating (unenhanced by third-party support) equivalent to “A” or better as determined by Standard and Poor’s Ratings Services or its successor, and “A2” or better as determined by Moody’s Investors Service Inc. or its successor and (d) is not an affiliate of the Design-Build Contractor or the Company.

The initial stated aggregate amount of the letters of credit is required to be increased to an aggregate amount equal to 100% of potential (i) DB Revenue Service Availability liquidated damages payable up to the Guaranteed DB Long Stop Date and (ii) DB Final Completion delay liquidated damages payable up to the DB Final Completion Deadline, if at any time prior to the DB RSA Date (but no sooner than three years after commencement of the DB Work included in the construction work) a look forward analysis conducted by the Lenders’ Technical Advisor shows that DB Revenue Service Availability is likely to occur more than sixty (60) days after the Guaranteed DB RSA Date. The stated aggregate amount of the letters of credit may be reduced by the Design-Build Contractor to $12,000,000 as of the DB RSA Date, whereupon the letter(s) of credit will be maintained until expiration of the Warranty Period, at which point each letter of credit will be returned to the Design-Build Contractor. Any time the Company is entitled under the Design-Build Contract to draw on a letter of credit, the Company is entitled, in its sole discretion, to draw on and use proceeds from one or more of the letters of credit in any order, or any other performance security provided by the Design-Build Contractor.

Guaranties. Each of Fluor, Salini and Traylor has executed and delivered to the Company a guaranty as of the effective date of the Design-Build Contract, each guarantying all of the Design-Build Contractor’s obligations under the Design-Build Contract and such obligations to the Company under the Interface Agreement. Any guaranty provided under the Design-Build Contract is required to meet the requirements set forth in the P3 Agreement and be enforceable by the Contracting Authority as a transferee beneficiary under the conditions specified in the P3 Agreement and the Design-Build Contract. Subject to the limited exceptions described in the P3 Agreement and the Design-Build Contract, so long as the Company or a lender is diligently pursuing remedies under a guaranty, the Contracting Authority has agreed under the P3 Agreement to forbear from exercising its right to the guaranties.

Warranties

The Design-Build Contractor warrants and guarantees for the benefit of (a) the Company, (b) the Contracting Authority and (c) to the extent any portion of the DB Work is being performed for third parties, the third parties, that: (i) the design and engineering of the DB Work will be performed in accordance with the standards of care, skill and diligence as would be provided by an engineering firm experienced in supplying similar services nationally in the United States of America for projects of technology, complexity and size similar to that of the DB Work, and otherwise in compliance with the requirements of the Design-Build Contract and the other Contract Documents; (ii) all DB Work will be of good quality, in conformance with the requirements of the Design-Build Contract and the other Contract Documents, and free of defects in material, equipment and workmanship; and (iii) the record documents and the final design documents must be accurate and complete, comply with the requirements of the Design-Build Contract and the other Contract Documents, and accurately reflect the condition of the Project as of the DB RSA Date.

Other than with respect to third-party warranties, the warranty will commence on the DB RSA Date and end on the later of (a) the first anniversary of the DB RSA Date and (b) the date of DB Final Completion, but in no event will the warranty extend later than the second anniversary of the DB RSA Date, with the following exceptions: (i) with respect to any Project component included in the DB Work (regardless of number) that is altered, repaired or replaced, as applicable, pursuant to the warranty, the term of the warranty will run until the later of the expiration of the base warranty period above and the date that is one year after the alteration, repair, or replacement; (ii) the liability period for latent defects will be per the statutory limit; and (iii) the term of the warranty with respect to any LRV (or associated equipment, part, system or component) included in the DB Work that is replaced due to an identified fleet defect will commence on the date of completion of the replacement and continue for the duration of the original, unextended warranty, as provided in the P3 Agreement.
Nonconforming Work

If the Design-Build Contractor has not performed the DB Work in conformity with the Contract Documents, then, in addition to any other remedies available to the Company, the Company may direct the Design-Build Contractor to remove and replace or otherwise remedy the nonconforming DB Work, without entitlement to make a claim for relief in connection with the nonconforming DB Work. The Design-Build Contractor must submit a proposed plan of correction to the Company for its approval describing the error or defect giving rise to the nonconforming DB Work and describing the Design-Build Contractor’s planned remedial action. The Company has the right and authority to cause nonconforming DB Work to be removed, replaced or otherwise remedied and to withhold or deduct the costs from any monies due or that become due to the Design-Build Contractor under the Contract Documents upon (a) any failure of the Design-Build Contractor to provide and obtain the Company’s approval of a remedial plan promptly following discovery of nonconforming work, or (b) any failure of the Design-Build Contractor to comply with the Company’s and/or the Contracting Authority’s direction under the Design-Build Contract relating to any safety issue.

Indemnities

Indemnities by the Design-Build Contractor. The Design-Build Contractor has agreed in the Design-Build Contract to indemnify, defend, and hold harmless the State Indemnified Parties and the Company Indemnified Parties from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys’ and expert witness fees and costs, arising out of, relating to or resulting from, among other things: (a) any act, omission, neglect or misconduct by any Design-Build Contractor-related entity in the manner or method of executing the DB Work satisfactorily or due to the failure to perform the DB Work; (b) the failure or alleged failure by any Design-Build Contractor-related entity to comply with the governmental approvals, any applicable environmental laws or other laws (including laws regarding hazardous materials management) relating to the performance of the DB Work; (c) any Design-Build Contractor-related entity’s performance of, or failure to perform, the obligations under any utility agreement; and (d) any Design-Build Contractor release of hazardous materials and any liabilities resulting therefrom.

In addition, the Design-Build Contractor is required to indemnify, defend and hold harmless the Company Indemnified Parties from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to, among other things: (a) claims by third parties for death, injury or destruction of or damage to property, in each case to the extent caused or contributed to by the negligence or other tortious act, fraud, strict liability or willful misconduct of any Design-Build Contractor-related entity; (b) failure of the Design-Build Contractor to pay any taxes for which it is responsible; (c) failure of the Design-Build Contractor to provide good title (to the extent required by the P3 Agreement) to any portion of the Project included within the DB Work, free and clear of any charge, lien, encumbrance or other security interest; (d) nonpayment of amounts due as a result of furnishing materials or services to the Design-Build Contractor or any of its subcontractors in connection with the DB Work to the extent that the Company has paid the Design-Build Contractor all undisputed amounts then due and payable from the Company to the Design-Build Contractor; or (e) failure by the Design-Build Contractor to possess (or have the right to use) and convey to the Company all intellectual property (or the right to use it) as required in the Design-Build Contract.

Indemnities by the Company. The Company is required to indemnify, defend and hold harmless the Design-Build Contractor Indemnified Parties from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises that arise out of or relate to: (a) third-party claims associated with the performance by the Company of its obligations under the Design-Build Contract or, to the extent the Design-Build Contractor is not responsible therefor, the P3 Agreement, including any damage to or destruction of property of, or death of or bodily injury to, any person, in each case to the extent caused by or contributed to by the tortious act, negligence, fraud, strict liability or willful misconduct of the Company, any of the Company’s contractors or subcontractors of any tier, or any other person for whom the Company is legally responsible; or (b) the violation of any law or governmental approval by the Company, any of the Company’s contractors or their subcontractors of any tier or any other person for whom the
Company is legally responsible. The foregoing will not apply, however, to the extent proven to have been caused by the Design-Build Contractor.

**Liquidated Damages**

If the Design-Build Contractor does not achieve DB Revenue Service Availability on or before the Guaranteed DB RSA Date, the Design-Build Contractor is obligated to pay to the Company liquidated damages in the amount of $220,000, as of April 7, 2016, for each day (or part thereof) until DB Revenue Service Availability is achieved. If the Design-Build Contractor does not achieve DB Final Completion on or before the Guaranteed DB Final Completion Date, the Design-Build Contractor must pay to the Company liquidated damages in the amount of $3,158 for each day (or part thereof) until DB Final Completion is achieved. For information on how the liquidated damages amounts will be updated on or before Financial Close, see “—The Amended and Restated Design-Build Contract.”

The Design-Build Contractor’s obligation to pay RSA delay liquidated damages and DB Final Completion delay liquidated damages to the Company may not exceed, in the aggregate, an amount equal to the sum of (a) the product of the DB Revenue Service Availability liquidated damages multiplied by two hundred seventy-five (275) days, plus (b) the product of the DB Final Completion delay liquidated damages multiplied by five hundred forty-three (543) days (subject to adjustment in accordance with the Design-Build Contract). Both the DB Revenue Service Availability liquidated damages and the DB Final Completion liquidated damages will be revised in the amended and restated Design-Build Contract to reflect interest rate adjustments. See “PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—The Amended andRestated Design-Build Contract.”

**Early Completion Incentive**

Subject to the terms and conditions of the Design-Build Contract, for each full day that DB Revenue Service Availability occurs before the Guaranteed DB RSA Date as set forth in the Project schedule effective as of the date of the early completion requested provided by the Design-Build Contractor (such Guaranteed DB RSA Date, as may be thereafter extended pursuant to the Design-Build Contract solely due to (i) a Company-caused delay, the Company’s DB Work suspension or a work order not resulting from the Contracting Authority’s directive letter and/or (ii) any Relief Event or Force Majeure Event that entitles the Company to delay interest under the P3 Agreement, which entitlement the Contracting Authority has not disputed under the P3 Agreement, or if there is a dispute, it is subsequently resolved such that the Company has the entitlement), the Design-Build Contractor is entitled to an early completion incentive payment in the amount of $80,000 per day, up to a maximum of ninety (90) days prior to such Guaranteed DB RSA Date. The Company’s obligation to pay the early completion incentive payment is subject to satisfaction of each of the following conditions: (a) the Design-Build Contractor has requested early achievement of DB Revenue Service Availability at least 13 months before the date on which the Design-Build Contractor wishes to achieve DB Revenue Service Availability; (b) pursuant to the P3 Agreement, the Contracting Authority has approved achievement of early Revenue Service Availability; and (c) early DB Revenue Service Availability is actually achieved.

**Subcontractors; Disadvantaged Business Enterprise Participation; Labor Standards**

Subject to the terms and conditions of the Design-Build Contract, the Design-Build Contractor may enter into one or more subcontracts with subcontractors to perform portions of the DB Work (but not the entire DB Work). The Design-Build Contractor may only retain subcontractors that are qualified, experienced and capable in the performance of the portion of the DB Work assigned and meet the other criteria specified in the Design-Build Contract. Each subcontract must include (a) terms sufficient to ensure both the acknowledgement of and compliance by the subcontractor with the applicable requirements of the Contract Documents and to ensure that the Company and the Contracting Authority have the ability to exercise their respective rights specified in the Contract Documents, (b) those terms that are specifically required by the Contract Documents to be included in the subcontract, and (c) all applicable federal requirements.

The Design-Build Contractor is also required to ensure that all of its subcontractors and suppliers provide representations, warranties, guarantees and obligations in accordance with good industry practice for work of similar scope and scale with respect to design, materials, workmanship, equipment, tools and supplies furnished by all the subcontractors and suppliers, all of which must extend to the Company, the Contracting Authority and relevant third parties, and is responsible for enforcing the representations, warranties, guarantees and obligations. Neither the
Design-Build Contractor nor any of its subcontractors may terminate or replace certain key personnel without the prior consent of the Company, to the extent specified in the Design-Build Contract.

The Design-Build Contractor is bound to comply with certain labor standards, ethical standards, nondiscrimination standards and federal laws during the performance of the DB Work and meet certain disadvantaged business enterprise participation goals. The Design-Build Contractor is also responsible and liable for all labor relations matters of the Design-Build Contractor and subcontractor personnel relating to the DB Work. For a more detailed description, see “—SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Subcontractors; Disadvantaged Business Enterprise Participation; Labor Standards.”

Insurance

Under the Design-Build Contract, the Design-Build Contractor must procure or cause to be procured and keep in effect or cause to be kept in effect (a) the controlled insurance program, professional risk insurance, builder’s risk insurance and other insurance coverages required by the Design-Build Contract and (b) the subcontractors’ insurance coverages required by the Design-Build Contract. Each insurance policy must be procured from an insurance company meeting the requirements of applicable law, licensed or authorized to do business in the State and rated at least “A-” by Standard and Poor’s or “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating, both at policy inception and for the duration of its placement of insurance, unless the Design-Build Contractor has obtained the Company’s approval otherwise. Subject to limited exceptions in the Design-Build Contract, the Design-Build Contractor is responsible for insurance policy deductibles. Except as otherwise provided in the Design-Build Contract, all insurance policies must be purchased specifically and exclusively for the Project and extend to all aspects of the DB Work, with coverage limits devoted solely to the Project. For a more detailed description of insurance under the Design-Build Contract, see “—SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Insurance.”

LRV Options

The Contracting Authority under the P3 Agreement has three separate options to require the Company to purchase and commission option LRVs under the P3 Agreement: LRV option A, LRV option B and LRV option C, each as set forth in the P3 Agreement and the Design-Build Contract. The Design-Build Contractor is required, on behalf of the Company, to fulfill these obligations with respect to LRV options set forth in the P3 Agreement (as described in the Design-Build Contract) but only with respect to those option LRVs ordered by the Contracting Authority under the P3 Agreement before the date that is 30 months before the Guaranteed DB RSA Date (such date, as of the date of the Contracting Authority’s exercise of the first LRV option). The Design-Build Contractor is responsible for ensuring that each option LRV meets certain requirements provided in the P3 Agreement and the Design-Build Contract to enable the Company to meet the performance requirements. In addition, the Design-Build Contractor is required to remove and replace, or repair, any defective LRVs (including LRVs with fleet defects) supplied by the Design-Build Contractor, at the Design-Build Contractor’s sole expense, to the extent required by the warranty in the Design-Build Contract.

Changes

The Contracting Authority Change Order. Pursuant to the process set forth in the P3 Agreement, the Contracting Authority may authorize and/or require a Contracting Authority change order modifying, among other things, the work under the P3 Agreement, the requirements of the Technical Provisions and the scope of the DB Work due to modifications to the terms and conditions (or assumed terms and conditions) of third-party agreements or utility agreements. Following the issuance of a Contracting Authority change order under the P3 Agreement, subject to certain limitations in the Design-Build Contract, including with respect to disputes, the Company and the Design-Build Contractor are to agree on a corresponding scope change order under the Design-Build Contract, which may include (a) adjustment of the contract deadlines as appropriate and/or (b) either (i) compensation to which the Design-Build Contractor is entitled or (ii) any net cost savings and schedule savings to which the Company is entitled.

Under the P3 Agreement, if the Contracting Authority and the Company are unable to reach agreement on a Contracting Authority’s change order, the Contracting Authority may seek to resolve the dispute under the P3 Agreement dispute resolution procedures without issuing a directive letter, or it may issue a directive letter under the
P3 Agreement directing the Company to proceed with the performance of some or all of the proposed Contracting Authority change. Upon receipt of the directive letter, the Company will issue a corresponding work order to the Design-Build Contractor pursuant to the Design-Build Contract, and the Design-Build Contractor is required to proceed immediately with the DB Work as directed, pending execution of a formal Contracting Authority’s change order under the P3 Agreement (subject to the fast-track adjudication process set forth in in the Design-Build Contract).

**Scope Changes**

A scope change under the Design-Build Contract means a material addition to, deletion from, suspension of or other modification to the quality, function or intent of the Project or to the DB Work as delineated in the Design-Build Contract or the other Contract Documents, or a material change to the requirements of, or the Design-Build Contractor’s and the Company’s rights and/or obligations set forth in, the Design-Build Contract, but do not include correction or detailing of the DB Work by the Company and the Design-Build Contractor from time to time. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Changes—Scope Changes Generally.”

The Company may initiate a scope change under the Design-Build Contract, including as a result of a Company-caused delay or a Company’s DB Work suspension, by providing the Design-Build Contractor a written request setting forth in detail the nature of the requested change. Upon receipt of the request, the Design-Build Contractor must provide to the Company a proposal for a scope change order setting forth in detail the information required by the Design-Build Contract.

If the Company approves the Design-Build Contractor’s proposal, the Company and the Design-Build Contractor are required to execute a written scope change order, and one or more of the contract price, the payment and values schedule, the Project schedule and/or the contract deadlines will be adjusted, along with other necessary changes to the Contract Documents set forth in the scope change order. If the Company does not approve the Design-Build Contractor’s proposal for a scope change order, the Company (a) may, at its option, execute and deliver to the Design-Build Contractor a work order and (b) must compensate the Design-Build Contractor for the reasonable increased cost incurred by the Design-Build Contractor in responding to the Company’s proposal.

The Design-Build Contractor may initiate a scope change, including as a result of a Company-caused delay or a Company DB Work suspension, by providing a notice to the Company that includes all information required by the Design-Build Contract. After delivery of a notice to the Company, the Design-Build Contractor is required to deliver to the Company a proposal for a scope change order setting forth in detail the information required by the Design-Build Contract.

**Scope Change Due to Company-Caused Delays and Company DB Work Suspension.** Except to the extent another consequence is expressly provided in the Design-Build Contract, the Design-Build Contractor is entitled to claim a scope change order to the extent the Design-Build Contractor’s performance of the DB Work is adversely affected by (a) a Company-caused delay or (b) a Company DB Work suspension, and the effects of which the Design-Build Contractor cannot, in the absence of incurring acceleration costs for impacts to the critical path or other costs impacting the critical path, overcome. If the Contracting Authority’s approval of the scope change order is required under the P3 Agreement and the Company is unable, despite using its reasonable efforts, to secure the approval, then the Company is not obligated to issue a scope change order, the Design-Build Contractor has the right to seek monetary compensation and other relief to which it may be entitled from the Company, pursuant to the dispute resolutions procedures in the Design-Build Contract, to compensate it for any losses incurred as a result of the Company’s inability to issue a scope change order.

**Work Orders.** If, subject to certain limitations in the Design-Build Contract: (a) a proposal for a scope change order delivered by the Design-Build Contractor following Company’s request is not accepted by the Company; (b) the Contracting Authority issues a directive letter pursuant to the P3 Agreement as expressly contemplated in the Design-Build Contract; (c) the Company wishes to direct the Design-Build Contractor to proceed immediately in connection with any dispute regarding the scope of the DB Work or the Design-Build Contractor’s compliance with the requirements of the Contract Documents; or (d) the Company otherwise wishes to direct the Design-Build Contractor to perform additional work or services or other actions not included in the DB Work, then the Company may, at its option, execute and deliver to the Design-Build Contractor a work order in lieu
of the scope change order set forth in the Design-Build Contract. With respect to work orders not resulting from the Contracting Authority’s directive letter, the Company has no right to issue a work order that: (i) is not in compliance with law or the P3 Agreement; (ii) is not in compliance with a governmental approval or good industry practice; or (iii) would cause an insured risk to become uninsured.

**Relief Event, Force Majeure Event and Non-Company Caused Disruption**

**General Obligations.** Under the Design-Build Contract, the Design-Build Contractor may submit a claim for relief in connection with a Relief Event, a Force Majeure Event or a Non-Company Caused Disruption. The Company’s obligation to provide relief to the Design-Build Contractor is conditioned upon the Company’s receipt of corresponding relief under the P3 Agreement. With respect to certain Relief Events relating to differing site conditions, utilities, utility owner delays and hazardous materials, the Design-Build Contractor and the Contracting Authority share the risks and costs associated with the Relief Events. In addition, the Design-Build Contract sets forth certain limitations with respect to the Design-Build Contractor’s right to relief as a result of damage or destruction to project improvements, sales taxes on LRVs, excavation and landfills. For a more detailed description of Relief Events, shared risks and these limitations, see APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract—Relief Event, Force Majeure Event and Non-Company Caused Disruption Claim Process.”

**Waiver.** If the Design-Build Contractor does not submit timely notice to the Company in the time periods specified in the Design-Build Contract, its rights with respect to a Relief Event, Force Majeure Event or Non-Company Caused Disruption may be waived, in whole or in part, as set forth in the Design-Build Contract.

**Mitigation.** The Design-Build Contractor is required under the Design-Build Contract to take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, Force Majeure Event or Non-Company Caused Disruption, including all steps that would generally be taken in accordance with good industry practice. The Design-Build Contractor is not entitled to make any request for compensation or a time extension for incremental costs or critical path delays that could have been reasonably avoided through re-sequencing and re-scheduling of the DB Work and/or other work-around measures (but the workaround measures are allowable if justified by equal or greater savings in amounts otherwise payable by the Company for incremental costs and delay costs).

**Termination of the Design-Build Contract**

**Design-Build Contractor Default**

Subject to certain limitations set forth in the Design-Build Contract (including applicable cure periods), the Design-Build Contractor will be in breach of the Design-Build Contract upon the occurrence of certain events or conditions of default. The Design-Build Contractor defaults include, without limitation: (a) failure to diligently prosecute the DB Work to completion in accordance with the Contract Documents; (b) failure to achieve DB Revenue Service Availability by the Guaranteed DB Long Stop Date, or DB Final Completion by the DB Final Completion Deadline; (c) failure to make any payment owing to the Company under the Contract Documents when due; (d) failure to maintain in effect the required insurance or the guaranties, letters of credit or other performance security; (e) there occurs a transfer by the Design-Build Contractor not permitted under the Design-Build Contract, or any other violation by the Design-Build Contractor of the limitations on assignment or transfer under the Design-Build Contract occurs; (f) failure to comply with any applicable governmental approvals or laws; (g) insolvency or bankruptcy of the Design-Build Contractor or Fluor; (h) the Design-Build Contractor’s payment of amounts due the Company or any other person under the Design-Build Contract or the Interface Agreement to which the limitation of the Design-Build Contractor’s aggregate liability applies in accordance with the Design-Build Contract equals or exceeds the limitation of liability; and (i) the Design-Build Contractor’s payment of delay liquidated damages due the Company under the Design-Build Contract equals or exceeds the limitation of the Design-Build Contractor’s liability for delay liquidated damages set forth in the Design-Build Contract. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract—Design-Build Contractor Default” for a detailed list of all Design-Build Contractor defaults under the Design-Build Contract.
Upon the occurrence of a Design-Build Contractor default under the Design-Build Contract, which is not cured within the applicable cure period, the Company may terminate the Design-Build Contract and recover any and all damages available at law. The Contracting Authority, under the P3 Agreement, and the Company, under the Design-Build Contract, also have step-in rights and suspension rights for the Project under certain circumstances. In addition, the Company may make demand upon, draw on and enforce and collect any of the Company’s letters of credit, guaranties and performance security in any order and apply the proceeds of any action to the satisfaction of the Design-Build Contractor’s obligations under the Design-Build Contract, including payment of amounts due to the Company. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract—Company Remedies for a Design-Build Contractor Default.”

**Company Default**

The Company will be in breach under the Design-Build Contract upon the occurrence of certain events or conditions of default. Subject to limitations in the Design-Build Contract, Company’s defaults include, without limitation: (a) failure by the Company to pay the Design-Build Contractor the undisputed portion of any payment due to the Design-Build Contractor and the failure continues for thirty (30) days after written notice of the non-payment; (b) insolvency or bankruptcy of the Company; and (c) the Company is in default or has failed to perform any of its other material obligations under the Design-Build Contract or its material obligations to the Design-Build Contractor under the Interface Agreement, and the failure is not cured as set forth in the Design-Build Period. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract—Default by the Company and Design-Build Contractor Remedies” for a detailed list of all Company defaults under the Design-Build Contract.

Subject to the provisions of the DB Direct Agreement and to the rights of the Contracting Authority under the P3 Agreement, at any time after the occurrence of a Company default under the Design-Build Contract, which is not cured within the applicable cure period, the Design-Build Contractor is entitled to terminate the Design-Build Contract. If the Design-Build Contract is terminated for this reason, the Design-Build Contractor is entitled to receive a termination payment in accordance with the invoice requirements set forth in the Design-Build Contract. The Design-Build Contractor may also suspend performance of the DB Work as permitted by the Design-Build Contract if the Company fails to pay to the Design-Build Contractor any undisputed amount owing to the Design-Build Contractor and the failure continues for thirty (30) days after written notice of the non-payment.

**The Contracting Authority’s P3 Agreement Termination for Convenience; the Company’s P3 Agreement Termination for Contracting Authority Default or with Respect to the “New Starts Full Funding Grant Agreement.”**

The Contracting Authority may terminate the P3 Agreement in whole, but not in part, if the Contracting Authority determines, in its discretion, that termination is in the Contracting Authority’s best interest. In addition, the Company may terminate the P3 Agreement for a Contracting Authority default or in connection with the “New Starts Full Funding Agreement”, each as set forth in the P3 Agreement. If the P3 Agreement is terminated for any of the foregoing, then the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement, and the Company will be required to pay a termination payment to the Design-Build Contractor as calculated in accordance with and pursuant to the procedures set forth in the Design-Build Contract as the Design-Build Contractor’s sole and exclusive remedy.

**Termination Due to the P3 Agreement Termination for Extended Delay.** Under the P3 Agreement, (a) in the event of an Extended Delay, either the Contracting Authority or the Company may deliver to the other a notice of conditional election to terminate the P3 Agreement, following the receipt of which the receiving party has the option to either accept or reject the election to terminate the P3 Agreement, in addition to the Company and the Contracting Authority having the right to dispute the other party’s right to terminate the P3 Agreement for Extended Delay and (b) in the event of an Extended Delay that results in three hundred sixty-five (365) or more days of critical path delay, both the Contracting Authority and the Company have a right to issue an unconditional notice to terminate the P3 Agreement, in which case the other party has no further option to continue the P3 Agreement. The Design-Build Contractor may provide notice to the Company of certain DB Extended Delay events under the circumstances set forth in the Design-Build Contract, following which the parties have agreed to negotiate the continuation of the Design-Build Contract that may result in such continuation, the replacement of the Design-Build Contractor or the Company’s issuance of the notice to the Contracting Authority under the P3 Agreement to terminate the P3 Agreement. The parties have also agreed in the Design-Build Contract that the Design-Build Contractor has certain
rights with respect to the Contracting Authority’s election to terminate the P3 Agreement or Company’s election to accept the same or continue the P3 Agreement in effect, in addition to certain Design-Build Contractor’s rights with respect to the Company’s conditional election to terminate the P3 Agreement for Extended Delay or its unconditional rights to do so, in each case, subject to the terms and conditions of the Design-Build Contract.

**Termination Due to the P3 Agreement Termination for Insurance Unavailability.** Under the P3 Agreement, if it becomes apparent during the Design-Build Period that insurance required under the P3 Agreement is not available to the extent specified in the P3 Agreement, the Contracting Authority may deliver to the Company notice of its conditional election to terminate the P3 Agreement for insurance unavailability. If the Company determines to accept such Contracting Authority election to terminate the P3 Agreement, the Company may do so, within the time required by the P3 Agreement, without the Design-Build Contractor’s consent. If the Company, following the Contracting Authority’s notice under the P3 Agreement of its conditional election to terminate the P3 Agreement for insurance unavailability, wishes to give notice to the Contracting Authority under the P3 Agreement to continue performing its obligations under the P3 Agreement, the Company may do so only with the Design-Build Contractor’s consent (which consent is required to be provided or withheld by the Design-Build Contractor in accordance with the good industry practice). If the Contracting Authority elects under the P3 Agreement to terminate the P3 Agreement for insurance unavailability pursuant to the P3 Agreement and the Company accepts or is deemed to have accepted such Contracting Authority election, then the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement and the Design-Build Contractor will be entitled to receive a termination payment calculated pursuant to the Design-Build Contract that is limited to that portion of the termination amount actually received by the Company under the P3 Agreement for insurance unavailability attributable to the DB Work. If, during the Design-Build Period, the Contracting Authority, during the period of insurance unavailability provides notice to the Company under the P3 Agreement exercising the Contracting Authority’s unconditional right to terminate the P3 Agreement, then the Company is required to promptly provide such notice to the Design-Build Contractor and the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement and the Company is obligated to pay over to the Design-Build Contractor such amounts (if any) actually paid by the Contracting Authority to the Company under the P3 Agreement that are attributable to the DB Work or the Design-Build Contractor.

**Termination Based on P3 Agreement Termination Due to Court Ruling.** If the P3 Agreement is terminated for Termination Due to Court Ruling, then the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement. If the Design-Build Contract is terminated prior to DB Final Completion (and the Company’s payment therefor) and the termination is not due to a Design-Build Contractor default, the Design-Build Contractor is entitled to receive a court ruling termination payment calculated in accordance with the Design-Build Contract.

**Termination if Financial Close Fails to Occur.** If the Company fails to achieve Financial Close by the Financial Close deadline for any reason not attributable to the Design-Build Contractor’s failure to perform its obligations under the Design-Build Contract, the Design-Build Contractor may, at its sole discretion, elect to terminate the Design-Build Contract. If the Design-Build Contractor elects to terminate the Design-Build Contract, it will provide written notice of termination to the Company and the termination will be effective immediately upon delivery of the notice. If this occurs, neither party will have liability to the other.

**Limitation on Liability**

The Design-Build Contractor’s total aggregate liability under the Design-Build Contract may not exceed 35% of the contract price, subject to certain exclusions set forth in the Design-Build Contract. See APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Limitation on Liability.”

**Remedial Plans**

With respect to certain Design-Build Contractor defaults, the Company will defer exercise of its termination remedy and allow the Design-Build Contractor to take action. If the Design-Build Contractor fails to cure this type of default within the initial cure period for the default specified in the Design-Build Contract, then the Company may require the Design-Build Contractor to prepare and submit for the Company’s approval a remedial plan meeting the requirements of the Design-Build Contract. The Contracting Authority under the P3 Agreement may also request that a remedial plan be provided by the Company (which the Design-Build Contractor will be
responsible for preparing in accordance with the Design-Build Contract) in the event of a remedial plan default under the P3 Agreement. If the Design-Build Contractor does not provide or comply with a remedial plan in accordance with the Design-Build Contract, the Company may terminate the Design-Build Contract without allowing any additional cure period.

**Dispute Resolution Procedures**

Any claim or controversy between the Company and the Design-Build Contractor will be submitted to binding arbitration upon written notice of either party delivered to the other of the party’s intention to arbitrate, the nature of the dispute, the amount claimed and the decision sought, except that a dispute relating to a scope change order or claims against the Contracting Authority will be resolved pursuant to the fast-track adjudication process specified in the Design-Build Contract. Despite the foregoing, equitable remedies, including injunction and specific performance, will be available to the Design-Build Contractor and the Company by judicial proceedings and, for this purpose and for the purpose of enforcing any arbitral award or decision, the parties have submitted to the exclusive jurisdiction and venue of the federal and state courts in the State.

If any issue in dispute between the Design-Build Contractor and the Company is also the subject of a concurrent dispute under the P3 Agreement, the Design-Build Contractor and the Company are required to seek to cause the dispute under the Design-Build Contract to be consolidated with the dispute resolution process occurring under the P3 Agreement. If this consolidation does not occur, then any ongoing proceeding regarding the dispute under the Design-Build Contract will be stayed pending final resolution of the dispute under the P3 Agreement, which resolution will be binding on the Design-Build Contractor and the Company for all purposes of the Design-Build Contract.

The Design-Build Contractor is permitted to participate in the dispute resolution process established under the P3 Agreement with respect to disputes regarding the DB Work or relief available to the Design-Build Contractor under the Design-Build Contract that is subject to the Company’s receipt of corresponding relief under the P3 Agreement.

**Governing Law**

The Design-Build Contract will be construed and interpreted in accordance with the laws of the State, except to the extent that United States federal law otherwise applies.

**Assignment**

Neither the Design-Build Contractor nor the Company has the right, power or authority to assign or otherwise sell, convey, sublease, mortgage, encumber, transfer or otherwise dispose of the Design-Build Contract or any portion thereof, either voluntarily or involuntarily, without the prior written consent of the other party, which consent may be granted or withheld in the sole discretion of the other party, except that (a) the Company may assign all of its rights and interests in and under the Design-Build Contract to the Lenders as collateral security for its obligations, and the Lenders may further assign these rights without the Design-Build Contractor’s consent thereto as provided in the DB Direct Agreement and (b) the Company may assign to the Contracting Authority any or all of its rights under the Design-Build Contract without the Design-Build Contractor’s consent.

**The Amended and Restated Design-Build Contract**

The Company and the Design-Build Contractor have agreed to a draft amended and restated Design-Build Contract, to be executed and delivered on or prior to Financial Close, which is anticipated to result in certain changes to the terms and conditions of the Design-Build Contract.

Such changes include the liquidated damage amounts described in “PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—Liquidated Damages” will be updated as of Financial Close to reflect an interest rate adjustment (see APPENDIX I—“LENDERS’ TECHNICAL ADVISOR’S REPORT” for the updated liquidated damage amounts). For a description of liquidated damages in the Design-Build Contract, see APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Liquidated Damages.” In addition, the parties have agreed that payments from the Company to the Design-Build Contractor for
mobilization and certain DB Work performed prior to Financial Close that is not performed under the limited notice
to proceed may be invoiced by the Design-Build Contractor at or after Financial Close and may be paid by the
Company earlier than otherwise contemplated in the Design-Build Contract, subject to the satisfaction of specified
conditions set forth in the Design-Build Contract, including the occurrence of Financial Close and receipt of
payment from the Contracting Authority. Finally, with respect to all payments for DB Work payable from proceeds
received from the TIFIA Lender, the Company will have 35 days following the receipt of a payment request from
the Design-Build Contractor to make such payments to the Design-Build Contractor. For a detailed description of
the payment provisions of the Design-Build Contract, see APPENDIX D—“SUMMARY OF CERTAIN

The foregoing is a summary of certain provisions of the draft amended and restated Design-Build Contract
and is not a full statement of the terms of such agreement. Accordingly, the foregoing summary is qualified in its
entirety by reference to such agreement and is subject to the full text of the final agreement to be executed on or
prior to Financial Close. A copy of such agreement will be available following its execution, free of charge, upon
request from the Company or the Trustee.

The O&M Contract

O&M work for the Project will be undertaken by the O&M Contractor pursuant to the O&M Contract,
dated as of April 7, 2016, between the Company and the O&M Contractor.

Scope of Services

Subject to limited exceptions specified in the O&M Contract, the O&M Contractor is responsible, on behalf
of the Company, for the performance of all services necessary for the operation and maintenance of the Purple Line
under the P3 Agreement in accordance with all applicable laws, governmental approvals, good industry practice and
the other requirements of the O&M Contract and the other Contract Documents.

The scope of the services under the O&M Contract (the “Services”) includes:

Fare Collection and Fare System. Under the O&M Contract, the O&M Contractor is responsible for: (a)
operations and maintenance of the fare system equipment; (b) stocking ticket vending machines, collecting cash
from the machines, depositing cash receipts and arranging for proceeds of credit and other electronic transactions to
be deposited into a designated Contracting Authority account; (c) maintaining generally accepted fiscal controls and
procedures in accordance with the Contracting Authority and the State of Maryland requirements; (d) providing
accounting reports regarding all transactions and deposits and monitoring the fare system equipment; and (e)
providing reports regarding, any intrusion or tampering with said equipment.

O&M Renewal Work. The O&M Contractor is required to diligently perform renewal work as and when
necessary to comply with the performance requirements and the Contract Documents, to achieve full design life for
each asset, supporting reliable and quality service operations and availability and to restore the useful life of each
element at the end of its residual life. The O&M Contractor is responsible for funding all renewal work costs to the
extent the O&M Lifecycle Payments are not sufficient to pay the costs incurred or paid by the O&M Contractor or a
component of the renewal work is performed by the O&M Contractor earlier than scheduled, but the O&M
Contractor is entitled to the full O&M Lifecycle Payments at the scheduled time (or, if earlier, when any of these
amounts are paid to the Company by the Contracting Authority), subject to the payment provisions in the O&M
Contract. The O&M Contractor is required to repair, restore and replace all losses or damages to the system or other
improvements and assets during the O&M Period due to weather, users or any other cause, at the O&M Contractor’s
cost and expense, except to the extent that the O&M Contractor is entitled to claim compensation or reimbursement
under the O&M Contract, including with respect to the amounts the Contracting Authority is responsible for under
the P3 Agreement. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M
CONTRACT—Scope of Services—O&M Renewal Work.”

Acquisition of Real Property. Under the P3 Agreement, the Contracting Authority has identified certain
property to be used for the Project, and the Contracting Authority is required under the P3 Agreement to acquire, at
its cost, the Project right-of-way and certain other property in the time periods identified in a property acquisition
schedule. The Company is required to make any acquired Project right-of-way available to the O&M Contractor to
the extent required for the performance of the Services. In addition, the O&M Contractor is solely responsible for the acquisition of (and costs relating to) temporary property interests.

Utilities. During the O&M Period, utility owners may apply for additional utility permits to install new utilities that would cross or longitudinally occupy the Project right-of-way, or to modify, repair, upgrade, relocate or expand existing utilities within the Project right-of-way. In these circumstances, the O&M Contractor is required to: (a) assist the Contracting Authority in providing comments regarding the permit applications to the extent related to the Services; (b) make available upon request the most recent Project design information and/or record documents in the O&M Contractor’s possession, as applicable, to the applicants; (c) assist each applicant with information regarding the location of other proposed and existing utilities; and (d) use commercially reasonable efforts to coordinate work schedules with the applicants as appropriate to avoid interference, if possible, with the Services by applicants’ activities. The O&M Contractor is also required to monitor utilities and utility owners within the Project right-of-way for compliance with applicable utility permits, utility agreements, easements, and applicable law and use diligent efforts to obtain the cooperation of each utility owner having utilities within the Project right-of-way. In addition, the O&M Contractor is responsible for certain utility adjustments and completion of certain utility work that is required during the O&M Period, in accordance with the Contract Documents. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Scope of Services—Utilities.”

Hazardous Materials. Subject to certain exceptions set forth in the O&M Contract, the O&M Contractor is required to manage all hazardous materials during the O&M Period in accordance with the O&M Contract. If the O&M Contractor fails to undertake the hazardous materials management required under the O&M Contract within a reasonable time after discovery of hazardous materials in accordance with the O&M Contract, the Company may notify the O&M Contractor that it will undertake the hazardous materials management itself. The Contracting Authority under the P3 Agreement may also undertake the hazardous materials management, and the O&M Contractor is required to reimburse, on a current basis, the Company and/or the Contracting Authority for the reasonable costs that the Company and/or the Contracting Authority incurs in carrying out hazardous materials management actions, as set forth in the O&M Contract. Except as expressly set forth in the O&M Contract, the O&M Contractor bears all risk of the Company under the P3 Agreement associated with the discovery of hazardous materials within the site during the O&M Period. The O&M Contractor is also responsible, on behalf of the Company, for the management of all pre-existing hazardous materials encountered during the O&M Period, in compliance with applicable law, subject to certain limitations set forth in the O&M Contract.

Site Conditions. The O&M Contractor acknowledged in the O&M Contract that its knowledge of the site conditions is equal to that of the Company. The O&M Contractor has no right under the O&M Contract to claim that any condition constitutes a differing site condition or that discovery of any paleontological or cultural (including archaeological and historic) resources, or threatened or endangered species constitutes a Relief Event if, with respect to the Services under any major construction contracts awarded during the O&M Period, the O&M Contractor had actual knowledge regarding the conditions or resources prior to the award of the contract or the condition or resource would have become known to the O&M Contractor based on a reasonable investigation of the area in connection with the establishment of the scope of work for the contract. Notwithstanding the foregoing, the resolution of certain litigation regarding threatened or endangered species may entitle the O&M Contractor to relief. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Scope of Services—Site Conditions.”

Security and Incident Response. The O&M Contractor is responsible for the security of the Project and the safety and security of the workers and public throughout the O&M Period and is required to take measures, consistent with good industry practice, to prevent damage to or destruction of Project improvements by any third party or by any Force Majeure Event.

Governmental Approvals. The O&M Contractor is responsible for obtaining all governmental approvals required for the Services, other than approvals provided by the Contracting Authority, and bears the risk of any delay in obtaining approvals, as well as the risk of conditions imposed on performance of the Services by the approvals.

Handback. The O&M Contractor is obligated to perform all work required to be performed by the Company under the P3 Agreement in connection with the handback requirements, including conducting handback inspections and performing all renewal work required to be performed during the final five calendar years of the
O&M Term. The Company, under the O&M Contract, or the Contracting Authority, under the P3 Agreement, may perform the handback renewal work itself and seek reimbursement from the O&M Contractor in the event the Project does not comply with the handback requirements, as described in the O&M Contract, and the O&M Contractor is required to reimburse the Company or the Contracting Authority, as applicable, for its costs under such circumstances. After the schedule for Renewal Work to meet handback requirements is approved by the Contracting Authority under the P3 Agreement, if the Contracting Authority determines in accordance with the P3 Agreement that the budgeted costs for the Renewal Work included in the Availability Payments under the P3 Agreement are not sufficient to cover the cost of the renewal work and the shortfall is not covered by amounts held in the Rehabilitation Reserve Account, the Contracting Authority has the right under the P3 Agreement to withhold sufficient funds from future Availability Payments to cover any remaining deficit after accounting for funds in the Rehabilitation Reserve Account, and the Company is entitled to make the corresponding withholdings from the O&M Monthly Availability Payments due to the O&M Contractor. The Company and the O&M Contractor have clarified in the draft amended and restated O&M Contract that the Rehabilitation Reserve Account established and funded by the Company pursuant to the TIFIA Loan Agreement is the same reserve account initially referred to as the Project handback reserve account for the purposes of the O&M Contract. See “—The Amended and Restated O&M Contract.” In lieu of the Company’s withholding of the O&M Monthly Availability Payments as described above, the O&M Contractor is entitled to provide a letter of credit as described in the P3 Agreement to secure its obligation to perform the handback renewal work, to the extent permitted by the Contracting Authority.

Back-to-Back Relief Provisions

Under the O&M Contract, subject to certain exceptions (including with respect to Company-caused delays and any Company suspension of Services), the O&M Contractor is only entitled to compensation or relief in the event and only to the extent that the Company actually receives the corresponding compensation or relief under the P3 Agreement. If the Company’s failure to receive payment or other relief to which it is otherwise entitled under the P3 Agreement (and to which the O&M Contractor is entitled under the O&M Contract) is solely a result of the Company’s failure to comply with its obligations under the O&M Contract and the P3 Agreement that is not attributable to the O&M Contractor, then the O&M Contractor is entitled to payment or other relief from the Company under the O&M Contract that the O&M Contractor would be otherwise entitled but for the Company’s failure to so comply.

Payments to the O&M Contractor; the Contracting Authority’s Costs

The Company’s payments to the O&M Contractor under the O&M Contract consist of the pre-O&M commencement Services fee and the O&M Monthly Availability Payments, inclusive of all applicable taxes, duties, excises, including all state and local sales and use taxes payable by the Company to the O&M Contractor and all governmental fees payable by the O&M Contractor in connection with the Services but the O&M Contractor is entitled to claim a Relief Event with respect to sales or use tax on option LRVs. The pre-O&M commencement Services fee will be paid to the O&M Contractor by the Company monthly, based on agreed payment dates as set forth in the O&M Contract. Commencing from the O&M Commencement Date and continuing throughout the O&M Term, the O&M Monthly Availability Payments will be paid by the Company to the O&M Contractor for the prior contract month as set forth in the O&M Contract, consisting of operating payments, maintenance payments, insurance payments and lifecycle payments, each corresponding to the respective component of the monthly availability payments under the P3 Agreement for the relevant contract month, subject to certain adjustments set forth in the O&M Contract. The Company is required to establish and fund a reserve account with Lifecycle Payments received from the Contracting Authority under the P3 Agreement and make payments to the O&M Contractor from the reserve account, all as described in the O&M Contract. For a description of agreed changes to the O&M Lifecycle Payments and reserve account mechanics in the amended and restated O&M Contract, see “—The Amended and Restated O&M Contract.”

Subject to certain limitations set forth in the O&M Contract, the Company may withhold all or part of any O&M Monthly Availability Payments under certain circumstances, including if the Contracting Authority has withheld under the P3 Agreement or if the O&M Contractor has failed to make payments owing to the Company under the O&M Contract.

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For a detailed descriptions of payments and withholdings under the O&M Contract, see APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor; the Contracting Authority’s Costs.”

**Performance Security**

*Letters of Credit.* The O&M Contractor is obligated to provide to the Company, no later than sixty (60) days before the scheduled P3 Agreement RSA Date (and thirty (30) days prior to each contract year thereafter), one or more letters of credit, in an initial aggregate amount equal to 50% of the sum of (i) the O&M Contractor operating annual turnover, calculated as the then-current (indexed) O&M Monthly Availability Payments payable to the O&M Contractor for the relevant contract year, but excluding the O&M Lifecycle Payments and certain Company costs set forth in the O&M Contract, and (ii) the average annual O&M Lifecycle Payments; in each case disregarding any deductions, withholdings or downward adjustments permitted under the O&M Contract. The O&M Contract requires that the letter(s) of credit be issued by a commercial bank or trust company that (a) has a combined capital and surplus of at least $5,000,000,000 U.S. Dollars, (b) is a national banking association, a state bank chartered in one of the states of the United States or the United States branch of a foreign bank, (c) has a senior unsecured long-term credit rating (unenhanced by third-party support) equivalent to “A” or better as determined by Standard and Poor’s Ratings Services or its successor, and “A2” or better as determined by Moody’s Investors Service Inc. or its successor and (d) is not an affiliate of the O&M Contractor or the Company. In addition, the Contracting Authority is required to be a transferee beneficiary under the letters of credit, and the letters of credit are to be transferred to the Contracting Authority in certain circumstances specified in the P3 Agreement. Any time the Company is entitled under the O&M Contract to draw on a letter of credit, the Company is entitled, in its sole discretion, to draw on and use proceeds from one or more of the letters of credit in any order or any other performance security provided by the O&M Contractor.

*Guaranties.* Each of Fluor, ACI and CAF is required, on or prior Financial Close, to execute and deliver to the Company a guaranty, each guaranteeing all of the O&M Contractor’s obligations under the O&M Contract and such obligations to the Company under the Interface Agreement. Any guaranty provided under the O&M Contract is required to meet the requirements set forth in the P3 Agreement and be enforceable by the Contracting Authority under certain circumstances specified in the P3 Agreement and the O&M Contract. Subject to the limited exceptions described in the P3 Agreement and the O&M Contract, so long as the Company or a Lender is diligently pursuing remedies under a guaranty, the Contracting Authority has agreed under the P3 Agreement to forbear from exercising its rights under the guaranties.

*Performance and Payment Bonds.* Before allowing any work to commence under any major construction contract during the O&M Period, the O&M Contractor is required to obtain and deliver to the Company (a) a payment bond with an aggregate value equal to 100% of the total value of construction work included in the Services to be performed under the major construction contract and (b) separate performance security in the form of surety bond(s) covering the subcontractor’s obligations under its major construction contract, in each case in accordance with the O&M Contract; each with a multiple obligee rider naming the Contracting Authority and the Collateral Agent as additional obligees. The performance security in the form of a surety bond is required to cover the O&M Contractor’s obligations under the O&M Contract and remain in force until those obligations have been fulfilled. The payment bond(s) and performance security in the form of a surety bond is required to be issued by a surety or insurance company, as applicable, meeting the requirements of applicable law, licensed or authorized to do business in the State of Maryland and rated at least “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating.

**Warranties**

The O&M Contractor warrants and guarantees for the benefit of the Company, the Contracting Authority and, to the extent any portion of the Services is being performed for third parties, the third parties, that: (i) the Services will be performed by qualified personnel in a good and workmanlike manner and satisfy the performance standards that apply to the Services, as described in the O&M Contract, reflecting good industry practice, and any parts or components repaired or replaced as part of the Services will also meet the foregoing standard; (ii) all design and engineering included in the Services will be performed in accordance with the standards of care, skill and diligence as would be provided by an engineering firm experienced in supplying similar services nationally in the United States of America for projects of technology, complexity and size similar to that of the Project, and otherwise
in compliance with the requirements of the O&M Contract and the other Contract Documents; (iii) all option LRVs and all construction included in the Services will be of good quality, in conformance with the requirements of the O&M Contract and the other Contract Documents, and free of defects in material, equipment and workmanship; and (iv) the record documents and the final design documents prepared by the O&M Contractor in connection with any design and construction included in the Services must be accurate and complete, comply with the requirements of the O&M Contract and the other Contract Documents, and accurately reflect the condition of the Project as of the completion of the Services.

The term of the warranty is one year following the performance of any Services (or, with respect to each option LRV, following delivery thereof) but in no event extends after the end of the O&M Term, with the following exceptions: (a) the term of the warranty with respect to all Services performed for third parties is for a minimum of one year after the date of acceptance of the Services by the third party or a longer term as may be expressly required in the O&M Contract, for such third party’s benefit, with rights of enforcement (and the Contracting Authority is required to be identified as a third-party beneficiary of all third party warranties); (b) the warranty with respect to renewal work performed during the last two years of the O&M Term and any O&M Contractor’s warranties that extend beyond the scheduled end of the O&M Term are required to be extended by O&M Contractor for the joint benefit of the Contracting Authority and the Company; (c) the term of the warranty with respect to any option LRV or associated equipment, part, system or component that is replaced due to an identified fleet defect will commence on the date of completion of the replacement and continue for the duration of the original, unextended warranty, as provided in the P3 Agreement; and (d) the liability period for latent defects will be per the statutory limit.

Nonconforming Work

If the O&M Contractor has not performed all Services in conformity with the Contract Documents, then, in addition to any other remedies available to the Company, the Company may direct the O&M Contractor to remove and replace or otherwise remedy the nonconforming work, without entitlement to make a claim for relief in connection with the nonconforming work. The O&M Contractor is required to submit a proposed plan of correction to the Contracting Authority, through the Company, for the Contracting Authority’s approval, describing the error or defect giving rise to the nonconforming work and describing the O&M Contractor’s planned remedial action. For any nonconforming work with respect to the O&M Contractor’s renewal work, any plan of correction is subject to the Company’s review and comment. The Company has the right to cause nonconforming work to be removed, replaced or otherwise remedied and to withhold or deduct the costs from any monies due or that become due to the O&M Contractor under the Contract Documents upon (a) any failure of the O&M Contractor to provide, and obtain the Contracting Authority’s approval of, a remedial plan or submit the remedial plan to the Company for its review promptly following discovery of nonconforming work, or (b) any failure of the O&M Contractor to comply with the Contracting Authority’s direction under the O&M Contract relating to any safety issue.

Indemnities

Indemnities by the O&M Contractor. The O&M Contractor has agreed in the O&M Contract to indemnify, defend, and hold harmless the State Indemnified Parties and the Company Indemnified Parties from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys’ and expert witness fees and costs, arising out of, relating to or resulting from, among other things: (a) any act, omission, neglect or misconduct by any O&M Contractor-related entity in the manner or method of executing the Services satisfactorily or due to the failure to perform the Services (b) the failure or alleged failure by any O&M Contractor-related entity to comply with the governmental approvals, any applicable environmental laws or other laws (including laws regarding hazardous materials management) relating to the performance of the Services; (c) any O&M Contractor-related entity’s performance of, or failure to perform, the obligations under any utility agreement; and (d) any O&M Contractor release of hazardous materials and any liabilities resulting therefrom.

In addition, the O&M Contractor is required to indemnify, defend and hold harmless the Company Indemnified Parties from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to, among other things: (a) claims by third parties for death, injury or destruction of or damage to property, in each case to the
extent caused or contributed to by the negligence or other tortious act, fraud, strict liability or willful misconduct of any O&M Contractor-related entity; (b) failure of the O&M Contractor to pay any taxes for which it is responsible; (c) failure of the O&M Contractor to provide good title (to the extent required by the P3 Agreement) to any portion of the Project included within the Services, free and clear of any charge, lien, encumbrance or other security interest; (d) nonpayment of amounts due as a result of furnishing materials or services to the O&M Contractor or any of its subcontractors in connection with the Services to the extent that the Company has paid the O&M Contractor all undisputed amounts then due and payable from the Company to the O&M Contractor; or (e) failure by the O&M Contractor to possess (or have the right to use) and convey to the Company all intellectual property (or the right to use it) as required by the O&M Contract. The foregoing will not apply, however, to the extent proven to have been caused by the Company. For a detailed descriptions of the O&M Contractor’s indemnities under the O&M Contract, see APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Indemnities—Indemnities by the O&M Contractor.”

**Indemnities by the Company.** The Company is required to indemnify, defend and hold harmless the O&M Contractor Indemnified Parties from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises that arise out of or relate to (a) third-party claims associated with the performance by the Company of its obligations under the O&M Contract or, to the extent the O&M Contractor is not responsible therefor, the P3 Agreement, including any damage to or destruction of property of, or death of or bodily injury to, any person, in each case to the extent caused by or contributed to by the tortious act, negligence, fraud, strict liability or willful misconduct of the Company, any of the Company’s contractors or subcontractors of any tier, or any other person for whom the Company is legally responsible or (b) the violation of any law or governmental approval by the Company, any of the Company’s contractors or subcontractors of any tier, or any other person for whom the Company is legally responsible. The foregoing will not apply, however, to the extent proven to have been caused by the O&M Contractor.

**Insurance**

Under the O&M Contract, the O&M Contractor is required to procure and maintain, and caused its subcontractors performing the Services to procure and maintain, the insurance coverage described in the O&M Contract. Each insurance policy must be procured from an insurance company meeting the requirements of applicable law, licensed or authorized to do business in the State of Maryland and rated at least “A-” by Standard and Poor’s or “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating, both at policy inception and for the duration of its placement of insurance, unless the O&M Contractor has obtained the Company’s approval otherwise. Subject to limited exceptions in the O&M Contract, the O&M Contractor is responsible for insurance policy deductibles. Except as otherwise provided in the O&M Contract, all insurance policies must be purchased specifically and exclusively for the Project and extend to all aspects of the Services, with coverage limits devoted solely to the Project. For a more detailed description of the insurance requirements under the O&M Contract, see APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Insurance.”

**LRV Options**

The Contracting Authority under the P3 Agreement has three separate options to require the Company to purchase and commission option LRVs under the P3 Agreement. The O&M Contractor is required, on behalf of the Company, to fulfill these obligations with respect to LRV options set forth in the P3 Agreement (as described in the O&M Contract) but only with respect to those option LRVs ordered by the Contracting Authority under the P3 Agreement after the date that is 30 months before the Guaranteed DB RSA Date under the Design-Build Contract (this date, as of the date of the Contracting Authority’s exercise of the first LRV option). Subject to limited exceptions in the O&M Contract, the O&M Contractor is responsible for achieving the performance requirements to be met at each service level described in the Contract Documents, without any right to rely on provision of additional LRVs through exercise of the LRV option or otherwise. In addition, the O&M Contractor is required to remove and replace, or repair, any defective LRVs (including LRVs with fleet defects) operated and maintained by the O&M Contractor, at the O&M Contractor’s sole expense, except to the extent the Design-Build Contractor is responsible for the defective LRVs it supplied under the Design-Build Contract.
Changes

The Contracting Authority Change Order. Pursuant to the process set forth in the P3 Agreement, the Contracting Authority may authorize and/or require a Contracting Authority change order modifying, among other things, the work under the P3 Agreement, the requirements of the O&M Contract and the scope of the Services due to modifications to the terms and conditions (or assumed terms and conditions) of third-party agreements or utility agreements. Following the issuance of a Contracting Authority change order under the P3 Agreement, subject to certain limitations in the O&M Contract, the Company and the O&M Contractor are to agree on a corresponding scope change order under the O&M Contract. Under the P3 Agreement, if the Contracting Authority and the Company are unable to reach agreement on a Contracting Authority change order, the Contracting Authority may seek to resolve the dispute under the P3 Agreement dispute resolution procedures without issuing a directive letter, or it may issue a directive letter directing the Company to proceed with the performance of some or all of the proposed Contracting Authority change. Upon receipt of the directive letter, the Company will issue a corresponding work order to the O&M Contractor pursuant to the O&M Contract, and the O&M Contractor is required to proceed immediately with the Services as directed, pending execution of a formal Contracting Authority change order under the P3 Agreement (subject to the fast-track adjudication process in the O&M Contract).

Scope Changes

A scope change under the O&M Contract means a material addition to, deletion from, suspension of or other modification to the quality, function or intent of the Project or to the Services as delineated in the O&M Contract or the other Contract Documents, or a material change to the requirements of, or the O&M Contractor’s and the Company’s rights and/or obligations set forth in, the O&M Contract, but do not include correction or detailing of the Services by the Company and the O&M Contractor from time to time. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Changes—Scope Changes Generally.” The Company may initiate a scope change under the O&M Contract, or may, at its option, direct the O&M Contractor through a work order to perform certain additional work, in each case in accordance with the process and subject to the requirements set forth in the O&M Contract.

Except to the extent another consequence is expressly provided in the O&M Contract, the O&M Contractor is entitled to claim a scope change order to the extent the O&M Contractor’s performance of the Services is adversely affected by a Company-caused delay or a suspension by the Company of the Services, the effects of which the O&M Contractor cannot overcome. If the Contracting Authority’s approval of the scope change order is required under the P3 Agreement and the Company is unable, despite using its reasonable efforts, to secure the approval, then the Company is not obligated to issue a scope change order but the O&M Contractor maintains the right to seek monetary compensation and other relief to which it may be entitled from the Company, pursuant to the dispute resolution procedures in the O&M Contract, to compensate it for any losses incurred as a result of the Company’s inability to issue a scope change order.

If, subject to certain limitations in the O&M Contract: (a) a proposal for a scope change order delivered by the O&M Contractor following Company’s request is not accepted by the Company; (b) the Contracting Authority issues a directive letter pursuant to the P3 Agreement; (c) the Company wishes to direct the O&M Contractor to proceed immediately in connection with any dispute regarding the scope of the Services or the O&M Contractor’s compliance with the requirements of the Contract Documents; or (d) the Company otherwise wishes to direct the O&M Contractor to perform additional work or services or other actions not included in the Services, then the Company may, at its option, execute and deliver to the O&M Contractor a work order in lieu of the scope change order set forth in the O&M Contract. With respect to work orders not resulting from the Contracting Authority’s directive letter, the Company has no right to issue a work order that is not in compliance with law or the P3 Agreement, is not in compliance with a governmental approval or good industry practice or would cause an insured risk to become uninsured.

Service Changes. Under the P3 Agreement, the Contracting Authority may direct a major service change or a minor service change, each as contemplated by, and subject to certain limitations in, the O&M Contract and the P3 Agreement. The Company is to make a corresponding direction under the O&M Contract, which the O&M Contractor is obligated to comply with. The O&M Contractor is also obligated to fulfill the Company’s obligations under the P3 Agreement with respect to special events and special event service as contemplated in the O&M Contract. Subject to certain limitations in the O&M Contract, no Contracting Authority change order under the P3
Agreement or scope change order under the O&M Contract is required for any major service change or, subject to the limits of the volume adjustment in the P3 Agreement, any minor service change or special event services. In addition, when the Purple Line system has sustained peak passenger loads condition for at least three consecutive months, the O&M Contractor is entitled to a scope change order, corresponding to a modification delivered by the Contracting Authority to the Company under the P3 Agreement, as described in the O&M Contract.

**Calculation of Total Trip Run Time and Tsc**

Under the O&M Contract, the O&M Contractor, on behalf of the Company, is required to conduct certain activities so as to enable Actual Combined Tsc and Total Trip Run Time to be determined before the start of revenue service demonstration. After completion of these activities, the Contracting Authority under the P3 Agreement may direct a resulting minor service change and revise certain other metrics in the O&M Contract, which will be effective at the start of revenue service demonstration. The Company will in turn direct a minor service change and make the corresponding revisions under the O&M Contract. The O&M Contractor, the Company and the Contracting Authority (under the P3 Agreement) are to repeat these activities to obtain a new determination not more than once during each five-year period starting from the date of the most recent determination of Actual Combined Tsc values (subject to certain exceptions and conditions in the O&M Contract).

**Relief Event, Force Majeure Event and Non-Concessionaire Caused Disruption**

**General Obligations**. Under the O&M Contract, the O&M Contractor may submit a claim for relief in connection with a Relief Event, a Force Majeure Event or a Non-Concessionaire Caused Disruption. The Company’s obligation to provide relief to the O&M Contractor is conditioned upon the Company’s receipt of corresponding relief under the P3 Agreement. With respect to certain Relief Events relating to differing site conditions and unanticipated hazardous materials, the O&M Contractor and the Contracting Authority share the risks and costs associated with the Relief Events. In addition, the O&M Contract sets forth certain limitations with respect to the O&M Contractor’s right to relief as a result of damage or destruction to project improvements, sales taxes on LRVs and capital asset work. For a more detailed description of relief events, shared risks and these limitations, see APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Relief Event, Force Majeure Event and Non-Concessionaire Caused Disruption Claim Process.”

**Waiver**. If the O&M Contractor does not submit timely notice to the Company in the time periods specified in the O&M Contract, its rights with respect to a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption may be waived, in whole or in part, as set forth in the O&M Contract.

**Excuse from Compliance**. Except as expressly provided in the O&M Contract, where a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, the obligations of each party which are affected by the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption will be suspended, but only to the extent that, and for so long as the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption prevents that party from meeting its obligations in accordance with the O&M Contract. The O&M Contract also limits the accumulation of Noncompliance Points and OTP Factors and provides certain grace periods for the deferral of Noncompliance Events upon the occurrence of a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, to the same extent as set forth in the P3 Agreement. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Relief Event, Force Majeure Event and Non-Concessionaire Caused Disruption Claim Process—Excuse from Compliance.”

**Mitigation**. The O&M Contractor is required under the O&M Contract to take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, including all steps that would generally be taken in accordance with good industry practice. The O&M Contractor is not entitled to make any request for compensation or a time extension or incremental costs that could have been reasonably avoided through re-sequencing and re-scheduling of the Services and/or other workaround measures (but the workaround measures are allowable if justified by equal or greater savings in amounts otherwise payable by the Company for incremental costs.

**Noncompliance Points System**

A Noncompliance Point system will be used to measure the O&M Contractor’s performance levels and trigger certain remedies in parallel with the payment mechanism specified in the P3 Agreement. The O&M
Contractor will establish and maintain an electronic database of Activity Noncompliance Occurrences, Activity Noncompliance Events and Operations Availability Noncompliance Events, and will enter each Activity Noncompliance Occurrence, Activity Noncompliance Event and Operations Availability Noncompliance Event into the database in real time upon discovery. For a more detailed description, see APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Noncompliance Points System.”

Termination of the O&M Contract

O&M Contractor Default

Subject to certain limitations set forth in the O&M Contract (including applicable cure periods), the O&M Contractor will be in breach of the O&M Contract upon the occurrence of certain events or conditions of default, including: (a) failure to commence the Services promptly following the O&M Commencement Date diligently prosecute the Services to completion in accordance with the Contract Documents; (b) failure to make any payment owing to the Company under the Contract Documents when due; (c) failure to maintain in effect the required insurance or the guaranties, letters of credit or other performance security; (d) there occurs a transfer by the O&M Contractor not permitted under the O&M Contract or any other violation by the O&M Contractor of the limitations on assignment or transfer under the O&M Contract occurs; (e) failure to comply with any applicable governmental approval or law; (f) the O&M Contractor accumulates certain Noncompliance Points over periods of time specified in the O&M Contract in violation of the O&M Contract; and (g) the bankruptcy or insolvency of the O&M Contractor, Fluor, ACI or CAF USA during the time periods and otherwise as set forth in the O&M Contract. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—O&M Contractor Default” for a detailed list of all O&M Contractor defaults under the O&M Contract.

Upon the occurrence of an O&M Contractor’s default under the O&M Contract, which is not cured within the applicable cure period, the Company may terminate the O&M Contract and recover any and all damages available at law. The Contracting Authority, under the P3 Agreement, and the Company, under the O&M Contract, also have respective step-in rights and suspension rights for the Project under certain circumstances. In addition, the Company may make demand upon, draw on and enforce and collect any of the letters of credit, guaranties and other performance security provided under the O&M Contract in any order and apply the proceeds of any action to the satisfaction of the O&M Contractor’s obligations under the O&M Contract, including payment of amounts due to the Company. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—Company Remedies for an O&M Default.”

Default by the Company and O&M Contractor Remedies

The Company will be in breach under the O&M Contract upon the occurrence of certain events or conditions of default. Subject to limitations in the O&M Contract, the Company’s defaults include, without limitation: (a) failure by the Company to pay the O&M Contractor the undisputed portion of any O&M Monthly Availability Payment due to the O&M Contractor and the failure continues for thirty (30) days after written notice of the non-payment; (b) failure by the Company to pay the O&M Contractor the undisputed amounts (other than the O&M Monthly Availability Payments) in excess of $1,000,000 (individually or in the aggregate) due to the O&M Contractor and the failure continues for thirty (30) days after written notice of the non-payment; (c) bankruptcy or insolvency of the Company; and (d) Company is in default or has failed to perform any of its other material obligations under the O&M Contract or its material obligations to the O&M Contractor under the Interface Agreement, and the failure is not cured as set forth in the O&M Contract. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—Default by the Company and O&M Contractor Remedies” for a detailed list of all Company defaults under the O&M Contract.

Subject to the provisions of the O&M Direct Agreement and to the rights of the Contracting Authority under the P3 Agreement, at any time after the occurrence of a Company default under the O&M Contract, which is not cured within the applicable cure period, the O&M Contractor is entitled to terminate the O&M Contract. If the O&M Contract is terminated for this reason, the O&M Contractor is entitled to receive a termination payment, as its exclusive remedy, in accordance with the invoice requirements set forth in the O&M Contract. The O&M Contractor may also suspend performance of the Services as permitted by the O&M Contract if the Company fails to pay to the O&M Contractor (a) any undisputed portion of the O&M Monthly Availability Payment owing to the
O&M Contractor, and this failure continues for thirty (30) days after written notice of the non-payment and (b) any undisputed amount owing to the O&M Contractor that is not payable from the monthly availability payment under the P3 Agreement and the failure continues for ninety (90) days after written notice of the non-payment.

The Contracting Authority’s P3 Agreement Termination for Convenience; the Company’s P3 Agreement Termination for Contracting Authority Default. The Contracting Authority may terminate the P3 Agreement in whole, but not in part, if the Contracting Authority determines, in its discretion, that termination is in the Contracting Authority’s best interest. In addition, the Company may terminate the P3 Agreement for a Contracting Authority default. If the P3 Agreement is terminated for any of the foregoing, then the O&M Contract will automatically terminate effective as of the termination date of the P3 Agreement, and the Company will be required to pay a Termination Payment to the O&M Contractor as calculated in accordance with and pursuant to the procedures set forth in the O&M Contract as the O&M Contractor’s sole and exclusive remedy.

Termination Due to the P3 Agreement Termination for Extended Delay. Under the P3 Agreement, in the event of an Extended Delay, either the Contracting Authority or the Company may deliver to the other a notice of conditional election to terminate the P3 Agreement, following the receipt of which the receiving party has the option to either accept or reject the election to terminate the P3 Agreement. The O&M Contractor may provide notice to the Company of certain O&M Extended Delay events under the circumstances set forth in the O&M Contract, following which the parties have agreed to negotiate the continuation of the O&M Contract, the replacement of the O&M Contractor or the Company’s issuance of a notice to the Contracting Authority under the P3 Agreement to terminate the P3 Agreement. The parties have also agreed in the O&M Contract that the O&M Contractor has certain rights with respect to the Contracting Authority’s election to terminate the P3 Agreement or Company’s election to accept the same or continue the P3 Agreement in effect, in addition to certain O&M Contractor’s rights with respect to the Company’s conditional election to terminate the P3 Agreement for Extended Delay, subject to the terms and conditions of the O&M Contract.

Termination Due to the P3 Agreement Termination for Insurance Unavailability. Under the P3 Agreement, if it becomes apparent that insurance required under the P3 Agreement is not available to the extent specified in the P3 Agreement, the Contracting Authority may deliver to the Company notice of its conditional election to terminate the P3 Agreement for insurance unavailability. If the Company determines to accept such Contracting Authority election to terminate the P3 Agreement, the Company may do so, within the time permitted by the P3 Agreement, without the O&M Contractor’s consent, and the O&M Contract will automatically terminate effective as of the termination date of the P3 Agreement. If the O&M Contract is so terminated, except as otherwise provided in the O&M Contract, the O&M Contractor will be entitled to receive a termination payment equal to that portion of the O&M Monthly Availability Payments applicable to the Services completed up to the date of termination and which has not previously been paid to the O&M Contractor, together with reasonable demobilization costs (including subcontracts’ termination costs). If the Company, following the Contracting Authority’s notice under the P3 Agreement of the Contracting Authority’s conditional election to terminate the P3 Agreement for insurance unavailability, wishes to give notice to the Contracting Authority under the P3 Agreement to continue performing its obligations under the P3 Agreement, the Company may do so, within the time permitted by the P3 Agreement, without O&M Contractor’s consent so long as the Company establishes and funds the escrow account as described in the O&M Contract.

Termination Based on P3 Agreement Termination Due to Court Ruling. If the P3 Agreement is terminated for Termination Due to Court Ruling, then the O&M Contract will automatically terminate effective as of the termination date of the P3 Agreement. If the O&M Contract is so terminated, the O&M Contractor is entitled to receive a termination payment calculated in accordance with the O&M Contract.

Limitation on Liability

Without a termination of the O&M Contract, the O&M Contractor’s total aggregate liability may not, in any contract year, exceed an amount equal to 75% but no more than 150% of the O&M Contractor Operating Annual Turnover in the aggregate in any three consecutive contract years, subject to the limitations specified in the O&M Contract. On termination of the O&M Contract, the O&M Contractor’s total aggregate liability may not exceed an amount equal to 200% of the sum of the O&M Contractor Operating Annual Turnover and the average annual O&M Lifecycle Payments, subject to the limitations specified in the O&M Contract. See APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Limitation on Liability.”
Dispute Resolution Procedures

Any claim or controversy between the Company and the O&M Contractor will be submitted to binding arbitration upon written notice of either party delivered to the other of the party’s intention to arbitrate, the nature of the dispute, the amount claimed and the decision sought, except that a dispute relating to a scope change order or claims against the Contracting Authority will be resolved pursuant to the fast-track adjudication process specified in the O&M Contract. Despite the foregoing, equitable remedies, including injunction and specific performance, will be available to the O&M Contractor and the Company by judicial proceedings and, for this purpose and for the purpose of enforcing any arbitral award or decision, the parties have submitted to the exclusive jurisdiction and venue of the federal and state courts in the State of Maryland.

If any issue in dispute between the O&M Contractor and the Company is also the subject of a concurrent dispute under the P3 Agreement, the O&M Contractor and the Company are required to seek to cause the dispute under the O&M Contract to be consolidated with the dispute resolution process occurring under the P3 Agreement. If this consolidation does not occur, then any ongoing proceeding regarding the dispute under the O&M Contract will be stayed pending final resolution of the dispute under the P3 Agreement, which resolution will be binding on the O&M Contractor and the Company for all purposes of the O&M Contract.

The O&M Contractor is permitted to participate in the dispute resolution process established under the P3 Agreement with respect to disputes regarding the Services or relief available to the O&M Contractor under the O&M Contract that is subject to the Company’s receipt of corresponding relief under the P3 Agreement.

Governing Law

The O&M Contract will be construed and interpreted in accordance with the laws of the State of Maryland, except to the extent that United States federal law otherwise applies.

Assignment

Neither the O&M Contractor nor the Company has the right, power or authority to assign or otherwise sell, convey, sublease, mortgage, encumber, transfer or otherwise dispose of the O&M Contract or any portion thereof, either voluntarily or involuntarily, without the prior written consent of the other party, which consent may be granted or withheld in the sole discretion of the other party, except that (a) the Company may assign all of its rights and interests in and under the O&M Contract to the Lenders as collateral security for its obligations, and the Lenders may further assign these rights without the O&M Contractor’s consent thereto as provided in the O&M Direct Agreement and (b) the Company may assign to the Contracting Authority any or all of its rights under the O&M Contract without the O&M Contractor’s consent.

The Amended and Restated O&M Contract

The Company and the O&M Contractor have agreed to a draft amended and restated O&M Contract, to be executed and delivered on or prior to Financial Close, modifying certain terms and conditions of the O&M Contract, including with respect to the Rehabilitation Reserve Account and payment of the O&M Lifecycle Payments described in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor; the Contracting Authority’s Costs—O&M Monthly Availability Payments—Payment of O&M Lifecycle Payments; O&M Renewal Work Deficit.” Under the amended and restated O&M Contract, the Company will agree to establish, on or prior to the RSA Date, the Rehabilitation Reserve Account and fund the same with Lifecycle Payments received from the Contracting Authority’s and pay to the O&M Contractor from that account for renewal work. The Lifecycle Deficit Amount, however, will still be determined by the Lenders’ Technical Advisor commencing on the 10th anniversary of the RSA Date. The amended and restated O&M Contract will also provide that if certain renewal work is no longer needed to be performed (based on the O&M Contractor’s determination and the Lenders’ Technical Advisor’s Report), the O&M Contractor will be paid the budgeted amount at the scheduled time and if the O&M Contractor determines that certain renewal work may be performed later than specified in the renewal work schedule, the O&M Contractor may do so but the Company will pay the O&M Contractor for that renewal work after it has been performed. In other respects, the mechanism with respect to the Rehabilitation the Reserve Account and the O&M Lifecycle Payments under the O&M Contract remain substantially the same as described in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M
CONTRACT—Payments to the O&M Contractor; the Contracting Authority’s Costs—O&M Monthly Availability Payments—Payment of O&M Lifecycle Payments; O&M Renewal Work Deficit.” In addition, the Company and the O&M Contractor have clarified in the draft amended and restated O&M Contract that the Rehabilitation Reserve Account established and funded by the Company pursuant to the TIFIA Loan Agreement is the same reserve account initially referred to as the Project handback reserve account for the purposes of the O&M Contract. See “—Scope of Services—Handback.”

The foregoing is a summary of certain provisions of the draft amended and restated O&M Contract and is not a full statement of the terms of such agreement. Accordingly, the foregoing summary is qualified in its entirety by reference to such agreement and is subject to the full text of the final agreement to be executed on or prior to Financial Close. A copy of such agreement will be available following its execution, free of charge, upon request from the Company or the Trustee.

Interface Agreement

The Company, the Design-Build Contractor and the O&M Contractor entered into the Interface Agreement on April 7, 2016 to record their understanding as to certain matters involving their common interests with respect to the DB Work and the Services as they relate to the Project.

Under the Interface Agreement, the Design-Build Contractor and the O&M Contractor each agreed, among other things, (a) to cooperate effectively with the other in the performance of its obligations under the Design-Build Contract and the O&M Contract, respectively, and under the Interface Agreement and (b) to not unnecessarily withhold or delay any required approval or information under its contract to the extent the same is required for the discharge of the other contractor’s obligations under the Interface Agreement or its respective contract. In order to coordinate their respective efforts and activities pursuant to the Design-Build Contract and the O&M Contract, respectively, the Company, the Design-Build Contractor and the O&M Contractor agreed to establish a coordination committee, through which the parties will endeavor to achieve efficiencies in the review of design documents, including with respect to the processing of change orders that are reasonably expected to affect both contractors, the resolution of issues as they arise from time to time, and the development of submittals that require joint participation.

Other than as set forth below, the Interface Agreement does not create any rights in favor of the Design-Build Contractor or the O&M Contractor as against the Company or in favor of the Company as against the Design-Build Contractor or the O&M Contractor, except to the extent that any such rights are expressly set forth in the contract to which the contractor is a party.

Each of the O&M Contractor and the Design-Build Contractor agreed in the Interface Agreement that, except as otherwise expressly provided in the Interface Agreement or its contract, (a) the performance or non-performance of the other contractor under the contract to which it is a party is not a defense available to the first contractor for its own breach or failure to perform its obligations under the contract to which it is a party and (b) it shall not be excused from, and shall not otherwise be entitled to any extension of time or any compensation for the performance of, any obligation under its respective contract or the Interface Agreement, and it shall not be entitled to assert or claim any change order or seek any other relief under its respective contract, in any such case, as a result of any actual or alleged act, omission, performance or non-performance by the other contractor (including the other contractor’s subcontractors) under its respective contract or the Interface Agreement, except, with respect to both (a) and (b), to the extent such other contractor’s performance or non-performance results from a Company-caused delay, Company-initiated DB Work suspension or Company-initiated Services suspension (as applicable) or work order not resulting from Owner’s directive letter under the P3 Agreement issued by the Company in violation of the Interface Agreement, in each case that itself is not caused by the performance or non-performance of the first contractor.

The O&M Contractor’s and the Design-Build Contractor’s obligations to the Company under the Interface Agreement are guaranteed under parent guaranties, which are described in APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Performance Security—Guaranties” and APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE OPERATIONS AND MAINTENANCE CONTRACT—Performance Security—Guaranties.”
LENDERS’ TECHNICAL ADVISOR’S REPORT

Lenders’ Technical Advisor’s Report (Turner & Townsend)

Turner & Townsend (‘‘T&T’’) prepared the Lenders’ Technical Advisor’s Report dated June 14, 2016 included in this Official Statement as APPENDIX I, which reviews the technical aspects of the Project and supporting information as well as the capabilities of the Company in completing the design, construction and O&M scope of the Project. T&T reviewed a comprehensive set of documents related to the Project, including the P3 Agreement, the Design-Build Contract, the O&M Contract, the Company’s technical submissions, budgets, O&M plans, geotechnical reports and other such reference information and reports as provided by other consultants on behalf of the Contracting Authority or the Equity Members. T&T opinions included therein are from the perspective of potential lenders and Holders.

Overview of T&T

Turner & Townsend is a leading construction consultant, combining 16 years of North American project delivery success with 19 years of international P3 experience. Over the last 10 years, T&T has provided advice to government agencies, bidding consortia and lenders on more than 60 P3 projects across North America, with a combined construction value in excess of $16 billion. This is in addition to experience on over 220 P3 projects worldwide. The T&T team for the Project have extensive light rail experience, working on the client side and for lenders and consortia.

Executive Summary

T&T is satisfied that the Sponsors, Design-Build Contractor and the O&M Contractor have the resources, capabilities and experience to fulfill their obligations on the Project. T&T opines that the technical requirements set forth in the Project Agreement are reasonable for the Project and that the P3 Agreement transfers risk appropriately in the context of the Project and is drafted in a form that is recognized in the U.S. P3 market. T&T considers the Design-Build Contract and the O&M Contract to be logical and comprehensive and that the risk allocation and security mechanisms are suitable for this Project and consistent with other North American projects of similar size that achieved financial close and is satisfied that an appropriate security package has been proposed on the Project. T&T considers the organization for O&M activities to be adequate for managing the Project and provide the required resources for the Project.

Project Participants

Company. T&T notes that it is familiar with all Equity Members and the projects that they are involved with, in North America and is satisfied with the resources, capabilities and experience of the Equity Members to fulfill their obligations on the Project.

Design-Build Contractor. T&T comments that the firms comprising the Design-Build Contractor have experience working together and have been organized to provide complementary experience for the specific construction requirements of the Project. T&T notes that Fluor has significant experience constructing transportation P3 projects, including the Denver Eagle Rail P3, and further opines that Lane and Traylor have the relevant experience undertaking works that parallel the technical challenges of the Project, including tunneling. T&T views the combination of P3 experience, rail and heavy civil experience to be an appropriate blend of expertise for the Project. Should a single member of the Design-Build Contractor become insolvent, T&T is satisfied that the remaining 2 parties could complete their works, meaning that the work to be completed by an incoming contractor would be reduced. T&T estimates a time of two to three months to procure a replacement contractor but notes that if the remaining two Design-Build Contractor members were to undertake the management of the contract in the event of only one Design-Build Contractor partner failing, the delay would be minimal.

O&M Contractor. T&T comments that the firms comprising the O&M Contractor have experience working together and have been organized to provide complementary experience for the specific operations, maintenance and rehabilitation requirements of the Project. T&T notes that Fluor has significant experience in the operations of transportation P3 projects, including the Denver Eagle Rail P3, and further opines that Alternate Concepts Inc. have extensive relevant rail experience in North America undertaking works that parallel the technical
requirements of the Project. The O&M Contractor will use both in-house crews and subcontractors to complete required routine maintenance and renewal activities. T&T has reviewed the O&M specifications, key performance requirements and the O&M methodology and approach to be undertaken by the O&M Contractor in delivering the O&M scope of works and considers each to be reasonable. T&T opines that the scope of services required is in line with expectations for a LRT P3 project and that the structure outlined by the O&M Contractor is considered a good approach for managing the Project and should provide the required resources for the Project.

**Vehicles Provider.** T&T notes that CAF USA will be providing the vehicles during the construction phase of the Project. T&T notes that CAF USA has extensive experience providing vehicles for US rail projects and has delivered vehicles as required to achieve the RSA Date on time. T&T notes that the vehicle to be used for the Project is largely based on that provided for the Houston LRV contract. The Houston LRV will have been in operation for nearly 4 years by the time the Purple Line LRV design is completed. T&T notes this provides a strong benefit as a result of the ability to take account of the lessons learned from the Houston contract, particularly in the testing and commissioning phases of the Project.

**P3 Agreement**

T&T reviewed the execution version of the P3 Agreement dated April 7, 2016, including specifically provisions related to the contract period, environmental compliance, governmental approvals, conditions precedent, utility relocations, regulated materials management, O&M scope, payment mechanism, noncompliance and unavailability events and deductions, relief events and compensation events, handback provisions, and defaults, and concluded that the P3 Agreement transfers risk appropriately in the context of the Project and is drafted in a form that is recognized in the U.S. P3 market.

**Design-Build Contract**

T&T reviewed the amended and restated version of the Design-Build Contract dated June 14, 2016 and found it logical and comprehensive. T&T concluded that the risk allocation and security mechanisms are suitable for this Project and consistent with other North American projects that achieved financial close. T&T opines on the scope and extent of pass through obligations of the Project, noting these are what they would expect to see for the Design-Build Contract appear reasonable and logical for the Project. T&T notes that the payment process, delay clauses and security package, including the sizing of Delay Liquidated Damages, are adequate for the Project and will cover debt service in the event of a delay.

**Construction Cost and Schedule**

In T&T’s opinion, the fixed price, lump sum contract price under the Design-Build Contract has been derived in a logical and rational manner and is reasonable for the Project. T&T reviewed the cash flow (maximum payment curve) and is satisfied that it reflects a reasonable representation of costs in association with bidding, design development and initial site establishment, as well as the construction schedule. The baseline construction schedule shows a total duration from Financial Close to Certification of Revenue Service Availability of 69 months. T&T considers the schedule to be compiled in line with good practice and shows a logical sequence of activities. A critical path has been clearly identified on the schedule with adequate floats identified in the schedule.

**Key Elements of Construction**

- **Design.** T&T indicates the design proposed by the Design-Build Contractor complies with the basic configuration elements as set out by the Contracting Authority in the output specifications. T&T notes that based on the Design-Build Contractor’s design, no additional properties are required beyond the Project right of way procured by the Contracting Authority. The time allowed in the baseline project schedule for engineering design is extensive and T&T is satisfied that it is sufficient for the Project.

- **Underground structures.** T&T notes there are 4 underground structures, including 3 tunnels. T&T notes the Design-Build Contractor’s technical proposal has detailed the process for the construction of these elements of the Project. The tunneling techniques include conventional underground tunneling and cut-and-cover in the shallower areas of the Plymouth Tunnel. The Design-Build Contractor has developed a detailed approach for the below grade construction that includes excavation and support,
dewatering, noise, dust and vibration control during construction. T&T notes the Design-Build Contractor’s proposal has also detailed an approach to interfacing with the adjacent property owners; limiting dust, noise and vibration; addressing geotechnical issues; equipment that will be used to construct and rehabilitate tunnels; and preliminary access and route haul plans. T&T notes the extensive experience of the Design-Build Contractor in the construction of tunnels similar to those on the Project.

- **Track.** The scope of work provides an overall track length of 16.2 miles, including 14.7 miles at grade, 0.5 miles in the tunneled sections and 1.0 mile on elevated structures. T&T notes that the Design-Build Contractor’s approach to track work has been detailed in the technical proposal and the design is based on principles that are dictated AREMA (American Railway Engineering and Maintenance) industry standards and MTA design guidelines.

- **Vehicles.** T&T notes that CAF USA has been chosen as the vehicle supplier for the Purple Line Project. CAF USA has an LRV design that is currently in production in the USA, that will be modified to meet MTA’s requirements. The vehicle will be largely manufactured and assembled in CAF USA’s Elmira, New York facility. T&T notes that CAF USA will build the carshells and truck frames in Spain and ship these components to Elmira. All assembly takes place in Elmira and the trucks are also assembled in New York from a bare frame. T&T further notes that the Company has engaged Interfleet to undertake a consultancy role on the project. Their remit covers all facets of the LRV supply from CAF USA, from design review through final LRV acceptance on the project site. Interfleet will review all CAF USA design submittals prior to these submittals being made to the Company and the Contracting Authority. Interfleet will also provide production quality assurance and quality control oversight at CAF Group’s manufacturing facilities, both in Spain and Elmira, New York. For vehicle testing and acceptance at the site, Interfleet will have a continuous presence on site, witnessing all acceptance testing and providing technical support as required.

- **Governmental Approvals.** T&T reviewed the various permitting and approval requirements for the Project. T&T notes that the Company’s design conforms with the basic configuration elements as set out by the Contracting Authority in the output specifications. As such, T&T does not anticipate a material delay occurring in obtaining the necessary permits.

**Operations and Maintenance**

T&T comments that the O&M Contractor has developed a strategy for operation and maintenance that has been detailed in the operation and maintenance solution. Approaches for mixed-traffic conditions in areas of the alignment that will have a shared use has been defined. Safety and service reliability are drivers of the operation and maintenance solution and strategies have been developed to manage abnormal operating conditions, such as during game days etc. The key work items in the operation and maintenance solution include tracks and trackway, station stops, Operations and Maintenance Facility, LRT portions of the traffic control installations, automatic train protection systems, intelligent transportation systems component and systems, communication and security systems, performance reporting and monitoring, LRVs, traction power substations and overhead contact system, asset management planning and snow and ice removal, as required.

T&T notes that detailed proposals have been developed to address operation through the University of Maryland area. The track through campus is embedded and maintenance will be the same as for other embedded sections of track along the corridor. To deal with the aspects of safety during construction, the Design-Build Contractor will utilize orange safety fence to channelize students to specific crossings and shield them from the work zone. The O&M Contractor’s operational proposal has taken into consideration adequate details for safe operation of the vehicles through the University zone.

T&T reviewed the performance requirements and found them to be reasonable and suitable for the Project. In their opinion, the O&M Contractor should be able to manage the Project within these requirements. T&T reviewed the O&M Contractor’s organization structure and considers it to be suitable to manage the Project within these requirements.
Payments and Deductions

T&T considers the payment mechanism for the Project to be clearly drafted, logical and suitable for the Project. T&T comments further that given the resources, capability and experience of the O&M Contractor, they believe there is a low risk of the Company reaching the deduction threshold triggers. T&T further opines that the assumptions made by the O&M Contractor with respect to Noncompliance Events in a typical year of operation to be reasonable if performing at a good level.

Review of Financial Model

T&T confirmed that the inputs related to construction, O&M and lifecycle costs in the Financial Model dated as of June 14, 2016 are consistent with costs T&T reviewed for its report.

For a complete copy of the Lenders’ Technical Advisor’s Report, see APPENDIX I—“LENDERS’ TECHNICAL ADVISOR’S REPORT.”
The following estimated and projected sources and uses table sets forth the projected amounts of the financing sources for the Project as well as the anticipated uses thereof. Potential investors in the 2016 Bonds should note that these are projected sources and uses and are used herein for informational purposes only and that the amounts of the actual sources and uses of the proceeds from the financing of the Project are subject to change as contemplated herein, may bear no correlation to the estimates included herein and do not create any obligation for the Equity Sponsors to contribute the estimated amount included.

**Estimated Sources and Uses of the 2016 Bonds Proceeds on the Closing Date**  
*(U.S. Dollars in thousands)*

### Sources

<table>
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<tr>
<th>Source</th>
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<tr>
<td>2016A Bonds Par Amount</td>
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<td>2016B Bonds Par Amount</td>
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<td>2016C Bonds Par Amount</td>
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<td>2016D Bonds Par Amount</td>
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<td>2016A Bonds Original Issue Premium</td>
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<td>2016B Bonds Original Issue Premium</td>
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<td>2016C Bonds Original Issue Premium</td>
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<td>2016D Bonds Original Issue Premium</td>
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<td><strong>TOTAL SOURCES</strong></td>
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### Uses

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<th>Use</th>
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<tr>
<td>Bonds Proceeds Sub-Accounts</td>
<td>361,129</td>
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<td>Costs of issuance (1)</td>
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<td><strong>TOTAL USES</strong></td>
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(1) Includes the Underwriters' discount.
### Projected Sources and Uses of Funds through the End of Funding Date for Development, Construction, and Financing Costs (1)

(U.S. Dollars in thousands)

#### Sources

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<tr>
<th>Description</th>
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<td>Progress Payments (2)</td>
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<td>Final Completion Payment allocated to DB Costs (3)</td>
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<td>Interest earned on Bond Proceeds Sub-Accounts balances</td>
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<td>Equity drawdown</td>
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<td>Bond Proceeds Sub-Accounts drawdowns</td>
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<td>TIFIA Loan</td>
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<td>TIFIA Loan capitalized interest (4)</td>
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<td><strong>TOTAL SOURCES OF FUNDS</strong></td>
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#### Uses

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<td>Development costs (5)</td>
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<tr>
<td>Design Build costs</td>
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<tr>
<td>Design Build construction costs</td>
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<td>Other Company related construction costs (6)</td>
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<tr>
<td>Operating and maintenance costs during construction</td>
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<td>Company costs during construction</td>
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<td>Availability Payment Startup Reserve Account</td>
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<td>2016D Bonds Debt Service Reserve Sub-Account</td>
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<td>TIFIA Debt Service Reserve Sub-Account</td>
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<td>Tax Reserve Account</td>
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<td><strong>TOTAL USES OF FUNDS</strong></td>
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(1) Does not include (i) $23,320 of the Final Completion Payment that will be used to repay the 2016B Bonds, and (ii) the $100,000 RSA Payment that will be used to repay the 2016A Bonds. These payments are included in the table entitled "Projected Semi-Annual Sources and Uses of Funds through the End of the Funding Date" included elsewhere in this section.

(2) Includes the $18,500 limited notice to proceed amount.

(3) The total Final Completion Payment is $30,000; however, $23,320 is used to repay the 2016B Bonds and is not included in this table.

(4) Non-cash item.

(5) Includes all costs of issuance.

(6) These costs are included in the Design Build Contract.
## Projected Semi-Annual Sources and Uses of Funds through the End of Funding Date (1)
(U.S. Dollars in thousands)

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<tbody>
<tr>
<td><strong>Sources of Funds</strong></td>
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<td>165,365</td>
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(1) Includes (i) $23,320 of the Final Completion Payment that is programmed to be used to repay the 2016B Bonds, and (ii) the $100,000 RSA Payment that is programmed to be used to repay the 2016A Bonds. These payments are not included in the table entitled "Projected Sources and Uses of Funds through the End of Funding Date for Development, Construction and Financing Costs" included elsewhere in this section.

(2) The semi-annual periods are based on the calendar year and do not align with the payment dates of the Bonds.

(3) The 2016A and 2016B Bonds are expected to be repaid prior to maturity as shown in this table. See "The 2016 Bonds - Redemption of the 2016 Bonds."
PROJECTED FINANCIAL INFORMATION

The following tables set forth the annual and projected debt service requirements and projected cash flow and debt service coverage for the 2016 Bonds and for the TIFIA Loan and the 2016 Bonds during operations. Potential investors in the 2016 Bonds should note that these interest rates and equity contribution amounts are estimates being used herein for information purposes only and that the actual interest rates applicable to the 2016 Bonds and the actual amount of equity contributed by the Equity Sponsors are subject to change as contemplated hereunder, may bear no correlation to the estimates included herein, may in no way be indicative of the final yield on the 2016 Bonds and do not create an obligation for the Equity Sponsors to contribute the estimated amount included herein. See the forward looking statements disclaimer provided on pages v-vi for additional information regarding the risks and uncertainties surrounding the information included in the following tables.
<table>
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<tr>
<th>Ending Period (9/30)</th>
<th>2016A Bonds Principal</th>
<th>2016A Bonds Interest</th>
<th>Total Debt Service on 2016A Bonds</th>
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(1) The 2016A Bonds are expected to be repaid prior to maturity based on the RSA Deadline Date included in the Design-Build Contract.

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<th>Ending Period (9/30)</th>
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(2) The 2016A Bonds are expected to be repaid prior to maturity.
### Annual Debt Service Requirements for the 2016B Bonds

(U.S. Dollars in thousands)

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<tr>
<th>Ending Period (9/30)</th>
<th>2016B Bonds Principal (1)</th>
<th>2016B Bonds Interest</th>
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(1) The 2016B Bonds are expected to be repaid prior to maturity based on the RSA Deadline Date included in the Design-Build Contract.

### Projected Annual Debt Service for the 2016B Bonds

(U.S. Dollars in thousands)

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<th>Ending Period (9/30)</th>
<th>2016B Bonds Principal (2)</th>
<th>2016B Bonds Interest</th>
<th>Total Debt Service on 2016B Bonds</th>
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(2) The 2016B Bonds are expected to be repaid prior to maturity.
## Annual Debt Service Requirements for the 2016C Bonds
(U.S. Dollars in thousands)

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<th>Ending Period (9/30)</th>
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</table>

(1) The 2016C Bonds are expected to be repaid prior to maturity based on the RSA Deadline Date included in the Design-Build Contract.

## Projected Annual Debt Service for the 2016C Bonds
(U.S. Dollars in thousands)

<table>
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<th>Ending Period (9/30)</th>
<th>2016C Bonds Principal (2)</th>
<th>2016C Bonds Interest</th>
<th>Total Debt Service on 2016C Bonds</th>
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</table>

(2) The 2016C Bonds are expected to be repaid prior to maturity.
### Annual Debt Service Requirements for the 2016D Bonds

(U.S. Dollars in thousands)

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<th>Ending Period (9/30)</th>
<th>2016D Bonds Principal</th>
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## Projected Cash Flow and Debt Service Coverage for the 2016 Bonds During Operation

(U.S. Dollars in thousands)

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<th>Revenues (1)</th>
<th>Special Lifecycle Payments</th>
<th>Overhead, Operating &amp; Maintenance Costs</th>
<th>Major Maintenance Costs and Capital Expenditures</th>
<th>Availability Reserve Deposits / Payment Startup</th>
<th>Net Cash Flow ( (A) \times (C) \times (D) / (E) )</th>
<th>Net Cash Flow Divided by Bonds Debt Service (5)</th>
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(1) Excludes revenues that are not included in the definition of "Net Cash Flow."

(2) Per the contractual definition of Senior Debt Service, the Bonds Interest includes the interest from the 2016B, 2016C, and 2016D Bonds.

(3) This represents the projected redemption of the 2016C Bonds prior to their maturity date.

(4) Per the contractual definition of Senior Debt Service, the Senior Debt Service includes the interest from the 2016B, 2016C, and 2016D Bonds, and principal repayment from only the 2016D Bond.

(5) Contractually, the Total Debt Service Coverage Ratio is calculated for each semi-annual period. For the purposes of the above table, the Net Cash Flow Divided by Bonds Debt Service is calculated for each annual period ending September 30.
**Projected Cash Flow and Debt Service Coverage for the 2016 Bonds and the TIFIA Loan During Operations**

*(U.S. Dollars in thousands)*

<table>
<thead>
<tr>
<th>Ending Period (9/30)</th>
<th>Net Cash Flow (A)</th>
<th>2016 Bonds Debt Service (1) (B)</th>
<th>Net Cash Flow Divided by Bonds Debt Service (A) / (B)</th>
<th>TIFIA Loan Debt Service (C)</th>
<th>Net Cash Flow Divided by Total Debt Service (2) (A) / (B+C)</th>
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</table>

(1) The Bonds Debt Service consist of the interest from the 2016B, 2016C, and 2016D Bonds, and the principal repayment from the 2016D Bonds, as per the contracts.

(2) Contractually, the total Debt Service Coverage Ratio is calculated for each semi-annual period. For the purposes of the above table, the "Net Cash Flow Divided by Total Debt Service" is calculated for each annual period ending September 30.
CONTINUING DISCLOSURE

Pursuant to the requirements of Rule 15c2-12 (17 C.F.R. Part 240, § 240.15c2-12) of the Securities Exchange Act of 1934, as amended (“Rule 15c2-12”) for the benefit of the Bondholders and Beneficial Owners of the 2016 Bonds, the Contracting Authority has agreed in that certain Continuing Disclosure Agreement, dated as of the Closing Date (the “Continuing Disclosure Agreement (Contracting Authority)”), to provide annual financial information and operating data of the type included in this Official Statement in APPENDIX A attached hereto and notices of certain enumerated events, and (ii) the Company has agreed in that certain Continuing Disclosure Agreement, dated as of the Closing Date (the “Continuing Disclosure Agreement (Company)”), between the Company and the Trustee, as dissemination agent (the “Dissemination Agent”), to provide annual audited financial statements, as well as certain other reports, information, documents and notices required to be provided pursuant to the Series 2016 Loan Agreement and notices of certain enumerated events. All such financial statements, reports, information, documents and notices required to be filed pursuant to the Continuing Disclosure Agreements will be posted to the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access System known as “EMMA.”

Forms of the Continuing Disclosure Agreement (Company), and the Continuing Disclosure Agreement (Contracting Authority) are attached hereto as APPENDIX J-1 and J-2, respectively. A failure by the Contracting Authority, the Company or the Dissemination Agent to comply with the requirements of the Continuing Disclosure Agreement (Company) or the Continuing Disclosure Agreement (Contracting Authority), as applicable, does not in and of itself constitute an Event of Default under the Indenture or the Series 2016 Loan Agreement. Nevertheless, such a failure must be reported in accordance with Rule 15c2-12 and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the 2016 Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the 2016 Bonds and their market price.

MDOT believes it has complied in all material respects with its continuing disclosure agreements pursuant to Rule 15c2-12 during the last five years; however, the MDOT acknowledges that (i) from time to time during such period, certain financial information related to the MDOT, while publicly available and linked to some outstanding CUSIPs on EMMA, was not properly linked to all outstanding CUSIPs on a timely basis; and (ii) certain State of Maryland financial and operating information for fiscal years 2011 through 2015, while publicly available on EMMA in various capacities, was not properly linked to certain of the MDOT’s outstanding debt issuances on a timely basis. MDOT believes it has taken corrective action to properly link all such informational filings with all relevant CUSIPs and has implemented procedures designed to assure proper linkage of filings in the future.

The Company has no obligations under any previous continuing disclosure agreement under Rule 15c2-12.

The Company has agreed in the Continuing Disclosure Agreement (Company) that, until such time as proceeds of the 2016 Bonds have been fully allocated to the Project, to use its best efforts to post on its website (http://www.purplelinetransitpartners.com/default.htm) (this inactive textual reference is not a hyperlink, and this website is not incorporated herein) within one hundred and twenty (120) days after the end of each Fiscal Year a report detailing the amount of proceeds of the 2016 Bonds disbursed to the Project during the prior year and its expectations relating to the key environmental and social objectives of the Project as recommended by the Executive Committee of the Green Bonds Principles of the International Capital Markets Association. Failure to comply with this undertaking shall not be a default under the Continuing Disclosure Agreement (Company). The Continuing Disclosure Agreement (Company) also provides that the Dissemination Agent shall have no responsibility for the information posted or any liability to any person, including any Bondholder or Beneficial Owners, with respect to any reports, notices or disclosures posted pursuant to such undertaking.

Summary of the Terms of the Continuing Disclosure Agreement (Company)

The Company shall promptly (or within the time specified) provide to the Dissemination Agent:

(i) (A) audited financial statements of the Company prepared in accordance with GAAP within one hundred and twenty (120) days after the end of each Fiscal Year of the Company beginning with Fiscal Year 2017, unless any such audited financial statements shall not be available by such time, in which case the unaudited financial statements shall be provided and the audited financial statements of the
(ii) simultaneously with delivery of the financial statements in clause (i) above, if an Event of Default has occurred and is continuing, a certificate of the Company stating that an Event of Default has occurred and is continuing under the Series 2016 Loan Agreement;

(iii) an annual operating budget for each Fiscal Year, beginning with Fiscal Year 2017, within ten (10) days following acceptance thereof by the Company’s management, but in no event later than fifteen (15) days prior to the commencement of such Fiscal Year;

(iv) prior to the RSA Date, on a monthly basis, beginning with the month of July 2016, a construction progress report of the Company: (a) providing an assessment of the overall construction progress of the D&C Work since the date of the last report (or, with respect to the first such report, since the date of the Continuing Disclosure Agreement (Company)) and setting forth a reasonable estimate as to the completion date for the applicable D&C Work, and (b) providing a reasonably detailed description of any material delays encountered or anticipated in connection with such D&C Work, and a reasonably detailed description of the proposed course of action with respect to such delay, such report to be provided on or before twenty-eight (28) days after the end of each month;

(v) prior to the RSA Date, on or before twenty-eight (28) days after the end of each fiscal quarter, starting with the fiscal quarter ending September 30, 2016, a summary provided by the Company of the monthly progress reports issued by the Lenders’ Technical Advisor for each month of such quarter;

(vi) not later than sixty (60) days after the end of each fiscal quarter of the Company following the RSA Date, a report showing (a) the operating data for the Project for the previous fiscal quarter, including total Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”), total O&M Expenditures and total Renewal Expenditures incurred, and (b) the variances for such period between the actual Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”), actual O&M Expenditures and actual Renewal Expenditures incurred, and the projected Project Revenues (as such term is defined in the Indenture and in APPENDIX B—“DEFINITIONS OF TERMS”), budgeted O&M Expenditures and budgeted Renewal Expenditures respectively for the same period as set forth in the annual operating budget, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more;

(vii) details of litigation in respect of the Company pending or, to the knowledge of the Company, threatened in writing by or before any arbitrator or Governmental Authority in which (a) the claim against the Company exceeds $10 million, net of any amounts covered by insurance or (b) a remedy requested in the litigation is the permanent stoppage or delay of completion of the Project beyond the Long Stop Date;

(viii) details of any penalties or damages paid by the Company under the Material Project Contracts in excess of $10 million in the aggregate per Material Project Contract;

(ix) details of any “event of default” or “Event of Default” (or its equivalent) as defined or used in, or termination with respect to, any Material Project Contract and copies of all written notices of default delivered to the Company with respect to any Material Project Contract;

(x) copies of any notice of any insurance claims in excess of $10 million;

(xi) copies of any notice of the occurrence of a Force Majeure Event or Relief Event under the P3 Agreement or any written claim for any similar event or occurrence under the Design-Build Contract;

(xii) any certificates certifying achievement of Revenue Service Availability (including specifically the number of days that the actual RSA Date is prior to the RSA Deadline (without giving
effect to any extension thereof under the P3 Agreement), if such eventuality occurs, and the date the 2016D Bonds shall be subject to mandatory redemption pursuant to Section 4.5(c)(vi) of the Indenture) or Final Completion;

(xiii) in the event any letter of credit issuer of a then-effective Equity Letter of Credit is downgraded such that such issuer is no longer an Acceptable LC Bank, notice of the final resolution thereof (for the avoidance of doubt, whether such Equity Letter of Credit is drawn or replaced) pursuant to the terms of the Equity Contribution Agreement; and

(xiv) copies of any written claim or notice of (a) violation in respect of any violation of Environmental Law or (b) any new or not previously disclosed historical release of Hazardous Materials that, in either case of clauses (a) or (b), would reasonably be expected to cause or does cause a Material Adverse Effect.

The Company shall provide or cause to be provided, in a timely manner, but not later than ten (10) Business Days after the occurrence of the event, to the Dissemination Agent, and the Dissemination Agent will thereafter promptly provide notice to MSRB, as instructed by the Company, of any of the following events with respect to the 2016 Bonds (each, a “Listed Event”, and collectively, the “Listed Events”):

(i) principal and interest payment delinquencies;

(ii) non-payment related defaults, if material;

(iii) unscheduled draws on debt service reserves reflecting financial difficulties;

(iv) unscheduled draws on credit enhancements reflecting financial difficulties;

(v) substitution of credit or liquidity providers, or their failure to perform;

(vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (as defined in IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2016 Bonds, or other material events affecting the tax status of the 2016 Bonds;

(vii) modifications to rights of the Bondholders and Beneficial Owners, if material;

(viii) Bond calls, if material and tender offers;

(ix) defeasances;

(x) release, substitution or sale of property securing repayment of the 2016 Bonds, if material;

(xi) rating changes;

(xii) Bankruptcy Event, insolvency, receivership or similar event of the Company;

(xiii) the consummation of a merger, consolidation, or acquisition involving the Company or the sale of all or substantially all of the assets of the Company, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(xiv) appointment of a successor or additional trustee or the change of name of a trustee under the Indenture, if material;

provided that, for the purposes of the event identified in (xii) above, the event is considered to occur when any of the following occurs: The appointment of a receiver, fiscal agent or similar officer for the Company in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or
governmental authority has assumed jurisdiction over substantially all of the assets or business of the Company, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Company.

The Company and the Dissemination Agent may amend the Continuing Disclosure Agreement (Company) (and the Dissemination Agent will agree to any amendment so requested by the Company to the extent that such amendment does not adversely affect the Dissemination Agent) and any provision of the Continuing Disclosure Agreement (Company) may be waived, provided that the following conditions are satisfied:

(i) if the amendment or waiver relates to the provisions relating to the provision of reports and reporting of Listed Events, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the 2016 Bonds, or type of business conducted, which change shall be evidenced by a written opinion of Bond Counsel;

(ii) the agreements in the Continuing Disclosure Agreement (Company), as proposed to be amended or waived, would, in the opinion of the Bond Counsel, have complied with the requirements of the Rule at the time of the primary offering of the 2016 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(iii) the proposed amendment or waiver (A) is approved by the Bondholders and Beneficial Owners in the manner provided in the Indenture in connection with Supplemental Indentures requiring consent of the Bondholders and Beneficial Owners, or (B) does not, in the opinion of Bond Counsel, materially impair the interests of the Bondholders and Beneficial Owners.

Summary of the Terms of the Continuing Disclosure Agreement (Contracting Authority)

The Contracting Authority agrees to provide or cause to be provided to the MSRB through its EMMA system for each fiscal year (beginning with the fiscal year ending June 30, 2016) not later than two-hundred seventy-five (275) days following the end of that fiscal year, (i) the audited financial statements of the Contracting Authority for such fiscal year, or (ii) in the event that audited financial statements are not available within such time period, unaudited financial statements for such fiscal year, and within five (5) days after audited financial statements are available, the audited financial statements, in all cases, prepared in accordance with GAAP. The audited financial statements may be incorporated by reference from other documents, including official statements of debt issues of the Contracting Authority, which are available on the MSRB’s EMMA system or filed with the SEC.

The Contracting Authority shall, within ten (10) days after execution and delivery of the New Starts Full Funding Grant Agreement related to the Federal Transit Administration New Starts funds allocated to the Project, file a notice with the MSRB stating that the New Starts Full Funding Grant Agreement has been fully executed and delivered and the related funds are available thereunder for the Project in accordance with the terms of the New Starts Full Funding Grant Agreement.

The Contracting Authority shall provide or cause to be provided, in a timely manner, but not later than ten (10) Business Days after the occurrence of the event, to the MSRB notice of any of the following events with respect to the 2016 Bonds:

(i) Bankruptcy Event, insolvency, receivership or similar event of the Contracting Authority; and

(ii) the consummation of a merger, consolidation, or acquisition involving the Contracting Authority or the sale of all or substantially all of the assets of the Contracting Authority, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material,
provided that, for the purposes of the event identified in (i) of this section, the event is considered to occur when any of the following occurs: The appointment of a receiver, fiscal agent or similar officer for the Contracting Authority in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Contracting Authority, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Contracting Authority.

The Continuing Disclosure Agreement (Contracting Authority) may only be amended or any provision thereof waived, provided that the following conditions are satisfied:

(i) If the amendment or waiver relates to the reports or listed events provisions of the Continuing Disclosure Agreement (Contracting Authority), it may only be made in connection with a change in circumstances arising from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the 2016 Bonds, or type of business conducted, which change shall be evidenced in writing by Bond Counsel;

(ii) If amendment or waiver would, in the opinion of Bond Counsel, have complied with the requirements of Rule 15c2-12(b)(5) under the Exchange Act at the time of the primary offering of the 2016 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(iii) The proposed amendment or waiver (i) is approved by the Bondholders and Beneficial Owners of the 2016 Bonds in the manner provided in the Indenture in connection with Supplemental Indentures requiring consent of the Bondholders and Beneficial Owners, or (ii) does not, in the opinion of Bond Counsel, materially impair the interests of the Bondholders and Beneficial Owners.

LEGAL MATTERS

The Bond Issuer will furnish the Underwriters a transcript of certain proceedings incident to the authorization and issuance of the 2016 Bonds. The Bond Issuer will also furnish, at the Company’s expense, the approving legal opinions of Bond Counsel to the Bond Issuer as set forth in APPENDIX L—“FORM OF APPROVING OPINION OF BOND COUNSEL.”

The various legal opinions to be delivered concurrently with the delivery of the 2016 Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. In rendering a legal opinion, the attorney does not become an insurer or guarantor of the expression of professional judgment, of the transaction opined upon, or of the future performance of the parties to the transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

The 2016 Bonds are offered when, as and if executed and delivered and accepted by the Underwriters and subject to the approving legal opinion of Ballard Spahr LLP, as Bond Counsel, and to certain other conditions. Certain legal matters will be passed upon for the Bond Issuer by its counsel, Miles & Stockbridge P.C.; for the Contracting Authority by the Office of the Attorney General of the State of Maryland; for the Company and Sponsors by their counsel, Orrick, Herrington & Sutcliffe LLP and DLA Piper LLP (US); and for the Underwriters by their special counsel, Latham & Watkins LLP.
TAX MATTERS

Federal Law

General

In the opinion of Ballard Spahr LLP, Bond Counsel, under existing law, (i) interest on the 2016 Bonds is excludable from gross income for purposes of federal income taxation under existing laws as enacted and construed as of the date of issuance of the 2016 Bonds (except that interest on a 2016 Bond is not excludable while such 2016 Bond is held by a “substantial user” of the Project or a “related person” within the meaning of Section 147(a) of the Code), and (ii) interest on the 2016 Bonds is a preference item for purposes of determining individual and corporate alternative minimum tax. Interest on 2016 Bonds held by foreign corporations may be subject to the branch profits tax imposed by the Code. The proposed text of the opinion of Bond Counsel is set forth in APPENDIX L hereto.

The Internal Revenue Code of 1986, as amended, and the regulations thereunder (the “Code”) imposes various requirements that must be satisfied for interest on the 2016 Bonds to be excludable from gross income for purposes of federal income taxation. These requirements include limitations on the use and investment of bond proceeds, limitations on the maturity of and security for such 2016 Bonds, procedures for issuance of such 2016 Bonds, a requirement that arbitrage earned on certain investments be paid periodically to the United States, and a requirement that information reports be filed with the Internal Revenue Service. The Bond Issuer and the Company have represented and warranted in the Indenture, the Loan Agreement and/or the Tax Regulatory Agreement that they will not take any action that would impair the excludability from gross income of interest on the 2016 Bonds for federal income tax purposes.

The opinion of Bond Counsel assumes continuing compliance with the covenants of the Bond Issuer and the Company pertaining to those sections of the Code which affect the excludability from gross income of interest on the 2016 Bonds for federal purposes of federal income taxation and, in addition, relies on representations by the Bond Issuer and the Company with respect to matters solely within the knowledge of the Bond Issuer and the Company which Bond Counsel has not independently verified. If the Bond Issuer or the Company should fail to comply with such covenants or if the foregoing representations should be determined to be inaccurate, interest on the 2016 Bonds could become included in gross income from the date of issuance of the 2016 Bonds or as of some later date, regardless of the date on which the event causing such inclusion occurs.

Prospective purchasers of the 2016 Bonds should also be aware that the ownership of tax exempt obligations, such as the 2016 Bonds, may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations and taxpayers who may be deemed to have incurred (or continued) indebtedness to purchase or carry tax exempt obligations. Bond Counsel expresses no opinion regarding such consequences. Prospective purchasers of the 2016 Bonds should consult with their tax advisors as to the applicability and impact of any such consequences.

Original Issue Premium

The 2016 Bonds being offered at a premium (“original issue premium”) equal generally to the excess of their public offering price over their principal amount are referred to herein as the “Premium Bonds”. For federal income tax purposes, original issue premium is amortizable periodically over the term of a Premium Bond through reductions in the holder’s tax basis for such Premium Bond for determining taxable gain or loss upon sale or redemption prior to maturity. Amortization of premium does not create a deductible expense or loss. Investors should consult their tax advisors for an explanation of the amortization rules.

Backup Withholding

A person making payments of tax-exempt interest to a holder of the 2016 Bonds is generally required to report the payments to the Internal Revenue Service (the “IRS”) and to implement “backup withholding” if a holder of the 2016 Bonds does not provide an IRS Form W-9 to the payor. “Backup withholding” requires the payor to withhold tax from the interest payments at the backup withholding rate, currently 28%. Form W-9 states the holder’s taxpayer identification number or basis of exemption from backup withholding.
If a holder purchasing 2016 Bonds through a brokerage account has executed a Form W-9 in connection with the account, as generally can be expected, there should be no backup withholding from the interest on the 2016 Bonds.

If backup withholding occurs, it does not affect the exclusion of the interest on the 2016 Bonds from gross income for federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the holder’s federal income tax liability once the required information is furnished to the IRS.

**State of Maryland law**

By the terms of the Act, the 2016 Bonds and the interest payable thereon are forever exempt from all Maryland state and local taxes, but the terms of the Act do not expressly refer to estate or inheritance taxes, or to any other taxes not levied or assessed directly on the 2016 Bonds, the interest thereon, their transfer or the income therefrom.

**Changes in Federal and State Tax Law**

From time to time, there are Presidential proposals, proposals of various federal committees, and legislative proposals in the Congress and in the states that, if enacted, could alter or amend the federal and state tax matters referred to herein or adversely affect the marketability or market value of the 2016 Bonds or otherwise prevent holders of the 2016 Bonds from realizing the full benefit of the tax exemption of interest on the 2016 Bonds. Further, such proposals may impact the marketability or market value of the 2016 Bonds simply by being proposed. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted it would apply to bonds issued prior to enactment. In addition, regulatory actions are from time to time announced or proposed and litigation is threatened or commenced which, if implemented or concluded in a particular manner, could adversely affect the market value, marketability or tax status of the 2016 Bonds. It cannot be predicted whether any such regulatory action will be implemented, how any particular litigation or judicial action will be resolved, or whether the 2016 Bonds would be impacted thereby.

Purchasers of the 2016 Bonds should consult their tax advisors regarding any pending or proposed legislation, regulatory initiatives or litigation. The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of issuance and delivery of the 2016 Bonds, and Bond Counsel has expressed no opinion as of any date subsequent thereto or with respect to any proposed or pending legislation, regulatory initiatives or litigation.

THE FOREGOING DISCUSSION OF CERTAIN FEDERAL AND STATE INCOME TAX CONSEQUENCES IS PROVIDED FOR GENERAL INFORMATION ONLY. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS AS TO THE TAX CONSEQUENCES TO THEM IN LIGHT OF THEIR OWN PARTICULAR INCOME TAX POSITION, OF ACQUIRING, HOLDING OR DISPOSING OF THE 2016 BONDS.
LITIGATION

The Bond Issuer

To the knowledge of the Bond Issuer, after due inquiry, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending against the Bond Issuer (as to which the Bond Issuer has received service of process) or, to the knowledge of the Bond Issuer, threatened against or affecting the Bond Issuer wherein an unfavorable decision, ruling or finding would (i) adversely affect the transactions contemplated by, or the validity or enforceability of, the Issuer Documents, or any other agreement or instrument to which the Bond Issuer is a party and which is used or contemplated for use in the consummation of the transactions contemplated by the Issuer Documents, (ii) question the excludability of the interest on the 2016 Bonds from the gross income of the Holders thereof for federal income tax purposes or (iii) question or contest the title or positions or appointments of any officers or board members of the Bond Issuer.

The Contracting Authority

Except as set forth in this section, there is no action, suit, proceeding, investigation or litigation pending against, and served on, the Contracting Authority which challenges the Contracting Authority’s authority to execute, deliver and perform its obligations under, or which challenges the validity or enforceability of, the P3 Agreement or which challenges the authority of Contracting Authority officials to execute the P3 Agreement; and the Contracting Authority has disclosed to the Company prior to the effective date of Financial Close any such pending action, suit, proceeding, investigation or litigation against the Contracting Authority (including filed but un-served complaints of which the Contracting Authority’s senior officials are aware). An action was filed on August 26, 2014 in the U.S. District Court in the District of Columbia alleging that a Threatened or Endangered Species exists at, near or on the Project right-of-way. See “THE PURPLE LINE LIGHT RAIL PROJECT—Environmental Litigation and Permits.” Additionally, an action was filed on May 9, 2016 in the Circuit Court for Montgomery County, Maryland, naming MTA and MDOT as defendants. The complaint alleges that MTA has not offered “just compensation” to the plaintiffs for portions of the plaintiffs’ real property affected by the Project. The plaintiffs are seeking new appraisals, new offers of just compensation, and monetary and punitive damages.

The Company

There is no pending or, to the Company’s knowledge, threatened litigation or proceeding against the Company or the Project, (i) affecting the existence of the Company, (ii) in any way contesting or affecting the validity or enforceability of the Company Documents, or (iii) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, and which, in each case (individually or in the aggregate), has a material likelihood of success and, if determined adversely to the Company, would reasonably be expected to have a Material Adverse Effect.

There is no pending or, to the Company’s knowledge, threatened, legal or administrative proceeding (material as to the Company) to which the Company is a party, or of which property of the Company is subject, which will materially adversely affect the transactions contemplated by this Official Statement or the Transaction Documents or which will materially adversely affect the validity or enforceability of any 2016 Loan Document to which the Company it is a party, including the Series 2016 Loan Agreement and the Continuing Disclosure Agreement (Company) (a form of which is set forth in APPENDIX J-2—“FORM OF CONTINUING DISCLOSURE AGREEMENT (COMPANY)”).
RELATED PARTY TRANSACTIONS

Certain of the parties with whom the Company has contracted or will contract to provide guarantees, staffing and administrative, maintenance, technical and other services to the Project are affiliates of or otherwise related to Fluor Enterprises, Meridiam or Star America.

The Company will enter into a Design-Build Contract with the Design-Build Contractor, whose members are Fluor Enterprises, Lane and Traylor. The Design-Build Contract includes, on a fixed price “lump-sum, turn-key basis,” any and all work and services required or appropriate in connection with the design and construction of the Purple Line, except to the extent expressly excluded by the Design-Build Contract. The fixed price of the Design-Build Contract is $2,009,873,600, subject to adjustment in accordance with the terms of the Design-Build Contract. See “THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract” and APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT.” In addition, Fluor, Salini and Traylor, each in their capacity as a Design-Build Guarantor, will each provide a guaranty to support the Design-Build Contractor’s obligations under the Design-Build Contract and such obligations of the Design-Build Contractor to the Company under the Interface Agreement. See “PROJECT PARTICIPANTS—Design-Build Guarantors.”

The Company will enter into an O&M Contract with the O&M Contractor, whose members are of Fluor Enterprises, ACI, and CAF USA. The O&M Contract includes all services necessary for the operation and maintenance of the Purple Line under the P3 Agreement, except to the extent expressly excluded in the O&M Contract. See “THE PRINCIPAL PROJECT DOCUMENTS—The O&M Contract” and APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT.” In addition, Fluor, ACI and CAF, each in their capacity as an O&M Guarantor, will each provide a guaranty to support the O&M Contractor’s obligations under the O&M Contract and such obligations of the O&M Contractor to the Company under the Interface Agreement. See “PROJECT PARTICIPANTS—O&M Guarantors.”

The Company will pay a development fee to compensate each of the Sponsors for out-of-pocket, third-party development costs as well as internal development costs incurred in developing the Project and achieving financial close on the Financial Close Date. In addition the Company may enter into one or several TAMSAs during the Term.

The Company will also pay a letter of credit fee to each of the Sponsors to compensate them for providing the respective Equity Letters of Credit, which support their respective equity commitments in accordance with the Equity Contribution Agreement.

RATINGS

S&P has assigned a preliminary rating of “BBB+” on the 2016 Bonds; Fitch has assigned an expected rating of “BBB+” on the 2016 Bonds and DBRS has assigned a provisional rating on the 2016A Bonds and the 2016B Bonds of “A (low),” and on the 2016C Bonds and the 2016D Bonds of “BBB (high).” With respect to the TIFIA Loan, S&P has assigned a preliminary rating of “BBB+,” Fitch has assigned an expected rating of “BBB+” and DBRS has assigned a provisional rating of “BBB (high).”

The Contracting Authority and the Company have provided certain information to S&P, Fitch and DBRS that is not included in this Official Statement. The ratings reflect only the view of the respecting rating agency. An explanation of the ratings given by S&P may be obtained from S&P at 55 Water Street, New York, New York 10007, (212) 438-1000; an explanation of the ratings given by Fitch may be obtained from Fitch at 33 Whitehall Street, New York, New York 10004, (212) 908-0500; and an explanation of the ratings given by DBRS may be obtained from 181 University Avenue, Suite 700, Toronto, ON M5H 3M7, (416) 593-5577. There is no assurance that any such ratings will continue for any given period of time or that any such ratings will not be revised downward or withdrawn entirely if, in the judgment of each rating agency, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the 2016 Bonds.
UNDERWRITING

The 2016 Bonds are being sold at an aggregate purchase price of $364,884,504 (representing the $313,035,000 aggregate original principal amount of the 2016 Bonds less an underwriting discount of $2,475,101 plus an original issue premium of $54,324,605) to the Underwriters pursuant to a bond purchase agreement, dated June 14, 2016, entered into among the Underwriters, the Bond Issuer and the Company (the “Bond Purchase Agreement”). The expenses associated with the issuance of the 2016 Bonds are being paid by the Company from proceeds of the 2016 Bonds and other available funds. The right of the Underwriters to receive compensation in connection with the 2016 Bonds is contingent upon the actual sale and delivery of the 2016 Bonds. The Underwriters will initially offer the 2016 Bonds for sale at the prices or yields set forth on the inside cover of this Official Statement. Such prices or yields may subsequently change in connection with the marketing of the 2016 Bonds. The Underwriters may offer and sell the 2016 Bonds to certain dealers (including dealers depositing the 2016 Bonds into investment trusts) and others at prices lower than the initial public offering price or prices set forth in this Official Statement. The Underwriters reserve the right to join with dealers and other investment banking firms in offering the 2016 Bonds for sale.

J.P. Morgan Securities LLC (“J.P. Morgan”) and RBC Capital Markets, LLC (“RBC”, and together with J.P. Morgan, the “Underwriters”, and individually, each, an “Underwriter”) provided a support letter in connection with the Company’s bid submitted to the Contracting Authority for the contract to construct and operate the Project and in connection with the Underwriters’ role in the potential financing of the Project.

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the Underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the Bond Issuer, the Contracting Authority, the State or the Company and to persons and entities with relationships with the Bond Issuer, the Contracting Authority, the State or the Company, for which they received or will receive customary fees and expenses. The Underwriters currently anticipate that JP Morgan Chase Bank, National Association may provide a standby letter of credit to the Company for and on behalf of Lane to secure, in part, performance of the Design-Build Contractor’s obligations to the Company under the Design Build Contract.

J.P. Morgan has entered into negotiated dealer agreements (each, a “Dealer Agreement”) with each of Charles Schwab & Co., Inc. (“CS&Co.”) and LPL Financial LLC (“LPL”) for the retail distribution of certain securities offerings at the original issue prices. Pursuant to each Dealer Agreement, each of CS&Co. and LPL may purchase 2016 Bonds from J.P. Morgan at the original issue price less a negotiated portion of the selling concession applicable to any 2016 Bonds that such firm sells.

In the ordinary course of their various business activities, the Underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the Bond Issuer or the Company (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Bond Issuer, the Contracting Authority, the State or the Company. Certain affiliates of J.P. Morgan currently hold an approximately three percent (3%) ownership interest in Fluor. The Underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

The Underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.
ELIGIBILITY FOR INVESTMENT

Eligibility Under Maryland Law for Investment and as Security for the Deposit of Public Money

To the extent that a particular investor is governed by Maryland law with respect to its investments, and subject to any applicable limitations under Maryland law, the 2016 Bonds are securities in which any of the following persons may invest money: an officer of a governmental unit; a bank, trust company, savings and loan association, investment company, or other person operating a banking business; an insurance association or other person operating an insurance business; a personal representative, guardian, trustee or other fiduciary; and any other person. The Act provides that the 2016 Bonds may be deposited with and received by a governmental unit, or any officer of the State or a governmental unit, for any purpose for which the deposit of bonds or other obligations of the State is authorized by law. Each Holder of the 2016 Bonds should make its own determination as to such matters of legality of investment in, or pledge of book-entry interests in, the 2016 Bonds.

FINANCIAL ADVISORS

The Bank of Tokyo-Mitsubishi UFJ, Ltd., THB Advisory LLC and Agentis Capital (collectively, the “Company Financial Advisors”) have acted as financial advisors to the Company in connection with certain aspects of the issuance of the 2016 Bonds. The Company Financial Advisors have provided advice on the plan of finance and structure of the issue has and have not been engaged, nor have they undertaken, to make an independent verification or to guarantee the accuracy, completeness or fairness of the information contained in this Official Statement.

BMO Capital Markets Corp. (“BMO”) has provided financial advisory services to the MTA under contract by and between the Bond Issuer on behalf of MTA and BMO. BMO has provided financial transaction advisory services with respect to matters relating to capital markets, transaction structure, and the procurement process for the project. BMO is not engaged in the business of underwriting or distributing municipal securities, and BMO has not served as a Municipal Advisor, as that term is defined in the Securities and Exchange Commission’s Rule 15Ba1-1 promulgated under the Exchange Act, related to the Project. BMO assumes no responsibility for the accuracy, completeness or fairness of this Official Statement. BMO is a direct, wholly-owned subsidiary of BMO Financial Corp. (formerly Harris Financial Corp.) which is itself a wholly-owned subsidiary of the Bank of Montreal, and is a member of the Financial Industry Regulatory Authority (FINRA) and the Securities Investor Protection Corporation (SIPC).

INDEPENDENT AUDITOR

The financial statements of MDOT as of and for the year ended June 30, 2015 included in APPENDIX A to this Official Statement have been audited by SB & Company, LLC, independent auditors, as stated in their report appearing therein. SB & Company, LLC, independent auditors, has not been engaged to perform and has not performed, since the date of its report included in APPENDIX A to this Official Statement, any procedures on the financial statements addressed in such report. SB & Company, LLC also has not performed any procedures relating to this Official Statement.
CONCLUDING STATEMENT

All quotations in this Official Statement from, and summaries and explanations of, the Maryland Constitution, the Annotated Code of Maryland, and the bond proceedings do not purport to be complete. Reference is made to the pertinent provisions of the Maryland Constitution, the Annotated Code of Maryland and those documents for all complete statements of their provisions. Copies of the bond proceedings are available upon request from the Bond Issuer.

To the extent that any statements in this Official Statement involve matters of opinion or estimates (whether or not expressly stated to be such) those statements are made as such and not as representations of fact or certainty. No representation is made that any of those statements will be realized. Information in this Official Statement has been derived by the Company from official and other sources and is believed by the Company to be accurate and reliable, but information other than that obtained from the Company’s records has not been independently confirmed or verified by the Company and its accuracy is not guaranteed.

This Official Statement is not to be construed as a contract or agreement between the Company, the Bond Issuer or the Contracting Authority and the original purchaser or subsequent holders or Holders of any of the 2016 Bonds.

This Official Statement has been prepared, approved and delivered by the Company, and signed for and on its behalf and in its official capacity by the official indicated below.

PURPLE LINE TRANSIT PARTNERS LLC

By: /s/ John M. Dionisio

John M. Dionisio, Authorized Representative
APPENDIX A

AUDITED FINANCIAL STATEMENTS FOR THE MARYLAND DEPARTMENT OF TRANSPORTATION

Audited Financial Statements
for the
Maryland Department of Transportation

(Cover and pages 1, 2 and 5 through 20 not included)
REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

Mr. Pete K. Rahn, Secretary
Maryland Department of Transportation

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the major fund, and the aggregate remaining fund information of the Maryland Department of Transportation (the Department), as of and for the year ended June 30, 2015, and the related notes to the financial statements, which collectively comprise the Department’s basic financial statements as listed in the table of contents.

Management’s Responsibility for the Financial Statements

The Department’s management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor’s Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor’s judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity’s preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.
Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the major fund, and the aggregate remaining fund information of the Department, as of June 30, 2015, and the respective changes in financial position for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Emphasis of Matter

As discussed in Note 1.D. to the financial statements, during the year ended June 30, 2015, the Department adopted new accounting guidance from Government Accounting Standards Board (GASB) Statement No. 68, “Accounting and Financial Reporting for Pensions.” Our opinion is not modified with respect to this matter.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management’s discussion and analysis, schedules of funding progress and employer contributions of the Maryland Transit Administration Other Post-employment Benefit Plan, schedule of changes in the net pension liability and related ratios and schedule of employer contributions for the Maryland Transit Administration Pension Plan, schedules of the Department’s proportionate share of the net pension liability and Department contributions for the Maryland State Retirement and Pension System, and the special revenue funds schedule of revenue, expenditures and changes in fund balance – budget and actual, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management’s responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.
Supplementary and Other Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Department’s basic financial statements. The statement of changes in assets and liabilities – agency funds, introductory section and statistical section are presented for purposes of additional analysis and are not a required part of the basic financial statements.

The statement of changes in assets and liabilities – agency funds is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the statement of changes in assets and liabilities – agency funds is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

The introductory section and statistical section has not been subjected to the auditing procedures applied in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

Hunt Valley, Maryland
December 4, 2015
MARYLAND DEPARTMENT OF TRANSPORTATION
Management’s Discussion and Analysis

As management of the Maryland Department of Transportation (Department), we offer the citizens of Maryland and others interested in the Department’s financial statements this narrative overview and analysis of the financial activities of the Department for the fiscal year ended June 30, 2015. We encourage readers to consider the information presented here in conjunction with additional information that we have furnished in our letter of transmittal, which can be found on page 7 of this report.

Financial Highlights

- The assets of the Department exceeded its liabilities at the close of the most recent fiscal year by $13,021,909,000 (net position). Of this amount, $1,450,994,000 represents the unrestricted deficit primarily due to the reporting of net pension liability and OPEB liability.
- The Department’s governmental funds reported a combined ending fund balance, as of the close of the current fiscal year, of $356,265,000, a decrease of $11,205,000 in comparison with the prior fiscal year.
- The Department’s Consolidated Transportation Bonds debt outstanding increased by $207,580,000 (11.5%) during the current fiscal year. The key factors in this increase were bond issuances of $401,535,000, while the Department continued to make its regularly scheduled debt service principal payments during the year which totaled $152,415,000. In addition, the Department issued $259,715,000 refunding bonds to defease $301,255,000 bonds.

Overview of the Financial Statements

This discussion and analysis is intended to serve as an introduction to the Department’s basic financial statements. The Department’s basic financial statements are comprised of three components: (1) government-wide financial statements, (2) fund financial statements, and (3) notes to the financial statements. This report also contains other supplementary information in addition to the basic financial statements themselves.

Government-wide financial statements

The government-wide financial statements are designed to provide readers with a broad overview of the Department’s finances, in a manner similar to a private-sector business. The Statement of Net Position presents information on all of the Department’s assets and liabilities, with the difference between the two reported as net position. Over time, increases and decreases in net position may serve as one of several useful indicators of the Department’s financial position. The Statement of Activities presents information showing how the Department’s net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (e.g., uncollected taxes and earned but unused vacation leave).

Both of the government-wide financial statements distinguish functions of the Department that are principally supported by taxes and intergovernmental revenues (governmental activities) from other functions. The governmental activities of the Department include the Secretary’s
Office, the State Highway Administration (SHA), the Maryland Port Administration (MPA), the Motor Vehicle Administration (MVA), the Maryland Transit Administration (MTA), the Maryland Aviation Administration (MAA), Washington Metropolitan Area Transit Authority Grants (WMATA), distributions to political subdivisions, distributions to other state agencies and debt service. The government-wide financial statements include only the Department (a special revenue fund of the State of Maryland), which has no component units and does not include the Maryland Transportation Authority, which is a separate enterprise fund of the State of Maryland. The government-wide financial statements can be found starting on page 36 of this report.

**Fund financial statements**
A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The Department, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. All of the funds of the Department can be divided into two categories: governmental funds and fiduciary funds.

**Governmental funds**
Governmental funds are used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on near-term inflows and outflows of spendable resources, as well as on balances of spendable resources available at the end of the fiscal year. Such information may be useful in evaluating a government’s near-term financing requirements.

Because the focus of the governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for governmental funds with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government’s near-term financing decisions. Both the governmental fund Balance Sheet and the governmental fund Statement of Revenues, Expenditures and Changes in Fund Balances provide a reconciliation to facilitate this comparison between governmental funds and governmental activities.

The Department maintains two individual governmental funds. Information is presented separately in the governmental fund Balance Sheet and in the governmental fund Statement of Revenues, Expenditures and Changes in Fund Balances for the special revenue fund and the debt service fund. The special revenue fund is considered to be a major fund. The basic governmental fund financial statements can be found starting on page 38 of this report.

The Maryland General Assembly authorizes an annual appropriated budget for the Department’s special revenue fund. A budgetary comparison schedule has been provided for the special revenue fund to demonstrate compliance with this budget. The budgetary comparison schedule can be found on page 71 of this report.

**Fiduciary funds**
Fiduciary funds are used to account for resources held for the benefit of parties outside the government. Fiduciary funds are not reflected in the government-wide financial statements because the resources of those funds are not available to support the Department’s own programs. The
accounting used for the fiduciary funds is much like that used for proprietary funds. The basic fiduciary fund financial statements can be found on page 41 of this report.

Notes to the financial statements
The notes to the financial statements provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements. The notes to the financial statements can be found starting on page 43 of this report.

Changes in Governmental Accounting Standards
In June 2012, the Governmental Accounting Standards Board (GASB) approved a Statement that reflects substantial changes to the accounting and financial reporting of pension plans. Statement No. 67, Financial Reporting for Pension Plans, addresses financial reporting for state and local government pension plans. Statement No. 67 replaces the requirements of Statement No. 25, Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans, for most public employee pension plans and replaces the requirements of Statement No. 50, Pension Disclosures, for those governments and public pension plans. Under Statement No. 67, an emphasis is put on accounting for pension plans whereas Statement No. 25 dealt more with funding pension plans. Implementation of the standard caused an adjustment to beginning net position of approximately $1.04 billion.

Other information
In addition to the basic financial statements and accompanying notes, this report also presents certain required supplementary information concerning the Department’s progress in funding its obligation to provide pension benefits to its employees at the MTA, as well as the budget and actual comparison schedule. Required supplementary information can be found starting on page 69 of this report.

Government-wide Financial Analysis
As noted earlier, net position may serve over time as a useful indicator of a government’s financial position. For the Department, assets and deferred outflows exceeded liabilities and deferred inflows by $13,021,909,000 at the close of the most recent fiscal year. By far the largest portion of the Department’s net position reflects its investment in capital assets (e.g., land, buildings, equipment and infrastructure), less any still outstanding related debt used to acquire those assets. The Department uses those capital assets to provide services to the citizens of Maryland; consequently, these assets are not available for future spending. Although the Department’s investment in its capital assets is reported net of related debt, it should be noted that the resources needed to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities.

The Department’s net position decreased by $678,269 during the current fiscal year 2015, primarily due to the implementation of GASB 68.
The following schedule reflects the Department’s Net Position Summary.

### Maryland Department of Transportation

#### Net Position

*(amounts expressed in thousands)*

<table>
<thead>
<tr>
<th>Governmental Activities</th>
<th>2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current and other assets</td>
<td>$1,075,212</td>
<td>$1,098,394</td>
</tr>
<tr>
<td>Capital assets</td>
<td>17,411,981</td>
<td>16,706,298</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>18,487,193</td>
<td>17,804,692</td>
</tr>
<tr>
<td>Deferred amount on refunding bonds</td>
<td>24,397</td>
<td>6,450</td>
</tr>
<tr>
<td>Deferred amount related to pensions</td>
<td>106,967</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>131,364</td>
<td>6,450</td>
</tr>
<tr>
<td>Long-term liabilities outstanding</td>
<td>4,758,245</td>
<td>3,336,247</td>
</tr>
<tr>
<td>Other liabilities</td>
<td>703,898</td>
<td>722,640</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>5,462,143</td>
<td>4,058,887</td>
</tr>
<tr>
<td>Deferred concession arrangement</td>
<td>50,945</td>
<td>52,077</td>
</tr>
<tr>
<td>Deferred amount related to pensions</td>
<td>83,560</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td>134,505</td>
<td>52,077</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Investment in capital assets</td>
<td>14,472,903</td>
<td>14,063,378</td>
</tr>
<tr>
<td>Unrestricted deficit</td>
<td>(1,450,994)</td>
<td>(363,200)</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td>$13,021,909</td>
<td>$13,700,178</td>
</tr>
</tbody>
</table>
Governmental activities

Governmental activities, which represent the Department’s overall economic position, decreased the Department’s net position by $678,269,000. The key elements of the Department’s governmental activities are as follows:

Maryland Department of Transportation
Changes in Net Position
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Governmental Activities</th>
<th>2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program revenues:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charges for services</td>
<td>$588,304</td>
<td>$565,814</td>
</tr>
<tr>
<td>Operating grants and contributions</td>
<td>92,238</td>
<td>90,574</td>
</tr>
<tr>
<td>Capital grants and contributions</td>
<td>741,846</td>
<td>800,019</td>
</tr>
<tr>
<td><strong>General revenues:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor vehicle taxes and fees</td>
<td>1,465,022</td>
<td>1,389,066</td>
</tr>
<tr>
<td>Motor fuel taxes and fees</td>
<td>918,483</td>
<td>807,739</td>
</tr>
<tr>
<td>Corporation income tax share</td>
<td>166,051</td>
<td>162,609</td>
</tr>
<tr>
<td>State sales tax share</td>
<td>30,788</td>
<td>48,653</td>
</tr>
<tr>
<td>Unrestricted investment earnings</td>
<td>2,096</td>
<td>2,156</td>
</tr>
<tr>
<td>Other</td>
<td>64,516</td>
<td>16,518</td>
</tr>
<tr>
<td><strong>Total revenues</strong></td>
<td>4,069,344</td>
<td>3,883,148</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secretary’s Office</td>
<td>624,378</td>
<td>570,596</td>
</tr>
<tr>
<td>State Highway Administration</td>
<td>1,399,446</td>
<td>1,436,114</td>
</tr>
<tr>
<td>Port Administration</td>
<td>126,885</td>
<td>99,996</td>
</tr>
<tr>
<td>Motor Vehicle Administration</td>
<td>213,896</td>
<td>207,342</td>
</tr>
<tr>
<td>Transit Administration</td>
<td>937,286</td>
<td>886,966</td>
</tr>
<tr>
<td>Aviation Administration</td>
<td>337,596</td>
<td>354,180</td>
</tr>
<tr>
<td>Interest on long-term debt</td>
<td>69,902</td>
<td>122,894</td>
</tr>
<tr>
<td><strong>Total expenses</strong></td>
<td>3,709,389</td>
<td>3,678,088</td>
</tr>
<tr>
<td><strong>Increase in net position</strong></td>
<td>359,955</td>
<td>205,060</td>
</tr>
<tr>
<td><strong>Net position – July 1</strong></td>
<td>13,700,178</td>
<td>13,495,118</td>
</tr>
<tr>
<td><strong>Net position as previously reported</strong></td>
<td>14,060,133</td>
<td>13,700,178</td>
</tr>
<tr>
<td>Prior period adjustment-adoption of GASB 68</td>
<td>(1,038,224)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Net position – June 30</strong></td>
<td>$13,021,909</td>
<td>$13,700,178</td>
</tr>
</tbody>
</table>
Below are the Department's Revenues by Source and Expenses by Function for Fiscal Years 2015 & 2014

**Revenue 2015**

- Charges for services: 14.4%
- Operating grants and contributions: 2.2%
- Capital grants and contributions: 18.2%
- Motor vehicle taxes and fees: 36.0%
- Motor fuel taxes and fees: 22.6%
- Corporation income tax share: 4.1%
- State sales tax share: 0.8%
- Unrestricted investment earnings: 0.1%
- Other: 1.6%

**Revenue 2014**

- Charges for services: 14.6%
- Operating grants and contributions: 2.3%
- Capital grants and contributions: 20.6%
- Motor vehicle taxes and fees: 35.8%
- Motor fuel taxes and fees: 20.8%
- Corporation income tax share: 4.2%
- State sales tax share: 1.2%
- Unrestricted investment earnings: 0.1%
- Other: 0.4%

**Expenses 2015**

- Secretary's Office (TSO): 16.8%
- State Highway Administration (SHA): 37.7%
- Port Administration (MPA): 3.4%
- Motor Vehicle Administration (MVA): 5.8%
- Transit Administration (MTA): 25.3%
- Maryland Aviation Admin. (MAA): 9.1%
- Interest on Long-Term Debt (INT-LTD): 1.9%

**Expenses 2014**

- Secretary's Office (TSO): 15.5%
- State Highway Administration (SHA): 39.1%
- Port Administration (MPA): 2.7%
- Motor Vehicle Administration (MVA): 5.7%
- Transit Administration (MTA): 24.1%
- Maryland Aviation Admin. (MAA): 9.6%
- Interest on Long-Term Debt (INT-LTD): 3.3%
**Financial Analysis of the Government’s Funds**

As noted earlier, the Department uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

**Governmental funds**

The focus of the Department’s governmental funds is to provide information on near-term inflows, outflows and balances of spendable resources. Such information is useful in assessing the Department’s financing requirements. In particular, the unreserved fund balance may serve as a useful measure of a government’s net resources available for spending at the end of the fiscal year.

As of the end of the current fiscal year, the Department’s governmental funds reported combined ending fund balances of $356,265,000, a decrease of $11,205,000 in comparison with the prior fiscal year. The Department’s governmental funds increase is due primarily to the increase in revenue and liquidation of federal receivables. All of the special revenue fund balance is non-spendable, restricted, committed, and/or assigned fund balance and indicates that it is not available for new spending because it has already been committed and/or assigned for the following purposes: (1) to maintain a separate nonspendable account for inventory activity balances in the amount of $93,356,000; (2) to maintain a separate nonspendable account for prepaid expenses activity balances in the amount of $104,491,000; (3) to maintain a separate committed account for encumbrances in the amount of $27,930,000; (4) to maintain a separate assigned account for specific agency activity balances in the amount of $677,000; and (5) to maintain a separate assigned account for transportation programs in the amount of $129,811,000.

The special revenue fund is the chief operating fund for the Department. As a measure of the special revenue fund’s liquidity, it may be useful to compare the total fund balance of $356,265,000 to the total Department expenditures of $4,488,052,000. The total fund balance represents 8.3% of the total fund expenditures.

**Capital Asset and Debt Administration**

**Capital assets**

The Department’s investments in capital assets for its governmental activities as of June 30, 2015, amounts to $17,411,981,000 (net of accumulated depreciation). This investment in capital assets includes land, buildings and improvements, machinery and equipment, infrastructure and construction in progress. In the current fiscal year, the Department’s investments in capital assets increased by $705,683,000.

Some of the major capital asset events during the current fiscal year included the following:

- Construction continued on the expansion and upgrading of the airport facilities at Baltimore Washington International Thurgood Marshall Airport (BWI Marshall); construction in progress at BWI Marshall at the close of the current fiscal year increased to $263,280,000 compared to $249,304,000 in the prior fiscal year, while MAA buildings increased by $162,707,000 and infrastructure increased by $12,453,000 in the current fiscal year.

- A variety of widening and/or expansion of existing and new highways and bridges were completed in fiscal year 2015; infrastructure assets for SHA at the close of the current fiscal year reached $18,934,362,000 compared to $18,140,331,000 in the prior fiscal year, a 4.4% increase.
Various transit, port and motor vehicle administration construction projects began in fiscal year 2015; construction in progress for these administrations at the close of the current fiscal year was $2,413,288,000 compared to $1,994,429,000 in the prior fiscal year.

The following schedule reflects the Department’s Capital Assets Summary.

Maryland Department of Transportation
Capital Assets
(net of depreciation)
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Governmental Activities</th>
<th>June 30, 2015</th>
<th>June 30, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>$2,591,842</td>
<td>$2,552,170</td>
</tr>
<tr>
<td>Buildings and improvements</td>
<td>1,475,937</td>
<td>1,356,568</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>653,176</td>
<td>664,665</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>9,196,813</td>
<td>9,195,993</td>
</tr>
<tr>
<td>Seagirt Assets</td>
<td>50,945</td>
<td>52,077</td>
</tr>
<tr>
<td>Construction in progress</td>
<td>3,443,268</td>
<td>2,884,825</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$17,411,981</strong></td>
<td><strong>$16,706,298</strong></td>
</tr>
</tbody>
</table>

Additional information on the Department’s capital assets can be found in note 8 on page 51 of this report.

**Long-term debt**

At the end of the current fiscal year the Department had total bonded debt outstanding of $2,020,250,000, and represents bonds secured solely by specified revenue sources (i.e., revenue bonds).

The following schedule reflects the Department’s Outstanding Debt Summary.

Maryland Department of Transportation
Outstanding Debt
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Governmental Activities</th>
<th>June 30, 2015</th>
<th>June 30, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consolidated transportation bonds</td>
<td>$2,020,250</td>
<td>$1,812,670</td>
</tr>
</tbody>
</table>

The Department’s consolidated transportation bonds outstanding debt increased by 11.5%. The issuance of $265,535,000 in new debt in Series 2015, the issuance of $259,715,000 in Series 2015 Refunding bonds, and the issuance of $136,000,000 in new debt in Series 2015 (Second Issue) combined with the continued scheduled debt service principal payments made during the year resulted in the increase in debt outstanding in fiscal year 2015. The Department maintains an “AAA” rating with Standard & Poor’s Corporation, an “AA+” rating with Fitch Ratings and an “Aa1” rating with Moody’s Investors Services, Inc., for its consolidated transportation bonds. As provided by law, the maximum outstanding aggregate amount of Consolidated Transportation Bonds that may be outstanding increased from $2,600,000,000 to $4,500,000,000 effective June 1, 2013 and thereafter. The increase is pursuant to legislation enacted by the 2013 General Assembly, which also increased transportation funding. The aggregate principal amount of those bonds that was allowed to be outstanding as of June 30, 2015 for the Department was $2,530,255,000, which is higher than the Department’s outstanding transportation-related debt.
Additional information on the Department’s long-term debt can be found in note 10 on page 53 of this report.

**Capital leases.** At the end of the current fiscal year the Department had capital leases outstanding of $628,650,000. The following schedule reflects the Department’s Capital Leases Summary.

**Maryland Department of Transportation**  
**Capital Leases**  
*(amounts expressed in thousands)*

<table>
<thead>
<tr>
<th>Governmental Activities</th>
<th>June 30, 2015</th>
<th>June 30, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital leases</td>
<td>$ 628,650</td>
<td>$ 594,302</td>
</tr>
</tbody>
</table>

The Department’s capital lease obligations have increased by $34,348,000, during the current fiscal year. This increase is attributable to issuance of a new bond, ongoing construction costs related to airport projects and continued scheduled capital lease payments at the various Department’s port facilities, and transit facilities. The Department maintains an “AA+” rating with Standard & Poor’s Corporation, an “Aa2” rating with Moody’s Investors Services, Inc. and an “AA” with Fitch Ratings for Certificates of Participation which are included in capital lease obligations. Additional information on the Department’s capital lease obligations can be found in note 12 on page 54 of this report.

**Special Revenue Fund Budgetary Highlights**

The Department’s appropriations, between the original and final amended budget decreased by $47,572,582 for special funds and decreased by $21,791,300 for Federal funds during the current fiscal year. The decrease in special and federal fund appropriations was due to a mid-year budget evaluation analysis throughout the Department. The Schedule of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual can be found on page 75 of this report.

**Economic Factors and Next Year’s Budgets and Rates**

Maryland’s economic indices showed a modest positive direction for the State this past fiscal year. Employment growth for the State of Maryland was 1.5% for the first three quarters of this year compared to 0.9% growth in 2014. The State’s personal income is continuing to rise with a growth of 1.5% through the second quarter of 2015. Nationally, personal income grew by 2.2% for the same period.

Maryland’s economy continues to slowly recover from the economic downturn. Although the pace of recovery is not as robust as that experienced in other recent economic cycles, steady growth is forecasted for the next several years. The unemployment rate, which peaked at 7.6% in 2010, is expected to be 5.2% for 2015. Job growth continues to be in professional and business services as well as education and health services.

The federal government sector, normally a positive driver to Maryland’s economy, represents the major downside risk to the rate of growth. Maryland’s economy is heavily reliant on federal spending. The fiscal concerns associated with federal spending continue to constrain economic recovery. Until the federal government’s direction becomes clear, the outlook will remain cautiously optimistic.
During the 2013 Session of the General Assembly, the Transportation Infrastructure Investment Act of 2013 was enacted to increase transportation funding by increasing motor fuel taxes and requiring the Maryland Transit Administration, beginning in 2015, to increase base fare prices. These changes became effective July 1, 2013.

During the current fiscal year, assigned fund balance for transportation programs decreased to $129,811,000, from $134,703,000 in the prior year primarily due to the realization of revenue from the prior year federal receivable, a slight increase in budgeted funds and reclassification of reserve for prepaid expenses in the amount of $1,044,000 (net of current receivable), $576,000, and $104,491,000, respectively.

Requests for Information
This Comprehensive Annual Financial Report is designed to provide a general overview of the Department’s finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to: Mr. David L. Fleming, Chief Financial Officer, Office of Finance, MDOT - Secretary’s Office, 7201 Corporate Center Drive, Hanover, MD, 21076.
MARYLAND DEPARTMENT OF TRANSPORTATION
Statement of Net Position
As of June 30, 2015
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Total Governmental Activities</th>
<th>ASSETS:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cash and cash equivalents</td>
</tr>
<tr>
<td></td>
<td>Cash and cash equivalents - restricted</td>
</tr>
<tr>
<td></td>
<td>Taxes receivable, net</td>
</tr>
<tr>
<td></td>
<td>Intergovernmental receivables</td>
</tr>
<tr>
<td></td>
<td>Other accounts receivable</td>
</tr>
<tr>
<td></td>
<td>Due from other state agencies</td>
</tr>
<tr>
<td></td>
<td>Inventories</td>
</tr>
<tr>
<td></td>
<td>Prepaids</td>
</tr>
<tr>
<td><strong>Capital assets not depreciated:</strong></td>
<td></td>
</tr>
<tr>
<td>Construction in progress</td>
<td>3,443,268</td>
</tr>
<tr>
<td>Land</td>
<td>2,591,842</td>
</tr>
<tr>
<td><strong>Capital assets depreciated (net of depreciation):</strong></td>
<td></td>
</tr>
<tr>
<td>Buildings and improvements</td>
<td>1,475,937</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>653,176</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>9,196,813</td>
</tr>
<tr>
<td>Seagirt assets</td>
<td>50,945</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>18,487,193</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DEFERRED OUTFLOWS OF RESOURCES:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred amount for refunding bonds</td>
</tr>
<tr>
<td>Deferred amount for pensions</td>
</tr>
<tr>
<td><strong>Total deferred outflows</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LIABILITIES:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries payable</td>
</tr>
<tr>
<td>Accounts payable and other current liabilities</td>
</tr>
<tr>
<td>Accounts payable to political subdivisions</td>
</tr>
<tr>
<td>Due to other state agencies</td>
</tr>
<tr>
<td>Unearned revenue</td>
</tr>
<tr>
<td>Accrued interest payable</td>
</tr>
<tr>
<td><strong>Noncurrent liabilities:</strong></td>
</tr>
<tr>
<td>Due within one year</td>
</tr>
<tr>
<td>Due in more than one year</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DEFERRED INFLOWS OF RESOURCES:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred concession arrangement receipts</td>
</tr>
<tr>
<td>Deferred amount for pensions</td>
</tr>
<tr>
<td><strong>Total deferred inflows</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NET POSITION:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net investment in capital assets</td>
</tr>
<tr>
<td>Unrestricted deficit</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
</tr>
</tbody>
</table>

The notes to the financial statements are an integral part of this statement.
MARYLAND DEPARTMENT OF TRANSPORTATION
Statement of Activities
For the Fiscal Year Ended June 30, 2015
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>FUNCTIONS/PROGRAMS</th>
<th>Expenses</th>
<th>Charges for Services</th>
<th>Operating Grants and Contributions</th>
<th>Capital Grants and Contributions</th>
<th>Net (Expense) Revenue and Changes in Net Position</th>
<th>Total Governmental Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary's Office</td>
<td>$624,378</td>
<td>$7,133</td>
<td>$7,967</td>
<td>$3,289</td>
<td>$605,989</td>
<td>(605,989)</td>
</tr>
<tr>
<td>State Highway Administration</td>
<td>1,399,446</td>
<td>46,435</td>
<td>13,738</td>
<td>520,195</td>
<td>(819,078)</td>
<td></td>
</tr>
<tr>
<td>Port Administration</td>
<td>126,885</td>
<td>52,411</td>
<td>-</td>
<td>1,105</td>
<td>73,369</td>
<td></td>
</tr>
<tr>
<td>Motor Vehicle Administration</td>
<td>213,896</td>
<td>4</td>
<td>10,711</td>
<td>995</td>
<td>(202,186)</td>
<td></td>
</tr>
<tr>
<td>Transit Administration</td>
<td>937,286</td>
<td>142,363</td>
<td>59,046</td>
<td>184,355</td>
<td>(551,522)</td>
<td></td>
</tr>
<tr>
<td>Aviation Administration</td>
<td>337,596</td>
<td>339,958</td>
<td>776</td>
<td>31,907</td>
<td>35,045</td>
<td></td>
</tr>
<tr>
<td>Interest on long-term debt</td>
<td>69,902</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(69,902)</td>
<td></td>
</tr>
<tr>
<td><strong>Total governmental activities</strong></td>
<td>3,709,389</td>
<td>588,304</td>
<td>92,238</td>
<td>741,846</td>
<td>(2,287,001)</td>
<td></td>
</tr>
</tbody>
</table>

**General revenues:**
- Motor vehicle taxes and fees 1,465,022
- Motor fuel taxes and fees 918,483
- Corporation income tax share 166,051
- State sales tax 30,788
- Unrestricted investment earnings 2,096
- Other revenue 64,516

**Total general revenues** 2,646,956

- Change in net position 359,955
- Net position, July 1, 2014, as restated 12,661,954

**Net position, June 30, 2015** $13,021,909

The notes to the financial statements are an integral part of this statement.
### MARYLAND DEPARTMENT OF TRANSPORTATION

**Balance Sheet**

**Governmental Funds**

**As of June 30, 2015**

*(amounts expressed in thousands)*

<table>
<thead>
<tr>
<th></th>
<th>Special Revenue</th>
<th>Debt Service</th>
<th>Total Governmental Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$310,851</td>
<td>$-</td>
<td>$310,851</td>
</tr>
<tr>
<td>Cash and cash equivalents - restricted</td>
<td>$12,808</td>
<td>$-</td>
<td>$12,808</td>
</tr>
<tr>
<td>Taxes receivable, net</td>
<td>$140,711</td>
<td>$-</td>
<td>$140,711</td>
</tr>
<tr>
<td>Intergovernmental receivable</td>
<td>$214,145</td>
<td>$-</td>
<td>$214,145</td>
</tr>
<tr>
<td>Other accounts receivable</td>
<td>$48,749</td>
<td>$-</td>
<td>$48,749</td>
</tr>
<tr>
<td>Due from other state agencies</td>
<td>$146,923</td>
<td>$-</td>
<td>$146,923</td>
</tr>
<tr>
<td>Inventories</td>
<td>$93,356</td>
<td>$-</td>
<td>$93,356</td>
</tr>
<tr>
<td>Prepaids</td>
<td>$104,491</td>
<td>$-</td>
<td>$104,491</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>$1,072,034</td>
<td>$-</td>
<td>$1,072,034</td>
</tr>
<tr>
<td><strong>LIABILITIES &amp; FUND BALANCES:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liabilities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries payable</td>
<td>$32,521</td>
<td>$-</td>
<td>$32,521</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$437,682</td>
<td>$-</td>
<td>$437,682</td>
</tr>
<tr>
<td>Accounts payable to political subdivisions</td>
<td>$57,918</td>
<td>$-</td>
<td>$57,918</td>
</tr>
<tr>
<td>Due to other state agencies</td>
<td>$3,565</td>
<td>$-</td>
<td>$3,565</td>
</tr>
<tr>
<td>Unearned revenue</td>
<td>$45,822</td>
<td>$-</td>
<td>$45,822</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>$577,508</td>
<td>$-</td>
<td>$577,508</td>
</tr>
<tr>
<td><strong>DEFERRED INFLOW OF RESOURCES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unavailable revenue</td>
<td>$138,261</td>
<td>$-</td>
<td>$138,261</td>
</tr>
<tr>
<td><strong>FUND BALANCES:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonspendable fund balance:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inventories</td>
<td>$93,356</td>
<td>$-</td>
<td>$93,356</td>
</tr>
<tr>
<td>Prepaid items</td>
<td>$104,491</td>
<td>$-</td>
<td>$104,491</td>
</tr>
<tr>
<td>Committed fund balance:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Encumbrances</td>
<td>$27,930</td>
<td>$-</td>
<td>$27,930</td>
</tr>
<tr>
<td>Assigned fund balance:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agency activities</td>
<td>$677</td>
<td>$-</td>
<td>$677</td>
</tr>
<tr>
<td>Transportation programs</td>
<td>$129,811</td>
<td>$-</td>
<td>$129,811</td>
</tr>
<tr>
<td><strong>Total fund balances</strong></td>
<td>$356,265</td>
<td>$-</td>
<td>$356,265</td>
</tr>
<tr>
<td><strong>Total liabilities, deferred inflows and fund balances:</strong></td>
<td>$1,072,034</td>
<td>$-</td>
<td>$1,072,034</td>
</tr>
</tbody>
</table>

Amounts reported for governmental activities in the statement of net assets are different because:

- Capital assets used in governmental activities are not financial resources and, therefore, are not reported in the fund statements. 17,411,981
- Energy savings assets 3,178
- Accrued interest payable on bonds and capital leases (23,950)

Long-term liabilities not due and payable in the current period and, therefore, are not reported in the fund financial statements, includes the following:

- Unavailable revenue 138,261
- Advance rental payment (102,440)
- Deferred amount on refunding bonds 24,397
- Bonds payable (2,020,250)
- Capital leases (628,650)
- Pollution liability (156,161)
- MTA OPEB liability (311,916)
- Net pension liability (1,261,241)
- Premium on bonds not liquidated with current financial resources (213,439)
- Workers' compensation costs (64,686)
- Energy savings liability (50,191)
- Compensated absences (51,711)
- Deferred outflows and inflows related to pensions 23,407
- Deferred concession receipts (50,945)

**Net position of governmental activities** $12,993,979

The notes to the financial statements are an integral part of this statement.

A-38
MARYLAND DEPARTMENT OF TRANSPORTATION  
Statement of Revenues, Expenditures and Changes in Fund Balances  
Governmental Funds  
For the Fiscal Year Ended June 30, 2015  
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Other Fund</th>
<th>Special Revenue</th>
<th>Total Governmental Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue Service Funds</td>
<td>$1,465,022</td>
<td>-</td>
</tr>
<tr>
<td>Federal reimbursements</td>
<td>918,483</td>
<td>-</td>
</tr>
<tr>
<td>Revenue sharing of state corporation income tax</td>
<td>166,051</td>
<td>-</td>
</tr>
<tr>
<td>Revenue sharing of state sales tax</td>
<td>30,788</td>
<td>-</td>
</tr>
<tr>
<td>Federal reimbursements</td>
<td>833,040</td>
<td>-</td>
</tr>
<tr>
<td>Charges for services</td>
<td>460,668</td>
<td>-</td>
</tr>
<tr>
<td>Passenger facility charges</td>
<td>44,745</td>
<td>-</td>
</tr>
<tr>
<td>Customer facility charges</td>
<td>12,733</td>
<td>-</td>
</tr>
<tr>
<td>Special parking revenues</td>
<td>52,551</td>
<td>-</td>
</tr>
<tr>
<td>Investment earnings</td>
<td>2,090</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>61,665</td>
<td>1,719</td>
</tr>
<tr>
<td><strong>Total revenues</strong></td>
<td><strong>4,047,836</strong></td>
<td><strong>1,725</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXPENDITURES:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current:</td>
</tr>
<tr>
<td>Department administration, operating, and maintenance expenditures:</td>
</tr>
<tr>
<td>Secretary's Office</td>
</tr>
<tr>
<td>State Highway Administration</td>
</tr>
<tr>
<td>Port Administration</td>
</tr>
<tr>
<td>Motor Vehicle Administration</td>
</tr>
<tr>
<td>Transit Administration</td>
</tr>
<tr>
<td>Aviation Administration</td>
</tr>
<tr>
<td>Intergovernmental:</td>
</tr>
<tr>
<td>Highway user revenue distributions and federal fund pass-thru to local subdivisions</td>
</tr>
<tr>
<td>Washington Metropolitan Area Transit Authority Grants</td>
</tr>
<tr>
<td>Distributions to other state agencies</td>
</tr>
<tr>
<td>Debt service:</td>
</tr>
<tr>
<td>Principal repayment</td>
</tr>
<tr>
<td>Interest</td>
</tr>
<tr>
<td>Issuance expenditures</td>
</tr>
<tr>
<td>Capital outlay</td>
</tr>
<tr>
<td><strong>Total expenditures</strong></td>
</tr>
</tbody>
</table>

| Excess of expenditures over revenues | $(207,654) | $(230,679) | $(438,333) |

<table>
<thead>
<tr>
<th>OTHER FINANCING SOURCES (USES):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuance of debt</td>
</tr>
<tr>
<td>Refunding of Transportation Bonds</td>
</tr>
<tr>
<td>Premium on bonds</td>
</tr>
<tr>
<td>Payments to Refunded bond escrow agent</td>
</tr>
<tr>
<td>Capital leases</td>
</tr>
<tr>
<td>Advanced lease payments</td>
</tr>
<tr>
<td>Debt service transfer</td>
</tr>
<tr>
<td><strong>Total other financing sources and uses</strong></td>
</tr>
<tr>
<td><strong>Net change in fund balances</strong></td>
</tr>
<tr>
<td><strong>Fund balances, July 1, 2014</strong></td>
</tr>
<tr>
<td><strong>Fund balances, June 30, 2015</strong></td>
</tr>
</tbody>
</table>

The notes to the financial statements are an integral part of this statement.
MARYLAND DEPARTMENT OF TRANSPORTATION
Reconciliation of the Statement of Revenues, Expenditures and Changes in Fund Balances of Governmental Funds to the Statement of Activities
For the Fiscal Year Ended June 30, 2015
(amounts expressed in thousands)

**Amounts reported for governmental activities in the statement of activities are different because:**

Net change in fund balances - total governmental funds (page 39) $ (11,205)

Governmental funds report capital outlays as expenditures. However, in the statement of activities the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense. This is the amount by which capital outlays exceeded depreciation in the current period.

Capital outlays $ 1,746,878
Loss on disposal of assets (3,246)
Depreciation expense (1,037,949)

705,683

Revenues in the statement of activities that do not provide current financial resources are not reported as revenues in the funds.

Unavailable revenue $ 18,651
Amortization of advance rental payments 2,227

20,878

The issuance of long-term debt (e.g., bonds, leases) provides current financial resources to government funds, while the repayment of the principal of long-term debt consumes the current financial resources of governmental funds. Neither transaction, however, has any effect on net position. Also, governmental funds report the effect of premiums, discounts and similar items when debt is first issued, whereas these amounts are deferred in the statement of activities. This amount is the net effect of these differences in the treatment of long-term debt and related items.

Net premium on bonds $ (77,272)
Principal repayment of bonds 453,670
Debt Issued, transportation bonds (661,250)
Capital lease liability (34,348)

(319,200)

Some expenses reported in the statement of activities do not require the use of current financial resources, and therefore, are not reported as expenditures in the governmental funds.

Accrued interest $ 6,561
Compensated absences (1,052)
Energy savings liability 3,963
Workers compensation 2,358
State Net pension liability 59,553
MTA Net pension liability (50,219)
MTA OPEB obligation (44,852)
Energy savings asset (831)
Other 15,720

(8,799)

Deferred financing inflows (outflows)

Pension expense $ (28,534)
Amortization of assets 1,132

(27,402)

Change in net position of governmental activities (page 37) $ 359,955

The notes to the financial statements are an integral part of this statement.
## MARYLAND DEPARTMENT OF TRANSPORTATION

### Statement of Fiduciary Net Position

#### Fiduciary Funds

**As of June 30, 2015**

(*amounts expressed in thousands)*

<table>
<thead>
<tr>
<th></th>
<th>Maryland Transit Administration Pension Plan Trust Fund</th>
<th>Agency Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 932</td>
<td>$ 15,923</td>
</tr>
<tr>
<td>Investments, at fair value:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equity securities pool</td>
<td>84,858</td>
<td>-</td>
</tr>
<tr>
<td>Fixed income pool</td>
<td>47,067</td>
<td>-</td>
</tr>
<tr>
<td>Alternative investments pool</td>
<td>92,037</td>
<td>-</td>
</tr>
<tr>
<td>Real estate pool</td>
<td>9,990</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total investments</strong></td>
<td>233,952</td>
<td>15,923</td>
</tr>
<tr>
<td>Contributions receivable</td>
<td>2,961</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>237,845</td>
<td>15,923</td>
</tr>
<tr>
<td><strong>LIABILITIES:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>-</td>
<td>15,923</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>-</td>
<td></td>
</tr>
<tr>
<td><strong>NET POSITION:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Held in trust for pension benefits</td>
<td>$ 237,845</td>
<td></td>
</tr>
</tbody>
</table>

The notes to the financial statements are an integral part of this statement.
MARYLAND DEPARTMENT OF TRANSPORTATION
Statement of Change in Fiduciary Net Position
Fiduciary Funds
For the Fiscal Year Ended June 30, 2015
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Maryland Transit Administration Pension Plan Trust Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ADDITIONS:</strong></td>
</tr>
<tr>
<td>Contributions from employer $38,361</td>
</tr>
<tr>
<td>Investment earnings:</td>
</tr>
<tr>
<td>Interest income $14,045</td>
</tr>
<tr>
<td>Net depreciation in fair value of investments $(5,766)</td>
</tr>
<tr>
<td>Net investment earnings 8,279</td>
</tr>
<tr>
<td>Total additions 46,640</td>
</tr>
<tr>
<td><strong>DEDUCTIONS:</strong></td>
</tr>
<tr>
<td>Benefit payments 30,636</td>
</tr>
<tr>
<td>Administrative expenses 1,851</td>
</tr>
<tr>
<td>Total deductions 32,487</td>
</tr>
<tr>
<td>Change in net position 14,153</td>
</tr>
<tr>
<td>Net position, July 1, 2014 223,692</td>
</tr>
<tr>
<td><strong>Net position, June 30, 2015</strong> $237,845</td>
</tr>
</tbody>
</table>

The notes to the financial statements are an integral part of this statement.
1. **Summary of Significant Accounting Policies:**

A. **Reporting Entity:**
The Maryland Department of Transportation (Department), a department of the State of Maryland, was established by statute in 1971. The Department is responsible for carrying out the Governor’s policies in the area of transportation under statutory mandates, guidelines and constraints established by the State’s General Assembly. The Department has the responsibility for most state-owned transportation facilities and programs, including planning, financing, construction, operation and maintenance of various modes of transportation and carrying out related licensing and administrative functions. The statutorily created transportation agencies included in the Department are the Maryland Aviation Administration (MAA), Maryland Port Administration (MPA), Motor Vehicle Administration (MVA), Maryland Transit Administration (MTA), State Highway Administration (SHA) and the Secretary’s Office (TSO).

The accompanying financial statements include the Department, which has no component units. The Maryland Transportation Authority (Authority) is a separate entity with separate fiscal operations and management, and accordingly, is excluded from *The Financial Reporting Entity* of the Department, since it does not qualify for inclusion under Governmental Accounting Standards Board (GASB) Statement No. 14, because it is not financially accountable to the Department.

B. **Government-Wide and Fund Financial Statements:**
The Department’s government-wide financial statements (i.e., the Statement of Net Position and the Statement of Activities) report information on all non-fiduciary activities of the government. As a general rule, the effect of inter-fund activity has been eliminated from the government-wide financial statements. The Department’s governmental activities are supported primarily by taxes, intergovernmental revenues and charges for services. Fiduciary funds are excluded from the Department’s government-wide and fund financial statements, as fiduciary assets are not available for the Department’s use.

The Statement of Activities demonstrates the degree to which the direct expenses of a given function are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function. Program revenues include (1) charges to customers or applicants who purchase, use or directly benefit from goods, services or privileges provided by a given function and (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for the fiduciary fund (MTA Pension Plan Trust Fund).

C. **Measurement Focus, Basis of Accounting and Financial Statement Presentation:**
The government-wide financial statements and the fiduciary fund financial statements are reported using the economic resources measurement focus and accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when incurred, regardless of the timing of related cash flows. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

The governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Under the modified accrual basis of
accounting revenues are recognized in the financial statements as soon as they are both measurable and available. Revenues are considered available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the Department considers revenues to be available if they are collected within 60 days of the end of the current fiscal period. Expenditures generally are recorded when a liability or obligation is incurred as a result of goods or services rendered, as under accrual accounting. However, under the modified accrual basis, debt service expenditures are recorded only when payment is due. Compensated absences, retirement and workers' compensation costs and claims, judgments and other liabilities not expected to be paid with current available resources are recognized when the obligations are expected to be liquidated with expendable available financial resources.

Motor vehicle taxes, motor vehicle fuel taxes, charges for services, Federal reimbursements and interest associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenue of the current fiscal period. All other revenue items are considered to be measurable and available only when cash is received by the Department.

The Department collects and receives various types of motor vehicle taxes and fees. These taxes and fees consist primarily of a portion of the motor vehicle fuel taxes, motor vehicle titling taxes and motor vehicle registration fees. The Department accrues the June motor vehicle fuel taxes and titling taxes that are unremitting as of year-end as a receivable. These taxes are considered measurable and available since they represent June collections that are remitted to the Department in July and thereafter by merchants who collect these taxes. Expenditure-driven Federal grants are recognized as revenue when the qualifying expenditures have been incurred, all other grant requirements have been met and the reimbursement funding is available from the Federal government.

The Department reports the following major governmental fund:
**Special Revenue Fund:**
Transactions related to resources obtained, the uses of which are restricted for specific purposes, are accounted for in the special revenue fund. The special revenue fund accounts for resources used for operations (other than debt service and pension activities) of the Department, including construction and improvement of transportation facilities and mass transit operations. Fiscal resources dedicated to transportation operations include the excise taxes on motor vehicle fuel and motor vehicle titles, a portion of the State’s corporation income tax and the State’s sales tax, wharfage and landing fees, fare box revenues, bond proceeds, Federal grants for transportation purposes and other receipts of the Department’s agencies. The Department’s unexpended balances as of year-end do not revert to the State’s general fund. In addition, the various categories of transportation bonds are serviced from the resources of the Department. The particular taxes and other designated revenues are dedicated to the payment of transportation bonds and constitute the sole sources to which holders of transportation bonds may legally look for repayment.

The Department reports the following non-major governmental fund:
**Debt Service Fund:**
Transactions related to the resources accumulated and payments made for principal and interest on long-term transportation debt of governmental funds are accounted for in the debt service fund.

Additionally, the Department reports the following fund types:
**Pension Trust Fund:**
The pension trust fund accounts for the activities of the MTA Pension Plan (the MTA Plan), which accumulates resources for pension benefit payments to qualified Maryland Transit Administration
employees. The pension trust fund accounts for plan assets at their fair value. Additional information regarding the MTA Pension Plan is included in Note 15. The accounts of the pension trust fund are maintained and reported using the accrual basis of accounting. Under this method, revenues are recorded in the fiduciary fund financial statements when earned, administrative expenses are recorded at the time the liabilities are incurred and pension benefits are recorded when paid.

**Agency Fund:**
The agency fund is custodial in nature and does not present the results of operations or have a measurement focus. The Department uses an agency fund to account for the receipt and disbursement of Federal grant proceeds collected by the Department for distribution to political subdivisions and the accumulation of and payment of funds for debt service issued under the alternative county transportation bond program. When both restricted and unrestricted resources are available for use, the Department’s policy is to use unrestricted resources first and then restricted resources as they are needed.

**D. Change in Accounting Principles and Restatement of Beginning Balances**

**GASB 68**
Net position of governmental activities has been restated by negative $1,038,000, due to the implementation of GASB Statement No. 68 in recording the beginning net pension liability and the beginning deferred outflow of resources, contribution subsequent to the measurement date for all the defined benefit pension plans.

**E. New Pronouncements:**
The Department has adopted the provision of Governmental Accounting Standard Board (GASB Statement No. 68, entitled *Accounting and Financial Reporting for Pensions, an amendment of GASB Statement No. 27 and Statement No. 71, Pension Transition for Contributions Made Subsequent to the Measurement Date*. As part of GASB 68 the Department is required to record its net funded pension liability.

GASB also issued Statement No. 69, entitled *Government Combinations and Disposals of Government Operation*, and GASB Statement No. 70, entitled Accounting and Financial Reporting for Nonexchange Financial Guarantees. Both statements were adopted this fiscal year but had no effect on these accompanying financial statements.

The, GASB has issued Statement No. 72, entitled *Fair Value Measurement and Application; Statement No. 73, entitled, Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to certain Provisions of GASB Statements 67 and 68*; GASB Statement No. 74 entitled, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*; GASB Statement No. 75, entitled, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*; GASB Statement No. 76; entitled, *The Hierarchy of Generally Accepted Accounting Principles for State and Local Government*; and GASB Statement No. 77; entitled, *Tax Abatement Disclosures*, which will require adoption in the future, if applicable. These statements may or will have a material effect on the Department’s financial statements once implemented.

The Department will be analyzing the effects of these pronouncements and plans to adopt them as applicable by their effective date.
2. **Summary of significant Accounting Policies-Assets, Deferred Outflows of Resources, Liabilities, Deferred Inflows of Resources and Net Position or Equity**

A. **All Funds:**

1. **Deposits and investments:**
   The Department's cash on hand, demand deposits and short-term investments maturing within 90 days from the date purchased are considered as cash and cash equivalents. The Department’s investments are recorded at fair value and changes in fair value are recognized as revenue. The cash and cash equivalents and investments of the Pension Trust Fund are maintained by the State Retirement and Pension System of Maryland (System) on a pooled basis. The System, in accordance with Article 73B, Section 160 of the Annotated Code of Maryland, is permitted to make investments subject to the terms, conditions, limitations and restrictions imposed by the Board of Trustees of the System. The law further provides that not more than 15% of the assets that are invested in common stocks may be invested in non-dividend paying common stock. The System's investments are commingled in three combined investment funds. Two investment funds consist principally of bonds and other fixed income investments, while the other investment fund consists principally of common stocks.

2. **Receivables and payables:**
   Amounts due to the Department from various tax revenue sharing programs are recorded as taxes receivable, while amounts due to the Department from the Federal government are reported as intergovernmental receivables. Amounts representing balances due from the Authority and the State’s General Fund are reported as due from other state agencies. Amounts representing balances due to the Authority and the State’s General Fund are reported as due to other state agencies. Amounts representing balances due to political subdivisions are reported as accounts payable to political subdivisions.

3. **Inventories and prepaid items:**
   All inventories are valued at cost using the first-in/first-out (FIFO) method. Inventories of governmental funds are recorded as expenditures when consumed rather than when purchased. Certain payments to vendors reflect costs applicable to future accounting periods and are recorded as prepaid items in both government-wide and fund financial statements. In governmental fund type accounts, prepaid expenses are generally accounted for using the purchases method. Under the purchases method, prepaid expenses are treated as expenditures when purchased rather than accounted for as an asset.

4. **Grants:**
   Revenues from Federal reimbursement type grants are recognized when the related expenditures are incurred and the revenues are both measurable and available. The government considers all grant revenues to be available if they are collected within 60 days of the current fiscal period.

5. **Capital assets:**
   Capital assets, which include land, buildings and improvements, machinery and equipment, construction in progress and infrastructure assets (e.g., roads, bridges, sidewalks and similar items) are reported in the governmental activities column in the government-wide financial statements. Capital assets are defined by the Department as assets with an initial, individual cost of more than $50,000 and an estimated useful life in excess of two years. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Cost on constructed assets includes materials, labor, design and any other costs directly related to putting the asset in use. Donated capital assets are recorded at estimated fair market value at the date of donation. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset lives are not capitalized. Major outlays for capital assets and improvements are capitalized as projects are constructed.
Capital assets are depreciated using the straight line method over the following estimated useful lives:

<table>
<thead>
<tr>
<th>Capital Assets</th>
<th>Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buildings and improvements</td>
<td>5-50</td>
</tr>
<tr>
<td>Transit vehicles and equipment</td>
<td>10-25</td>
</tr>
<tr>
<td>Other vehicles</td>
<td>3-10</td>
</tr>
<tr>
<td>Office equipment</td>
<td>3-10</td>
</tr>
<tr>
<td>Computer equipment</td>
<td>3-10</td>
</tr>
<tr>
<td>Computer software</td>
<td>5-10</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>10-50</td>
</tr>
</tbody>
</table>

6. Deferred outflows/inflows of resources:
In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position that applies to a future period(s) and so will not be recognized as an outflow of resources (expense/expenditure) until then. The government only has one item that qualifies for reporting in this category. It is the deferred charge on refunding results from the difference in the carrying value of refunded debt and its reacquisition price. This amount is deferred and amortized over the shorter of the life of the refunded or debt.

7. Compensated absences:
It is the State’s policy to permit employees to accumulate earned but unused vacation and sick pay benefits. There is no liability for unpaid accumulated sick leave since the State does not have a policy to pay any amounts when employees separate from service with the State. All vacation pay is accrued when earned in the government-wide and fiduciary fund financial statements. A liability for these amounts is reported in governmental funds only if they have matured as a result of employee resignations and/or retirements. Principally all full-time State employees accrue annual leave based on the number of years employed up to a maximum of 25 days per calendar year. Earned annual leave may be accumulated up to a maximum of 75 days as of the end of each calendar year. Accumulated earned, but unused annual leave for the Department’s employees is accounted for in the government-wide financial statements.

8. Long-term obligations:
In the government-wide financial statements, long-term debt and other long-term obligations are reported as liabilities. Bond premiums and discounts adjust the carrying value of the bonds and are amortized over the life of the bonds. Bond issuance costs are expensed as incurred.

In the fund financial statements, governmental fund types recognize bond premiums and discounts during the period the debt is issued. The face amount of debt issued is reported as other financing sources. Premiums received on debt issuances are reported as other financing sources while discounts on debt issuances are reported as other financing uses. Issuance costs are reported as debt service expenditures.

9. Fund balance:
The Department’s Balance Sheet for the reservation of fund balance includes the following categories: (1) Nonspendable fund balance (which includes inventory of supplies and prepaid items), (2) Restricted fund balance (like for debt service items), (3) Committed fund balance (like for encumbrances), and (4) Assigned fund balance (like for loans receivable, agency activities and other function related activities) for Special Revenue funds within the Department.
When both restricted and unrestricted resources are available for use, it is the Department’s policy to use restricted resources first, then unrestricted resources (committed, assigned and unassigned) as they are needed. When unrestricted resources (committed, assigned and unassigned) are available for use it is the Department’s policy to use committed resources first, then assigned, and then unassigned as they are needed.

The Department utilizes encumbrance accounting. Encumbrances, based on purchase orders or other contracts, have been classified based on the existing resources that will be used to liquidate them. Encumbrances not included in the restricted fund balance are included in the committed fund balance since these amounts do not lapse all year-end but are payable from remaining appropriations from the prior year. These amounts can only be used for specific purposes pursuant to constraints imposed by formal actions of the government’s highest level of decision making authority through the budget process.

3. **Reconciliation of Government-wide and Fund Financial Statements:**

A. **Explanation of the governmental fund balance sheet and the government-wide statement of net position.**

The governmental fund Balance Sheet includes reconciliation between fund balance – total governmental funds and total net position – total governmental activities as reported in the government-wide Statement of Net Position. The governmental fund Statement of Revenues, Expenditures and Changes in Fund Balances includes reconciliation between the net change in fund balance – total governmental funds and the change in net position of governmental activities as reported in the government-wide Statement of Activities. The statement of net position should report all assets, deferred outflows of resources, liabilities, deferred inflows of resources, and net position. The statement of net position presents formats that displays assets, plus deferred outflows of resources, less liabilities, less deferred inflows of resources, equals net position, although a balance sheet format (assets plus deferred outflows of resources equals liabilities plus deferred inflows of resources, plus net position) may be used. Regardless of the format used, the statement of net position should report the residual amount as net position, rather than net assets, proprietary or fiduciary fund balance, or equity. Net position represents the difference between all other elements in a statement of financial position and should be displayed in three components—net investment in capital assets; restricted (distinguishing between major categories of restrictions); and unrestricted.

4. **Deposits and Investments:**

As of June 30, 2015, the Department had the following investments:

<table>
<thead>
<tr>
<th>Investment Type</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money Markets - Agency Funds</td>
<td>$ 15,923</td>
</tr>
<tr>
<td>Pooled investments - Pension Trust Fund</td>
<td>233,952</td>
</tr>
<tr>
<td>State Treasurer’s pooled – Special Fund</td>
<td>310,851</td>
</tr>
<tr>
<td>Restricted investment– Special Fund</td>
<td>12,808</td>
</tr>
<tr>
<td><strong>Total investments at fair value</strong></td>
<td><strong>$ 573,534</strong></td>
</tr>
</tbody>
</table>

**Interest rate risk:**

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. The Department's policy for managing its exposure to fair value loss arising from increasing interest rates is to comply with the Maryland State Treasurer (Treasurer) policy on all of the Department’s investments. The Treasurer’s investment policy states that to the extent possible, it will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific
Cash flow, the Treasurer will not directly invest in securities maturing more than five years from the date of purchase. The Department followed this policy for all of its investments.

Credit risk:
Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The Department's policy for reducing its exposure to credit risk is to comply with the Treasurer’s policy, which requires that the Treasurer’s investments in repurchase agreements be collateralized by U.S. Treasury and agency obligations. In addition, investments may be made directly in U.S. agency obligations. These agency obligations are rated Aa1 by Moody’s and AAA by Standard and Poor’s. State law also requires that money market mutual funds contain only U.S. Treasuries or agencies or repurchase agreements secured by U.S. Treasuries or agencies. The money market mutual funds are rated Aaa/AAA.

Concentration of credit risk:
Concentration of credit risk is the risk of loss attributed to the magnitude of a government's investment in a single issuer. The Department's policy for reducing this risk of loss is to comply with the Treasurer’s policy, which states the investment policy limits the amount of repurchase agreements to be invested with a particular institution to 30% of the portfolio. Other than that, there is no limit on the amount that may be invested in any one issuer.

Custodial credit risk - deposits and investments:
Custodial credit risk is the risk that, in the event of a bank failure, the Department's deposits may not be returned to it. Deposits are exposed to custodial credit risk if they are not covered by depository insurance and the deposits are (a) uncollateralized, (b) collateralized with securities held by the pledging financial institution, or (c) collateralized with securities held by the pledging financial institution's trust department or agent but not in the Department's name. The Department does not have a formal deposit policy for custodial credit risk, but follows the Treasurer’s policy that states the Treasurer may deposit in a financial institution in the State any unexpended or surplus money in which the Treasurer has custody. As of June 30, 2015, none of the Department's bank balance was uninsured or uncollateralized; none was uninsured or collateralized with securities held by the pledging financial institution; and none were uninsured or collateralized with securities held by the pledging financial institution’s trust department or fiscal agent, but not in the Department’s name. The Treasurer (i.e., law, regulation or formal policy) defines the types of securities authorized as appropriate investments for the Department and the conditions for making investment transactions. Investment transactions may be conducted only through qualified depositories, certified dealers, or directly with issuers of the investment securities.

As of June 30, 2015 the Department reported a total of $12,808,000 in Cash and cash equivalents – restricted on the Department’s balance sheet. This amount consists of restricted cash for the construction retainages related to the SHA road projects.

The Treasurer authorizes the Department to invest in obligations of the U.S. Treasury including bills, notes, and bonds; obligations of U.S. agencies and instrumentalities; repurchase agreements secured by an U.S. Treasury agency; instrumentality obligations or bankers’ acceptances guaranteed by a financial institution with the highest short-term debt rating by at least one nationally recognized statistical rating organization (NRSRO); commercial paper with the highest rating by at least one NRSRO; shares or certificates in a money market mutual fund as defined by the Treasurer; and Maryland local government pooled with short-term investments.
5. **Receivables and Unearned Revenue:**
The Department’s receivables as of June 30, 2015 for the individual funds were as follows:

<table>
<thead>
<tr>
<th>Receivables</th>
<th>Special Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxes receivable</td>
<td>$140,711</td>
</tr>
<tr>
<td>Intergovernmental receivable</td>
<td>214,145</td>
</tr>
<tr>
<td>Other accounts receivable</td>
<td>48,749</td>
</tr>
<tr>
<td>Due from other state agencies, net</td>
<td>146,923</td>
</tr>
<tr>
<td><strong>Net total receivables</strong></td>
<td><strong>$550,528</strong></td>
</tr>
</tbody>
</table>

The Department’s Taxes receivable consist of receivables recorded at year-end for the Motor Vehicle Fuel Tax Division in the amount of $95,063,000 and the MVA’s titling tax in the amount of $45,648,000. The Department’s Intergovernmental receivables consist of receivables from the Federal government in the amount of $206,280,000 and from the local subdivisions in the amount of $7,865,000. The Department’s other accounts receivable, of $48,749,000; consist of miscellaneous receivables recorded at fiscal year-end across the Department.

A balance of $40,929,000 is reported as Due from other state agencies in the Special Revenue Fund for the amount due from the State Comptroller’s Revenue Administration Division for cash transfers not transferred to the Department as of June 30, 2015. Also included in Due from other state agencies is the amount $94,710,000, for the amount due from the Authority for Passenger Facility Charge (PFC), Customer Facility Charge (CFC) and special parking revenue collections; $6,163,000 is reported as Due from other state agencies in the Special Revenue Fund for the amount due from the Authority for the ICC project; $5,121,000 is reported as Due from other state agencies, which is due from the Maryland Department of Budget and Management (DBM) for the health benefits refund. Also included in Due from other state agencies on the Statement of Net Position is the amount for the Department’s Energy Performance Contract (EPC) as of June 30, 2015, in the amount of $3,178,000.

The Department’s unearned revenue in connection with resources that have been received, but not yet earned was $148,262,000 as of June 30, 2015. The Department reported unearned revenue for customer prepayments of future airport services to be provided by the MAA in the amount of $2,650,000, $14,000 motor vehicle refunds by the MVA, $43,158,000 for revenues collected by the SHA for advanced contract payments and $102,440,000 for advanced rental payments related to MPA’s service concession agreement.

As of June 30, 2015, the Department also reported unearned revenue in the governmental funds in the amount of $45,822,000 for unearned customer prepayments. Unavailable revenue was comprised of $94,710,000 for the balance in the MAA PFC’s and CFC Improvement Funds and $43,551,000 related to federal receivables that were not collectable within the period available.

6. **Interfund Transfers:**
The interfund transfers for the Department for the year ended June 30, 2015, were as follows:

<table>
<thead>
<tr>
<th>Transfers In</th>
<th>Transfers Out</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt service fund</td>
<td>Special revenue fund</td>
<td><strong>$248,348</strong></td>
</tr>
</tbody>
</table>

The purpose of this interfund transfer is to record the amount of revenue transferred from the special revenue fund to the debt service fund for debt service principal and interest payments. This transfer is reported on the Statement of Revenues, Expenditures and Changes in Fund Balances for the year ended June 30, 2015 as a Debt service transfer under Other Financing Sources (Uses).
7. **Due to Other State Agencies:**
The amount reported as Due to other state agencies within the Special Revenue Fund in the accompanying balance sheet is $3,565,000. This represents the amount due to the State’s General Fund for motor vehicle fuel tax, hazmat program, auto safety and commercial vehicle enforcement which was not transferred as of June 30, 2015.

8. **Capital Assets:**
The Department’s Capital assets activity by asset classification, including accumulated depreciation, for the year ended June 30, 2015, was as follows:

<table>
<thead>
<tr>
<th>Capital Assets - Governmental activities</th>
<th>Balance</th>
<th>Increases</th>
<th>Decreases</th>
<th>Transfers</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>July 1, 2014</td>
<td></td>
<td></td>
<td>In (Out)</td>
<td>June 30, 2015</td>
</tr>
<tr>
<td><strong>Capital Assets not depreciated:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land</td>
<td>$2,552,170</td>
<td>$9,105</td>
<td>(1,482)</td>
<td>$32,049</td>
<td>$2,591,842</td>
</tr>
<tr>
<td>Construction in progress</td>
<td>2,884,825</td>
<td>948,788</td>
<td>-</td>
<td>(390,345)</td>
<td>3,443,268</td>
</tr>
<tr>
<td>Total capital assets not depreciated</td>
<td>5,436,995</td>
<td>957,893</td>
<td>(1,482)</td>
<td>(358,296)</td>
<td>6,035,110</td>
</tr>
<tr>
<td><strong>Capital assets depreciated:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building &amp; improvements</td>
<td>2,600,749</td>
<td>34,202</td>
<td>(979)</td>
<td>168,137</td>
<td>2,802,109</td>
</tr>
<tr>
<td>Machinery &amp; equipment</td>
<td>2,137,307</td>
<td>70,760</td>
<td>(28,404)</td>
<td>39,850</td>
<td>2,219,513</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>21,307,084</td>
<td>684,023</td>
<td>(3,641)</td>
<td>150,309</td>
<td>22,137,775</td>
</tr>
<tr>
<td>Seagirt Assets</td>
<td>54,341</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>54,341</td>
</tr>
<tr>
<td>Total capital assets depreciated</td>
<td>26,099,481</td>
<td>788,985</td>
<td>(33,024)</td>
<td>358,296</td>
<td>27,213,738</td>
</tr>
<tr>
<td><strong>Accumulated depreciation for:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building &amp; improvements</td>
<td>(1,244,181)</td>
<td>(82,041)</td>
<td>50</td>
<td>-</td>
<td>(1,326,172)</td>
</tr>
<tr>
<td>Machinery &amp; equipment</td>
<td>(1,472,642)</td>
<td>(121,381)</td>
<td>27,686</td>
<td>-</td>
<td>(1,566,337)</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>(12,111,091)</td>
<td>(833,395)</td>
<td>3,524</td>
<td>-</td>
<td>(12,940,962)</td>
</tr>
<tr>
<td>Seagirt Assets</td>
<td>(2,264)</td>
<td>(1,132)</td>
<td>-</td>
<td>-</td>
<td>(3,396)</td>
</tr>
<tr>
<td>Total accumulated depreciation</td>
<td>(14,830,178)</td>
<td>(1,037,949)</td>
<td>31,260</td>
<td>-</td>
<td>(15,836,867)</td>
</tr>
<tr>
<td>Net capital assets after depreciation</td>
<td>11,269,303</td>
<td>(248,964)</td>
<td>(1,764)</td>
<td>358,296</td>
<td>11,376,871</td>
</tr>
<tr>
<td>Net total capital assets – governmental activities</td>
<td>$16,706,298</td>
<td>$708,929</td>
<td>(3,246)</td>
<td>-</td>
<td>$17,411,981</td>
</tr>
</tbody>
</table>

Depreciation expense on capital assets charged to the Department’s modal administration/functions in the Statement of Activities as of June 30, 2015, was as follows:

<table>
<thead>
<tr>
<th>Depreciation Expense - Governmental Activities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary’s Office</td>
<td>$5,197</td>
</tr>
<tr>
<td>State Highway Administration</td>
<td>788,858</td>
</tr>
<tr>
<td>Port Administration</td>
<td>24,666</td>
</tr>
<tr>
<td>Motor Vehicle Administration</td>
<td>13,469</td>
</tr>
<tr>
<td>Transit Administration</td>
<td>125,790</td>
</tr>
<tr>
<td>Aviation Administration</td>
<td>79,969</td>
</tr>
<tr>
<td>Total depreciation expense - governmental activities</td>
<td>$1,037,949</td>
</tr>
</tbody>
</table>
agreements satisfy the criteria established to be considered service concession arrangements (SCAs). Under the terms of the ground lease, the Department transfers rights to PAC for a term of 50 years. After 50 years the Department has the option to buy PAC’s equipment. PAC charges and collects fees from the user for container lifts, short tons of roll on-roll off, break-bulk and bulk cargo and pays the operating costs, management fee and debt service associated with the project. The Department has the ability to approve what services the operator is required to provide. As of June 30, 2015, the Capital assets, net accumulated depreciation and deferred service concession arrangement receipts were $50,945,000.

10. Long-term Liabilities:
Changes in long-term liabilities:
The Department’s long-term liability activity for the year ended June 30, 2015, was as follows:

(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Governmental activities:</th>
<th>Beginning Balance July 1, 2014</th>
<th>Additions</th>
<th>Reductions</th>
<th>Ending Balance June 30, 2015</th>
<th>Due Within One Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation bonds*</td>
<td>$1,812,670</td>
<td>$661,250</td>
<td>($453,670)</td>
<td>$2,020,250</td>
<td>$174,165</td>
</tr>
<tr>
<td>Capital leases**</td>
<td>594,302</td>
<td>74,267</td>
<td>(39,919)</td>
<td>628,650</td>
<td>41,901</td>
</tr>
<tr>
<td>Pollution obligations</td>
<td>156,161</td>
<td>-</td>
<td>-</td>
<td>156,161</td>
<td>-</td>
</tr>
<tr>
<td>MTA OPEB obligations</td>
<td>267,064</td>
<td>44,852</td>
<td>-</td>
<td>311,916</td>
<td>-</td>
</tr>
<tr>
<td>State Employees’ Plan Net pension liability</td>
<td>640,527</td>
<td>-</td>
<td>(59,553)</td>
<td>580,974</td>
<td>-</td>
</tr>
<tr>
<td>MTA Net pension liability</td>
<td>630,048</td>
<td>50,219</td>
<td>-</td>
<td>680,267</td>
<td>-</td>
</tr>
<tr>
<td>Premium on bonds*</td>
<td>136,167</td>
<td>91,557</td>
<td>(14,285)</td>
<td>213,439</td>
<td>23,782</td>
</tr>
<tr>
<td>Worker’s compensation costs</td>
<td>67,044</td>
<td>12,954</td>
<td>(15,312)</td>
<td>64,686</td>
<td>10,392</td>
</tr>
<tr>
<td>EPC obligations*</td>
<td>54,154</td>
<td>-</td>
<td>(3,963)</td>
<td>50,191</td>
<td>4,094</td>
</tr>
<tr>
<td>Compensated absences</td>
<td>50,659</td>
<td>34,086</td>
<td>(33,034)</td>
<td>51,711</td>
<td>8,340</td>
</tr>
<tr>
<td>Total long-term liabilities – governmental activities</td>
<td>$4,408,796</td>
<td>$969,185</td>
<td>($619,736)</td>
<td>$4,758,245</td>
<td>$262,674</td>
</tr>
</tbody>
</table>

Note: * These items are combined for the net related debt calculation on the Statement of Net Position section entitled Net Position – Net investment in capital assets. # Capital lease additions consist of the new lease, in the amount of $40,000,000, and were added to the monies held by the trustee for construction costs, in the amount of $34,267,000.

The Treasurer’s Office negotiated financing for the EPC obligations in the amount of $54,154,000; certain agencies have a Maryland Energy Administration (MEA) State Agency Loan Program (SALP) loan totaling $5,151,000. The current portion that is due within one year is the principal due to the Treasurer’s Office in the amount of $3,616,000 and the agencies SALP portion in the amount of $478,000; see footnote 17 for additional program details.

The Department’s long-term liabilities, other than consolidated transportation bonds, are generally liquidated through the special revenue fund. The Department estimates there are no material liabilities for arbitrage rebates as of June 30, 2015.

11. Transportation bonds:
The Department issues Consolidated Transportation Bonds to provide funds for the acquisition and construction of major capital facilities. Consolidated Transportation Bonds are limited obligations issued by the Department for highway, port, airport, rail or mass transit facilities or any combination of such facilities. The principal must be paid within 15 years from the date of issue. As provided by law, the
General Assembly shall establish in the budget for any fiscal year a maximum outstanding aggregate amount of these Consolidated Transportation Bonds as of June 30 of the respective fiscal year that does not exceed $4,500,000,000. The aggregate principal amount of those bonds that were allowed to be outstanding as of June 30, 2015, was $2,530,255,000. The aggregate principal amount of Consolidated Transportation Bonds outstanding as of June 30, 2015, was $2,020,250,000. Consolidated Transportation Bonds are paid from the Debt Service Fund.

The Department’s Transportation Bonds outstanding as of June 30, 2015, were as follows:

(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Interest Rates</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consolidated Transportation Bonds - due serially through 2030 – for state transportation activity</td>
<td>2.0-5.5% $1,622,645</td>
</tr>
<tr>
<td>Consolidated Transportation Bonds, refunding – due serially through 2030 – for state transportation activity</td>
<td>5.0% 397,605</td>
</tr>
<tr>
<td>Total consolidated transportation bonds</td>
<td>$2,020,250</td>
</tr>
</tbody>
</table>

Principal and interest on Consolidated Transportation Bonds are payable from the proceeds of certain excise taxes levied by statute, a portion of the corporate income tax and a portion of the State sales tax credited to the Department. These amounts are applicable to the extent necessary for that exclusive purpose before being available for other uses by the Department. If those tax proceeds become insufficient to meet debt service requirements, other receipts of the Department are available for that purpose. The holders of such bonds are not entitled to look to other State resources for payment. Under the terms of authorizing bond resolutions, additional Consolidated Transportation Bonds may be issued provided, among other conditions, that (i) total receipts (excluding Federal funds for capital projects, bond and note proceeds and other receipts not available for debt service), less administration, operation and maintenance expenses for the preceding fiscal year, equal at least two times the maximum annual debt service on all Consolidated Transportation Bonds outstanding and to be issued, and (ii) total proceeds from pledged taxes equal at least two times the maximum annual debt service on all consolidated transportation bonds outstanding and to be issued.

County Transportation Bonds are issued by the Department and the proceeds are used by participating counties and Baltimore City to fund local road construction, reconstruction and other transportation projects and facilities and to provide local participating funds for Federally-aided highway projects. Debt service on these bonds is payable from the participating counties’ and Baltimore City’s share of highway user revenues. Legislation was enacted during the 1993 session of the General Assembly that established an alternative county transportation bond program. This new legislation provides features similar to the previous program except that the county transportation debt will be the obligation of the participating counties rather than the Department. Unexpended bond proceeds in the amount of $3,680,000 and certain debt service sinking fund amounts aggregating $12,233,000 were invested in money market accounts as of June 30, 2015. These funds are reported as restricted cash and cash equivalent in the agency funds. The two amounts are restricted for project funds and county bond debt service respectively. $87,860,000 in County Transportation Revenue Bonds was outstanding on June 30, 2015.

On February 26, 2014 consolidated transportation bonds in the amount of $265,535,000 were issued by the Department with a premium of $35,526,000. These bonds are dated February 26, 2014 with maturities ranging from February 1, 2018 to February 1, 2030 at interest rates ranging from 2.8-5.0%. On June 18, 2015, consolidated transportation bonds in the amount of $136,000,000 were issued by the Department with a premium of $13,927,000. These bonds are dated June 18, 2015 with maturities...
ranging from June 1, 2018 to June 1, 2030 at interest rates ranging from 3.0% to 5.0%. Also on June 18, 2015 consolidated transportation refunding bonds in the amount of $259,715,000 were issued by the Department with a premium of $42,105,000. These bonds are dated June 18, 2015 with maturities ranging from February 15, 2016 to February 15, 2023 at an interest rate of 5.0%. The net proceeds of these refunding bonds were used to purchase open market securities and were deposited in an irrevocable trust with an escrow agent to provide for all future debt service payments on the refunded bonds. As a result, the previously outstanding refunded bonds are considered to be defeased and liabilities for these bonds have been extinguished. The aggregate difference in debt and refunding debt is $58,815,000. The economic gain on the transaction is $21,119,000. As of June 30, 2015, the Department has $301,255,000 of defeased debt outstanding.

Annual debt service requirements to maturity for transportation bonds in future years are as follows:

<table>
<thead>
<tr>
<th>Years Ending June 30,</th>
<th>Consolidated Transportation Bonds-Principal</th>
<th>Consolidated Transportation Bonds-Interest</th>
<th>Total Transportation Bond Debt Service Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>$ 174,165</td>
<td>$ 83,829</td>
<td>$ 257,994</td>
</tr>
<tr>
<td>2017</td>
<td>207,185</td>
<td>80,577</td>
<td>287,762</td>
</tr>
<tr>
<td>2018</td>
<td>221,710</td>
<td>70,617</td>
<td>292,327</td>
</tr>
<tr>
<td>2019</td>
<td>182,375</td>
<td>60,513</td>
<td>242,888</td>
</tr>
<tr>
<td>2020</td>
<td>152,340</td>
<td>51,883</td>
<td>204,223</td>
</tr>
<tr>
<td>2021-2025</td>
<td>715,920</td>
<td>151,901</td>
<td>867,821</td>
</tr>
<tr>
<td>2026-2030</td>
<td>366,555</td>
<td>35,198</td>
<td>401,753</td>
</tr>
<tr>
<td>Total</td>
<td>$ 2,020,250</td>
<td>$ 534,518</td>
<td>$ 2,554,768</td>
</tr>
</tbody>
</table>

12. Operating and Capital Leases:

Operating Leases:
The Department leases office space under various agreements that are accounted for as operating leases. Rent expense under these agreements was $3,514,000 for the year ended June 30, 2015.

The future minimum operating lease payments under these agreements as of June 30, 2015, were as follows:

<table>
<thead>
<tr>
<th>Years Ending June 30,</th>
<th>Operating Leases Future Minimum Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>$ 2,717,234</td>
</tr>
<tr>
<td>2017</td>
<td>2,615,280</td>
</tr>
<tr>
<td>2018</td>
<td>2,539,451</td>
</tr>
<tr>
<td>2019</td>
<td>2,463,623</td>
</tr>
<tr>
<td>2020</td>
<td>2,229,005</td>
</tr>
<tr>
<td>2021-2025</td>
<td>4,243,838</td>
</tr>
<tr>
<td>2025-2029</td>
<td>346,311</td>
</tr>
<tr>
<td>Total operating leases</td>
<td>$ 17,154,743</td>
</tr>
</tbody>
</table>

Capital Leases:
The Department has entered into several lease agreements for the financing of various transportation related projects. The Department has also entered into agreements with the Maryland Transportation Authority for the financing of various aviation projects. The Department has reported obligations under

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capital leases of $628,650,000, as of June 30, 2015. The Department’s activity related to capital leases is included in the table in note 10.

The Department’s capital lease obligations as of June 30, 2015, were as follows:

- $13,485,000 in obligations related to Project Certificates of Participation for the Maryland Aviation Administration Facilities, Series 2010 (refunding), issued on December 1, 2010, at annual interest rates ranging from 3.0-5.0%;
- $10,230,000 in obligations related to Project Certificates of Participation for the Maryland Transit Administration Project, Series 2010 (refunding), issued on December 1, 2010, at annual interest rates ranging from 3.0-5.0%;
- $2,500,000 in obligations related to Certificates of Participation for the BWI Marshall Airport Shuttle Bus Fleet Acquisition, Series 2004, issued on October 7, 2004, at annual interest rates ranging from 2.75-3.60%;
- $17,795,000 in obligations related to Certificates of Participation for the Maryland Port Administration Facility Project, Series 2006, issued on June 14, 2006, at annual interest rates ranging from 4.25-5.25%;
- $7,147,000 for the Authority’s financing of the MPA’s Masonville Automobile terminal at an annual interest rate of 5.5%;
- $167,420,000 for the Maryland Economic Development Corporation bond issuance for the Maryland Aviation Facilities, issued on April 3, 2003, at annual interest rates ranging from 4.5-5.5%;
- $16,690,000 for the Maryland Economic Development Corporation bond issuances for the financing of the Department’s headquarters building, original bonds issued on June 27, 2002, refunding bonds issued May 25, 2010 at annual interest rates ranging from 3.0-4.5%;
- $147,654,000 on long-term obligations related to the financing of BWI Marshall Airport parking and roadway projects. Bonds associated with this agreement were issued by the Maryland Transportation Authority in the amount of $264,075,000 on March 5, 2002, and refunded on April 25, 2012, with annual interest rates ranging from 4.0-5.0%; the total liability is $159,860,000 (less monies the Authority’s trustee is holding);
- $84,522,000 on long-term obligations related to the financing of BWI Marshall Airport Consolidated Rental Car Facility. Bonds associated with this agreement were issued by the Authority in the amount of $117,345,000 on June 18, 2002, at annual interest rates ranging from 2.74-6.65%; the total liability is $93,785,000;
- $43,458,000 minimum payments, for the financing of certain airport facilities project located at BWI Marshall Airport including construction of a connector hallway between Concourse B and C. Bonds were issued by Maryland Transportation Authority on April 25, 2012, in the amount of $50,905,000 at annual interest rates ranging from 4.0-5.0%. As of June 30, 2015, the total liability is $45,405,000 (less monies the Authority’s trustee is holding);
- $108,111,000 on long-term obligations related to the financing of BWI Marshall Airport’s runway safety and paving improvement projects. Bonds were issued by the Maryland Transportation Authority on December 13, 2012, in the amount of $92,070,000 fixed rate bonds with interest rates ranging from 2.0-4.0% and $43,400,000 of variable rate demand bonds. As of June 30, 2015, the interest rate on the variable rated bonds was .067%. Total liability is $124,440,000 (less monies the Authority’s trustee is holding).
$9,638,000 on long-term obligation related to the financing of BWI Marshall Airports construction of a connector hallway between Concourse C and D. Bonds were issued by the Maryland Transportation Authority on December 18, 2014 in the amount of $40,000,000 at annual interest rates ranging from 3.0% to 5.0%. As of June 30, 2015 the total liability was $39,380,000 (less monies the Authority’s Trustee is holding).

As bond proceeds are spent for construction, the Department’s liability (or minimum payments) and related capital assets will increase, accordingly. Once construction is completed, the Construction in Progress asset will become a Building or Infrastructure asset.

The future minimum capital lease obligations and the net value of these minimum lease payments as of June 30, 2015, were as follows:

\[
\begin{array}{ll}
\text{Years Ending June 30,} & \text{Amount} \\
2016 & $69,535 \\
2017 & 68,156 \\
2018 & 66,590 \\
2019 & 66,510 \\
2020 & 66,512 \\
2021-2025 & 305,013 \\
2026-2030 & 223,482 \\
2031-2035 & 64,732 \\
\hline
\text{Total minimum lease payments} & 930,530 \\
\text{Less: amount representing interest} & 232,393 (a) \\
\text{Less: funds held by bond trustee} & 69,487 (b) \\
\text{Value of minimum lease payments} & $628,650 \\
\end{array}
\]

(a) The interest represents 37% of the total minimum lease principal payments due.
(b) The reduction shown in the amount of $69,487,000 are monies held by the bond trustee on behalf of the Maryland Transportation Authority to be used for construction and Debt service reserve fund expenditures.

The capital assets acquired through capital leases as of June 30, 2015 were as follows:

\[
\begin{array}{ll}
\text{Capital Asset} & \text{Amount} \\
\text{Construction in progress} & $169,374 \\
\text{Land and improvements} & 16,569 \\
\text{Buildings and improvements} & 1,006,288 \\
\text{Machinery and equipment} & 23,427 \\
\text{Infrastructure} & 288,187 \\
\text{Total acquired capital assets} & 1,503,845 \\
\text{Less: accumulated depreciation} & 450,129 \\
\text{Total capital assets – net} & $1,053,716 \\
\end{array}
\]

13. **Pollution Remediation Obligations:**
The Department has recognized a pollution remediation obligation on the Statement of Net Position for governmental activities. A pollution remediation obligation is an obligation to address the current or
potential detrimental effects of existing pollution by participating in pollution remediation activities, including pre-cleanup activities, cleanup activities, government oversight and enforcement, and post remediation monitoring. Obligating events that initiate the recognition of a pollution remediation liability include any of the following: (a) There is an imminent and substantial endangerment to the public; (b) The Department is in violation of a pollution prevention related permit or license; (c) The Department is identified as a responsible party or potentially responsible party by an environmental regulator; (d) The Department is named or has evidence that it will be named in a lawsuit to participate in pollution remediation; or (e) The Department voluntarily commences, or legally obligates itself to commence, cleanup activities, monitoring or operations and maintenance of pollution remediation efforts.

The pollution remediation obligation is an estimate and subject to change resulting from price increases or reductions, technology advances or from changes in applicable laws or regulations. The liability is recognized as it becomes estimable. In some cases, this may be at inception. In other cases, components of a liability are recognized as they become reasonably estimable. At a minimum, the liability is reviewed for sufficiency when various benchmarks occur and as remediation is implemented and monitored. The measurement of the liability is based on the current value of outlays to be incurred using the expected cash flow technique. This technique measures the sum of probability-weighted amounts in a range of possible potential outcomes – the estimated mean or average.

The Department’s pollution remediation liability as of June 30, 2015, is estimated to be $156,161,000 for cleanup projects at the SHA, the MPA, the MTA and the MAA with no expected recoveries from third parties to reduce the liability. Included in this liability are cost estimates for site monitoring and repair excavation of road and infrastructure, and replacement of buildings as a result of contaminations by hazardous materials under Federal and State law. In these cases, either the Department has been named in a lawsuit by a State Regulator or the Department has legally obligated itself under the Environmental Article, Section 7-201, of the Annotated Code of Maryland. These cost estimates for the Department’s pollution remediation, due to site contamination from hazardous materials, are based on engineering design estimates. The estimated long-term costs that the Department may be responsible for over the next 15 years include: various cleanup projects related to several MTA construction sites and projects related to cleanup of underground hazardous substances at one of the MPA’s marine terminals. The MPA is only responsible for 23% of the total remediation costs. The Department did not incur any significant costs to reduce the liability or identify any new technology that would change the liability during the current fiscal year ended June 30, 2015.

14. **Other Postemployment Benefits (OPEB):**

**State Employee and Retiree Health and Welfare Benefits Program of Maryland:**

**Plan Description:**

The members of the Maryland State Retirement, Pension and Law Enforcement Officers’ Systems and their dependents are provided postemployment health care benefits through the State Employee and Retiree Health and Welfare Benefits Program (OPEB Plan). The OPEB Plan is a single-employer defined benefit health care plan established by the State Personnel and Pensions Article, Section 2-501 through 2-516 of the Annotated Code of Maryland. The OPEB Plan is self-insured to provide medical, hospitalization, prescription drugs and dental insurance benefits to eligible State employees, retirees and their dependents. State law grants authority to establish and amend benefit provisions to the Secretary of the DBM. In addition, the Secretary of DBM shall specify by regulation the types or categories of State employees who are eligible to enroll, with or without State subsidies, or who are not eligible to enroll.
Effective June 1, 2004, the State of Maryland established the Postretirement Health Benefits Trust Fund (OPEB Trust) as a separate entity to receive appropriated funds and contributions which will be used to assist the OPEB Plan in financing the State’s postretirement health insurance subsidy. The OPEB Trust is established in accordance with the State Personnel and Pensions Article, Section 34-101, of the Annotated Code of Maryland and is administered by the Board of Trustees for the State Retirement and Pension System. Financial statements of the OPEB Trust may be obtained from the Office of the Maryland Comptroller, Treasury Building, Annapolis, MD 21401. A separate valuation is not performed by the Department. The Department’s only obligation to the OPEB Plan is its required annual contribution.

**Funding Policy:**

The contribution requirements of the OPEB Plan members and the State are established by the DBM Secretary. Each year the DBM Secretary recommends to the Maryland Governor the State’s share of the costs of the OPEB Plan. Beginning in fiscal year 2008, Maryland State law requires DBM to transfer any subsidy received as a result of the Federal Medicare Prescription Drug Improvement Act of 2003 or a similar subsidy to the OPEB Trust to prefund the costs of retirees’ health benefits. Also, funds may be separately appropriated in the State’s budget to transfer to the OPEB Trust.

Generally, a retiree may enroll and participate in the health benefit options if the retiree retired directly from State service with at least five years of creditable service, ended State service with at least 10 years of creditable service and within five years before the age at which a vested retirement allowance normally would begin or ended State service with at least 16 years of creditable service. Based on current practice, the State subsidizes approximately 50-85% of retiree premiums to cover medical, dental, prescription and hospitalization costs, depending on the type of insurance plan. The OPEB Plan is a cost sharing plan with the State of Maryland and assesses a charge to retirees for post-employment health care benefits, which is based on health care insurance charges for current employees. The Department’s share of these retirees’ health insurance costs were $23,419,000 for the year ending June 30, 2015, and was included in the health care costs allocated to all participating employers.

The Schedule of MDOT’s Employer Contributions for the OPEB Plan is as follows:

<table>
<thead>
<tr>
<th>Fiscal Year Ended June 30,</th>
<th>Annual Required Contribution</th>
<th>Annual Contribution Paid</th>
<th>Net OPEB Obligation</th>
<th>Percentage Contributed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>$ 28,981</td>
<td>$ 28,981</td>
<td>$ -</td>
<td>100.0 %</td>
</tr>
<tr>
<td>2014</td>
<td>21,798</td>
<td>21,798</td>
<td>-</td>
<td>100.0</td>
</tr>
<tr>
<td>2015</td>
<td>23,419</td>
<td>23,419</td>
<td>-</td>
<td>100.0</td>
</tr>
</tbody>
</table>

**Maryland Transit Administration Pension Plan - OPEB:**

**Plan Description:**

The members of the MTA Plan are provided post-employment health care benefits through the State Employee and Retiree Health Plan or the MTA Health Plan. The MTA currently funds retirees’ health care cost on a pay-as-you-go basis. As retirees incur expenses, the MTA pays out funds based on the appropriate benefit structure. The MTA does not currently have a separate fund set aside to pay health care costs. The MTA provides health care coverage for nearly 1300 retirees. Retirees make the same contributions as active employees; however, Medicare contributions are handled separately.
Funding Policy:
The Department is required by law to provide funding each year to the OPEB Plan for the Department’s share of the pay-as-you-go amount necessary to provide current benefits to retired employees and their dependents. The MTA healthcare benefits including Medical (PPO or HMO), prescription drug, dental and vision plans are provided to retirees meeting the following eligible criteria:

1. Age 65 with 5 years of service
2. Age 52 with 30 years of service
3. Age 55 with at least 30 years of service, including military and other qualifying service credits
4. Disabled with 5 years of service
5. Surviving spouse subsidized benefit for 3 years

Annual OPEB Costs and Net OPEB Obligation:
The Department’s annual OPEB cost, related to the MTA Plan, is calculated based on the annual required contribution (ARC), an amount actuarially determined in accordance with the parameters of accounting principles generally accepted in the United States of America. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and amortize any unfunded liabilities over a period not to exceed 30 years.

The annual OPEB cost and net OPEB obligation for the MTA Plan as of June 30, 2015 was:

(\textit{amounts expressed in thousands})

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual required contribution (ARC)</td>
<td>$67,496</td>
<td>Interest on OPEB obligations</td>
<td>$11,350</td>
<td>Adjustments to the OPEB cost</td>
</tr>
<tr>
<td>Annual OPEB cost</td>
<td>$58,757</td>
<td>Contributions made in current fiscal year</td>
<td>($13,905)</td>
<td>Increase in OPEB obligation</td>
</tr>
<tr>
<td>Net OPEB obligation beginning of year</td>
<td>$267,064</td>
<td>Net OPEB obligation end of fiscal year</td>
<td>$311,916</td>
<td></td>
</tr>
</tbody>
</table>

The three-year historical trend information for the MTA Plan is as follows:

(\textit{amounts expressed in thousands})

<table>
<thead>
<tr>
<th>Fiscal Year Ended June 30,</th>
<th>Annual OPEB Cost</th>
<th>Annual Contribution Paid</th>
<th>Net OPEB Obligation</th>
<th>Percentage Contributed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>$65,864</td>
<td>$14,147</td>
<td>$221,003</td>
<td>21.5 %</td>
</tr>
<tr>
<td>2014</td>
<td>$64,444</td>
<td>$18,383</td>
<td>$267,064</td>
<td>28.5</td>
</tr>
<tr>
<td>2015</td>
<td>$58,757</td>
<td>$13,905</td>
<td>$311,916</td>
<td>23.7</td>
</tr>
</tbody>
</table>

Funded Status and Funding Progress:
The funded status of the OPEB Plan for the MTA Plan is as follows:

(\textit{amounts expressed in thousands})

<table>
<thead>
<tr>
<th>Actuarial Valuation Date</th>
<th>Actuarial Value of Assets</th>
<th>Actuarial Accrued Liability</th>
<th>Unfunded Actuarial Accrued Liability (UAAL)</th>
<th>Covered Payroll</th>
<th>Percentage of UAAL over Covered Payroll</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/30/2011</td>
<td>$\text{-}</td>
<td>$527,679</td>
<td>$527,679</td>
<td>$147,474</td>
<td>357.8 %</td>
</tr>
<tr>
<td>6/30/2013</td>
<td>$\text{-}</td>
<td>670,833</td>
<td>670,833</td>
<td>137,596</td>
<td>487.5</td>
</tr>
<tr>
<td>6/30/2015</td>
<td>$\text{-}</td>
<td>607,063</td>
<td>607,063</td>
<td>137,427</td>
<td>441.7</td>
</tr>
</tbody>
</table>
Actuarial Methods and Assumptions:
An actuarial valuation of an ongoing plan involves estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality and healthcare cost trends. Actuarially determined amounts are subject to continual revision as actual results are compared with the past expectations and new estimates are made about the future.

A projection of benefits for financial reporting purposes are based on the substantive plan and includes the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between the employer and the plan members to that point. The actuarial methods and assumptions used include techniques that are designed to reduce the efforts of short-term volatility in actuarial accrued liabilities and the actuarial value of assets, consistent with the long-term perspective of the calculations.

The actuarial method and significant assumptions listed below were used in the actuarial valuation of the OPEB Plan for the MTA Plan as of June 30, 2015, was as follows:

<table>
<thead>
<tr>
<th>Actuarial Cost Method</th>
<th>Entry age normal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amortization Method</td>
<td>Closed, level dollar</td>
</tr>
<tr>
<td>Amortization Period</td>
<td>20 years (as of July 1, 2014)</td>
</tr>
<tr>
<td>Asset Valuation Method</td>
<td>Market value of assets</td>
</tr>
<tr>
<td>Actuarial Assumptions</td>
<td></td>
</tr>
<tr>
<td>Discount Rate</td>
<td>4.25%</td>
</tr>
<tr>
<td>Medical Trend</td>
<td>7.70% in FY2015 decreasing to 4.5% over 11 years</td>
</tr>
<tr>
<td>Dental/Vision Trend</td>
<td>4.5% per annum</td>
</tr>
</tbody>
</table>

15. Retirement Systems and Pension Plans:
State Retirement and Pension System of Maryland:
The Department contributes to the State Retirement and Pension System of Maryland (System), established by the State to provide pension benefits for State employees (other than employees covered by the MTA Plan described below) and employees of various participating political subdivisions or other entities within the State. The non-State entities that participate within the System receive separate actuarial valuations in order to determine their respective funding levels and actuarial liabilities. While the System is an agent multiple-employer public employee retirement system, the Department accounts for the plan as a cost sharing multiple-employer public employee retirement system as a separate valuation is not performed for the Department and the Department’s only obligation to the plan is its required annual contributions. Retirement benefits are paid from the System’s pooled assets rather than from assets relating to a particular plan participant.

Plan description:
Certain employees of the State are provided with pensions through the System. The State Personnel and Pensions Article of the Annotated Code of Maryland (the Article) grants the authority to establish and amend the benefit terms of the System to the System’s Board of Trustees. The System issues a publicly available financial report that can be obtained at [www.sra.state.md.us/Agency/Downloads/CAFR/](http://www.sra.state.md.us/Agency/Downloads/CAFR/).

Benefits provided:
A member of the System is generally eligible for full retirement benefits upon the earlier of attaining age 60 or accumulating 30 years of creditable service regardless of age. The annual retirement allowance
equals \( \frac{1}{55} \) (1.81%) of the member’s average final compensation (AFC), which is the member’s highest three-year average final salary, multiplied by the number of years of accumulated creditable service.

An individual who is a member of the System on or before June 30, 2011, is eligible for full retirement benefits upon the earlier of attaining age 62, with specified years of eligibility service, or accumulating 30 years of eligibility service regardless of age. An individual who becomes a member of the System on or after July 1, 2011, is eligible for full retirement benefits if the member’s combined age and eligibility service equals at least 90 years or if the member is at least age 65 and has accrued at least 10 years of eligibility service.

For most individuals who retired from the System on or before June 30, 2006, the annual pension allowance equals 1.2% of the member’s AFC, multiplied by the number of years of creditable service accumulated prior to July 1, 1998, plus 1.4% of the member’s AFC, multiplied by the number of years of creditable service accumulated subsequent to June 30, 1998. With certain exceptions, for individuals who are members of the System on or after July 1, 2006, the annual pension allowance equals 1.2% of the member’s AFC, multiplied by the number of years of creditable service accumulated prior to July 1, 1998, plus 1.8% of the member’s AFC, multiplied by the number of years of creditable service accumulated subsequent to June 30, 1998. Beginning July 1, 2011, any new member of the System shall earn an annual pension allowance equal to 1.5% of the member’s AFC multiplied by the number of years of creditable service accumulated as a member of the System.

Exceptions to these benefit formulas apply to members of the Employees’ Pension System, who are employed by a participating governmental unit that does not provide the 1998 or 2006 enhanced pension benefits or the 2011 reformed pension benefits. The pension allowance for these members equals 0.8% of the member’s AFC up to the social security integration level (SSIL), plus 1.5% of the member’s AFC in excess of the SSIL, multiplied by the number of years of accumulated creditable service. For the purpose of computing pension allowances, the SSIL is the average of the social security wage bases for the past 35 calendar years ending with the year the retiree separated from service.

**Early Service Retirement:**
A member of the System may retire with reduced benefits after completing 25 years of eligibility service. Benefits are reduced by 0.5% per month for each month remaining until the retiree either attains age 60 or would have accumulated 30 years of creditable service, whichever is less. The maximum reduction for the System member is 30%.

An individual who is a member of either the System on or before June 30, 2011, may retire with reduced benefits upon attaining age 55 with at least 15 years of eligibility service. Benefits are reduced by 0.5% per month for each month remaining until the retiree attains age 62. The maximum reduction for these members of the System is 42%. An individual who becomes a member of the System on or after July 1, 2011, may retire with reduced benefits upon attaining age 60 with at least 15 years of eligibility service. Benefits are reduced by 0.5% per month for each month remaining until the retiree attains age 65. The maximum reduction for these members of the System is 30%.

**Disability and Death Benefits:**
Generally, a member covered under retirement plan provisions who is permanently disabled after 5 years of service receives a service allowance based on a minimum percentage (usually 25%) of the member’s AFC. A member covered under pension plan provisions who is permanently disabled after accumulating 5 years of eligibility service receives a service allowance computed as if service had continued with no change in salary until the retiree attained age 62. Death benefits are equal to a member’s annual salary as of the date of death plus all member contributions and interest.
Contributions:
The Article sets contribution requirements of the active employees and the participating governmental units are established and may be amended by the System’s Board. Employees are required to contribute 7% of their annual pay. The Department’s contractually required contribution rate for the System for the year ended June 30, 2015, was approximately $52,723,000, actuarially determined as an amount that, when combined with employee contributions, is expected to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. Contributions to the System from the Department were approximately $52,723,000 for the year ended June 30, 2015.

As of June 30, 2015, the Department reported a liability of approximately $580,974,000 for its proportionate share of the Systems net pension liability. The Department’s net pension liability was measured as of June 30, 2014, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of that date. The Department’s proportion of the Systems net pension liability was based on a projection of the Department’s long-term share of contributions to the pension plan relative to the projected contributions of all participating government units, actuarially determined. As of June 30, 2015, the Department’s proportion for the System was 3.27%, which was substantially the same from its proportion measured as of June 30, 2014.

For the year ended June 30, 2015, the Board recognized pension expense for the System of approximately $1.0 million. As of June 30, 2015, the Department reported deferred outflows of resources and deferred inflows of resources related to System from the following sources:

<table>
<thead>
<tr>
<th>Deferred Outflows of Resources</th>
<th>Deferred Inflows of Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Changes of Assumptions</td>
<td>$8,404</td>
</tr>
<tr>
<td>Contribution after measurement date</td>
<td>83,560</td>
</tr>
<tr>
<td>Net difference between projected and actual earning on pension plan investments</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>$91,964</td>
</tr>
</tbody>
</table>

The amount reported as deferred outflows of resources related to System resulting from the Department’s contributions subsequent to the measurement date was $83,560,000 and will be recognized as a reduction of the System net pension liability in the year ended June 30, 2016. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to System will be recognized in pension expense as follows: Changes in assumptions: Fiscal years 2016-2019, $2,101 per year; Difference between projected and actual earnings on pension plan investments: Fiscal years 2016-2019, $15,898 per year.

Information included in the MSRPS financial statements:
Actuarial assumptions, long-term expected rate of return on pension plan investments, discount rate, and pension plan fiduciary net position are available at www.sra.state.md.us/Agency/Downloads/CAFR/.

The sensitivity of the Department’s proportionate share of the net pension liability to changes in the discount rate:
The Department’s proportionate share of the System’s net pension liability calculated using the discount rate of 7.65% is $580,974,000. Additionally, the Department’s proportionate share of the System’s net
pension liability if it were calculated using a discount rate that is 1-percentage-point lower (6.65%) is $836,311,000 or 1-percentage-point higher (8.65%) is $365,891,000.

Maryland Transit Administration Pension Plan:

Plan description:
The MTA Pension Plan (the Plan) is a single employer noncontributory plan that covers all MTA employees covered by a collective bargaining agreement and all those management employees who were employed by the Baltimore Transit Company. In addition, employees who enter the management group as a result of a transfer from a position covered by a collective bargaining agreement maintain their participation. The Plan is part of the Department's financial reporting entity and is included in the Department’s financial statements as a Pension Trust Fund. The Plan prepares separate audited Financial Statements, which can be obtained from the Plan, William Donald Schaefer Tower, 8 Saint Paul Street, Baltimore, Maryland 21202. The Plan is administered and funded in compliance with the collective bargaining agreements, which established the Plan.

As of June 30, 2015, the Department reported a liability of approximately $680,267,000 for its proportionate share of the Plan’s net pension liability. The Department’s net pension liability was measured as of June 30, 2014, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of that date. The Department’s proportion of the Plan net pension liability was based on a projection of the Department’s long-term share of contributions to the pension plan relative to the projected contributions of all participating government units, actuarially determined. As of June 30, 2015, the Department’s proportion for the Plan was 25.12%, which was substantially the same from its proportion measured as of July 1, 2014.

For the year ended June 30, 2015, the Plan recognized pension expense for the Plan of approximately $59.7 million. As of June 30, 2015, the Department reported deferred outflows of resources and deferred inflows of resources related to System from the following sources:

<table>
<thead>
<tr>
<th>Deferred Outflows of Resources</th>
<th>Deferred Inflows of Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Differences between expected and actual experience</td>
<td>$</td>
</tr>
<tr>
<td>Changes of Assumptions</td>
<td>45,840</td>
</tr>
<tr>
<td>Net difference between projected and actual earning on pension plan investments</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>$ 45,840</td>
</tr>
</tbody>
</table>

The amount reported as deferred outflows of resources related to the Plan resulting from the Department’s contributions subsequent to the measurement date was $50,219,000 and will be recognized as a reduction of the Plan’s net pension liability in the year ended June 30, 2016. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to the Plan will be recognized in pension expense as follows: Changes in assumptions: Fiscal years 2016-2019, $7,640,000 per year; Difference between projected and actual earnings on pension plan investments: Fiscal years 2016-2019, ($2,803,000) per year.

The sensitivity of the Department’s proportionate share of the net pension liability to changes in the discount rate:
The Plan’s net pension liability calculated using the discount rate of 4.75% is $680,267,000. Additionally, the Department’s proportionate share of the System’s net pension liability if it were
calculated using a discount rate that is 1-percentage-point lower (3.75%) is $802,198,000 or 1-percentage-point higher (5.75%) is $578,210,000.

The Plan and the reports can be found on the MDOT website at the following link:
http://www.mdot.maryland.gov/newMDOT/Finance/Index.html

16. Risk Management and Insurance:
Workers’ Compensation:
The Department is self-insured for workers’ compensation liabilities. The Department’s workers’ compensation self-insured liabilities are reported when it is probable that a loss has occurred and the amount of that loss can be reasonably estimated. Liabilities include an amount for claims that have been incurred but not reported. Because actual claims liabilities depend on such complex factors as inflation, changes in legal doctrines, and damage awards, the process used in computing claims liabilities does not necessarily result in an exact amount. Claims liabilities are reevaluated periodically to take into consideration recently settled claims, the frequency of claims, and other economic and social factors. Liabilities for incurred workers’ compensation losses to be settled by fixed or reasonably determined payments over a long period of time are reported at their present value using a 4% discount rate. The workers’ compensation costs are based upon separately determined actuarial valuations for the fiscal year ended June 30, 2015.

The Department’s workers’ compensation self-insurance program is administered by the Injured Worker's Insurance Fund under a contract which requires that the Department pay premiums based upon loss experience plus a proportionate share of administrative costs. In the event of termination of the contract, the Department is obligated for any premium deficiency at the time of termination. The Department’s accrued workers’ compensation costs, as of June 30, 2015, were $64,686,000.

The activity related to accrued workers’ compensation costs is included in the table in note 10. Changes in the balances for the Department’s workers’ compensation liability during the past two fiscal years are as follows:

<table>
<thead>
<tr>
<th>(amounts expressed in thousands)</th>
<th>Fiscal Year Ended June 30, 2015</th>
<th>Fiscal Year Ended June 30, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpaid claims, beginning of fiscal year</td>
<td>$67,044</td>
<td>$63,913</td>
</tr>
<tr>
<td>Incurred claims and changes in estimates</td>
<td>12,954</td>
<td>18,893</td>
</tr>
<tr>
<td>Claim payments</td>
<td>(15,312)</td>
<td>(15,762)</td>
</tr>
<tr>
<td>Total unpaid claims, end of fiscal year</td>
<td>$64,686</td>
<td>$67,044</td>
</tr>
</tbody>
</table>

Insurance:
The operations of the MAA, MPA and MTA are covered by commercial liability insurance policies and many claims are handled by the Department’s insurance carriers. The MAA’s two facilities, Baltimore Washington International Thurgood Marshall Airport and Martin State Airport, are covered by an airport owners and operators general liability insurance policy providing coverage per occurrence up to $750,000,000 for bodily injury and property damage. This policy contains the war, hi-jacking and other perils endorsement for $100,000,000 due to the events of September 11, 2001.
The MPA’s liability insurance policies, including excess liability policies, provide insurance up to $150,000,000 per occurrence for its port operations. These policies cover liability for both injury and property damage.

The MTA operations are covered by $495,000,000 in excess liability insurance over and above the MTA’s $5,000,000 self-insurance retention. For CSX and Amtrak commuter service, the MTA has purchased insurance to cover its contractual obligations. The insurance provides coverage for excess liability claims of $5,000,000 to $495,000,000; claims under $5,000,000 are self-insured by the MTA. However, to comply with the provisions of the operating agreement with CSX, the MTA has entered into a $5,000,000 standby letter of credit against which CSX may draw in the event claims exceed, in the aggregate for an occurrence, the amount of $250,000. No claims were made against the letter of credit during the current fiscal year. In addition, the excess liability policies provide punitive damages liability coverage and Federal Employee Liability Act coverage to CSX arising from commuter rail operations for claims ranging from $5,000,000 to $495,000,000.

The amount of any settlements, within the Department, did not exceed the insurance coverage in each of the past three fiscal years. For those areas not covered by purchased insurance, the State Treasurer has a program of self-insurance for tort claims. By statute, bodily injury, personal injury or property damages are limited to claims of $200,000 per claimant under the established self-insurance program.

17. Energy Performance Contract (EPC):
The Department of General Services (DGS) implemented an Energy Performance Contract program for the Department in fiscal year 2011, with a goal to reduce Maryland’s energy consumption through energy efficiency projects. The Treasurer’s Office secured the financing required to fund the construction of the improvements. The savings resulting from the projects are used to offset the costs of the services.

The SHA, MTA, MAA and the MPA participated in the EPC. MPA is the only remaining administration in construction and should be fully completed in fiscal year 2015. The assets related the project for the fiscal year ended June 30, 2015, are included on the Department’s Statement of Net Position in the amount of $47,013,000 and due from EPC Assets for $3,178,000. As of June 30, 2015, the total amount due in long-term liability for EPC obligations is $50,191,000.

18. Commitments:
As noted in Note 2, encumbrance accounting is used to account for outstanding commitments for open purchase orders and unfulfilled contracts in governmental funds. Amounts related to encumbrances are reported in the special revenue fund in the amount of $27,930,000 as of June 30, 2015.

The Department has active construction commitments outstanding as of June 30, 2015 of approximately $3,753,816,000, principally for construction of highway, port, motor vehicle, aviation and transit projects. Approximately 29.71% of future expenditures, related to these commitments of the Department, are expected to be reimbursed from proceeds of approved Federal grants when the actual costs are incurred. The remaining balance will be funded by other financial resources of the Department, including the issuance of long-term debt.
As of June 30, 2015, the Department’s commitments with contractors were as follows:

(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Construction projects</th>
<th>Spent-to-date</th>
<th>Remaining commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highway construction</td>
<td>$1,866,662</td>
<td>$2,301,310</td>
</tr>
<tr>
<td>Port construction</td>
<td>568,457</td>
<td>335,312</td>
</tr>
<tr>
<td>Motor vehicle construction</td>
<td>15,775</td>
<td>171,174</td>
</tr>
<tr>
<td>Transit construction</td>
<td>466,921</td>
<td>395,364</td>
</tr>
<tr>
<td>Aviation construction</td>
<td>584,496</td>
<td>550,656</td>
</tr>
<tr>
<td><strong>Total projects</strong></td>
<td><strong>$3,502,311</strong></td>
<td><strong>$3,753,816</strong></td>
</tr>
</tbody>
</table>

19. **Related Party Transactions:**
Various State of Maryland agencies provide services for the Department for which they are reimbursed from the Department. During fiscal year 2015, such reimbursements are reflected as Distributions to other state agencies in the Special Revenue Fund.

20. **Federal Revenue:**
Federal revenue consists principally of grants from the Federal Transit Administration for rail and bus projects for the Baltimore region and from the Federal Highway Administration in connection with highway construction projects. In addition, the Department receives Federal grants to aid in planning, design and construction of transportation facilities and to support the mass transit operations. Entitlement to the resources is generally conditioned upon compliance with terms and conditions of the grant agreements and applicable federal regulations including the expenditure of the resources for eligible purposes. Substantially all grants are subject to financial and compliance audits by the grantors. Any disallowances as a result of these audits become a liability of the Department. As of June 30, 2015, the Department estimates that no material liabilities will result from such audits.

21. **Passenger Facility Charges (PFC):**
The Aviation Safety and Capacity Expansion Act of 1990 (the “1990 Safety Act”), enacted by the United States Congress (“Congress”), allows a public agency to impose an airport Passenger Facility Charge for enplaned passengers. The proceeds of such PFCs are to be used to finance eligible airport-related construction projects, as approved by the Federal Aviation Administration (the “FAA”). The MAA received FAA approval in July 1992 to collect PFCs for four projects.

The Aviation Investment and Reform Act for the 21st Century, enacted by Congress in April of 2000, together with the 1990 Safety Act, increased the maximum per passenger PFC allowed to be charged by qualifying airports from $3.00 to $4.50. In June 2002, the MAA received FAA approval to increase its collection level to $4.50 to support PFC approved projects in the MAA’s capital program. The FAA further allows the MAA to impose and use PFCs for the payment of debt service for bonds used to fund PFC approved projects (see note 12 Operating and Capital Leases). PFC collections not needed for debt service are used for PFC approved paygo projects.

22. **Rent Revenue:**
The Department leases terminal space at various marine terminals (including the Seagirt Marine Terminal), airport facilities and office space in the World Trade Center Building, Baltimore, Maryland, pursuant to various operating leases. The Department’s total minimum future rental revenues totaled $624,575,000 as of June 30, 2015 and do not include contingent rentals that may be received under certain concession leases on the basis of a percentage of the concessionaire’s gross revenue in excess of stipulated minimums. Rental revenues collected included in operations were approximately $170,067,000 for the year ended June 30, 2015. Assets of the Department under lessor operating lease agreements, totaling $554,666,000 are included in the Capital assets, net of accumulated depreciation in the amount of $707,440,000 on the Statement of Net Position.

Minimum future rental revenues for the Department are as follows:

<table>
<thead>
<tr>
<th>Year Ending June 30,</th>
<th>Operating Leases Minimum Future Rental Revenues (amounts expressed in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>$132,540</td>
</tr>
<tr>
<td>2017</td>
<td>125,711</td>
</tr>
<tr>
<td>2018</td>
<td>121,162</td>
</tr>
<tr>
<td>2019</td>
<td>118,825</td>
</tr>
<tr>
<td>2020</td>
<td>30,588</td>
</tr>
<tr>
<td>2021-2025</td>
<td>89,666</td>
</tr>
<tr>
<td>2026-2030</td>
<td>6,083</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$624,575</strong></td>
</tr>
</tbody>
</table>

23. **Net Position/Fund Balance:**
The unrestricted deficit for the governmental activities on the government-wide statement of net position is $1,450,994,000.

Nonspendable fund balance is reported for a portion of the Special Revenue Fund balance in the amount of $93,356,000 that is for inventories of supplies, while the amount of $104,491,000 is recorded for prepaid items as of June 30, 2015.

The commitment of fund balance requires formal action by a government’s highest level of decision-making authority. The assignment of fund balance is based on an authorization policy established by the governing body pursuant to which that authorization is given. Committed fund balance is reported for the Department’s encumbrance balance in the amount of $27,930,000, as of June 30, 2015.

Assigned fund balance is reported in the amount of $677,000 as of June 30, 2015 and represents non-budgeted agency activities. The amount that represents the balance in the Department’s Transportation Trust Fund for future transportation programs is $129,811,000 as of June 30, 2015.
24. **Contingent Liabilities:**
The Department is party to various legal proceedings, many of which occur in the normal course of the Department’s operations, including actions commenced and claims asserted for alleged property damage, personal injury, breach of contract, discrimination or other alleged violations of law. These legal proceedings are not, in the opinion of the Office of the Attorney General of the State, likely to have a material adverse impact on the Department’s financial position as of June 30, 2015.
Maryland Department of Transportation
Comprehensive Annual Financial Report

REQUIRED SUPPLEMENTARY INFORMATION
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### Schedule of Funding Progress

**Maryland Transit Administration OPEB Plan**

(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Year</th>
<th>Actuarial Valuation Date - June 30,</th>
<th>Actuarial Accrued Liability - Entry Age</th>
<th>Actuarial Accrued Liability</th>
<th>Unfunded Actuarial Liability Payroll</th>
<th>Unfunded Actuarial Accrued Liability as Percentage of Covered Payroll</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>$ -</td>
<td>527,679</td>
<td>527,679</td>
<td>147,474</td>
<td>357.81</td>
</tr>
<tr>
<td>2013</td>
<td>-</td>
<td>670,833</td>
<td>670,833</td>
<td>137,596</td>
<td>487.54</td>
</tr>
<tr>
<td>2015</td>
<td>-</td>
<td>607,063</td>
<td>607,063</td>
<td>137,427</td>
<td>441.73</td>
</tr>
</tbody>
</table>

---

### Schedule of Employer Contributions

**Maryland Transit Administration OPEB Plan**

(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Year Ended June 30,</th>
<th>Annual Required Contribution</th>
<th>Annual Contribution Paid</th>
<th>Percentage of Required Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>$ 43,900</td>
<td>$ 10,100</td>
<td>23.0 %</td>
</tr>
<tr>
<td>2010</td>
<td>45,500</td>
<td>10,900</td>
<td>24.0 %.</td>
</tr>
<tr>
<td>2011</td>
<td>51,268</td>
<td>14,230</td>
<td>27.8 %.</td>
</tr>
<tr>
<td>2012</td>
<td>55,852</td>
<td>15,103</td>
<td>27.0 %.</td>
</tr>
<tr>
<td>2013</td>
<td>65,864</td>
<td>14,147</td>
<td>21.5 %.</td>
</tr>
<tr>
<td>2014</td>
<td>64,444</td>
<td>18,383</td>
<td>28.5 %.</td>
</tr>
<tr>
<td>2015</td>
<td>58,757</td>
<td>13,905</td>
<td>23.7 %.</td>
</tr>
<tr>
<td>--------------------------</td>
<td>--------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td><strong>Total Pension Liability:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Cost</td>
<td>$19,438</td>
<td>$24,718</td>
<td></td>
</tr>
<tr>
<td>Interest</td>
<td>$43,472</td>
<td>$39,236</td>
<td></td>
</tr>
<tr>
<td>Difference between expected and actual experience</td>
<td>$4,025</td>
<td>$(19,621)</td>
<td></td>
</tr>
<tr>
<td>Changes of assumptions</td>
<td>$38,643</td>
<td>$53,480</td>
<td></td>
</tr>
<tr>
<td>Benefit payments, including refunds of member contributions</td>
<td>$(32,598)</td>
<td>$(30,636)</td>
<td></td>
</tr>
<tr>
<td>Net change in total pension liability</td>
<td>$72,980</td>
<td>$67,177</td>
<td></td>
</tr>
<tr>
<td>Total pension liability - beginning</td>
<td>$768,371</td>
<td>$841,351</td>
<td></td>
</tr>
<tr>
<td>Total pension liability - ending (a)</td>
<td>$841,351</td>
<td>$908,528</td>
<td></td>
</tr>
</tbody>
</table>

| **Plan fiduciary net position:** |        |        |        |        |        |        |        |        |        |        |
| Contributions - employer | $39,749 | $35,400|        |        |        |        |        |        |        |        |
| Contributions - member | -       | -      |        |        |        |        |        |        |        |        |
| Net investment income | $15,783 | $14,045|        |        |        |        |        |        |        |        |
| Benefit payments, including refunds of member contributions | $(32,598) | $(30,636) |        |        |        |        |        |        |        |        |
| Administrative expense | $(1,587) | $(1,851) |        |        |        |        |        |        |        |        |
| Net change in plan fiduciary net position | $21,347 | $16,958|        |        |        |        |        |        |        |        |
| Plan fiduciary net position - beginning | $189,957 | $211,304|        |        |        |        |        |        |        |        |
| Plan fiduciary net position - ending (b) | $211,304 | $228,262|        |        |        |        |        |        |        |        |
| Net pension liability - ending (a)-(b) | $630,047 | $680,266|        |        |        |        |        |        |        |        |

Source: Bolton Partners, Maryland Transit Administration Pension Plan, GASB68 Actuarial Information Report.

(1) Information for FY2013 and earlier is not available
(2) FY15 reflects a reduction to the effective discount rate from 5.24% to 4.75%
# Required Supplementary Information

## Schedule of Employer Contributions

**Maryland Transit Administration Pension Plan**  
*(amounts expressed in thousands)*

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Actuarially determined contribution</td>
<td>$39,749</td>
<td>$40,807</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contribution in relation to the actuarially determined contribution</td>
<td>Information not available for earlier than FY2013</td>
<td>$39,749</td>
<td>$35,400</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contribution deficiency (excess)</td>
<td>$5,407</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cover-employee payroll (1)</td>
<td>$135,545</td>
<td>$137,680</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contribution as a percentage of covered employee payroll</td>
<td>29.33%</td>
<td>25.71%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Notes to Schedule:**

Valuation date  
Actuarially determined contribution amounts are calculated as of the beginning of the fiscal year (July 1) for the year immediately following the fiscal year. Actuarial val...

Methods and assumptions used to determine contribution rates:

- **Actuarial cost method**  
  - Level Dollar Entry Age Normal
- **Amortization method**  
  - Level Payments (Closed)
- **Remaining amortization period**  
  - Remaining payments range from 5 to 25 years
- **Asset valuation method**  
  - 5-year smoothed market
- **Inflation**  
  - 3.5 percent
- **Salary increases**  
  - Rates vary by participant service
- **Investment rate of return**  
  - 7.60 percent, net of pension plan investment and administrative expenses, including inflation
- **Retirement age**  
  - Rates vary by participant age
- **Mortality**  
  - RP-2000 tables for males (two-year setback) and females. The RP-2000 Disabled Retiree table is used for disabled memb...

Source: Bolton Partners, Maryland Transit Administration Pension Plan, GASB68 Actuarial Information Report.

(1) Information for FY2013 and earlier is not available
MARYLAND DEPARTMENT OF TRANSPORTATION
Required Supplementary Information
Changes in the Net Pension Liability and Related Ratios
Maryland State Retirement Pension Plan
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Fiscal Year Ended June 30</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proportion of the Maryland State Retirement System Net Pension</td>
<td>3.46%</td>
</tr>
<tr>
<td>Proportionate share of the State net pension liability (asset)</td>
<td>$580,974</td>
</tr>
<tr>
<td>Total</td>
<td>$580,974</td>
</tr>
<tr>
<td>Cover-employee payroll</td>
<td>$372,296</td>
</tr>
<tr>
<td>Net pension liability as a percentage of covered-employee payroll</td>
<td>64.08%</td>
</tr>
<tr>
<td>Plan fiduciary net position as a percentage of the total pension</td>
<td>71.87%</td>
</tr>
</tbody>
</table>

This schedule is presented to illustrate the requirement to show information for 10 years. However, information prior to June 30, 2015 is not available.

MARYLAND DEPARTMENT OF TRANSPORTATION
Required Supplementary Information
Schedule of Employer Contributions
Maryland State Retirement Pension Plan
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Fiscal Year Ended June 30</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actuarially determined contribution</td>
<td>$52,723</td>
</tr>
<tr>
<td>Contribution in relation to the actuarially determined contribution</td>
<td>(52,723)</td>
</tr>
<tr>
<td>Contribution deficiency (excess)</td>
<td>$ -</td>
</tr>
<tr>
<td>Cover-employee payroll</td>
<td>$372,296</td>
</tr>
<tr>
<td>Contribution as a percentage of covered employee payroll</td>
<td>14.16%</td>
</tr>
</tbody>
</table>

This schedule is presented to illustrate the requirement to show information for 10 years. However, information prior to June 30, 2015 is not available.
## MARYLAND DEPARTMENT OF TRANSPORTATION

Required Supplementary Information

Special Revenue Funds

Schedule of Revenues, Expenditures and Changes in Fund Balances - Budget and Actual

For the Year Ended June 30, 2015

(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Special Fund</th>
<th>Variance with Final Budget - Positive (Negative)</th>
<th>Federal Fund</th>
<th>Variance with Final Budget - Positive (Negative)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Original</td>
<td>Final</td>
<td>Actual Amounts</td>
</tr>
<tr>
<td><strong>REVENUES:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxes:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor vehicle taxes and fees</td>
<td>$1,520,481</td>
<td>$1,445,316</td>
<td>$1,462,643</td>
</tr>
<tr>
<td>Motor vehicle fuel taxes and fees</td>
<td>916,746</td>
<td>877,394</td>
<td>923,593</td>
</tr>
<tr>
<td>Revenue sharing of state corporate income tax</td>
<td>167,251</td>
<td>163,970</td>
<td>166,051</td>
</tr>
<tr>
<td>Revenue sharing of state sales tax</td>
<td>33,101</td>
<td>31,500</td>
<td>30,788</td>
</tr>
<tr>
<td>Federal reimbursements</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Charges for services</td>
<td>425,204</td>
<td>417,475</td>
<td>460,566</td>
</tr>
<tr>
<td>Investment earnings</td>
<td>1,000</td>
<td>1,000</td>
<td>2,090</td>
</tr>
<tr>
<td>Other</td>
<td>22,100</td>
<td>27,300</td>
<td>47,307</td>
</tr>
<tr>
<td><strong>Total revenues</strong></td>
<td>3,085,883</td>
<td>2,963,955</td>
<td>3,093,038</td>
</tr>
<tr>
<td><strong>EXPENDITURES and ENCUMBRANCES:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General government:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Secretary's Office</td>
<td>584,562</td>
<td>598,495</td>
<td>555,739</td>
</tr>
<tr>
<td>State Highway Administration</td>
<td>1,127,222</td>
<td>1,124,217</td>
<td>1,131,846</td>
</tr>
<tr>
<td>Maryland Port Administration</td>
<td>195,939</td>
<td>142,676</td>
<td>135,774</td>
</tr>
<tr>
<td>Motor Vehicle Administration</td>
<td>209,661</td>
<td>214,843</td>
<td>202,976</td>
</tr>
<tr>
<td>Maryland Transit Administration</td>
<td>1,022,295</td>
<td>958,025</td>
<td>958,214</td>
</tr>
<tr>
<td>Maryland Aviation Administration</td>
<td>261,679</td>
<td>284,060</td>
<td>278,859</td>
</tr>
<tr>
<td><strong>Total general government</strong></td>
<td>3,401,358</td>
<td>3,322,316</td>
<td>3,263,408</td>
</tr>
<tr>
<td>Total expenditures and encumbrances</td>
<td>3,401,358</td>
<td>3,322,316</td>
<td>3,263,408</td>
</tr>
<tr>
<td>Excess of revenues over expenditures</td>
<td>(315,475)</td>
<td>(358,331)</td>
<td>(170,370)</td>
</tr>
<tr>
<td><strong>OTHER FINANCIAL SOURCES (USES):</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds from Bonds</td>
<td>740,000</td>
<td>490,000</td>
<td>401,535</td>
</tr>
<tr>
<td>Transfers in (out)</td>
<td>(212,169)</td>
<td>(211,666)</td>
<td>(216,767)</td>
</tr>
<tr>
<td><strong>Total other financing sources and uses</strong></td>
<td>527,831</td>
<td>278,334</td>
<td>184,768</td>
</tr>
<tr>
<td>Net change in fund balances</td>
<td>212,356</td>
<td>(80,027)</td>
<td>14,398</td>
</tr>
<tr>
<td>Fund balances, July 1, 2014</td>
<td>385,093</td>
<td>137,677</td>
<td>371,768</td>
</tr>
<tr>
<td>Fund balances, June 30, 2015</td>
<td>$597,449</td>
<td>$57,650</td>
<td>$386,166</td>
</tr>
</tbody>
</table>
1. **Stewardship, Compliance and Accountability:**

**Budgeting and budgetary control:**
The Maryland Constitution requires the Governor to submit to the General Assembly an annual balanced budget for the following fiscal year. This budget is prepared and adopted for the Special Revenue Fund, which includes the transportation activities of the Department, shared taxes and payments of debt service on transportation bonds. The budgetary Federal fund revenue and expenditures are included in the GAAP Special Revenue Fund as federal revenues and expenditures by function. An annual budget is also prepared for the Federal funds, which accounts for all Departmental grants from the Federal government.

Each year the Department prepares its annual budget and submits it to the Governor. The Governor then presents the State’s annual budget (including the Department’s) to the General Assembly in accordance with Constitutional requirements. The General Assembly is required to then enact a balanced budget for the next fiscal year.

The GAAP Special Revenue Fund includes both budgetary special and federal funds.

**Special fund:**
The Special fund includes all transportation activities of the Department and shared taxes with the political subdivisions.

**Federal fund:**
The Federal fund accounts for substantially all grants from the Federal government.

**Budgetary fund equities and other accounts:**
The Department’s legal level of budgetary control is exercised at the agency appropriation (program) and fund level (legislative spending authority level). Encumbrances and expenditures cannot exceed appropriated amounts. Appropriation transfers between or within departments and any supplemental appropriations require both executive and legislative branch approvals. Uncumbered and unexpended appropriations lapse at fiscal year-end and become available for appropriation in the subsequent year. Encumbrance accounting is employed in governmental funds. Encumbrances (e.g., purchase orders, contracts) outstanding at year-end are reported as reservations of fund balances and do not constitute expenditures or liabilities because the commitments will be re-appropriated and honored during the subsequent fiscal year.

All Departmental budgetary expenditures for special and federal funds are made pursuant to appropriations in the annual budget, as amended from time to time. The Department may, with the Governor’s approval, amend the appropriations by modal administration within the budgetary special and federal funds. Additionally, appropriations for programs funded in whole or in part from special or federal funds may permit expenditures in excess of the original special or federal fund appropriation to the extent that actual revenues exceed original budget estimates and such additional expenditures are approved by the Governor. Unexpended appropriations from special and federal funds may be carried over to the following year to the extent of (a) available resources and (b) encumbrances which are approved by the Department of Budget and Management. The Department did not receive any general fund appropriations in fiscal year 2015.
The Department's original and amended budget adopted by the General Assembly for special and federal funds is presented in the Required Supplementary Information - Special Revenue Funds - Schedule of Revenues, Expenditures and Changes in Fund Balances -- Budget and Actual -- For the Year Ended June 30, 2015 on page 75 of this report. The Department's budgetary fund structure and basis of budgeting, which is the modified accrual basis with certain exceptions, differs from that utilized to present financial statements in conformity with generally accepted accounting principles (GAAP). The budgetary system's principal departures from the modified accrual basis are the classification of the Department's budgetary funds and the timing of recognition of certain revenues and expenditures. The GAAP special revenue fund is an aggregate of the special and federal budgetary funds.

A summary of the effects of the fund structure differences and exceptions to the modified accrual basis of accounting, as of June 30, 2015, is provided in the Reconciliation of the Budgetary Special Fund, Fund Balance to the GAAP Special Revenue Fund, and Fund Balance in the Notes to the Required Supplementary Information section (see below).

MARYLAND DEPARTMENT OF TRANSPORTATION
Reconciliation of the Budgetary Special Fund, Fund Balance
to the GAAP Special Revenue Fund, Fund Balance
June 30, 2015
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Classification of budgetary fund equities and other accounts into governmental funds' fund structure:</th>
<th>Special Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special fund-fund balance (page 75)</td>
<td>$386,166</td>
</tr>
<tr>
<td>Non-budgeted funds-fund balance</td>
<td>677</td>
</tr>
<tr>
<td>Total budgetary fund balance reclassified to GAAP fund structure</td>
<td>386,843</td>
</tr>
</tbody>
</table>

Accounting principle and timing differences:

Assets recognized in governmental funds financial statements not recognized for budgetary purposes:

- Taxes receivable: 3,069
- Inventories: 93,356
- Due from other state funds: 5,121

Liabilities recognized in governmental funds financial statements not recognized for budgetary purposes:

- Other Accounts Payable: 1,834
- Deferred inflows of resources: (138,261)
- Accrued Liabilities: 4,303

Financial statement governmental funds’ fund balance, June 30, 2015: $356,265
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MARYLAND DEPARTMENT OF TRANSPORTATION  
Statement of Changes in Assets and Liabilities  
Agency Funds  
For the Year Ended June 30, 2015  
(amounts expressed in thousands)  

<table>
<thead>
<tr>
<th></th>
<th>July 1, 2014</th>
<th>Additions</th>
<th>Deletions</th>
<th>June 30, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 31,612</td>
<td>$ 12,240</td>
<td>$ 27,929</td>
<td>$ 15,923</td>
</tr>
<tr>
<td>Total assets</td>
<td>$ 31,612</td>
<td>$ 12,240</td>
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<td>Accounts payable and accrued liabilities</td>
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<td>$ 15,689</td>
<td>$ 15,923</td>
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<tr>
<td>Total liabilities</td>
<td>$ 31,612</td>
<td>$ -</td>
<td>$ 15,689</td>
<td>$ 15,923</td>
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</tbody>
</table>
MARYLAND DEPARTMENT OF TRANSPORTATION
STATISTICAL SECTION
JUNE 30, 2015

This part of the Maryland Department of Transportation’s comprehensive annual financial report represents detailed information as a context for understanding what the information in the financial statements, not disclosures and required supplementary information says about the Department’s overall financial health.

Table of Contents

<table>
<thead>
<tr>
<th>Financial Trends</th>
<th>Pages</th>
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<tbody>
<tr>
<td></td>
<td>83-84</td>
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<tr>
<td>These schedules contain trend information to help the reader understand how the Department’s financial performance and well-being have changed over time.</td>
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<th>Revenue Capacity</th>
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<td>These schedules contain information to help the reader assess the Department’s two most significant revenue sources, the motor vehicle tax and motor vehicle fuel tax.</td>
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<td>These schedules present information to help the reader assess the affordability of the Department’s current levels of outstanding debt and Department’s ability to issue additional debt in the future.</td>
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<th>Miscellaneous Statistics</th>
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</table>
**MARYLAND DEPARTMENT OF TRANSPORTATION**  
**Net Position by Component**  
**Last Ten Fiscal Years**  
*(accrual basis of accounting)*

<table>
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<tr>
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<td><strong>Governmental activities:</strong></td>
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<tr>
<td>Net Investment in capital assets</td>
<td>$12,552,326</td>
<td>$13,047,662</td>
<td>$13,391,594</td>
<td>$13,349,027</td>
<td>$13,171,279</td>
<td>$13,068,635</td>
<td>$13,360,456</td>
<td>$13,819,782</td>
<td>$14,063,378</td>
<td>$14,472,903</td>
</tr>
<tr>
<td>Restricted</td>
<td>4,939</td>
<td>4,898</td>
<td>2,768</td>
<td>9,694</td>
<td>3,783</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Unrestricted (deficit)</td>
<td>278,586</td>
<td>188,470</td>
<td>2,833</td>
<td>(62,463)</td>
<td>(201,647)</td>
<td>(205,960)</td>
<td>(278,008)</td>
<td>(324,664)</td>
<td>(363,200)</td>
<td>(1,450,994)</td>
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<tr>
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<td>$13,241,030</td>
<td>$13,397,195</td>
<td>$13,296,258</td>
<td>$12,973,415</td>
<td>$12,862,675</td>
<td>$13,082,448</td>
<td>$13,495,118</td>
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<table>
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<td></td>
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</tr>
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<td>$14,472,903</td>
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<tr>
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<td>4,939</td>
<td>4,898</td>
<td>2,768</td>
<td>9,694</td>
<td>3,783</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Unrestricted (deficit)</td>
<td>278,586</td>
<td>188,470</td>
<td>2,833</td>
<td>(62,463)</td>
<td>(201,647)</td>
<td>(205,960)</td>
<td>(278,008)</td>
<td>(324,664)</td>
<td>(363,200)</td>
<td>(1,450,994)</td>
</tr>
<tr>
<td><strong>Total primary government net position</strong></td>
<td>$12,835,851</td>
<td>$13,241,030</td>
<td>$13,397,195</td>
<td>$13,296,258</td>
<td>$12,973,415</td>
<td>$12,862,675</td>
<td>$13,082,448</td>
<td>$13,495,118</td>
<td>$13,700,178</td>
<td>$13,021,909</td>
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MARYLAND DEPARTMENT OF TRANSPORTATION
Changes in Net Position
Last Ten Fiscal Years
(accrual basis of accounting)
(amounts expressed in thousands)

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<td>Expenses:</td>
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<td>406,315</td>
<td>419,588</td>
<td>459,933</td>
<td>483,410</td>
<td>498,029</td>
<td>515,638</td>
<td>570,596</td>
<td>624,378</td>
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<td>1,422,063</td>
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<td>1,410,556</td>
<td>1,593,278</td>
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<td>189,603</td>
<td>166,516</td>
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<td>115,211</td>
<td>87,445</td>
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<td>78,465</td>
<td>106,590</td>
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<td>86,966</td>
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<td>101,481</td>
<td>92,996</td>
<td>144,725</td>
<td>110,984</td>
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<td>62,378</td>
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<td>Charges for services:</td>
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<td>Secretary's office</td>
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<td>2,291</td>
<td>9,447</td>
<td>27,903</td>
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<td>5,630</td>
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<td>38,495</td>
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<td>297,935</td>
<td>418,588</td>
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<td>90,732</td>
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<td>92,238</td>
<td>92,238</td>
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<td>668,442</td>
<td>714,144</td>
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<td>779,557</td>
<td>800,019</td>
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<td>1,354,993</td>
<td>1,464,370</td>
<td>1,524,097</td>
<td>1,456,407</td>
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<td>Taxes:</td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Motor vehicle taxes</td>
<td>1,237,199</td>
<td>1,241,538</td>
<td>1,178,609</td>
<td>1,058,759</td>
<td>1,025,599</td>
<td>1,166,398</td>
<td>1,259,743</td>
<td>1,322,143</td>
<td>1,389,066</td>
<td>1,465,022</td>
</tr>
<tr>
<td>Motor fuel taxes</td>
<td>746,240</td>
<td>740,791</td>
<td>741,851</td>
<td>728,385</td>
<td>714,210</td>
<td>747,171</td>
<td>728,410</td>
<td>740,428</td>
<td>807,739</td>
<td>918,483</td>
</tr>
<tr>
<td>Corporation income tax share</td>
<td>202,755</td>
<td>185,557</td>
<td>167,102</td>
<td>150,554</td>
<td>153,275</td>
<td>156,758</td>
<td>180,653</td>
<td>76,746</td>
<td>162,609</td>
<td>166,051</td>
</tr>
<tr>
<td>State sales tax share</td>
<td>26,527</td>
<td>27,689</td>
<td>23,659</td>
<td>223,084</td>
<td>223,582</td>
<td>227,981</td>
<td>23,581</td>
<td>48,653</td>
<td>30,785</td>
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<td>1,006</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>7,235</td>
<td>16,518</td>
<td>64,516</td>
<td>64,516</td>
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<td>Loss on disposal of capital assets</td>
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<td>-</td>
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<td>-</td>
<td>7,235</td>
<td>16,518</td>
<td>64,516</td>
<td>64,516</td>
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<tr>
<td>Transfers out</td>
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<td>-</td>
<td>-</td>
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<tr>
<td>Total governmental activities general revenues</td>
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<td>2,114,979</td>
<td>2,164,811</td>
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<td>2,195,137</td>
<td>2,182,778</td>
<td>2,426,741</td>
<td>2,646,956</td>
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<tr>
<td>Governmental activities</td>
<td>712,191</td>
<td>405,179</td>
<td>156,165</td>
<td>54,889</td>
<td>(322,843)</td>
<td>(110,740)</td>
<td>219,773</td>
<td>414,550</td>
<td>205,060</td>
<td>359,955</td>
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<tr>
<td>Total primary government</td>
<td>$ 712,191</td>
<td>$ 405,179</td>
<td>$ 156,165</td>
<td>$ 54,889</td>
<td>$ (322,843)</td>
<td>$ (110,740)</td>
<td>$ 219,773</td>
<td>$ 414,550</td>
<td>$ 205,060</td>
<td>$ 359,955</td>
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MARYLAND DEPARTMENT OF TRANSPORTATION
Governmental Activities Tax Revenues by Source
Last Ten Fiscal Years
(accrual basis of accounting)
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Fiscal Year Ended June 30,</th>
<th>Motor Vehicle Tax</th>
<th>Motor Fuel Tax</th>
<th>Corporation Income Tax</th>
<th>State Sales Tax (1)</th>
<th>Total</th>
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<tbody>
<tr>
<td>2006</td>
<td>$1,237,199</td>
<td>$746,240</td>
<td>$202,755</td>
<td>$26,527</td>
<td>$2,212,721</td>
</tr>
<tr>
<td>2007</td>
<td>1,241,538</td>
<td>740,791</td>
<td>185,557</td>
<td>27,689</td>
<td>2,195,575</td>
</tr>
<tr>
<td>2008</td>
<td>1,178,609</td>
<td>741,851</td>
<td>167,102</td>
<td>23,659</td>
<td>2,111,221</td>
</tr>
<tr>
<td>2009</td>
<td>1,058,759</td>
<td>728,385</td>
<td>150,554</td>
<td>223,084</td>
<td>2,160,782</td>
</tr>
<tr>
<td>2010</td>
<td>1,082,559</td>
<td>714,210</td>
<td>153,275</td>
<td>223,582</td>
<td>2,173,626</td>
</tr>
<tr>
<td>2011</td>
<td>1,166,398</td>
<td>747,171</td>
<td>156,758</td>
<td>227,981</td>
<td>2,298,308</td>
</tr>
<tr>
<td>2012</td>
<td>1,259,743</td>
<td>728,410</td>
<td>180,653</td>
<td>23,581</td>
<td>2,192,387</td>
</tr>
<tr>
<td>2013</td>
<td>1,332,143</td>
<td>740,428</td>
<td>76,746</td>
<td>25,462</td>
<td>2,174,344</td>
</tr>
<tr>
<td>2014</td>
<td>1,389,066</td>
<td>807,739</td>
<td>162,609</td>
<td>48,653</td>
<td>2,408,067</td>
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<td>2015</td>
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<td>918,483</td>
<td>166,051</td>
<td>30,788</td>
<td>2,580,344</td>
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</tbody>
</table>


(1) July 1, 2008 thru June 30, 2011 the Department received additional Sales Tax Revenue due to the increase of 1 percent on the State Sales Tax.

MARYLAND DEPARTMENT OF TRANSPORTATION
Maryland’s Ten Largest Employers
Calendar Years
( Employer Listed Alphabetically)

<table>
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<tr>
<th>2015-2014</th>
<th>2014-2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exelon</td>
<td>Giant Food Stores</td>
</tr>
<tr>
<td>Giant Food</td>
<td>Helix Health System Inc</td>
</tr>
<tr>
<td>Godard Space Flight Ctr</td>
<td>Johns Hopkins Hospital</td>
</tr>
<tr>
<td>H&amp;R Block</td>
<td>Johns Hopkins University</td>
</tr>
<tr>
<td>Johns Hopkins University</td>
<td>Safeway</td>
</tr>
<tr>
<td>McDonald’s</td>
<td>Target</td>
</tr>
<tr>
<td>Northrop Grumman Corporation</td>
<td>Home Depot</td>
</tr>
<tr>
<td>Target</td>
<td>Northrop Grumman Corporation</td>
</tr>
<tr>
<td>University of Maryland Medical System</td>
<td>University of Maryland Medical System</td>
</tr>
<tr>
<td>Walmart Associates</td>
<td>Walmart Associates</td>
</tr>
</tbody>
</table>

Source: Department of Labor, Licensing and Regulation: Office of Labor Market Analysis and Information - Major Employer List - March 2015
http://www.dllr.state.md.us/lmi/emplists/maryland.shtml
<table>
<thead>
<tr>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Nonspendable</td>
<td>$126,182</td>
<td>$136,723</td>
<td>$152,788</td>
<td>$158,650</td>
<td>$171,094</td>
<td>$182,156</td>
<td>$181,093</td>
<td>$183,355</td>
<td>$192,871</td>
<td>$197,847</td>
</tr>
<tr>
<td>Committed</td>
<td>37,025</td>
<td>25,170</td>
<td>23,931</td>
<td>861</td>
<td>-</td>
<td>12,442</td>
<td>8,182</td>
<td>11,499</td>
<td>26,989</td>
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</tr>
<tr>
<td>Assigned</td>
<td>219,980</td>
<td>165,144</td>
<td>(26,468)</td>
<td>169,307</td>
<td>164,628</td>
<td>137,050</td>
<td>37,905</td>
<td>108,879</td>
<td>135,279</td>
<td>677</td>
</tr>
<tr>
<td>Total special revenue fund</td>
<td>$383,187</td>
<td>$327,037</td>
<td>$150,251</td>
<td>$328,818</td>
<td>$335,722</td>
<td>$331,648</td>
<td>$227,180</td>
<td>$303,733</td>
<td>$355,139</td>
<td>$198,524</td>
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</table>

<table>
<thead>
<tr>
<th>All other governmental funds</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restricted</td>
<td>$4,696</td>
<td>$2,381</td>
<td>-</td>
<td>$7,033</td>
<td>$1,126</td>
<td>-</td>
<td>-</td>
<td>$5,056</td>
<td>$12,331</td>
<td>-</td>
</tr>
<tr>
<td>Total all other governmental funds</td>
<td>$4,696</td>
<td>$2,381</td>
<td>-</td>
<td>$7,033</td>
<td>$1,126</td>
<td>-</td>
<td>-</td>
<td>$5,056</td>
<td>$12,331</td>
<td>-</td>
</tr>
</tbody>
</table>

# MARYLAND DEPARTMENT OF TRANSPORTATION

## Changes in Fund Balances, Governmental Funds
### Last Ten Fiscal Years

(amounts expressed in thousands)

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor vehicle taxes and fees</td>
<td>$1,983,439</td>
<td>$1,982,329</td>
<td>$1,920,460</td>
<td>$1,787,144</td>
<td>$1,913,569</td>
<td>$1,988,153</td>
<td>$2,072,571</td>
<td>$2,196,805</td>
<td>$2,383,505</td>
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<tr>
<td>Revenue sharing of state taxes</td>
<td>229,282</td>
<td>213,246</td>
<td>373,638</td>
<td>376,857</td>
<td>384,739</td>
<td>204,234</td>
<td>102,208</td>
<td>196,839</td>
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</tr>
<tr>
<td>Federal reimbursements</td>
<td>860,446</td>
<td>782,760</td>
<td>762,171</td>
<td>804,906</td>
<td>799,761</td>
<td>850,631</td>
<td>868,121</td>
<td>921,719</td>
<td>833,040</td>
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<tr>
<td>Charges for services</td>
<td>372,626</td>
<td>407,386</td>
<td>399,271</td>
<td>419,691</td>
<td>431,261</td>
<td>439,785</td>
<td>459,850</td>
<td>452,406</td>
<td>460,668</td>
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</tr>
<tr>
<td>Passenger facility charges and interest</td>
<td>37,017</td>
<td>42,171</td>
<td>45,609</td>
<td>40,824</td>
<td>44,054</td>
<td>45,066</td>
<td>46,648</td>
<td>48,534</td>
<td>43,919</td>
<td>44,745</td>
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<tr>
<td>Special parking revenues (2)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Investment earnings</td>
<td>8,487</td>
<td>10,553</td>
<td>3,758</td>
<td>4,029</td>
<td>404</td>
<td>2,750</td>
<td>764</td>
<td>2,156</td>
<td>6,103</td>
<td>14,255</td>
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<tr>
<td>Other</td>
<td>9,354</td>
<td>34,278</td>
<td>25,666</td>
<td>13,260</td>
<td>18,118</td>
<td>34,734</td>
<td>3,481</td>
<td>6,103</td>
<td>14,255</td>
<td>63,384</td>
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<tr>
<td><strong>Expenditures:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Department administration, operating and maintenance expenditures</td>
<td>1,175,711</td>
<td>1,254,313</td>
<td>1,305,618</td>
<td>1,358,247</td>
<td>1,447,811</td>
<td>1,239,600</td>
<td>1,422,847</td>
<td>1,408,232</td>
<td>1,841,195</td>
<td>1,793,321</td>
</tr>
<tr>
<td>Highway user revenues and federal funds</td>
<td>583,090</td>
<td>615,458</td>
<td>582,335</td>
<td>515,722</td>
<td>255,164</td>
<td>297,145</td>
<td>263,981</td>
<td>252,574</td>
<td>244,448</td>
<td>253,401</td>
</tr>
<tr>
<td>WMATA Grants</td>
<td>237,948</td>
<td>236,158</td>
<td>273,001</td>
<td>285,309</td>
<td>340,852</td>
<td>386,648</td>
<td>396,094</td>
<td>404,955</td>
<td>414,964</td>
<td></td>
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<tr>
<td>Distributions to other state agencies (1)</td>
<td>78,554</td>
<td>75,607</td>
<td>87,100</td>
<td>59,980</td>
<td>401,930</td>
<td>481,244</td>
<td>343,946</td>
<td>127,957</td>
<td>19,926</td>
<td></td>
</tr>
<tr>
<td>Debt service</td>
<td>142,060</td>
<td>119,316</td>
<td>121,390</td>
<td>142,359</td>
<td>150,954</td>
<td>174,215</td>
<td>180,308</td>
<td>208,236</td>
<td>232,404</td>
<td></td>
</tr>
<tr>
<td>Capital outlays</td>
<td>1,432,833</td>
<td>1,369,805</td>
<td>1,400,238</td>
<td>1,261,036</td>
<td>1,232,890</td>
<td>1,218,164</td>
<td>1,361,241</td>
<td>1,491,360</td>
<td>1,471,040</td>
<td>1,746,878</td>
</tr>
<tr>
<td><strong>Total expenditures:</strong></td>
<td>3,650,196</td>
<td>3,670,657</td>
<td>3,769,682</td>
<td>3,622,653</td>
<td>3,699,667</td>
<td>3,822,878</td>
<td>3,856,525</td>
<td>4,192,914</td>
<td>4,487,894</td>
<td></td>
</tr>
<tr>
<td><strong>Excess (deficiency) of revenues:</strong></td>
<td>(115,969)</td>
<td>(169,542)</td>
<td>(249,319)</td>
<td>(404,740)</td>
<td>280,002</td>
<td>130,679</td>
<td>218,450</td>
<td>360,811</td>
<td>427,128</td>
<td></td>
</tr>
<tr>
<td>Other financing sources (uses):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital leases</td>
<td>49,399</td>
<td>6,285</td>
<td>2,098</td>
<td>1,021</td>
<td>-</td>
<td>29,127</td>
<td>2,519</td>
<td>5,733</td>
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<tr>
<td>Other long-term liability</td>
<td>5,320</td>
<td>2,411</td>
<td>102</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other capital financing sources (2)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Proceeds from bonds</td>
<td>103,814</td>
<td>102,381</td>
<td>249,217</td>
<td>402,642</td>
<td>140,002</td>
<td>323,967</td>
<td>189,323</td>
<td>325,000</td>
<td>661,250</td>
<td></td>
</tr>
<tr>
<td>Sale of future revenue rights</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(331,412)</td>
<td></td>
</tr>
<tr>
<td>Payment to escrow agents</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(193,288)</td>
<td>-</td>
<td>33,292</td>
<td>91,557</td>
<td></td>
</tr>
<tr>
<td>Transfers to the General Fund (1)</td>
<td>(23)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net other sources (uses) of financial resources:</strong></td>
<td>158,510</td>
<td>111,077</td>
<td>249,319</td>
<td>404,740</td>
<td>280,002</td>
<td>35,361</td>
<td>130,679</td>
<td>218,450</td>
<td>360,811</td>
<td>427,128</td>
</tr>
<tr>
<td><strong>Excess (deficiency) of revenues over expenditures and net other sources (uses) of financial resources:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Fund balance, July 1:</strong></td>
<td>345,342</td>
<td>387,883</td>
<td>329,418</td>
<td>150,251</td>
<td>335,851</td>
<td>336,848</td>
<td>331,648</td>
<td>227,180</td>
<td>308,789</td>
<td>356,205</td>
</tr>
<tr>
<td><strong>Fund balance, June 30:</strong></td>
<td>$387,883</td>
<td>$329,418</td>
<td>$150,251</td>
<td>$335,851</td>
<td>$336,848</td>
<td>$331,648</td>
<td>$227,180</td>
<td>$308,789</td>
<td>$367,470</td>
<td>$356,205</td>
</tr>
</tbody>
</table>


(1) Transfers to the general fund and Maryland Transportation Authority have been reclassified to expenditures in fiscal years 2002, 2004 and 2005.

(2) Customer facility charges and special parking revenues split starting in fiscal years 2012.
## Maryland Department of Transportation

### Transportation Trust Fund

#### Gasoline and Motor Vehicle Revenue Account

(last ten fiscal years)

(amounts expressed in thousands)

(unaudited)

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor vehicle fuel tax and fees (7)</td>
<td>$757,959</td>
<td>$755,733</td>
<td>$755,176</td>
<td>$736,105</td>
<td>$721,295</td>
<td>$752,319</td>
<td>$733,563</td>
<td>$745,556</td>
<td>$812,915</td>
<td>$923,593</td>
</tr>
<tr>
<td>Motor vehicle titling tax (3)</td>
<td>$719,207</td>
<td>$703,815</td>
<td>$649,657</td>
<td>$514,155</td>
<td>$543,411</td>
<td>$594,938</td>
<td>$632,256</td>
<td>$684,655</td>
<td>$740,835</td>
<td>$795,510</td>
</tr>
<tr>
<td>Licensing and registration</td>
<td>$360,981</td>
<td>$372,498</td>
<td>$354,967</td>
<td>$354,982</td>
<td>$350,098</td>
<td>$360,514</td>
<td>$357,247</td>
<td>$362,324</td>
<td>$367,305</td>
<td>$376,513</td>
</tr>
<tr>
<td>Corporation income tax (6)</td>
<td>$202,755</td>
<td>$185,557</td>
<td>$167,102</td>
<td>$151,304</td>
<td>$154,025</td>
<td>$157,993</td>
<td>$180,653</td>
<td>$76,746</td>
<td>$162,609</td>
<td>$166,051</td>
</tr>
<tr>
<td>Sales and use tax on rental vehicles</td>
<td>$26,527</td>
<td>$27,689</td>
<td>$23,659</td>
<td>$21,498</td>
<td>$22,201</td>
<td>$24,362</td>
<td>$23,581</td>
<td>$25,462</td>
<td>$30,311</td>
<td>$30,788</td>
</tr>
<tr>
<td><strong>Total revenues:</strong></td>
<td>$2,067,429</td>
<td>$2,045,292</td>
<td>$1,950,561</td>
<td>$1,778,044</td>
<td>$1,791,030</td>
<td>$1,890,126</td>
<td>$1,927,400</td>
<td>$1,894,743</td>
<td>$2,113,975</td>
<td>$2,292,455</td>
</tr>
</tbody>
</table>

| **Deductions:**             |      |      |      |      |      |      |      |      |      |      |
| 1% portion -- Motor vehicle titling tax (3) | ($143,841) | ($140,763) | ($129,931) | ($171,385) | ($181,137) | ($198,313) | ($210,786) | ($228,218) | ($246,945) | ($265,170) |
| Other to the Trust Fund (7) | ($7,348) | ($8,214) | ($7,526) | ($6,178) | ($6,615) | ($6,859) | ($6,797) | ($9,040) | ($121,401) | ($180,913) |
| Other | ($45,907) | ($46,688) | ($47,337) | ($44,407) | ($45,744) | ($45,585) | ($57,413) | ($51,500) | ($52,617) | ($57,881) |
| **Total deductions:** | ($197,096) | ($195,665) | ($184,794) | ($221,970) | ($233,496) | ($250,757) | ($274,996) | ($388,758) | ($420,963) | ($503,964) |
| **Net Highway User Revenue** | $1,870,333 | $1,849,627 | $1,765,767 | $1,556,074 | $1,557,534 | $1,639,369 | $1,652,404 | $1,605,985 | $1,693,012 | $1,788,491 |

#### Allocations (Highway User Revenue): (4)

| Share to the Department | 1,309,233 | 1,294,739 | 1,236,037 | 1,089,252 | 1,090,274 | 1,122,968 | 1,278,618 | 1,445,386 | 1,530,483 | 1,616,796 |
| Share to the General Fund (5) | - | - | - | - | - | - | - | - | 40,000 | - |
| Share to counties and municipalities | 293,184 | 328,309 | 313,564 | 279,232 | 29,593 | 9,836 | 23,134 | 30,514 | 32,167 | 33,981 |
| Share to Baltimore City | 219,416 | 226,579 | 216,166 | 187,590 | 133,948 | 129,510 | 123,930 | 130,085 | 130,362 | 137,714 |
| Local Share to the General Fund (1) (2) | 48,500 | - | - | - | 303,719 | 377,055 | 186,722 | - | - | - |
| **Total allocations** | $1,870,333 | $1,849,627 | $1,765,767 | $1,556,074 | $1,557,534 | $1,639,369 | $1,652,404 | $1,605,985 | $1,693,012 | $1,788,491 |

Source: Maryland Department of Transportation, The Secretary's Office, Office of Finance.

1. The 2005 Session of the Maryland General Assembly approved legislation (HB 147) providing for the transfer of $48,500,000 from the Local Government's share of Highway User Revenues to the State General Fund in FY2006.

2. The 2007 Special Session of the Maryland General Assembly approved legislation to increase the State's Sales Tax and the Vehicle Excise Tax (Titling) from 5% to 6%, effective Jan. 1, 2008. In addition, the percentage of Titling Tax to GMVRA was changed from 80% to 66 and 2/3%, effective July 1, 2008.

3. The 2010 Session of the Maryland General Assembly approved legislation (SB141) changing the allocation of Highway User Revenues. Effective July 1, 2009, the allocation is 70% to the Department, 19.5% to the General Fund, 8.6% to Baltimore City, 1.5% to the Counties, and .4% to the Municipalities. Effective July 1, 2010, the allocation is 68.5% to the Department, 23% to the General Fund, 7.9% to Baltimore City, .5% to the Counties, and .1% to the Municipalities. Pursuant to legislation enacted by the General Assembly at its 2011 Session (HB 72), effective July 1, 2011, the allocation is 79.8% to the Department, 11.3% to the General Fund, 7.5% to Baltimore City, .8% to Counties, and .6% to municipalities. Effective July 1, 2012 the allocation is 90% to the Department, 8.1% to Baltimore City, 1.5% to Counties, and .4% to municipalities. Effective July 1, 2013 the allocation is 90.4% to the Department, 7.7% to Baltimore City, 1.5% to Counties, and .4% to municipalities.

4. The 2011 Session of the Maryland General Assembly approved legislation (HB 72) requiring the transfer from the Transportation Trust Fund of $40,000,000 of the Department's share of Highway User Revenues to the Revenue Stabilization Account in fiscal year 2012.

5. The 2011 Session of the Maryland General Assembly approved legislation (HB 72) that changed the allocation of corporate income tax revenue to the Department from 24% to 17.2%.

6. The 2013 Session of the Maryland General Assembly approved legislation (HB 1515) that increases the motor fuel tax rate based on growth of the Consumer Price Index and applies a sales and use tax equivalent to the price of motor fuel. Effective July 1, 2013, the motor fuel tax rate was increased by 3.1 cents per gallon for sales and use tax equivalent and 0.4 cents per gallon for CPI. Revenue from these sources is not part of the GMVRA but is retained 100% by the Department.
## MARYLAND DEPARTMENT OF TRANSPORTATION

### Legal Debt Margin Information

**Last Ten Fiscal Years**

*(amounts expressed in thousands)*

<table>
<thead>
<tr>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt limit</td>
<td>$1,333,475</td>
<td>$1,248,750</td>
<td>$1,497,060</td>
<td>$1,620,850</td>
<td>$1,830,010</td>
<td>$1,791,840</td>
<td>$1,888,995</td>
<td>$1,913,290</td>
<td>$2,292,670</td>
<td>$2,530,255</td>
</tr>
<tr>
<td>Net debt applicable to limit</td>
<td>1,078,475</td>
<td>1,108,692</td>
<td>1,266,434</td>
<td>1,574,902</td>
<td>1,643,884</td>
<td>1,561,840</td>
<td>1,562,630</td>
<td>1,618,290</td>
<td>1,812,670</td>
<td>2,020,250</td>
</tr>
<tr>
<td>Total legal debt margin</td>
<td>$255,000</td>
<td>$140,058</td>
<td>$230,626</td>
<td>$45,948</td>
<td>$186,126</td>
<td>$230,000</td>
<td>$326,365</td>
<td>$295,000</td>
<td>$480,000</td>
<td>$510,005</td>
</tr>
</tbody>
</table>

| Net debt applicable to the limit as a percentage of debt limit | 80.88% | 88.78% | 84.59% | 97.17% | 89.83% | 87.16% | 82.72% | 84.58% | 79.06% | 79.84% |

### Legal Debt Margin Calculation for Fiscal Year 2015

- Debt limit (1) $2,530,255
- Debt applicable to limit:
  - Special revenue bonds 2,020,250
- Total net debt applicable to limit 2,020,250
- Legal debt margin $510,005


(1) The Maryland Department of Transportation's legal debt limit is established by the Maryland General Assembly on an annual basis.
MARYLAND DEPARTMENT OF TRANSPORTATION

Ratio of Annual Debt Service Expenditures For Consolidated Transportation Bonded Debt to Total General Governmental Expenditures
Last Ten Fiscal Years
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Fiscal Year Ended June 30,</th>
<th>Total Debt Service</th>
<th>Total Noncapital Governmental Expenditures</th>
<th>Ratio of Debt Service to Noncapital Expenditures (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Principal</td>
<td>Interest</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>$ 92,280</td>
<td>$ 49,780</td>
<td>$ 142,060</td>
</tr>
<tr>
<td>2007</td>
<td>68,290</td>
<td>51,026</td>
<td>119,316</td>
</tr>
<tr>
<td>2008</td>
<td>68,990</td>
<td>52,400</td>
<td>121,390</td>
</tr>
<tr>
<td>2009</td>
<td>71,325</td>
<td>71,031</td>
<td>142,356</td>
</tr>
<tr>
<td>2010</td>
<td>77,595</td>
<td>73,359</td>
<td>150,954</td>
</tr>
<tr>
<td>2011</td>
<td>83,170</td>
<td>75,492</td>
<td>158,662</td>
</tr>
<tr>
<td>2012</td>
<td>102,845</td>
<td>71,370</td>
<td>174,215</td>
</tr>
<tr>
<td>2013</td>
<td>109,340</td>
<td>70,968</td>
<td>180,308</td>
</tr>
<tr>
<td>2014</td>
<td>130,620</td>
<td>76,614</td>
<td>207,234</td>
</tr>
<tr>
<td>2015</td>
<td>232,404</td>
<td>-</td>
<td>232,404</td>
</tr>
</tbody>
</table>


MARYLAND DEPARTMENT OF TRANSPORTATION

Ratio of Outstanding Debt by Type
Last Ten Fiscal Years
(amounts expressed in thousands)

<table>
<thead>
<tr>
<th>Year Ended June 30,</th>
<th>Special Revenue Bonds</th>
<th>Capital Leases</th>
<th>Other Long-term Liability (2)</th>
<th>Governmental Activities Debt</th>
<th>Total Personal Income (1)</th>
<th>Percentage of Personal Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>$ 1,079,340</td>
<td>$ 348,470</td>
<td>$ 404,318</td>
<td>$ 1,832,128</td>
<td>$ 245,063,048</td>
<td>0.75 %</td>
</tr>
<tr>
<td>2007</td>
<td>1,111,050</td>
<td>343,379</td>
<td>391,029</td>
<td>1,845,458</td>
<td>261,066,893</td>
<td>0.71</td>
</tr>
<tr>
<td>2008</td>
<td>1,268,815</td>
<td>331,703</td>
<td>373,319</td>
<td>1,973,837</td>
<td>272,901,349</td>
<td>0.72</td>
</tr>
<tr>
<td>2009</td>
<td>1,582,605</td>
<td>673,836</td>
<td>-</td>
<td>2,256,441</td>
<td>283,052,530</td>
<td>0.80</td>
</tr>
<tr>
<td>2010</td>
<td>1,645,010</td>
<td>641,252</td>
<td>-</td>
<td>2,286,262</td>
<td>282,152,796</td>
<td>0.81</td>
</tr>
<tr>
<td>2011</td>
<td>1,561,840</td>
<td>604,662</td>
<td>-</td>
<td>2,166,502</td>
<td>289,653,105</td>
<td>0.75</td>
</tr>
<tr>
<td>2012</td>
<td>1,562,630</td>
<td>562,656</td>
<td>-</td>
<td>2,125,286</td>
<td>306,001,368</td>
<td>0.69</td>
</tr>
<tr>
<td>2013</td>
<td>1,618,290</td>
<td>591,783</td>
<td>-</td>
<td>2,210,073</td>
<td>316,681,620</td>
<td>0.70</td>
</tr>
<tr>
<td>2014</td>
<td>1,812,670</td>
<td>594,302</td>
<td>-</td>
<td>2,406,972</td>
<td>321,688,894</td>
<td>0.75</td>
</tr>
<tr>
<td>2015</td>
<td>2,020,230</td>
<td>628,650</td>
<td>-</td>
<td>2,648,900</td>
<td>329,559,645</td>
<td>0.80</td>
</tr>
</tbody>
</table>


(1) US Department of Commerce, Bureau of Economic Analysis. Data for all years based on revised statistics of state personal income released on September 30, 2014. All estimates of state personal income are subject to BEA’s flexible annual revision schedule.

http://lwd.dol.state.nj.us/labor/lpa/industry/incpov/tpi.htm

(2) Other long-term liability items were reclassified as capital leases in fiscal year 2009.
The 2011 Session of the Maryland General Assembly approved legislation (HB 72) that changed the allocation of corporate income tax revenue to the Department from 24% to 17.2%. However, effective July 1, 2012 the Department received 9.5%; from July 1, 2013 through June 30, 2016 the Department will receive 19.5%.

The 2011 Session of the Maryland General Assembly approved legislation (HB 72) requiring the transfer from the Transportation Trust Fund of $40,000,000 of the Department's share of Highway User Revenues to the Revenue Stabilization Account in fiscal year 2012.

The 2011 Session of the Maryland General Assembly approved legislation (HB 72) that changed the allocation of corporate income tax revenue to the Department from 24% to 17.2%. However, effective July 1, 2012 the Department received 9.5%; from July 1, 2013 through June 30, 2016 the Department will receive 19.5%.

The 2007 Special Session of the Maryland General Assembly approved legislation to increase the State's Sales Tax and the Vehicle Excise Tax (Titling) from 5% to 6%, effective Jan. 1, 2008. In addition, effective July 1, 2008, the percentage of Titling Tax retained by the General Assembly was increased from 75% to 76.5% of the tax revenue. Effective June 1, 2008, the Motor Vehicle Fuel Tax rate was increased by 3.1 cents per gallon for sales and use tax equivalent and 0.4 cents per gallon for CPI. Revenue from these sources is not part of the GMVRA but is retained 100% by the Department.
## MARYLAND DEPARTMENT OF TRANSPORTATION
### Schedule of Miscellaneous Statistics
#### Last Ten Fiscal Years
*(unaudited)*

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maryland Department of Transportation:</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>State Highway Administration:</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miles of State Highway (1)</td>
<td>5,134</td>
<td>5,140</td>
<td>5,140</td>
<td>5,138</td>
<td>5,143</td>
<td>5,145</td>
<td>5,266</td>
<td>5,145</td>
<td>5,155</td>
<td>5,152</td>
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<tr>
<td><strong>Motor Vehicle Administration:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor Vehicle Titles Issued</td>
<td>1,202,561</td>
<td>1,166,195</td>
<td>1,096,692</td>
<td>930,858</td>
<td>939,209</td>
<td>994,235</td>
<td>995,247</td>
<td>1,018,200</td>
<td>1,001,118</td>
<td>1,049,969</td>
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<td><strong>Maryland Port Administration:</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Foreign Commerce (2,000 lbs.)</td>
<td>30,620,470</td>
<td>30,782,628</td>
<td>33,017,812</td>
<td>22,362,891</td>
<td>32,839,928</td>
<td>37,843,891</td>
<td>36,687,782</td>
<td>30,274,105</td>
<td>29,510,199</td>
<td>N/A</td>
</tr>
<tr>
<td>General Cargo (2,000 lbs.) (included above)</td>
<td>9,239,964</td>
<td>8,893,780</td>
<td>8,905,872</td>
<td>7,155,595</td>
<td>8,373,255</td>
<td>9,126,585</td>
<td>9,557,401</td>
<td>9,939,751</td>
<td>10,230,365</td>
<td>N/A</td>
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<tr>
<td><strong>Maryland Aviation Administration:</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passenger Traffic</td>
<td>20,360,376</td>
<td>20,643,685</td>
<td>21,321,252</td>
<td>20,103,443</td>
<td>21,313,033</td>
<td>22,488,838</td>
<td>22,611,988</td>
<td>22,530,342</td>
<td>22,761,893</td>
<td></td>
</tr>
<tr>
<td>Commercial Air Carrier Operations</td>
<td>266,928</td>
<td>267,517</td>
<td>260,970</td>
<td>243,453</td>
<td>247,391</td>
<td>258,992</td>
<td>254,246</td>
<td>232,609</td>
<td>224,246</td>
<td></td>
</tr>
<tr>
<td>Total Aircraft Operations</td>
<td>304,648</td>
<td>303,721</td>
<td>290,945</td>
<td>266,273</td>
<td>272,935</td>
<td>277,435</td>
<td>273,966</td>
<td>263,360</td>
<td>251,305</td>
<td>243,255</td>
</tr>
<tr>
<td><strong>Maryland Transit Administration (3):</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Bus Service (4)</td>
<td>840</td>
<td>840</td>
<td>895</td>
<td>895</td>
<td>895</td>
<td>869</td>
<td>928</td>
<td>903</td>
<td>929</td>
<td>964</td>
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<tr>
<td>Routes (5)</td>
<td>2,657</td>
<td>1,809</td>
<td>2,146</td>
<td>2,111</td>
<td>2,088</td>
<td>2,364</td>
<td>2,088</td>
<td>2,136</td>
<td>2,222</td>
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<tr>
<td>Vehicle Miles (7)</td>
<td>23,877,900</td>
<td>23,448,056</td>
<td>23,873,434</td>
<td>24,703,842</td>
<td>24,248,825</td>
<td>23,016,156</td>
<td>20,832,391</td>
<td>24,973,730</td>
<td>24,003,000</td>
<td>20,487,566</td>
</tr>
<tr>
<td>Trips</td>
<td>71,624,670</td>
<td>72,611,252</td>
<td>75,575,573</td>
<td>79,239,334</td>
<td>78,188,577</td>
<td>72,520,531</td>
<td>73,627,843</td>
<td>74,002,744</td>
<td>75,780,350</td>
<td>79,035,332</td>
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<td>Subway Cars</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>98</td>
<td>98</td>
<td></td>
</tr>
<tr>
<td>Routes (6)</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Car Miles</td>
<td>4,681,521</td>
<td>4,735,303</td>
<td>5,193,972</td>
<td>5,285,406</td>
<td>4,400,709</td>
<td>4,706,797</td>
<td>4,764,148</td>
<td>5,103,781</td>
<td>5,072,282</td>
<td>5,010,750</td>
</tr>
<tr>
<td>Trips</td>
<td>12,918,530</td>
<td>13,225,843</td>
<td>13,955,325</td>
<td>13,566,823</td>
<td>13,360,903</td>
<td>14,002,609</td>
<td>15,199,117</td>
<td>15,208,352</td>
<td>14,632,401</td>
<td>13,908,813</td>
</tr>
<tr>
<td>Trips</td>
<td>503,813</td>
<td>501,732</td>
<td>508,200</td>
<td>515,841</td>
<td>513,029</td>
<td>514,222</td>
<td>515,485</td>
<td>515,841</td>
<td>516,422</td>
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<tr>
<td>MARC Commuter Rail Cars</td>
<td>165</td>
<td>157</td>
<td>153</td>
<td>157</td>
<td>157</td>
<td>177</td>
<td>177</td>
<td>177</td>
<td>177</td>
<td></td>
</tr>
<tr>
<td>Number of Trips Daily</td>
<td>85</td>
<td>85</td>
<td>89</td>
<td>83</td>
<td>87</td>
<td>91</td>
<td>110</td>
<td>100</td>
<td>93</td>
<td></td>
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<tr>
<td>Number of Stations Served (6)</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>41</td>
<td>42</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Trips</td>
<td>503,813</td>
<td>501,732</td>
<td>508,200</td>
<td>515,841</td>
<td>513,029</td>
<td>514,222</td>
<td>515,485</td>
<td>515,841</td>
<td>516,422</td>
<td></td>
</tr>
<tr>
<td>Number of MDOT State Employees (8)</td>
<td>6,523</td>
<td>6,518</td>
<td>6,572</td>
<td>6,638</td>
<td>6,463</td>
<td>6,007</td>
<td>5,963</td>
<td>5,885</td>
<td>8,387</td>
<td>8,485</td>
</tr>
</tbody>
</table>

Source: Maryland Department of Transportation modal administrations.

(1) As of January 1.

(2) Calendar year basis.

(3) Data is estimated for FY 2006 and may have also been restated in prior fiscal years.

(4) Bus service statistics have been restated to include transportation provided by contractual bus companies.


(6) Service initiated to Frederick and Monocacy on December 17, 2001.

(7) Vehicle and car miles have been restated to accurately reflect the revenue service miles.

(8) 2006-2013 does not include union employees.
MARYLAND DEPARTMENT OF TRANSPORTATION
The Office of the Secretary
Pete K. Rahn, Secretary
James F. Ports, Deputy Secretary
Dennis R. Schrader, Deputy Secretary

Secretary’s Office
Ed McDonald, Chief of Staff
Kevin Reigrut, Assistant Secretary of Operations
Cheryl A.C. Brown-Whitfield, Principal Counsel, Assistant Attorney General
Brenda I. Cachuela, Director, Office of Audits
Erin Henson, Director, Office of Public Affairs
Louis Jones, Director, Office of Diversity and Equity
David Maier, Director, Office of Fleet, Facilities and Administrative Services
Bradley Smith, Director, Office of Freight and Multimodalism
Phillip Dacey, Director, Office of Governmental Affairs
Harold G. Frank, Director, Homeland Security, Emergency Management and Rail Safety
Judith M. Slater, Director, Office of Human Resources
Sabrina Bass, Director, Office of Minority Business Enterprises
Tracie Rhodes, Director, Office of Administration and Coordination of Minority and Small Business Programs
Heather Murphy, Director, Office of Planning
Mike Zimmerman, Director, Office of Procurement
Del Adams, Director, Office of Real Estate and Economic Development
Diane Langhorne, Director, Strategic Customer Service
Ronald Brothers, Chief Information Officer, Office of Transportation Technology Services

Office of Finance
David L. Fleming, Director/Chief Financial Officer
Steven P. Watson, Deputy Director/Deputy Chief Financial Officer
Brandie Karfonta, Accounting
Elizabeth Helmer, Budgeting
June R. Hornick, Debt Administration
Linda S. Williams, Financial Planning

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APPENDIX B
DEFINITIONS OF TERMS

“2016 Bonds” means the 2016A Bonds, the 2016B Bonds, the 2016C Bonds and the 2016D Bonds issued by the Bond Issuer.

“2016 Bonds Closing Date” means the date the 2016 Bonds are issued and all conditions to closing specified in the TIFIA Loan Agreement have been satisfied or waived in writing by the TIFIA Lender.

“2016 Loan” means the loan by the Bond Issuer to the Company of the entire amount of the proceeds of the 2016 Bonds on the Closing Date.

“2016 Loan Documents” means Indenture, the Series 2016 Loan Agreement, the Intercreditor Agreement, the Security Documents and all other agreements, instruments and documents executed and delivered pursuant to or in connection with any of the foregoing.

“2016A Bonds” means the Private Activity Revenue Bonds (RSA), Series 2016A (Purple Line Light Rail Project) (Green Bonds) issued by the Bond Issuer.

“2016A Proceeds Sub-Account” means the “2016A Proceeds Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“2016B Bonds” means the Private Activity Revenue Bonds (FCP), Series 2016B (Purple Line Light Rail Project) (Green Bonds) issued by the Bond Issuer.

“2016B Proceeds Sub-Account” means the “2016B Proceeds Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“2016C Bonds” means the Private Activity Revenue Bonds (SLP), Series 2016C (Purple Line Light Rail Project) (Green Bonds) issued by the Bond Issuer.

“2016C Proceeds Sub-Account” means the “2016C Proceeds Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“2016D Bonds” means the Private Activity Revenue Bonds (AP), Series 2016D (Purple Line Light Rail Project) (Green Bonds) issued by the Bond Issuer.

“2016D Bonds Debt Service Reserve Required Balance” means, (a) as of any date of determination on or prior to September 30, 2022, $6,543,708, and (b) as of any date of determination thereafter, an amount equal to the principal and interest on the 2016D Bonds that will become due and payable by the Company in the six (6) consecutive months following such date of determination.

“2016D Bonds Debt Service Reserve Sub-Account” means the “2016D Bonds Debt Service Reserve Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“2016D Proceeds Sub-Account” means the “2016D Proceeds Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Acceleration Event” means the applicable Secured Parties party to any Finance Document, in accordance with, and pursuant to the terms of, such Finance Document and, as applicable, the Intercreditor Agreement, shall have declared the whole or any part of the principal of, and accrued interest on, the related Secured Obligations to be immediately due and payable prior to the scheduled maturity of such obligation.
“Acceptable Credit Rating” (i) with respect to the Collateral Agency Agreement, means, with respect to any person, the rating of its unsecured, senior long-term indebtedness (or, if such person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues an Acceptable Letter of Credit or enters into a Qualified Hedge, ‘A+’, ‘A1’ or the equivalent rating from any Nationally Recognized Rating Agency; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from any Nationally Recognized Rating Agency and (ii) with respect to the TIFIA Loan Agreement, means, with respect to any person, the rating of its unsecured, senior long-term indebtedness (or, if such person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such person executes, delivers or issues an Acceptable Letter of Credit or enters into a Qualified Hedge or a repurchase agreement with respect to any Project Account permitted under the definition of “Permitted Investments” (as defined in the TIFIA Loan Agreement), ‘A+’, ‘A1’ or the equivalent rating from any Nationally Recognized Rating Agency; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from any Nationally Recognized Rating Agency.

“Acceptable LC Bank” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“Acceptable Letter of Credit” (x) with respect to the Collateral Agency Agreement, means an irrevocable standby letter of credit, which (a) is denominated in United States dollars and drawable and payable in the United States, (b) is without recourse to the Company, (c) is issued in favor of the Collateral Agent by an Acceptable LC Bank, (d) is not secured by any Collateral, (e) has a term of at least one year from the date of issuance (provided that, in the case of a letter of credit issued as a replacement for a letter of credit with less than one year remaining until its stated expiration date, the term of such replacement letter of credit shall end no earlier than the end of the term of the original letter of credit) and (f) allows the Collateral Agent to make a draw thereunder (i) upon the presentation to the issuing bank of a certificate that conforms to the requirements set forth in such letter of credit stating that the Collateral Agent is drawing funds thereunder pursuant to the relevant Finance Document, (ii) during the thirty (30) day period prior to expiry (unless replaced with an Acceptable Letter of Credit), (iii) upon downgrade of the issuing bank such that it is no longer an Acceptable LC Bank, if such letter of credit has not been replaced within ten (10) Business Days of such downgrade, and (iv) if such letter of credit is used to fund any Reserve Account, when funds would otherwise be drawn from such Reserve Account and (y) with respect to the TIFIA Loan Agreement, means an irrevocable standby letter of credit, which (a) is denominated in United States dollars and drawable and payable in the United States, (b) is without recourse to the Company, (c) is issued in favor of the Collateral Agent by a Qualified Issuer, (d) is not secured by any Collateral, (e) has a term of at least one year from the date of issuance (provided that, in the case of a letter of credit issued as a replacement for a letter of credit with less than one year remaining until its stated expiration date, the term of such replacement letter of credit shall end no earlier than the end of the term of the original letter of credit) and (f) allows the Collateral Agent to make a draw thereunder (i) upon the presentation to the issuing bank of a certificate that conforms to the requirements set forth in such letter of credit stating that the Collateral Agent is drawing funds thereunder pursuant to the relevant Finance Document, (ii) during the thirty (30) day period prior to expiry (unless replaced with an Acceptable Letter of Credit), (iii) upon downgrade of the issuing bank such that it is no longer a Qualified Issuer, if such letter of credit has not been replaced within ten (10) Business Days of such downgrade, and (iv) if such letter of credit is used to fund any Reserve Account, when funds would otherwise be drawn from such Reserve Account.

“Acceptable Replacement Party” means:

(a) With respect to each Design-Build Guaranty, each O&M Guaranty, the Design-Build Contract or the O&M Contract, any Person that:

(i) provides evidence satisfactory to the Company and the Lenders’ Technical Advisor (solely with respect to technical capability) that such third party is technically, and such third party or a parent guarantor that has guaranteed such third party’s obligations under the applicable replacement contract is financially, capable of fulfilling all of the obligations of the party it is replacing;

(ii) (x) with respect to the Design-Build Contract, has, or its parent guarantor has, at the time of such replacement, (A) annual revenue in an amount at least three (3) times the value of
the work left to be completed under the Design-Build Contract at the time of the replacement and (B) shareholder equity in an amount at least equal to one half (½) of the value of the work left to be completed under the Design-Build Contract at the time of the replacement, or (y) with respect to the O&M Contract, (A) demonstrates comparable light rail project experience as the party it is replacing and (B) provides an aggregate security package to support its obligations under the replacement contract that is substantially similar to the O&M Contractor’s performance security as of the Closing Date; and

(iii) satisfies (including through waiver by the Contracting Authority or the TIFIA Lender, as applicable) any and all minimum requirements for such replacement set forth in the P3 Agreement and the TIFIA Loan Agreement; or

(b) (i) with respect to each Design-Build Guaranty or O&M Guaranty, Fluor or (ii) with respect to the Design-Build Contract or the O&M Contract, Fluor, or one of its affiliates, in each case, to the extent Fluor, or one of its affiliates, is not the party being replaced.

For the avoidance of doubt, a Person may qualify as an Acceptable Replacement Party with respect to any Design-Build Guaranty, any O&M Guaranty, the Design-Build Contract or the O&M Contract under either clause (a) or the appropriate sub-clause of clause (b) of this definition.

“Acceptance Agreement” means an Acceptance Agreement substantially in the form attached to the Collateral Agency Agreement.

“Account Collateral” means (a) all Project Accounts and all funds or other property deposited therein and all monies, funds, Permitted Investments, certificates, investment property, instruments, securities, “security entitlements” (within the meaning of Section 8-102(a)(17) of the UCC) and other “financial assets” (within the meaning of Section 8-102(a)(9) of the UCC), and all other property from time to time credited to such Project Accounts and all “securities accounts” (within the meaning of Section 8-501 of the UCC), all deposit accounts and any and all other bank accounts related to the Project Accounts and established pursuant to the Collateral Agency Agreement, and all proceeds, products and accessions of and to any and all of the foregoing, including whatever is received or receivable upon any collection, exchange, sale or other disposition of any of the foregoing and any property into which any of the foregoing is converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the foregoing; and (b) all deposit accounts, securities accounts and funds established under the Indenture and funds deposited therein and all monies, funds, Permitted Investments, certificates, investment property, instruments, securities, “security entitlements” (within the meaning of Section 8-102(a)(17) of the UCC) and other “financial assets” (within the meaning of Section 8-102(a)(9) of the UCC) and all other property from time to time credited to such deposit accounts, securities accounts and funds; and all deposit accounts and any and all other bank accounts related to such accounts and funds and established pursuant to the Indenture, and all proceeds, products and accessions of and to any and all of the foregoing, including whatever is received or receivable upon any collection, exchange, sale or other disposition of any of the foregoing and any property into which any of the foregoing is converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the foregoing.

“Account Interest” means the interest income earned on any Project Accounts received by the Company.

“Accounts” means, collectively, the accounts and sub-accounts established and created by the Indenture.


“Act” means Title 10, Subtitle 1 of the Economic Development Article of the Annotated Code of Maryland, Sections 10-101 through 10-132, inclusive, as amended and supplemented from time to time.

“Activity Noncompliance Event” means any Activity Noncompliance Occurrence which:

(a) has not been responded to within any applicable Response Time;
(b) has not been rectified within any applicable Rectification Time; or

(c) following the expiration of a Rectification Time, has not been rectified within any further Application (Maximum Exposure) Time.

“Activity Noncompliance Occurrence” means each occurrence of an event listed in the Activity Noncompliance Occurrence Table.

“Activity Noncompliance Occurrence Table” means the table in the Technical Provisions.

“Actual Combined Tsc” means the sum of the eastbound Actual Tsc value and the westbound Actual Tsc value for each of the periods identified in the Technical Provisions.

“Actual Benchmark Insurance Policies” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Insurance—Insurance Premium Benchmarking.”

“Actual Insurance Policies” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Insurance—Insurance Premium Benchmarking.”

“Actual Tsc” means traffic signal and traffic congestion delay value determined using a Total Trip Run Time test program following the process set out in the Technical Provisions.

“Additional Excess Liability” means the additional excess liability insurance coverage, from an Eligible Insurer, insuring the Contracting Authority, naming the Contracting Authority as the sole insured and otherwise not insuring any other Person.

“Additional Finance Documents” means any documents and/or instruments evidencing, documenting, securing or otherwise relating to Other Permitted Senior Secured Indebtedness incurred by the Company.

“Additional Funding Sources” means additional anticipated funds MDOT will receive to pay costs of the Project, including the following:

(a) over $300,000,000 in cash and in-kind payments from Prince George’s and Montgomery Counties;

(b) approximately $900,000,000 in Federal Transit Administration Section 5309 Capital Investment Grant (New Starts) funds from the Federal Transit Administration, $200,000,000 of which has already been allocated to the Project from fiscal year 2015 and 2016 appropriations and $125,000,000 of which has been recommended for allocation to the Project in the President’s fiscal year 2017 federal budget; and

(c) approximately $500,000 from the University of Maryland.

“Additional Parity Bonds” means additional bonds that the Bond Issuer may issue pursuant to the Indenture, which additional bonds shall be equally and ratably secured by the Trust Estate with all other then Outstanding Bonds, without preference, priority or distinction, provided, that any bonds shall only constitute Additional Parity Bonds if the incurrence thereof is permitted pursuant to the terms of the Finance Documents, including the requirements for “Additional Senior Obligations” pursuant to the TIFIA Loan Agreement.

“Additional Parity Bonds Loan” means any loan of the proceeds of any Additional Parity Bonds to the Company pursuant to an Additional Parity Bonds Loan Agreement.

“Additional Parity Bonds Loan Agreement” (a) with respect to the Collateral Agency Agreement, means, for each series of Additional Parity Bonds, the Series 2016 Loan Agreement or, if applicable, the loan agreement to be executed by the Bond Issuer and the Company in connection with the issuance of such Additional Parity Bonds...
pursuant to the Indenture, with such changes as are acceptable to the Company and the Bond Issuer and (b) with respect to the Indenture, means any Additional Parity Bonds Loan Agreement entered into between the Bond Issuer and the Company pursuant to which the Bond Issuer shall agree to make an Additional Parity Bonds Loan to the Company, as the same may be amended, supplemented or modified from time to time.

“Additional Parity Bonds Proceeds Account” means, on and after the RSA Date, any “Additional Parity Bonds Proceeds Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Additional Parity Tax-Exempt Bonds” means Additional Parity Bonds with respect to which there shall have been delivered to the Bond Issuer an opinion of Bond Counsel to the effect that the interest on such Additional Parity Bonds is excludable from gross income for federal income tax purposes.

“Additional Properties” means permanent interests in real property that the Contracting Authority agrees to acquire, in response to a request by the Company as specified in the P3 Agreement, to become part of the Project ROW or for a Utility Easement, subject to the exceptions stated in the P3 Agreement.

“Additional Secured Party” means (a) any holder of any Other Permitted Senior Secured Indebtedness and (b) any assignee of all or a portion of the TIFIA Obligations, in each case, that is (or whose Designated Representative is) a party to the Intercreditor Agreement or becomes (or whose Designated Representative becomes) a party to the Intercreditor Agreement as contemplated in Article XIV of the Intercreditor Agreement.

“Additional Senior Creditor” means a lender or holder of any Additional Senior Obligations.

“Additional Senior Obligations” means any Indebtedness of the Company, other than the Initial Senior Obligations, issued or incurred after the Effective Date in accordance with the requirements set forth in the TIFIA Loan Agreement and that complies with the following requirements, as applicable:

(a) the proceeds thereof may be used to complete the construction of the Project or to comply with obligations under the P3 Agreement, so long as the Company’s Authorized Representative certifies to the TIFIA Lender, and the Lenders’ Technical Advisor confirms, that (i) in the reasonable belief of the Company and the Lenders’ Technical Advisor, the undisbursed TIFIA Loan proceeds, together with other funds then available or irrevocably committed for the construction of the Project are not expected to be sufficient to complete the construction of the Project by the Revenue Service Availability Date reflected in the Financial Plan most recently approved by the TIFIA Lender or for the Company to comply with its obligations under the P3 Agreement, as applicable, (ii) the additional investment is necessary to complete construction of the Project or to comply with obligations under the P3 Agreement, as applicable, and (iii) the proceeds of such Additional Senior Obligations, together with other funds available to complete the Project or to comply with obligations under the P3 Agreement, as applicable, are expected to be sufficient to complete the construction of the Project by the Revenue Service Availability Date reflected in the Financial Plan most recently approved by the TIFIA Lender or to comply with obligations under the P3 Agreement, as applicable; provided that the aggregate amount of Additional Senior Obligations incurred pursuant to this paragraph (a) may not, without the prior written consent of the TIFIA Lender, exceed five percent (5%) of the maximum principal amount of the Initial Senior Obligations (excluding the principal amount of the 2016C Bonds);

(b) the proceeds thereof may be used to refurbish, upgrade, modify, expand or add to the Project, including for the purpose of complying with obligations under the P3 Agreement, so long as (i) such Additional Senior Obligations have an Investment Grade Rating as of the date of issuance and (ii) each of the Company’s Authorized Representative and the Lenders’ Technical Advisor certifies to the TIFIA Lender, that (A) there will be no fundamental change in the scope or use of the Project, (B) the proceeds of such Additional Senior Obligations, together with other funds available, will be sufficient for the proposed purpose, (C) the additional investment is not expected to have a Material Adverse Effect and (D) based on a Revised Financial Model provided by the Company to the TIFIA Lender, which Revised Financial Model must be acceptable to the TIFIA Lender, the projected Total Debt Service Coverage Ratio for each Calculation Date occurring prior to the Final Maturity Date, after giving effect to such Additional Senior Obligations, is not less than the Total Debt Service Coverage Ratio for each such Calculation Date set forth in the Base Case Projections; and
(c) the proceeds thereof may be used to refinance or replace the Senior Obligations, so long as (i) such Additional Senior Obligations have an Investment Grade Rating as of the date of issuance, (ii) the net proceeds thereof (after deducting any deposits required to satisfy any applicable senior debt service reserve requirements and costs of issuance not to exceed two percent (2%) of the principal amount of such Additional Senior Obligations) do not exceed the principal amount of the Senior Obligations outstanding and being refinanced or replaced and (iii) Senior Debt Service, after the incurrence of such Additional Senior Obligations, in each year of the remaining term of the TIFIA Loan, is not more than the Senior Debt Service projected for each such year set forth in the Base Case Projections;

provided that for each of clauses (a) through (c) above, (A) as of the date of the incurrence of the Additional Senior Obligations and after giving effect thereto, (1) no Event of Default will have occurred and be continuing and no event of default under the Senior Loan Documents will have occurred and be continuing and (2) each Reserve Account will have been fully funded (in cash, Permitted Investments or by an Acceptable Letter of Credit) in an amount equal to its respective required balance, (B) each Nationally Recognized Rating Agency that provided the most recent public ratings of the Senior Obligations and the TIFIA Loan in accordance with the TIFIA Loan Agreement will have confirmed that the incurrence of such Additional Senior Obligations will not result in a downgrade of the credit ratings of the Senior Obligations or the TIFIA Loan, respectively, to a level below the lower of the then-current credit ratings or the credit ratings as of the Effective Date (or the applicable closing date (to the extent the Initial Senior Obligations were issued on a day other than the Effective Date)) and (C) each Additional Senior Creditor (or an agent or trustee acting on its behalf) at the time of execution of any documentation with respect thereto will become a party to and be bound by the Intercreditor Agreement as an Additional Secured Party (as defined therein).

“Adjusted Estimated Fair Value” means A minus the sum of B, C, D, E and F, where:

A = the Estimated Fair Value;

B = the Contracting Authority’s Recoverable Costs;

C = all other amounts owing to the Contracting Authority by the Company under the terms of the P3 Agreement as of the Termination Date and any additional costs reasonably incurred by the Contracting Authority as a direct result of the Concessionaire Default, including any cumulative negative Post-Termination Services Amount;

D = the Relief Event Costs;

E = Credit Balances and Insurance Proceeds, to the extent that the amounts have not been already received or taken into account in calculating the Estimated Fair Value; and

F = any gains which have accrued, or will accrue, to any Equity Member or Affiliate as a result of the termination of the P3 Agreement or any other Contract Documents.

“Adjusted Resolicited Agreement Price” means A minus the sum of B, C, D, E and F where:

A = The lump sum amount offered by the Replacement Concessionaire as consideration for the Resolicited Agreement, but excluding any portion of the consideration that is allocable to work not included in the scope of the P3 Agreement;

B = The Contracting Authority’s Recoverable Costs;

C = All other amounts owing to the Contracting Authority by the Company under the terms of the P3 Agreement as at the Termination Date that are not assumed by the Replacement Concessionaire, including any cumulative negative Post-Termination Services Amount and any additional costs reasonably incurred by the Contracting Authority as a direct result of the Concessionaire Default;

D = the Relief Event Costs;
E = Credit Balances and Insurance Proceeds to the extent that the amounts have not been already received or taken into account during the Resolicitation Process; and

F = any gains which have accrued, or will accrue, to any Equity Member or Affiliate as a result of the termination of the P3 Agreement or any other Contract Documents.

“Administrative Expenditures of the Bond Issuer” means any expenditures of the Bond Issuer for insurance, fees and expenses of auditing not otherwise paid or provided for by the Company, and all other expenditures reasonably and necessarily incurred by the Bond Issuer by reason of the performance of its duties under the Bond Documents or its financing and refinancing of the Project, including without limitation (a) legal, financing and administrative expenses, fees and expenses of the Bond Issuer’s financial advisor and expenses incurred by the Bond Issuer to compel full and punctual performance of the 2016 Loan Documents in accordance with the terms thereof; (b) any payments made pursuant to a closing agreement entered into with the Internal Revenue Service with the consent of the Company to preserve the excludability of interest on the Tax-Exempt Bonds from gross income of the Holders thereof for federal income tax purposes (a “Closing Agreement”); and (c) legal, financing and administrative expenses incurred by the Bond Issuer in connection with any inquiry into or audit of any Tax-Exempt Bonds by the Internal Revenue Service and/or a Closing Agreement.

“Affiliate” means (x) with respect to the Collateral Agency Agreement, with respect to any Person, any other Person that is Controlling, Controlled by, or under common Control with such Person; (y) with respect to the TIFIA Loan Agreement, of a particular Person means, at any time, (a) any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person and (b) any Person beneficially owning or holding, directly or indirectly, ten percent (10%) or more of any class of securities having ordinary voting power for the election of directors or other members of the governing body of a corporation or other Person, or ten percent (10%) or more of any partnership or other ownership interests having ordinary voting power for the election of directors or other members of the governing body of a corporation or any other Person; and (z) with respect to the P3 Agreement only:

(i) any Equity Member,

(ii) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Company or any Equity Member, and

(iii) any Person owned in whole or in part by (i) the Company, (ii) any Equity Member or (iii) any Affiliate of the Company under clause (b) of this definition, whether the ownership interest is direct or indirect, beneficial or of record, provided that ownership of less than 10% of the equity interest in a Person shall not give rise to Affiliate status.

For purposes of clause (b)(ii) of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

“Aggregate Capital Commitment” means (a) with respect to Meridiam, $96,936,434, (b) with respect to Star America, $20,772,093, and (c) with respect to Fluor Enterprises, $20,772,093.

“Airspace” means any and all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Project ROW and not necessary or required for the Project or Company’s timely fulfillment of its obligations under the Contract Documents.

“Allowance” means the Hazardous Materials Remediation Allowance, Excess Liability Allowance, Fare System Allowance, and/or the Art in Transit Allowance.

“Allowance Work” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Payments to the Company—Progress Payments.”
**“Alternate Bus Service”** means a bus service implemented during a Service Interruption for all areas of the Purple Line System where Normal Service or Alternate Train Service cannot be provided because of the Service Interruption that: (a) provides at least the same frequency of service as Normal Service in both directions of travel; (b) serves all Stations directly affected by the Service Interruption; (c) uses standard transit coach equipment; and (d) provides sufficient capacity to carry all passengers.

**“Alternate Service”** means the service required by Part 3, Section 3.2 of the Technical Provisions to be provided by the Company when Normal Service cannot be provided due to a Service Interruption. Alternate Service shall include Alternate Train Service and may include Alternate Bus Service.

**“Alternate Train Service”** means a Train service implemented during a Service Interruption that is as close as reasonably possible to Normal Service including Normal Service headways in both directions of travel on both sides of the Service Interruption area and minimum achievable of Normal Service headways in both directions of travels through the Service Interruption area (i.e., single tracking) to the extent possible for safe operations under the conditions of the Service Interruption.

**“Amortized Redemption Price”** means the Amortized Value of the 2016 Bonds to be redeemed, plus accrued interest, to but not including, the redemption date if such redemption date occurs prior to (a) with respect to the 2016A Bonds, the 2016B Bonds or the 2016C Bonds, November 30, 2021 or (b) with respect to the 2016D Bonds, September 30, 2026, pursuant to the Indenture.

**“Amortized Value”** means the principal amount of the 2016 Bonds to be redeemed multiplied by the price of such 2016 Bonds expressed as a percentage, calculated based on the industry standard method of calculating bond prices, with a delivery date equal to the redemption date, the maturity date of such 2016 Bonds (taking into account any optional redemption provision) and a yield equal to such 2016 Bonds’ original offering yield set forth on the inside cover of the Official Statement.

**“Annual Fee”** means an original administrative fee equal to four basis points multiplied by the aggregate original principal amount of the 2016 Bonds on the Closing Date and an annual administrative fee equal to one basis point multiplied by the aggregate principal amount of the 2016 Bonds outstanding on the due date.

**“AP Start-Up Amount”** means the product of (i) 1.25 and (ii) the difference (which may not be less than zero) between (A) the sum of (x) the interest that will accrue on the TIFIA Loan and the Senior Secured Obligations during the Availability Payment Start-Up Period and (y) the Company Operations and Maintenance Expenses to be incurred during the Availability Payment Start-Up Period and (B) the aggregate amount of the general (i.e. MAPG) portions of the Availability Payments anticipated to be received by the Company during the Availability Payment Start-Up Period that are intended to be used to pay accrued interest on the TIFIA Loan and the Senior Secured Obligations.

**“Applicable Excess Funds”** means, with respect to each Semi-Annual Transfer Date, all funds remaining on deposit in the Revenue Account after application pursuant to clauses “First” through “Sixteenth” of the Flow of Funds on such Semi-Annual Transfer Date, as indicated in the applicable Funds Transfer Certificate.

**“Applicable Reserve Letter of Credit”** means, with respect to any Reserve Account, an Acceptable Letter of Credit delivered to the Collateral Agent to fund all or a portion of the Applicable Reserve Requirement relating to such Reserve Account in accordance with the terms of the Collateral Agency Agreement.

**“Applicable Reserve Requirement”** means (i) with respect to any Senior Debt Service Reserve Sub-Account, the applicable Senior Debt Service Reserve Required Balance; (ii) with respect to the TIFIA Debt Service Reserve Sub-Account, the TIFIA Debt Service Reserve Required Balance; and (iii) with respect to the Rehabilitation Reserve Account, the Rehabilitation Reserve Required Balance.

**“Applicable Secured Creditors”** means each of (a) the Senior Secured Creditors and (b) if the TIFIA Lender (or any assignee of all or a portion of the TIFIA Obligations pursuant to the terms of the TIFIA Loan Agreement) does not qualify as a Senior Secured Creditor hereunder, the TIFIA Lender (or such assignee).
“Applicable Senior Secured Obligations” means the aggregate of (i) all Senior Secured Obligations and (ii) upon the occurrence of a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or another federal agency as of the date of such Company Bankruptcy Related Event (and only for such time as the TIFIA Note is held by the TIFIA Lender or another federal agency), the TIFIA Obligations.

“Applicable Sponsor Cash Collateral Account” means, as applicable, (i) the Meridiam Sponsor Cash Collateral Sub-Account, (ii) the Star America Sponsor Cash Collateral Sub-Account or (iii) the Fluor Sponsor Cash Collateral Sub-Account, each as established and created as a sub-account of the Sponsor Cash Collateral Account in the name of the Company pursuant to the Collateral Agency Agreement.

“Applicable Tax-Exempt Bond Rate” means the “Interpolated AAA Yields” rate for (a) November 30, 2021 with respect to the 2016A Bonds, the 2016B Bonds and the 2016C Bonds, (b) September 30, 2026 with respect to the 2016D Bonds maturing on or after March 31, 2027, and (c) the maturity date with respect to the 2016D Bonds maturing before March 31, 2027, as published most recently by the Municipal Market Data (“MMD”) at least five calendar days, but not more than 45 calendar days, prior to the redemption date of the 2016 Bonds to be redeemed. If no such rate is published for any applicable year, the “Interpolated AAA Yields” rate for the published maturities most closely corresponding to the applicable year will be determined, and the Applicable Tax-Exempt Bond Rate will be interpolated from those rates on a straight-line basis. Should the MMD no longer publish the “Interpolated AAA Yields” rate, then the Applicable Tax-Exempt Bond Rate will equal the “Consensus Scale” rate for the applicable year as published by Municipal Market Advisors (“MMA”). In the further event that MMA no longer publishes the “Consensus Scale,” the Applicable Tax-Exempt Bond Rate will be determined by a broker-dealer registered with the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority, Inc. selected by the Company, as the quotation agent, based upon the rate per annum equal to the semi-annual equivalent yield to maturity for those tax-exempt general obligation bonds rated in the highest rating category by Moody’s Investors Service, Inc. and Standard & Poor’s Ratings Services, with a maturity date equal to (a) November 30, 2021 with respect to the 2016A Bonds, the 2016B Bonds and the 2016C Bonds, (b) September 30, 2026 with respect to the 2016D Bonds maturing on or after March 31, 2027, and (c) the maturity date with respect to the 2016D Bonds maturing before March 31, 2027, having characteristics (other than the ratings) most comparable to those of such 2016 Bonds in the judgment of the quotation agent. The quotation agent’s determination of the Applicable Tax-Exempt Bond Rate shall be final and binding in the absence of manifest error.

“Application (Maximum Exposure) Time” means, with respect to any Activity Noncompliance Occurrence, the applicable time period or further time period within which the O&M Contractor is required to rectify an Activity Noncompliance Occurrence as specified in the Activity Noncompliance Occurrence Table.

“Approved Construction Requisition” means a Construction Requisition Certificate and, to the extent required by the Collateral Agency Agreement, a Technical Advisor Certificate that, in each case, satisfy the conditions of the Collateral Agency Agreement applicable to the funds to be withdrawn and/or the Project Costs to be paid, in each case, with respect to any Construction Funds Transfer Date.

“AP Transfer Amount” means the product of (a) 1.25 and (b) the difference between (A) the sum of (x) the interest that has accrued since the commencement of the Availability Payment Start-Up Period that must be paid or reserved with respect to the Senior Secured Obligations and the TIFIA Loan on the first Monthly Transfer Date to occur during the Availability Payment Start-Up Period in accordance with the Collateral Agency Agreement and (y) the Company Operations and Maintenance Expenses incurred by the Company since the commencement of the Availability Payment Start-Up Period that must be paid or reserved on such Monthly Transfer Date in accordance with the Collateral Agency Agreement and (B) the aggregate amount of the general (i.e. MAPG) portions of the Availability Payments that will be used to pay or reserve such interest on the TIFIA Loan and the Senior Secured Obligations on such Monthly Transfer Date.

“Art in Transit Allowance” means the fund in the amount specified in Exhibit 4A to the P3 Agreement, to be used to pay for certain Work required for the Contracting Authority’s “art-in-transit” program.

“Asset Sale Proceeds” means the proceeds of any conveyance, lease, transfer, sale, assignment or disposition of (including in any sale-leaseback transaction) any material property, business or assets of the Project by the Company, whether now owned or hereafter acquired.

“Assigned Agreements” means all agreements and contracts (other than certain agreements referred to in the Security Agreement), in each case, to which the Grantor is a party or of which it is a beneficiary (as amended, supplemented, amended and restated or otherwise modified and in effect from time to time), including (i) all contracts and agreements related to the Project to which the Grantor is a party or of which it is a beneficiary, and (ii) each and every bond, indemnity, warranty, guaranty and other similar document relating to the performance by any party (other than the Grantor) of any of the foregoing, including: (A) all rights of the Grantor to receive moneys due and to become due under or pursuant to the Assigned Agreements, (B) all rights of the Grantor to receive proceeds of any insurance, bond, indemnity, warranty or guaranty with respect to the Assigned Agreements, (C) all claims of the Grantor for damages arising out of or for breach of or default under the Assigned Agreements and (D) all rights of the Grantor to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise to exercise all of the Grantor’s rights and remedies thereunder.

“Authority Having Jurisdiction (AHJ)” means an organization, office or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure. The term “Authorities Having Jurisdiction” refers to more than one such organization, office or individual.

“Authorized Denominations” means denominations of $5,000 principal amount and integral multiples thereof.

“Authorized Representative” means (a) for the purposes of the P3 Agreement, the authorized representative for either Party identified in or otherwise designated in accordance with the P3 Agreement and (b) for all other purposes, the chief executive officer, president, any senior vice president, chief financial officer or other authorized signatory of the Company.

“Availability Payment Start-Up Period” means period from and including the RSA Date through the end of the calendar month immediately following the calendar month in which the RSA Date occurs (or, if the RSA Date occurs on the last day of a calendar month, through the end of the second calendar month immediately following the RSA Date). For the avoidance of doubt, the maximum period of time for the Availability Payment Start-Up Period is two consecutive calendar months.

“Availability Payment Start-Up Reserve Account” means the “Availability Payment Start-Up Reserve Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Availability Payments” means the payments to be made by the Contracting Authority to the Company under the P3 Agreement, determined on an annual basis in accordance with the P3 Agreement and payable monthly.

“Backfill Change Order” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Payments to the Company—Payment for Certain Backfill Material and Disposal Costs.”

“Backfill Uses” has the meaning given in Section 5 of Exhibit 2 of the P3 Agreement.

“Bank Lending Margin” means in respect of any Variable Interest Rate Senior Obligations, the “Applicable Margin” or comparable interest rate margin as defined in the financing documents related to such Variable Interest Rate Senior Obligations.

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.
“Bankruptcy Event” means, with respect to any Person:

(a) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person, or of a substantial part of the assets of such Person, under any insolvency law or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or a substantial part of such Person’s assets and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed, undischarged or unbonded for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) Such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of such Person’s assets, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or (iii) make a general assignment for the benefit of creditors, or (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commence a voluntary proceeding under any insolvency law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any insolvency law, (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing.

“Bankruptcy Event of Default” means an Event of Default due to the occurrence and continuance of a Bankruptcy Event with respect to the Company pursuant to the Series 2016 Loan Agreement.

“Bankruptcy Proceeding” means (a) any voluntary or involuntary case or proceeding under any Insolvency Law, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to the Company or with respect to its assets, (c) any liquidation, dissolution, or winding up of the Company or (d) any assignment for the benefit of creditors or any other marshalling of assets or liabilities of the Company.

“Bankruptcy Related Event” means, with respect to any Person: (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of its assets, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Company, fail to make two (2) consecutive payments of TIFIA Debt Service in accordance with the provisions of Section 9 of the TIFIA Loan Agreement, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or a substantially similar proceeding or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing.

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securing the Senior Obligations, or (ii) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the Equity Interests may be transferred pursuant to a sale or disposition of such Collateral in lieu of foreclosure, or (e) solely with respect to the Company upon the occurrence and during the continuance of an event of default under the Senior Loan Documents, the Collateral Agent shall transfer, or direct the transfer of, funds on deposit in any of the Project Accounts pursuant to the enforcement waterfall set forth in Section 6.06 of the Collateral Agency Agreement (an as described in “PROJECT ACCOUNT AND FLOW OF FUNDS—Application of Proceeds” in the Official Statement) for application to the payment of any Secured Obligations.

“Base Case Budget” means the Company’s budget and schedule set forth in the initial forecast for the Project prepared as of the Effective Date of the TIFIA Loan Agreement, using the Base Case Financial Model.

“Base Case Financial Model” means the financial computer model, including the Financial Model Formulas and the related output, assumptions and information used by or incorporated in the Financial Model Formulas approved by the Parties as of the Effective Date:

(a) On the basis of which the Company and the Contracting Authority entered into this P3 Agreement;

(b) Which include certain financial forecasts, projections and calculations with respect to revenues, expenses, the repayment of Project Debt and Distributions to initial Equity Members that result in achievement of the Equity IRR; and

(c) Which is consistent with the Pricing Sheets.

“Base Case Model” means, (a) with respect to the Collateral Agency Agreement, as of the Closing Date, a mechanically sound financial model, approved by the Model Auditor, forecasting the revenues and expenditures of the Project for time periods and based upon assumptions and methodology provided by the Company, and such Base Case Model as updated from time to time; and (b) with respect to the Indenture, a mechanically sound financial model forecasting the revenues and expenditures of the Project for time periods and based upon assumptions and methodology provided by the Company and delivered to the Trustee on the Closing Date.

“Base Relevant Insurance Cost” means, for each category of insurance listed in the “Table of Base Relevant Insurance Costs” in Exhibit 7B to the P3 Agreement, the amount stated in the column entitled “Base Relevant Insurance Costs,” which reflects the annual premium, for each category of insurance, in the Proposal to place the relevant Insurance Policy at the Revenue Service Availability Date.

“Baseline Schedule” means the CPM schedule developed from the Initial Baseline Schedule for the D&C Work approved by the Contracting Authority in accordance with the Technical Provisions, and revisions to such schedule approved by the Contracting Authority in accordance with the Technical Provisions.

“Baseline Service Plan” means each of the service plans set out in the Pricing Sheets.

“Base Relevant Insurance Cost” means, for each category of insurance listed in the “Table of Base Relevant Insurance Costs” in the P3 Agreement, the amount stated in the column entitled “Base Relevant Insurance Costs,” which reflects the annual premium, for each category of insurance, in the Proposal to place the relevant Insurance Policy at the RSA Date.

“Benchmarking Reference Period” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Insurance—Starting Insurance Benchmarking Premiums.”

“Benchmarking Term” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Insurance—Insurance Premium Benchmarking.”

“Beneficial Owners” means purchasers of beneficial interests in the 2016 Bonds.

“Betterment” generally means any upgrading of such utility during the course of a utility adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the utility owner, including an increase in the capacity, capability, efficiency or function of the facility over that which was provided by the existing utility; provided, that if the utility agreement applicable to a particular utility facility includes a definition of the term, the definition in the utility agreement shall control. The following are not considered Betterments unless otherwise provided in the applicable utility agreement:

(a) any upgrading which is required for accommodation of the Project;
(b) replacement devices or materials that are of equivalent standards although not identical;
(c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
(d) any upgrading required by applicable law;
(e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and
(f) any upgrading required by the utility owner’s applicable utility standards.

“Bid Combined Tsc” means the sum of the eastbound Tsc value and the westbound Tsc value in the P3 Agreement, for each period identified in the P3 Agreement.

“Board of Public Works” means the Board of Public Works for the State of Maryland, established under Maryland Constitution 1864, Article VII, Section 1-3 and Maryland Constitution 1867, Article XII, Section 1-3.

“Book” means, unless the context requires otherwise, each part of the Contract Documents identified as a “Book,” as it may be amended from time to time.

“Bond Counsel” means Ballard Spahr LLP, or other attorneys selected by the Bond Issuer, with the consent of the Company, which consent shall not be unreasonably withheld, who have nationally recognized expertise in the issuance of municipal securities, the interest on which is excluded from gross income for federal and state income tax purposes.

“Bond Issuer” means the Maryland Economic Development Corporation, a body corporate and politic and an instrumentality of the State of Maryland.

“Bond Obligations” means (a) all payment obligations of the Company now existing or hereafter arising under the Series 2016 Loan Agreement and the other 2016 Loan Documents or any Additional Parity Bonds Loan Agreement, if any, and (b) any payment obligations constituting Additional Parity Bonds, in each case, equal as to priority to payment with the obligations in clause (a) hereof and equal in priority with respect to the Collateral (in each case, subject to any excluded Collateral contemplated in the Security Documents) pursuant to the Security Documents (and subject to the Intercreditor Agreement) as the obligations in clause (a) hereof.

“Bond Proceeds Sub-Account” means the 2016A Proceeds Sub-Account, the 2016B Proceeds Sub-Account, the 2016C Proceeds Sub-Account, the 2016D Proceeds Sub-Account, and any additional sub-account established for the deposit of proceeds of Additional Parity Bonds prior to the RSA Date into which all proceeds from the issuance of the 2016 Bonds and any Additional Parity Bonds, net of any original issue discount, underwriting discount or similar fee in respect thereof, and any amounts to be deposited in any related Debt Service
Reserve Sub-Account, if any, received by the Company pursuant to the terms of the Series 2016 Loan Agreement and, thereafter, any Account Interest or other earnings earned on such proceeds, shall be deposited.

“Bond Purchase Agreement” means the Bond Purchase Agreement entered into among the Company, the Bond Issuer, J.P. Morgan Securities LLC and RBC Capital Markets, LLC dated on or around the date of the Collateral Agency Agreement.

“Bond Resolution” means a resolution of the Bond Issuer adopted on January 27, 2014, authorizing the issuance of the 2016 Bonds, as supplemented by a resolution of the Bond Issuer adopted on April 18, 2016, and each such subsequent bond resolution issued or adopted by the Bond Issuer authorizing the issuance, sale and delivery of Additional Parity Bonds.

“Bonds” means the 2016 Bonds together with the Additional Parity Bonds issued from time to time pursuant to the Indenture, if any.

“Breakage Costs” means any commercially reasonable prepayment premiums or penalties (including customary and reasonable trustee, Collateral Agent and Lender fees but excluding any fees related to legal or other consulting costs), make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, payable by or on behalf of, or credited against payments owing to, the Company, under any Funding Agreement or Security Document or otherwise as a result of the payment (including pre-payment), redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date (less any breakage benefits), excluding, however, any such amounts included in the principal amount of any Refinancing. The term “Breakage Costs” excludes any such premiums, penalties, payments or other amounts relating to Subordinate Debt.

“Business Day” means (i) any day other than a Saturday, a Sunday or any other day on which commercial banks in New York City, New York or Maryland are required or authorized by law to be closed.

“Business Opportunity(ies)” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Advertising and Business Opportunities.”

“Buy America Requirements” means requirements applicable to FTA-funded projects under 49 U.S.C. §5323(j) and 49 C.F.R. Part 661, as each such statute and regulation may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“CAF” means Construcciones y Auxiliar de Ferrocarriles, S.A., a sociedad anónima formed under the laws of Spain.

“CAF USA” means CAF USA, Inc., a Delaware corporation.

“Calculation Date” means each March 31 and September 30 occurring after the RSA Date.

“Calculation Period” means a twelve (12) month period ending on a Calculation Date.

“Capacity Improvement” means any Project expansion, improvement, measure or procedure that both (a) maintains or increases the throughput capacity of the Project or any portion thereof and (b) improves the level of service of the Project. Capacity Improvements could include adding Stations, constructing bridges or other structures, new or improved intelligent transportation systems and applications, and making other improvements that achieve the foregoing conditions.

“Capital Contribution” means a capital contribution in the Company made directly or indirectly, by a Sponsor, in each case, by means of one or more cash equity contributions (including a transfer from the Applicable Senior Cash Collateral Account), a drawing on an Equity Letter of Credit or a Sponsor Subordinated Loan, pursuant to the Equity Contribution Agreement, other than capital contributions above any Sponsor’s Aggregate Capital Commitment.
“Capital Crescent Trail” means the paved trail and related improvements described in the Technical Provisions.

“Capital Expenditures” means (a) for purposes of the Indenture, expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one (1) year which are capitalized in accordance with GAAP; provided, that no payments made to the Design-Build Contractor from the proceeds of the Final Completion Payment, shall be included as Capital Expenditures for the purposes of the definition of “Free Cash Flow”; (b) for purposes of the TIFIA Loan Agreement, expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one (1) year which are capitalized in accordance with GAAP; provided that no payments made to the DB Contractor from the proceeds of the Final Completion Payment shall be included as Capital Expenditures for the purposes of the definition of “Net Cash Flow,” and (c) for purposes of the Collateral Agency Agreement, expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one (1) year which are capitalized in accordance with GAAP.

“Capitalized Interest Period” means the period from (and including) the Effective Date to (but excluding) the earlier of (a) March 11, 2022 and (b) the Revenue Service Availability Date.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act.

“Certificate of Revenue Service Availability” or “Certificate of P3 Revenue Service Availability” means the certificate issued by the Independent Engineer when all the conditions for the Project in the P3 Agreement have been satisfied in accordance with the procedures and within the time frame established in the P3 Agreement.

“Change in Law” means:

(a) With respect to the D&C Work, the enactment, adoption, modification, repeal or other change in any Law occurring after the Setting Date (including any change in the judicial or administrative interpretation of any Law) which is materially different from Laws in effect on the Setting Date and which (i) requires a material modification in the Project design, (ii) results in imposition of additional mitigation requirements on the Project respecting impacts on paleontological, biological or cultural (including archaeological and historical) resources, or (iii) prevents renewal of any Governmental Approval; and

(b) With respect to the O&M Work, the enactment, adoption, modification, repeal or other change in any Law occurring after the Setting Date (including any change in the judicial or administrative interpretation of any Law) which is materially different from Laws in effect on the Setting Date, including any Law requiring payment by the Company of a possessory interest or other ad valorem tax on property owned by the State;

but excluding (1) any such new Law or change which was passed or adopted prior to, but becomes effective after, the Setting Date, (2) any enactment, adoption, modification, repeal or other change in any tax Law of general application, except as specified in item (b) above, (3) any Changed D&C Standards resulting from any such new Law or change, and (4) any modification to the O&M Standards resulting from any such new Law or change.

“Change of Control” means, with respect to any Person, any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or Control or cause the direction or Control of the management of such Person or a significant aspect of its business; provided that the following shall not constitute a Change of Control:

(a) a change in possession of the power to direct or Control the management of such Person or a material aspect of its business due solely to bona fide open market transactions in securities
effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) a change in possession of the power to Control the management of such Person or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of such Person, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency;

(c) an upstream reorganization or transfer of direct or indirect interests in such Person so long as there occurs no change in the entity with ultimate power to Control or cause the Control of the management of such Person;

(d) the grant of a collateral assignment pursuant to the Security Documents or the exercise of remedies thereunder;

(e) the exercise of preferred or minority equity holder veto or voting rights (whether provided by applicable law or by such Person’s Organizational Documents) over major business decisions of such Person; or

(f) transfers of direct or indirect ownership interests in such Person between or among Persons that are under common Control with such Person;

provided that each sale, transfer or other disposal or reorganization described above shall be in compliance with all applicable laws and shall be to an entity that is not debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt and is not in violation of any applicable economic sanction laws administered by OFAC or by the United States Department of State or, to the extent applicable, the Patriot Act.

“Change of Ownership” means any “change in the ownership composition of a public-private partnership” under Section 10A-202(e) of Title 10A of the State Finance and Procurement Article of the Annotated Code of Maryland (Chapter 5, Acts 2013), including (a) any Equity Transfer, or (b) any other action that results, directly or indirectly, in a change in the power to direct or control or cause the direction or control of the management of the Project, including (i) a transfer of an interest, direct or indirect, in an Equity Member, the Company, the Company’s Interest or (ii) any other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction, or right of entry onto, use of, or right to manage and control the Project, of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise.

“Change Order” means a written order issued by the Contracting Authority directing the Company to make changes which the changes clause of the P3 Agreement authorizes the Contracting Authority to order with or without the consent of the Company. This written document amends the Contract Documents by adding, deleting or modifying the documents to include price, time, work and conditions not previously addressed within the Contract Documents.

“Change to Service Plan Report” shall mean a report provided by the Company with respect to a proposed change in the Service Plan, including the rationale and justification for change (or referring to a Request for Change Proposal from the Contracting Authority), information regarding proposed schedule changes and effect on operations, addressing relevant Service Levels and Reliability impacts of the proposed change.

“Changed D&C Standards” means changes made by the Contracting Authority which adopt, change or replace standards (including Safety Standards), criteria, requirements, conditions, procedures, specifications and other provisions of general application to design and construction of the Contracting Authority’s transportation
facilities, which may be implemented through revisions to existing manuals and publications or through new manuals and publications.

“CIG” means Capital Investment Grant.

“Claim” means a written demand or assertion by the Company, seeking, as a legal right, the payment of money, extension of time or interpretation of the terms of the Contract Documents, which is or potentially could be disputed by the Contracting Authority, or other relief arising under or relating to the P3 Agreement. Submittal of a PCO Notice or Request for Change Order under certain provisions in the P3 Agreement does not constitute a Claim.

“Clearing Agency” means any clearing agency or depository including the federal reserve/treasury book-entry system for United States and federal agency securities, and The Depository Trust Company.

“Closing Date” means, with respect to the 2016 Bonds, the date on which Financial Close occurs.

“Co-Collateral Agent” means the Person appointed as a Co-Collateral Agent by the Collateral Agent and the Company (with written notice to the Intercreditor Agent and the other Secured Parties), if at any time the Collateral Agent shall reasonably determine that such appointment shall be necessary or appropriate under applicable Law or in order to permit action to be taken under the Collateral Agency Agreement.

“Code” means the Internal Revenue Code of 1986 and the regulations promulgated and rulings issued thereunder, each as amended from time to time, and any successor statute.

“Codes and Standards” means the codes, standards, manuals, guidelines and other documents referenced in the Technical Provisions and Book 3 and incorporated into the Contract Documents by such reference.

“Collateral” means all real and personal property, now owned or hereafter acquired, which is or is intended to be subject to the security interests or Security Interests granted under any of the Security Documents.

“Collateral Agent” means (a) with respect to the P3 Agreement, the Design-Build Contract and the O&M Contract, the Institutional Lender listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the other Lenders in the Security Documents, or the Institutional Lender designated to act as trustee or agent on behalf of or at the direction of the other Lenders in an intercreditor agreement or other document executed by all Lenders to whom Security Documents are outstanding at the time of execution of such document, a copy of which shall be delivered by Concessionaire to the Contracting Authority, and in the event of any Project Debt issued and held by a single Lender, Collateral Agent means such Lender; and (b) for all other purposes, U.S. Bank National Association, in its capacity as collateral agent on behalf of itself and the other Secured Parties.

“Collateral Agency Agreement” means the Collateral Agency and Account Agreement, dated as of the Effective Date, by and among the Company, the Collateral Agent, the Securities Intermediary and the TIFIA Lender and each other Secured Party that accedes thereto in accordance with the Collateral Agency Agreement.

“Commercial Close” means the execution and delivery of the P3 Agreement by the parties thereto.

“Commercially Reasonable Insurance Rates” means insurance premiums that are less than or equal to the greater of (a) rates that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude are justified by the risk protection afforded, and (b) 200% of the rates indicated for the period in question in the Base Case Financial Model and related Financial Modeling Data.

“Committed Investment” means:

(a) Any form of direct investment of good and immediately available funds by Equity Members, including the purchase of equity shares in and/or the provision of Subordinate Debt to Concessionaire; or
(b) An irrevocable written commitment to make the direct investment referenced in clause (a) of this definition, in good and immediately available funds, by a date which is no later than 10 Business Days before the RSA Deadline, coupled with an on-demand letter of credit issued by or for the account of an Equity Member naming the Company as beneficiary, satisfying the applicable requirements of the P3 Agreement and guaranteeing such commitment.

“Company” or “Borrower” means Purple Line Transit Partners LLC, a Delaware limited liability company.

“Company Bankruptcy Related Event” means a Bankruptcy Related Event, but solely to the extent such Bankruptcy Related Event occurs with respect to the Company.

“Company Change of Control” means any Change of Control with respect to the Company.

“Company Contribution Notice” means a notice delivered by the Company to a Sponsor (with a copy to the Collateral Agent) indicating that a Capital Contribution is required to be made by such Sponsor by a certain date (such date to be at least seven (7) Business Days after the date of service of such notice) in accordance with the terms of the Equity Contribution Agreement.


“Company Indemnified Party(ies)” means the Company, the Lenders, the Lenders’ Technical Advisor, the independent engineer and each of their respective parents and affiliates, and their respective successors, assigns (but only permitted successors and assigns in the case of the Company), officers, directors, agents, representatives, consultants and employees.

“Company Insured Party(ies)” means the Company, the Lenders, the Lenders’ Technical Advisor, the independent engineer and each of their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

“Company Related Party” means, individually or collectively, (a) the Company and (b) each Equity Sponsor.

“Company Representative” means the Chief Financial Officer (or person performing a similar function) of the Company; any member of the Company; or any other individual (or individuals) so designated by the Company to act as Company Representative by written certificate furnished to the Bond Issuer, the Trustee, the Collateral Agent or any other Secured Party, as applicable, containing the specimen signature of such Person and signed on behalf of the Company by the Chief Executive Officer (or person performing a similar function) of the Company or by each Sponsor as the members of the Company. Such certificate may designate an alternate or alternates.

“Company’s Interest” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Provisions Relating to Financing of Company’s Obligations—Security.”

“Compensation Amounts” means the amount of compensation to be paid to the Company, if any, under a Change Order, which may include Incremental Costs, Delay Interest and Delay Costs, as agreed upon or determined through the Dispute Resolution Procedures.

“Concessionaire” means the Company.

“Concessionaire Default” means the occurrence of any one or more of the events or conditions constituting breaches or other defaults by the Company identified in the P3 Agreement, which are not cured within the applicable cure period.
“Concessionaire FC Notice” means the notice provided by the Company to the Contracting Authority under the P3 Agreement regarding the date scheduled for Financial Close, as amended or amended and restated from time to time.

“Concessionaire’s Design Quality Plan (CDQP)” means the deliverable described in the Technical Provisions, following approval by the Contracting Authority.

“Concessionaire Intellectual Property” means Proprietary Intellectual Property of the Company or third parties which is used or otherwise applied in connection with the Project or the Work. Intellectual Property that is created by the Company for the Project will be considered Concessionaire Intellectual Property only if such Intellectual Property has applications not restricted to the Project. Concessionaire Intellectual Property includes Source Code and Source Code Documentation with respect to Technology Enhancements.

“Concessionaire-Related Entity(ies)” means (a) the Company, (b) the Company’s Equity Members, (c) Contractors (including suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom the Company may be legally or contractually responsible and (f) the employees, agents, officers, directors, representatives, consultants, successors and assigns of any of the foregoing.

“Concessionaire Utility Agreement” means each agreement (if any) entered into between the Company and a Utility Owner that has not entered into a Contracting Authority Utility Agreement, in accordance with the P3 Agreement.

“Construction Account” means the “Construction Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Construction Completion Amount” means an aggregate amount equal to (i) any Project Costs incurred but not yet paid through and including the RSA Date plus (ii) any amounts projected to be payable with respect to D&C Work for the period from the RSA Date to and including the Final Completion Date, in each case as confirmed by the Lenders’ Technical Advisor.

“Construction Completion Certificate” means a certificate executed by an Authorized Representative of the Company and the Lenders’ Technical Advisor, instructing the Collateral Agent to retain in the Construction Account (or in one or more sub-accounts thereof) an aggregate amount equal to the Construction Completion Amount.

“Construction Documents” means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project included in the Construction Work, in accordance with the Contract Documents.

“Construction Funds Transfer Date” means the transfer date of a transfer by the Collateral Agent in accordance with an Approved Construction Requisition.

“Construction Period” means the period from the Effective Date (as defined in the TIFIA Loan Agreement) through the Substantial Completion Date.

“Construction Quality Plan (CCQP)” means the deliverable described in Part 2A, Section 14.3 of the Technical Provisions, following approval thereof by the Contracting Authority.

“Construction Requisition Certificate” means a certificate prepared by the Company in accordance with the terms of the Collateral Agency Agreement substantially in the form appended to the Collateral Agency Agreement containing the certifications by the Company required by the Collateral Agency Agreement with respect to a requested transfer of funds from the Construction Account.
“Construction Work” means all Work that under the P3 Agreement constitutes building, altering, repairing, improving or demolishing any structure, building, or other improvement to real property (including the Fixed Facilities and Fixed Equipment) included in the Project, including testing and commissioning, but excluding: (a) design, architectural, engineering, surveying, professional environmental services and similar services; (b) preparing and processing applications for Governmental Approvals; (c) coordinating with adjacent property owners and Utility Owners; (d) manufacturing and supply of LRVs (provided that Construction Work includes testing and commissioning of LRVs at the Site (excluding Project-Specific Locations); (e) Operations Work; and (f) maintenance services during the O&M Period that (i) are not performed under a Major Construction Contract, and (ii) do not constitute building, altering, performing major repairs to, improving or demolishing any structure, building or other improvement to real property.

“Consumer Price Index (CPI)” means the “All Items Consumer Price Index for All Urban Consumers” (CPI-U), for the U.S. City Average, as published by the United States Department of Labor Bureau of Labor Statistics, base year [1982-84 = 100]. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury’s Inflation Linked Treasuries as described at 62 Federal Register 846-847 (January 6, 1997), or if no such securities are outstanding, will be determined by the parties in accordance with general market practice at the time.

“Contingent O&M Payment” has the meaning set forth in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—Termination Due to the P3 Agreement Termination for Insurance Unavailability.”

“Continuing Disclosure Agreement (Company)” means the Continuing Disclosure Agreement, dated as of the Closing Date, between the Company and U.S. Bank National Association, as dissemination agent, pursuant to the Rule.

“Continuing Disclosure Agreement (Contracting Authority)” means the Continuing Disclosure Agreement, dated as of the Closing Date, by the Contracting Authority, pursuant to the Rule.

“Continuing Disclosure Agreements” means each of (i) the Continuing Disclosure Agreement (Company) and (ii) the Continuing Disclosure Agreement (Contracting Authority).

“Contract” means any agreement, and any modification of such agreement, by the Company with any other Person, Contractor or supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement or modification at a lower tier, between a Contractor and its lower tier subcontractor or supplier or a supplier and its lower-tier supplier, at all tiers.

“Contract Deadlines” means any of the Financial Close Deadline, RSA Deadline, Long Stop Date and Final Completion Deadline. The term “Contract Deadlines” means more than one Contract Deadline.

“Contract Documents” means:

(a) with respect to the P3 Agreement, the following documents. Each of the Contract Documents is an essential part of the agreement between the Parties. The Contract Documents are intended to be complementary and to be read together as a complete agreement. Subject to the P3 Agreement, in the event of any conflict, ambiguity or inconsistency within the Contract Documents, the order of precedence among the following Contract Documents, from highest to lowest, is as follows:

(i) Change Orders and other Modifications, and all Exhibits, appendices, annexes and attachments to such Change others and other Modifications;

(ii) The P3 Agreement, including Exhibits 1 through 16 to the P3 Agreement, and the executed originals of Exhibits to the P3 Agreement that are contracts, except that Sections 1, 2, 4, 5, 6 and 7 of Exhibit 2 have lower priority as specified below;
The Company’s Proposal commitments identified in Section 1 to Exhibit 2;

Deviations from requirements of the Technical Provisions approved by the Contracting Authority in accordance with the Instructions to Proposers, with respect to the ATCs identified in Section 2 of Exhibit 2 to the P3 Agreement;

Technical Provisions, including all exhibits and attachments to the Technical Provisions;

Codes and Standards (Book 3);

Contract Drawings (Book 4);

Engineering Data (Book 5); and

Those portions of the Proposal identified and incorporated by reference in Exhibit 17 to the P3 Agreement.

with respect to the O&M Contract and the Design-Build Contract:

the P3 Agreement and the definitions exhibit thereto;

exhibits to the P3 Agreement, excluding the definitions exhibit thereto;

duly authorized and executed scope change orders and amendments to the Design-Build Contract or the O&M Contract, as applicable, and the definitions exhibit thereto;

the Design-Build Contract and the definitions exhibit or the O&M Contract and the definitions exhibit, as applicable;

deviations from requirements of the Technical Provisions approved by the Contracting Authority;

Technical Provisions, including all exhibits and attachments to the Technical Provisions;

exhibits to the Design-Build Contract or the O&M Contract, as applicable, excluding the definitions exhibit; and

codes and standards, contract drawings and engineering data.


“Contract Month” generally means each calendar month during the O&M Period, except that (a) the first Contract Month will be the full or partial month that commences on the O&M Commencement Date and (b) the last Contract Month will be the full or partial month that includes the last day of the P3 Term. Where reference is made to a 3-Contract Month period, this means each consecutive three Contract Month period commencing on the O&M Commencement Date.

“Contract Termination Costs” means net costs that have been or will be incurred by the Company as a direct result of termination of the P3 Agreement arising from termination of Contracts, including reasonable and documented demobilization costs, but only to the extent that (a) such costs are incurred in connection with the Project and relate to provision of services or the completion of Work required to be provided by the Company; (b) such costs are incurred under arrangements and/or agreements that (i) are consistent with terms of the P3 Agreement, (ii) have been entered into in the ordinary course of business, (iii) do not provide for payments to or for the benefit of employees that exceed reasonable compensation for services provided, and (iv) in the case of
Contracts with Affiliates, are on commercially reasonable terms, and (c) each of the Company and the relevant Contractors has used commercially reasonable efforts to mitigate such costs.

“Contract Year” generally means each consecutive 12 Contract Month period except that the last Contract Year will include the last day of the Term and be a consecutive 13 Contract Month period if the first Contract Month was a partial month.

“Contracting Authority” means MTA and MDOT, and any entity succeeding to the powers, authorities and responsibilities of either the Maryland Transit Administration or the Maryland Department of Transportation, invoked by or under the Contract Documents.

“Contracting Authority-Caused Delay” means any delay to the Critical Path under the P3 Agreement (with respect to the D&C Work) or delay to performance of any material Company obligation under the P3 Agreement (with respect to the O&M Work) arising from the following matters and no others:

(a) Any Contracting Authority Change;

(b) Failure or inability of the Contracting Authority to make real property available under the P3 Agreement by the date specified in the Property Acquisition Schedule (or, with respect to properties identified in the P3 Agreement, by the date specified therein) and thereafter to maintain availability of said real property in accordance with the P3 Agreement so as to allow performance of the Work to proceed;

(c) Failure of a Third Party or Utility Owner to approve a Project Execution Plan in accordance with the applicable Third Party Agreement or Contracting Authority Utility Agreement within the time frame specified in such agreement, or if no time frame is specified, within a reasonable period of time following the Company’s submittal to such Third Party or Utility Owner of a Project Execution Plan in final form and meeting all applicable requirements;

(d) Any suspension of Work order issued (or deemed issued) by the Contracting Authority for its convenience under the P3 Agreement;

(e) Contracting Authority direction to uncover, remove, and restore Work, if the Contracting Authority (i) had the opportunity to inspect the Work before it was covered, (ii) orders the Work uncovered after the fact, and (iii) the Work exposed proves acceptable;

(f) The Contracting Authority’s failure to provide responses to Submittals under the P3 Agreement requiring Contracting Authority approval within (i) the time periods (if any) indicated in the P3 Agreement, or (ii) if no time period is indicated in the Contract Documents, within a reasonable time, provided that determination of a reasonable time under this subparagraph (ii) shall take into consideration, as applicable, (A) the nature, importance and complexity of the Submittal, (B) the number of Submittals or such other items which are then pending for Contracting Authority’s response, (C) the completeness and accuracy of the Submittal or such other item, and (D) Contracting Authority’s decision to perform detailed scrutiny or Submittals due to the Company’s history of providing Submittals that fail to comply with requirements of the Contract Documents;

(g) The Contracting Authority’s failure to perform or observe any of its material covenants or obligations under the P3 Agreement or the Contract Documents or to comply with Law or Governmental Approvals;

(h) An order issued by the Contracting Authority under the P3 Agreement which affects service, including an order to slow down or stop train service on the System;
Failure of any Contracting Authority personnel or police personnel to act in accordance with Standard Operating Procedures and/or the system operating rules provided to the Contracting Authority in writing;

Any other interruption, slowdown, partial or complete shutdown of service on the System which occurs due to the Contracting Authority’s operations within the Project ROW;

Except to the extent provided otherwise in subsection (m) of this definition with respect to the Silver Spring ATC Work, any failure of a Third Party to provide responses to Submittals within the time period indicated in the P3 Agreement or other time specified in a Third Party Agreement or any other breach of a Third Party Agreement by the Third Party that has a material adverse effect on the Company’s performance of a Third Party Agreement Requirement, provided that an Contracting Authority-Caused Delay under this subsection (k) shall not commence until two business days after the Company notifies the Contracting Authority regarding such Third Party failure or breach, identifying its impact on the Critical Path;

Any delay to or interference with the Work directly attributable to other projects undertaken by the Contracting Authority within the Project ROW during the Design-Build Period that are not identified in the Contract Documents; and

Any delay in obtaining a Governmental Approval required from Montgomery County, WMATA or the Maryland-National Capital Park and Planning Commission (Montgomery County) with respect to the Silver Spring ATC Work beyond one hundred and eighty (180) days from submission of the Design-Build Contractor’s complete and conforming application for such approval, meeting the agency’s quality requirements;

provided, in all cases that (i) the delay is beyond the Company’s control and is not due to (A) any breach of contract by a Company-Related Entity; (B) any act or omission of a Company-Related Entity not authorized by the Contract Documents; or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws or Governmental Approvals by any Company-Related Entity; and (ii) such delay could not reasonably have been avoided by any Company-Related Entity.

“Contracting Authority Change” means any of the following:

A change in the Work (including changes in the standards applicable to the Work) that the Contracting Authority has directed the Company to perform as described in the P3 Agreement;

Any suspension of Work order issued (or deemed issued) by the Contracting Authority for its convenience under the P3 Agreement;

Changes in the Work directly attributable to changes in the requirements of any Contracting Authority-Provided Approvals after the Proposal Date, except as otherwise provided in the P3 Agreement;

Any modification to the terms and conditions of any Third Party Agreement or Utility Agreement approved by the Contracting Authority in writing after the Setting Date (other than modifications after the Setting Date and prior to March 1, 2016, as indicated in Part 1 of the Technical Provisions as of March 1, 2016) that has a material impact on the Company’s obligations under the Contract Documents during the Design-Build Period;

Any material modification in the Project design or requirement to perform Extra DB Work directly attributable to (i) the Contracting Authority’s failure to perform or observe any of its material covenants or obligations under the P3 Agreement or the Contract Documents or to comply with Law or Governmental Approvals or (ii) other projects undertaken by the Contracting Authority
within the Project ROW during the Design-Build Period that are not identified in the Contract Documents; and

(f) Any other change in the Work that the Contract Documents expressly state shall be treated as an “Contracting Authority Change.”

A Contracting Authority Change is a Relief Event, and any delay resulting from a Contracting Authority Change is a Contracting Authority-Caused Delay, in each case, subject to the conditions and limitations in the definitions of “Relief Event” and “Contracting Authority-Caused Delay.”

“Contracting Authority Default” means the occurrence of any one or more of the following events:

(a) The Contracting Authority fails to make any payment due to the Company under the P3 Agreement when due, provided that such payment is not subject to a Dispute; or

(b) Subject to the P3 Agreement, any representation or warranty made by the Contracting Authority under the P3 Agreement is false, misleading or inaccurate in any material respect when made or omits material information when made.

“Contracting Authority FC Notice” means the notice (if any) provided by the Contracting Authority to the Company under the P3 Agreement regarding extension of the date scheduled for Financial Close.

“Contracting Authority Funding Sub-Account” means the “Contracting Authority Funding Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Contracting Authority Intellectual Property” means Intellectual Property owned by or licensed to the Contracting Authority, other than Concessionaire Intellectual Property.

“Contracting Authority-Provided Approvals” means the Governmental Approvals listed in Exhibit 8 to the P3 Agreement.

“Contracting Authority Termination Notice” means a notice of termination delivered by the Contracting Authority pursuant to the P3 Agreement exercising its rights to terminate (conditional or otherwise) the P3 Agreement in accordance with the terms of the P3 Agreement.

“Contracting Authority Utility Agreement” means each agreement between a Utility Owner and the Contracting Authority described in Part 1, Section 9 of the Technical Provisions.

“Contractor” means any Person with whom the Company has entered into any Contract to perform any part of the Work or provide any materials, equipment or supplies for the Project on behalf of the Company, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers. The term “Contractor” does not include Utility Owners or the Independent Engineer.

“Contribution Date” means the date by which a Capital Contribution is required to be made (directly or indirectly) by a Sponsor as set forth in the relevant Contribution Notice and as per the terms of the Equity Contribution Agreement.

“Contribution Notice” means a notice delivered by the Company or the Collateral Agent to a Sponsor indicating that a Capital Contribution is required to be made by such Sponsor by a certain date (such date to be at least seven (7) Business Days after the date of service of such notice) in accordance with the terms of the Equity Contribution Agreement.

“Control” means, (a) with respect to the Collateral Agency Agreement, when used with respect to any entity, any other entity having the power, directly or indirectly, to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise (and the
term “Controlling” has a corresponding meaning); and (b) with respect to the TIFIA Loan Agreement, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “Controlling,” “Controlled by” and “under common Control with” have meanings correlative to the foregoing.

“Control Agreement” means a deposit account control agreement among the Company, the Collateral Agent and the Deposit Account Bank with respect to the Operating Account (or any Other Operating Account) in substantially the form attached to the Collateral Agency Agreement, or in form and substance reasonably satisfactory to the Intercreditor Agent.

“Controlling Affiliate” means any Person which directly, or indirectly through one or more intermediaries, controls a majority of the voting shares of the Company, or controls the election of a majority of the board of directors, trustees or other persons exercising similar functions for the Company. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

“Cost and Pricing Data” means the data (including calculations, formulas, unit and material prices, and other cost and fee information) assembled by the Company, delivered as specified in the Instructions to Proposers and maintained as specified in the P3 Agreement, which data supports and explains the basis of the Company’s cost estimates, as applicable, for either the development, design, construction, operations and maintenance of the Project and provides all cost assumptions for human resources, including, in the case of the Company, the salary and benefits during the O&M Period for non-management personnel performing the Work. The term also includes data regarding pricing for Modifications and certain Contracts, as described in the P3 Agreement.

“Coverage Ratio Restricted Payment Conditions” means each of the following Restricted Payment Conditions: (a) the Total Debt Service Coverage Ratio as of the most recent Calculation Date (which may occur on such Semi-Annual Payment Date) and as of the Calculation Date immediately preceding such Calculation Date is or was, as applicable, equal to at least 1.20:1.00 and the Total Debt Service Coverage Ratio as of the four (4) consecutive Calculation Dates following the most recent Calculation Date is projected to be at least 1.20:1.00; (b) the TIFIA Lender has received, no earlier than ten (10) Business Days and no later than three (3) Business Days prior to the applicable Restricted Payment Date, a certificate signed by the Company’s Authorized Representative certifying as to the Restricted Payment Conditions, including a TIFIA coverage certificate providing calculations in reasonable detail of the applicable coverage ratios; and (c) the Total Debt Service Coverage Ratio as of the applicable Calculation Date (i) is not less than 1.20:1.00 for the most recent twelve (12) month period ending on such Calculation Date (or, if prior to the first anniversary of the Revenue Service Availability of the Project, for any shorter period from such Revenue Service Availability of the Project annualized for a twelve (12) month period) and (ii) is projected to be at least 1.20:1.00 for the next twenty-four (24) month period commencing on such Calculation Date, in each case, as set forth in a Senior Coverage Certificate provided by the Company to the Collateral Agent setting forth such Total Debt Service Coverage Ratio.

“Credit Balances and Insurance Proceeds” means all credit balances held by or for the benefit of the Company on the Termination Date and any insurance proceeds or other amounts owing to the Company or to which the Company would have been entitled had insurance been maintained pursuant to the requirements of the P3 Agreement.

“Critical Path” means each path shown on the Baseline Schedule for which there is zero Float.

“Critical Path Method (CPM)” is a method of planning and scheduling a construction project where activities are arranged based on activity relationships.

“CS&Co.” means Charles Schwab & Co., Inc.

“CSX” means CSX Transportation which is a Class I railroad operator on the East Coast, including in the State.
“D&C Design Services” means certain types of work identified in the P3 Agreement.

“D&C Construction Services” means certain types of work identified in the P3 Agreement.

“D&C Payment Cap” means the annual and aggregate cap on Progress Payments.

“D&C Work” (a) has, with respect to the P3 Agreement, the meaning given in APPENDIX C — “SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT – Design and Construction,” and (b) for all other purposes, means all Work to be performed prior to the RSA Date, as well as any Work remaining to be performed after such date by (i) the Design-Build Contractor or (ii) the LRV Supplier for the initial LRV order, which excludes for purposes of clarity the O&M Spare LRV, LRV components and related consumables obtained and supplied during the O&M Period.

“Daily Operations Performance Factor” means the result of the calculation for each day during the O&M Period determined in accordance with the P3 Agreement.

“DB Contractor’s Equity Member(s)” means any Person with a direct equity interest in the Design-Build Contractor.

“DB Extended Delay” means (a) a DB Extended FM Event or (b) a combination of Force Majeure Events, Relief Events and Contracting Authority-caused delays during the Design-Build Period that have resulted in a delay to the critical path of 365 days or more.

“DB Extended Delay Notice” has the meaning given in APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termi nation of the DB Contract—Termination Due to DB Extended Delay or the P3 Agreement Termination for Extended Delay—DB Extended Delay – 180 Days of Delay.”

“DB Extended FM Event” means:

(a) a single Force Majeure Event or Relief Event (other than Contracting Authority changes, Contracting Authority-caused delays and Relief Events for which the Company is entitled to claim incremental costs and delay costs under the P3 Agreement and the Design-Build Contractor is, in turn, entitled to claim such incremental costs and delay costs under the Design-Build Contract) that has materially prevented or delayed the Design-Build Contractor from performing a substantial portion of its obligations under the Design-Build Contract during the Design-Build Period for a period of 180 days or more in the aggregate within a period of 365 consecutive days; or

(b) a single Force Majeure Event or Relief Event (other than Contracting Authority changes, Contracting Authority-caused delays and Relief Events for which the Company is entitled to claim incremental costs and delay costs under the P3 Agreement and the Design-Build Contractor is, in turn, entitled to claim such incremental costs and delay costs under the Design-Build Contract) that has resulted in damage or loss to a material portion of the Project during the Design-Build Period that the Contracting Authority has determined is not in the public interest to repair or replace, and 180 days have passed since the occurrence thereof.

“DB Final Completion” means that all DB Work is complete and all other prerequisites for DB Final Completion have been met. DB Final Completion is deemed to have occurred upon satisfaction of all the conditions in the Design-Build Contract, as confirmed by the Company’s countersignature of a DB Final Completion certificate signed by the Design-Build Contractor in accordance with the procedures and within the time frame established in the Design-Build Contract.
“DB Letter of Credit” means a “Concessionaire Construction Letter of Credit” (as defined in the Design-Build Contract) required to be provided by the Design-Build Contractor to the Company in accordance with the responsibilities of the Design-Build Contract.

“DB Letter of Credit Consent to Assignment” means any consent by the issuing bank of the DB Letter of Credit to assignment by the Company to the Collateral Agent of the letter of credit proceeds of the DB Letter of Credit.

“DB P&P Bonds” means, individually and in the aggregate, as applicable: (a) any one or more payment bonds required to be delivered by the DB Contractor to the Company pursuant to the Design-Build Contract and (b) any one or more performance bonds required to be delivered by the DB Contractor to the Company pursuant to the Design-Build Contract.

“DB Performance Security Instruments” means, individually and in the aggregate, as applicable:

(a) the Design-Build Guaranties;
(b) the DB P&P Bonds;
(c) the DB Letter of Credit; and
(d) any other performance security instrument required to be delivered by or on behalf of the DB Contractor to, or for the benefit of, the Company from time to time pursuant to or in connection with the Design-Build Contract.

“DB Revenue Service Availability” means all DB Work is complete (except for punch list items that do not affect normal and safe use and operation of the system and any DB Work that, by its nature, is to be performed after the DB RSA Date). DB Revenue Service Availability is deemed to have occurred upon satisfaction of all the specified conditions in the Design-Build Contract, as confirmed by the Company’s countersigning of the DB Revenue Service Availability certificate in accordance with the procedures and within the time frame established in the Design-Build Contract.

“DB RSA Date” means the date on which DB Revenue Service Availability actually occurs under the Design-Build Contract.

“DB Work” has the meaning set forth in “THE PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—Scope of Work.”

“DBE Goal” means the goal for percentage of Work to be performed by certified DBEs, which goal is that established by the Contracting Authority for the Project, as specified in the P3 Agreement.

“DBE Participation Plan” means the participation plan required under the P3 Agreement.

“DBM” means the State’s Department of Budget and Management.

“DBRS” means DBRS Ratings Limited.

“Dealer Agreement” means the dealer agreements by and between J.P. Morgan and each of CS&Co. and LPL.

“Debt Service Payment Commencement Date” means the earlier of (a) March 31, 2022 and (b) the first Semi-Annual Payment Date occurring after the Revenue Service Availability Date.
“Debt Service Reserve Account” means the “Debt Service Reserve Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Debt Service Reserve Required Balance” means, individually and collectively, as applicable, any Senior Debt Service Reserve Required Balance or the TIFIA Debt Service Reserve Required Balance.

“Debt Service Reserve Sub-Account” means each sub-account of the Debt Service Reserve Account established and created from time to time in the name of the Company pursuant to the Collateral Agency Agreement.

“Deduction” means a deduction by the Contracting Authority under the P3 Agreement from the relevant Monthly Availability Payment in accordance with the P3 Agreement.

“Default” means any event or circumstance that, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

“Default Rate” means an interest rate equal to the TIFIA Interest Rate plus 200 basis points.

“Default Termination Event” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Termination of the P3 Agreement—Termination for Concessionaire Default.”

“Defaulting Sponsor” means a Sponsor who (a) fails to make, in whole or in part, a payment due by it in accordance with the Equity Contribution Agreement; and (b) payment is not made by (i) the issuer of such Sponsor’s relevant Equity Letter of Credit, if any, and/or (ii) a draw of the relevant amount from the Applicable Sponsor Cash Collateral Account, if available, in each case, pursuant to the Equity Contribution Agreement.

“Defeasance Escrow Account” means the “Defeasance Escrow Account” established and created pursuant to the Indenture.

“Defeasance Securities” means to the extent permitted by Law: (a) cash, (b) non-callable direct obligations of the United States of America (“Treasuries”), (c) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any Person claiming through the custodian or to whom the custodian may be obligated, (d) pre-refunded municipal obligations rated no lower than the then-current rating on direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), (e) securities eligible for “AA+” defeasance under then-existing criteria of S&P or (f) any combination thereof used to effect defeasance of the Bonds.

“Delay Costs” means indirect costs incurred by the Company due to a delay, including extended overhead, unabsorbed home office overhead, idle labor and equipment costs, additional storage costs, and labor and material cost escalation, but excluding costs relating to the Project Debt, to the extent provided in the P3 Agreement.

“Delay Interest” means:

(a) interest on the Project Debt (including commitment or standby fees on undrawn loan facilities) that accrues during the RSA Extension Period, but excluding (i) any interest accruing on interest that has been capitalized as a result of any prior or concurrent delays not attributable to a Relief Event or Force Majeure Event and (ii) any interest accruing during a period for which Availability Payments are being made under the P3 Agreement;

(b) any payments owing on account of standby letters of credit securing Committed Investments that are properly allocable to the RSA Extension Period;
(c) the Collateral Agent’s fees and TIFIA loan servicing fees related to Project Debt amendments, excluding change fees, penalty payments, legal fees or similar costs; and

(d) any additional payments on account of debt service payable during an Extended Delay during the Design-Build Period, as identified in the P3 Agreement.

No Delay Interest will be deemed to accrue if the RSA Date is earlier than the RSA Deadline in effect prior to the time extension.

“Delay Liquidated Damages” means the DB Revenue Service Availability liquidated damages and the DB Final Completion delay liquidated damages payable by the Design-Build Contractor under the Design-Build Contract.

“Deposit Account Bank” means the bank at which the Company elects to maintain the Operating Account (and any Other Operating Account, if any) in accordance with this Agreement, which bank (which must be a single bank with respect to all such accounts) (i) is organized under the laws of the United States of America or any state thereof, (ii) has unsecured long-term debt which shall be rated “A−” or better by S&P or “A3” or better by Moody’s and (iii) has a total capital stock and unimpaired surplus of not less than $500,000,000, and any Person appointed to replace such Person pursuant to the Collateral Agency Agreement.

“Design-Build (DB) Contract” means the Design-Build Contract for the Project, dated as of April 7, 2016, between the Company and the Design-Build Contractor, and any replacement contract entered into by the Company in accordance with the terms of the Finance Documents.

“Design-Build (DB) Contractor” means Purple Line Transit Constructors, LLC, whose members are Fluor Enterprises, Lane and Traylor, and any replacement contractor party to a replacement Design-Build Contract entered into in accordance with the terms of the Finance Documents.

“Design-Build Contractor Member” means each of Fluor Enterprises, Lane or Traylor, who are the members of the Design-Build Contractor.

“Design-Build (DB) Contractor Party” means each of (a) Fluor Enterprises, (b) Lane, and (c) Traylor.

“Design-Build Contractor Indemnified Party” means the Design-Build Contractor, each of its parents and affiliates, and the directors, officers, agents, employees, successors and assigns of each of them.

“Design-Build Direct Agreement” means the Direct Agreement (Design-Build Contract and Interface Agreement), to be dated on or prior to Financial Close, by and among the Design-Build Contractor, the Company and the Collateral Agent, and any replacement contract entered into from time to time in accordance with the terms of the Finance Documents.

“Design-Build (DB) Guarantors” means Fluor, Salini and Traylor and any replacement guarantor party to a replacement Design-Build Guaranty entered into from time to time in accordance with the terms of the Finance Documents.

“Design-Build Guaranty” means, individually and collectively, (i) the Guaranty dated as of April 7, 2016 by Fluor in favor of the Company, (ii) the Guaranty dated as of April 7, 2016 by Salini in favor of the Company and (iii) the Guaranty dated as of April 7, 2016 by Traylor Bros., Inc. in favor of the Company, and in each case, any replacement contract entered into in accordance with the terms of the Finance Documents.

“Design-Build Guaranty Consent and Agreement” means each of the Consents and Agreements (Design-Build Contract Guaranty), to be entered into, on or before Financial Close, by and among Concessionaire, a DB Guarantor and the Collateral Agent, substantially in the form attached as an exhibit to the Design-Build Contract (as amended or restated from time to time thereafter).
“Design-Build Period” means that portion of the P3 Term that commences on the Commercial Close and ends at 11:59 p.m. on the day immediately preceding the O&M Commencement Date.

“Design Documents” means those documents that manifest the design for the Project, at all stages, as developed by the Company or any portion, component or element thereof, including design required in connection with the operation and maintenance of the Project and Renewal Work, in each case irrespective as to whether such documents are required by the Contract Documents or are prepared or used by the Company in the Design Work. Design Documents include the Final Design Documents.

“Design Work” means all Work consisting of design, engineering, architecture or other professional services for the Project, including all such Work performed under the LRV Subcontract, and also includes other D&C Work (except for work under LRV Subcontract) included in the Work but not encompassed within the definition of Construction Work.

“Designated Payment Office” means the corporate trust office of U.S. Bank National Association, a national banking association, whose corporate trust office is located at 1021 East Cary Street, Suite 1850, Richmond, Virginia 23219, Attention: Global Corporate Trust Services.

“Designated Representative” means, at any time:

(a) with respect to the Owners of the 2016 Bonds, the Trustee;
(b) with respect to the TIFIA Loan, the TIFIA Lender;
(c) with respect to any Hedging Agreement, the relevant Hedge Provider on its own behalf; and
(d) with respect to any Additional Secured Party, such Additional Secured Party or any trustee or agent acting on its behalf pursuant to the relevant Finance Documents.

“Desktop Method” means the calculation methodology described in the P3 Agreement, involving a calculation that is not adjusted for market values or conditions. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT – Termination Compensation for Concessionaire Default During Design-Build Period.

“Development Default” means (a) the Company fails to diligently prosecute the work related to the Project or (b) the Company fails to achieve Substantial Completion in accordance with the Financial Plan most recently approved by the TIFIA Lender.

“Differing Site Conditions” means (i) subsurface or latent physical conditions that are encountered at the Site (excluding Project-Specific Locations) and differ materially from the conditions indicated in the Contract Documents (also known as Type I conditions), and (ii) subsurface physical conditions of an unusual nature at the Site (but excluding Project-Specific Locations) differing materially from those ordinarily encountered on and generally recognized as inherent in work of the character (also known as Type II conditions). Claims based on Differing Site Conditions are subject to the limitations stated in Sections 6.2 and 15.3.1(b) to the P3 Agreement.

“Direct Agreements” means (a) with respect to the P3 Agreement, the agreement substantially in the form of Exhibit 5B to the P3 Agreement, by and among the Contracting Authority, the Company and the Lender (or if there is more than one Lender, the Collateral Agent on behalf of the Lenders) respecting certain of Lenders’ rights under the Contract Documents and (b) for all other purposes, collectively, (i) the Design-Build Direct Agreement, (ii) each Design-Build Guaranty Consent and Agreement, (iii) the O&M Direct Agreement, (iv) each O&M Guaranty Consent and Agreement and (v) the P3 Direct Agreement.

“Direct Participant” means DTC’s participants.
“Direction Notice” means a notice to the Collateral Agency from the Intercreditor Agent with respect to an Enforcement Action in relation to an Event of Default.

“Disadvantaged Business Enterprise (DBE)” has the meaning given in 49 C.F.R. Part 26.

“Discretionary Capital Expenditures” means any Capital Expenditures (other than Capital Expenditures that are Renewal Expenditures) that either (a) are required to be incurred by the Company in connection with, and pursuant to, the P3 Agreement or (b) have been certified as being reasonable by the Lenders’ Technical Advisor.

“Discriminatory Change in Law” means any Change in Law (including changes in tax Law) during the P3 Term which is principally directed at and the effect of which is principally borne by the Company, including Concessionaire-Related Entities, or private transit owners or operators in the State, except where such change (a) is in response, in whole or in part, to any failure to perform or breach of the Contract Documents, violation of applicable Law or Governmental Approval, or culpable acts or omissions on the part of any Concessionaire-Related Entity, (b) is a directive by the U.S. Department of Homeland Security or comparable State agency, unless such directive is directed solely at or solely affects the Project and requires specific changes in the Company’s normal design, construction, operation or maintenance procedures in order to comply, or (c) is otherwise expressly permitted under the Contract Documents.

“Discriminatory Change in O&M Standards” means the alteration or changes (including additions) to the O&M Standards, including Changed D&C Standards applicable to Design Work and Construction Work included in the O&M Work, if (a) application of such standards to the Company or the Project is materially more onerous than the application of such standards to other comparable Contracting Authority projects, or (b) such standards are not applied to other comparable Standards to the Company or the Project shall not considered a Discriminatory Change in O&M Standards if (i) imposed in response to any failure to perform or breach of the Contract Documents, violation of applicable Law or Governmental Approval, culpable act or culpable omission by any Concessionaire-Related Entity; (ii) required for Safety Compliance; (iii) in response to a directive by the U.S. Department of Homeland Security or comparable State agency, unless such directive is directed solely at or solely affects the Project and such application requires specific changes in the Company’s normal design, construction, operation or maintenance procedures in order to comply; or (iv) for the purpose of addressing potential safety concerns arising from a specific condition or feature peculiar to the Project due to the Company’s design or construction.

“Dispute” means any Claim, dispute, disagreement or controversy between the Contracting Authority and the Company concerning their respective rights and obligations under the Contract Documents, including concerning any alleged breach or failure to perform and remedies.

“Dispute Resolution Board (DRB)” means either the technical or financial Dispute Resolution Board established under the P3 Agreement.

“Dispute Resolution Procedures” means the Parties right to submit written evidence to the DRB regarding a Dispute, and will be given an opportunity to respond to the evidence presented by the other, including participating in a hearing to the extent the DRB calls one in relation to a particular Dispute. The DRB will have 60 days to provide notice of its decision and summary of reasons for the decision reached. A limited category of Disputes will be outside of the jurisdiction of the DRBs and will be directly referred to the MDOT Secretary for resolution rather than a DRB. The following Disputes are outside of the jurisdiction of the DRBs: (a) the interpretation or application of the Contracting Authority codes and standards over which the Contracting Authority has jurisdiction for enforcement in its capacity as a regulator, and (b) Disputes involving interpretation of federal or State Law or policies. The decision of the DRB is not binding. Unless both Parties agree in writing to the contrary, the decision of the DRB shall not be admissible in any judicial proceeding. Referral of a matter to the DRB is not mandatory and does not waive the requirements of the P3 Agreement to file timely notice of Claim(s).

“Distribution Account” means a distribution account established and created with the Collateral Agency in the name of the Company on or prior to the RSA Date that does not constitute a Project Account and is not subject to the Security Interest of the Collateral Agent for the benefit of the Secured Parties, from which the Company shall have the exclusive right to withdraw or otherwise dispose of funds.

“Distributions” means any of the following, whether in cash or in kind, and whether made or projected to be made:

(a) Any:

(i) Dividend or other distribution in respect to share or other capital;

(ii) Payment or other distributions in reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;

(iii) Payments (whether of principal, interest, Breakage Costs or otherwise) on Subordinate Debt;

(iv) Payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it is neither in the ordinary course of business nor on reasonable commercial terms; and

(v) Receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms, or

(b) The early release of any contingent funding liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

Such dividends, distributions, payments or other benefits include proceeds of any Refinancing.

“Documents” means all documents or other receipts of the Grantor covering, evidencing or representing Inventory or Equipment.

“Dollars,” “U.S. Dollars” or “$” means the lawful currency of the United States of America.

“DRB” means Dispute Resolution Board.

“DTC” means The Depository Trust Company of New York.

“DTO” means Denver Transit Operators.

“Early Termination Date” means the effective date of termination of the P3 Agreement, prior to the stated expiration of the Term, under the P3 Agreement.

“Effective Date” means (a) with respect to the P3 Agreement, the date of execution, by both Parties, of the P3 Agreement, (b) with respect to the Collateral Agency Agreement, the date of the Collateral Agency Agreement, (c) with respect to the Design-Build Contract, the date of the Design-Build Contract, and (d) for all other purposes, the date of the TIFIA Loan Agreement.

“EIS” means environmental impact statement.

“Electrical Power Usage Report” means report regarding electrical power usage during the O&M Period required to be provided each month under to the P3 Agreement, showing usage during the prior month and year to date, in the form required by the P3 Agreement.
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Eligible Insurer” means an insurance company meeting the requirements of applicable Law, licensed or authorized to do business in the State and rated at least “A-” by Standard and Poor’s or “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating, both at policy inception and for the duration of its placement of insurance.

Eligible Project Costs” means the amounts identified as Eligible Project Costs in the Project budget, substantially all of which are paid by or for the account of the Company in connection with the Project, and which include prior Project expenditures approved by the TIFIA Lender and FTA, all of which shall arise from the following:

(a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; or

(c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided that Eligible Project Costs must be consistent with 23 U.S.C. § 601 et seq., 49 U.S.C. § 5302(3), the standard costs categories described in Schedule I to the TIFIA Loan Agreement, and all other applicable federal laws, in each case, as such laws are in effect on the Effective Date.

“Emergency” means any unplanned event within the Project ROW that (a) causes or has the potential to cause disruption to movement of LRVs and/or free flow of traffic within the O&M Limits; (b) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property immediately adjacent to the Project or to the safety of Users or the traveling public, (c) has jeopardized the safety of Users or the traveling public; or (d) is recognized or declared by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

“EMMA” means the MSRB’s Electronic Municipal Market Access (EMMA) system available on the Internet at http://emma.msrb.org and is the MSRB’s required method of filing or any similar system that is acceptable to or as may be prescribed by the MSRB for purposes of the Rule and approved by the Securities and Exchange Commission from time to time.

“End of Funding Date” means the last day of the first month that ends not less than sixty (60) days after the Final Completion Date.

“Energy Management Plan” means the energy management plan, the goal of minimizing Project energy costs by controlling energy consumption consistent with the requirements of the Contract Documents, developed by the Company pursuant to the Technical Provisions.

“Enforcement Action” means any action, whether by judicial proceedings or otherwise, to enforce or exercise any of the rights and remedies granted to the Collateral Agent and/or the Secured Parties pursuant to the Security Documents against the Collateral or the Company or in respect of an Equity Letter of Credit or the Equity Contribution Agreement, in each case, upon the occurrence and during the continuance of an Event of Default, subject to the terms of the Intercreditor Agreement.

“Engineer of Record” has the meaning given in the Technical Provisions.

“Environment” means air, soils, submerged lands, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, cultural (including historic and archeological) resources and paleontological resources.

“Environmental Approvals” means all Governmental Approvals arising from or required by any Environmental Law in connection with the Project.

“Environmental Law(s)” means all applicable laws, codes, rules, ordinances, restrictions and regulations adopted by Governmental Entities, now or hereafter in effect, regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials into the environment including into the air, surface water, or ground water or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials, or otherwise relating to the protection of public health, public welfare, public safety or the environment from the presence of or exposure to hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. (“CERCLA”), as amended by the Superfund Amendment and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (“RCRA”), as amended by the Solid and Hazardous Waste Amendments of 1984; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Hazardous Materials Transportation Uniform Safety Act; the Oil Pollution Act of 1990; the Endangered Species Act, 16 U.S.C. § 1531 et seq.; the Federal Water Pollution Control Act, the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq.; and the Natural Resources Article of the Annotated Code of Maryland and implementing regulations; all as amended and supplemented previously or in the future.

“Environmental Approvals” means all Governmental Approvals arising from or required by any Environmental Law in connection with the Project.

“Equity Change” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Assignment and Transfer.”

“Equity Change of Control” means, prior to the second (2nd) anniversary of the Substantial Completion Date, (a) any failure of the Meridiam Funds, collectively, to own one hundred percent (100%) of the indirect economic equity interest in Meridiam Infrastructure Purple Line, LLC, (b) any failure of MINA to maintain one hundred percent (100%) voting control of Meridiam Infrastructure Purple Line, LLC, (c) any failure of Fluor to own one hundred percent (100%) of the direct voting and economic equity interest in Fluor Enterprises, (d) any failure of the Star America Funds, collectively, to own one hundred percent (100%) of the direct economic equity interest in Star America Purple Line, LLC, (e) any failure of Star America GP to maintain one hundred percent (100%) voting control of Star America Purple Line, LLC, or (f) any failure of Meridiam Infrastructure Purple Line, LLC, Fluor Enterprises or Star America Purple Line, LLC to own one hundred percent (100%) of its direct voting and economic Equity Interest in the Company that it owns on the Effective Date as described in the TIFIA Loan Agreement.

“Equity Contribution Agreement” means the Equity Contribution Agreement, dated as of the Effective Date, among the Company, the Sponsors and the Collateral Agent.

“Equity Contributions” means the contributions made by the Sponsors pursuant to the Equity Contribution Agreement, and if made after the RSA Funding Date, the LLC Agreement.
“Equity Credit Support” means (a) one or more Equity Letters of Credit and/or (b) cash collateral deposited into the relevant Applicable Sponsor Cash Collateral Account.

“Equity Funding Sub-Account” means the “Equity Funding Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Equity Interests” means the membership interests or other equity interests in the Company.

“Equity IRR” means the nominal and blended Post-Tax internal rate of return to the Committed Investment described in clause (a) of the definition of Committed Investment, over the full Term calculated using the Financial Model, where the discount rate, when applied to Committed Investment cash flows, gives a zero net present value. For purposes of this definition the term “cash flows” refers to Distributions described in clause (a) of the definition of Distributions, minus Committed Investment described in clause (a) of the definition of Committed Investment.

“Equity Letter of Credit” means (a) with respect to the Equity Contribution Agreement, an irrevocable standby letter of credit for which a Sponsor is the account party (or which are provided on behalf of a Sponsor), which shall (i) be denominated in United States Dollars, (ii) be non-recourse to the Company, (iii) be issued in favor of the Collateral Agent by an Acceptable LC Bank and (iv) not be secured by the Collateral, in each case, substantially in the form attached to the Equity Contribution Agreement; and (b) with respect to the TIFIA Loan Agreement, an Acceptable Letter of Credit delivered by or on behalf of an Equity Sponsor and issued in favor of the Collateral Agent for the purpose of Equity Credit Support.

“Equity Lock-Up Account” means the “Equity Lock-Up Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Equity Lock-Up Prepayment Amount” means on any Calculation Date after the Substantial Completion Date, any amounts that have remained in the Equity Lock-Up Account for more than thirty (30) months.

“Equity Member” means any Person with a direct equity interest in the Company.

“Equity Transfer” means any assignment, mortgage, encumbrance, conveyance, sale or other transfer of equity interest in the Company.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto of similar import, together with the regulations thereunder, in each case as in effect from time to time.

“ERISA Affiliate” means a Person, trade or business that, together with the Company, is or was treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“ERISA Event” means a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to a Pension Plan other than an event for which the thirty (30)-day notice provision has been waived, (b) any failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Section 412 and 430 of the Code or Section 302 and 303 of ERISA) whether or not waived, and (c) the incurrence by the Company of any liability with respect to the withdrawal or partial withdrawal of the Company or any ERISA Affiliate from any Multiemployer Plan. For this purpose, “Pension Plan” shall mean any defined benefit pension plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which is maintained, funded or administered for the employees of the Company or any ERISA Affiliates.

“ESA” means the Endangered Species Act.

“Escalated Benchmark Insurance Premiums” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Insurance—Starting Insurance Benchmarking Premiums.”
“Escalation Index 1” means Consumer Price Index, Not Seasonally Adjusted.


“Escalation Index 3” means the Series ID WPU00000000, Not Seasonally Adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics.

“Escalation Index 4” means the Series ID PCU336510336510 as published by the United States Department of Labor, Bureau of Labor Statistics.

“Escalation Index 5” means Series ID CUURA311SA0 (the Washington-Baltimore, DC-MD-VA-WV Consumer Price Index), Not Seasonally Adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics.

“Estimated Demobilization Amount” has the meaning set forth in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—Termination Due to the P3 Agreement Termination for Insurance Unavailability.”

“Estimated Fair Value” means the amount determined pursuant to Exhibit 13B to the P3 Agreement.

“Event of Default” means any of the events identified as an “Event of Default” under any Finance Document.

“Event of Eminent Domain” means any action (or series of related actions) by any Governmental Authority (i) by which such Governmental Authority appropriates, confiscates, condemns, expropriates, nationalizes, seizes or otherwise takes all or any portion of the Collateral or the Project or (ii) by which such Governmental Authority assumes custody or control (other than as permitted pursuant to, and subject to compliance with, the P3 Agreement) of all or any portion of the Project, in each case that is reasonably anticipated to last for more than one hundred twenty (120) consecutive days.

“Excess Liability Allowance” means the fund in the amount specified in the P3 Agreement, to be used to pay for the excess liability insurance for the Contracting Authority.

“Excluded Premium Increases” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Insurance—Insurance Premium Benchmarking.”


“Excluded Assets” means (a) any property to the extent that a grant of any Security Interest in such property is prohibited by any Legal Requirement, requires a consent not obtained of any Governmental Authority pursuant to such Legal Requirements or is prohibited by, or constitutes a breach or default under or results in the termination of, or grants any Person (other than the Company) the right to terminate its obligations thereunder, or constitutes or results in the abandonment, invalidation or unenforceability of any right, title or interest of the Company therein, or requires any consent not obtained under, any lease, contract, permit, license, agreement, instrument or other document evidencing or giving rise to such property, except to the extent that such Legal Requirements or the term in such lease, contract, permit, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable Law (including, without limitation, pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC); provided that any such property shall constitute an Excluded Asset only to the extent and for so long as the consequences specified above shall exist and shall cease to be an Excluded Asset and shall become subject to the Security Interest of the Security Documents immediately and automatically, at such time as such consequence shall no longer be applicable and to the extent severable; (b) any equipment (as such term is defined in the UCC) owned by the Company that is subject to a purchase money Security Interest or a capital lease, in each case constituting Permitted Indebtedness, if the contract or other agreement in which such Security Interest is granted (or in the documentation providing for such
capital lease) prohibits or requires the consent of any Person other than the Company as a condition to the creation of any other Security Interest in such equipment, but only, in each case, to the extent, and for so long as, the Indebtedness secured by the applicable Security Interest or the capital lease has not been repaid in full or the applicable prohibition (or consent requirement) has not otherwise been removed or terminated; (c) any “intent-to-use” application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a Security Interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law; (d) except to the extent any such amounts would constitute a preference or a fraudulent conveyance, any and all amounts paid or distributed by the Company, in each case, to the extent expressly permitted under the Collateral Agency Agreement; (e) any and all assets or property sold, conveyed, transferred, assigned or otherwise disposed of by the Company to the extent expressly permitted by the terms of the Finance Documents (but, for the avoidance of doubt, the proceeds thereof shall not be considered “Excluded Assets” for the purposes of the Security Agreement); (f) each of the Distribution Account, the Material Project Contract Accounts, the Series 2016 Rebate Fund (and any similar rebate fund established with respect to any future tax-exempt borrowings comprising Additional Parity Bonds), and all respective monies, funds, instruments, securities and all other property from time to time on deposit therein or credited thereto and all proceeds of any or all of the foregoing and (g) those properties and assets as to which the Intercreditor Agent (at the direction of the Required Creditors in accordance with the Intercreditor Agreement) shall determine that the costs or burden of obtaining such Security Interest are excessive in relation to the value of the security to be afforded thereby.

“Excluded Work” means (i) the Company’s obligations under the P3 Agreement with respect to financing, reporting, making Submittals and other similar activities; (ii) the Company’s internal administrative, support and other similar services; and (iii) all work with respect to the Project contracted by the Company to Prime Contractors.

“Exempt Refinancing” means:

(a) Any Refinancing that was fully and specifically identified and taken into account in the Base Case Financial Model;

(b) (i) Amendments, modifications, supplements or consents to Funding Agreements and Security Documents, and (ii) the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision that, in either case, do not, individually or in the aggregate, provide a financial benefit to the Company;

(c) Movement of monies between the Project accounts in accordance with the terms of Funding Agreements and Security Documents;

(d) Any of the following acts by a Lender of senior lien priority Project Debt: (i) the syndication of any of such Lender’s rights and interests in the senior Funding Agreements; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, with respect to the senior Funding Agreements in favor of any other Lender of senior lien Project Debt or any other investor; or (iii) the grant by such Lender of any other form of benefit or interest in either the senior Funding Agreements or the revenues or assets of the Company, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor; and

(e) Periodic resetting and remarketing of tax-exempt or taxable bonds that bear interest at a variable or floating rate and are money market eligible under SEC Rule 2a-7.

“Extended DB Force Majeure Event” means a single Force Majeure Event or Relief Event (other than Contracting Authority Changes and Contracting Authority-Caused Delays) that (a) has materially prevented or delayed a Party from performing a substantial portion of its obligations under the P3 Agreement for a period of 180 days or more in the aggregate within a period of 365 consecutive days or (b) has resulted in damage or loss to a
material portion of the Project that the Contracting Authority has determined is not in the public interest to repair or replace.

“Extended Delay” means (a) an Extended DB Force Majeure Event, (b) an Extended OM Force Majeure Event, (c) any Contracting Authority-Caused Delay that has materially prevented or delayed the Company from performing a substantial portion of its obligations under the P3 Agreement for a period of 220 days or more in the aggregate within a period of 365 consecutive days, or (d) a combination of Force Majeure Events, Relief Events and Contracting Authority-Caused Delays during the Design-Build Period that have resulted in a delay to the Critical Path of 365 days or more. However, for purposes of determining the Contracting Authority’s right to terminate under Sections 19.2.1 and 19.2.5 of the P3 Agreement, the portion of any Extended Delay that is directly attributable to an Contracting Authority-Caused Delay shall not be considered.

“Extended Delay Payment Date” means the deemed RSA Deadline, in the event the RSA Date has not occurred before 366 days after the original RSA Deadline, which will be the date that is the later of (a) 366 days after the original RSA Deadline or (b) the date on which Revenue Service Availability would have been achieved but for the Critical Path delays caused by Force Majeure and Relief Events for which a time extension is allowable under the P3 Agreement.

“Extended Delay Shared Costs” has (a) with respect to the Design-Build Contract, the meaning given in APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the DB Contract—Termination Due to DB Extended Delay or the P3 Agreement Termination for Extended Delay —DB Extended Delay – 180 Days of Delay” and (b) with respect to the O&M Contract, the meaning given in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—Termination Due to O&M Extended Delay or the P3 Agreement Termination for Extended Delay—O&M Extended Delay – 220 Days of Contracting Authority-Caused Delay and 180 Days of Other Delay.”

“Extended Delay Termination Payment” means (a) with respect to the Design-Build Contract, a termination payment equal to that portion of the contract price applicable to the DB Work completed up to the date of termination and which has not previously been paid to the Design-Build Contractor, together with reasonable demobilization costs (including subcontracts’ termination costs) and (b) with respect to the O&M Contract, a termination payment equal to that portion of any O&M Monthly Availability Payments applicable to the Services completed up to the date of termination and which has not previously been paid to the O&M Contractor, together with reasonable demobilization costs (including subcontracts’ termination costs).

“Extended Delay Unavoidable Costs” has (a) with respect to the Design-Build Contract, the meaning given in APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the DB Contract—DB Extended Delay – 180 Days of Delay” and (b) with respect to the O&M Contract, the meaning given in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—Termination Due to O&M Extended Delay or the P3 Agreement Termination for Extended Delay.”

“Extended OM Force Majeure Event” means, with respect to any rolling 12-month period, any single Force Majeure Event or Relief Event (other than a Contracting Authority Change or Contracting Authority-Caused Delay) that (a) has/have materially prevented or delayed a Party from performing a substantial portion of its obligations under the P3 Agreement for a period of 180 days or (b) has resulted in damage or loss to a material portion of the Project that the Contracting Authority has determined is not in the public interest to repair or replace.

“Extra Work” means Work not included in the original scope of the Work.

“Fare System (FS)” means the equipment, software and firmware enabling the collection, capture, inspection, reconciliation and data collection for fares for the Project.

“Fare System Allowance” means the fund in the amount specified in Exhibit 4A to the P3 Agreement, to be used to pay for certain D&C Work, as specified in the Technical Provisions.
“Fare System Equipment” means equipment and associated components of the fare system provided by the Company in accordance with the Technical Provisions.

“FDIC” means the Federal Deposit Insurance Corporation.

“Federal Book-Entry Regulations” means (i) the United States Department of the Treasury’s regulations governing “Securities” (as defined in 31 C.F.R. § 357.2) issued by the United States Treasury and maintained in the form of entries in the federal reserve banks’ book-entry system known as the Treasury/Reserve Automated Debt Entry System (TRADES), as such regulations are set forth in 31 C.F.R. Part 357 and (ii) regulations analogous and substantially similar to the regulations described in clause (i) above governing any other automated book-entry system operated by the United States federal reserve banks in which securities issued by government sponsored enterprises are issued, recorded, transferred and maintained in book-entry form.

“Fee Letter” means that certain Agent Fee Letter, entered into by and between the Company and U.S. Bank National Association, in its capacity as Collateral Agent, Trustee, Intercreditor Agent and depositary agent.

“FHA” means the Federal-Aid Highway Act.

“Final Completion” means that all D&C Work is complete and all other prerequisites for Final Completion have been met. Final Completion is deemed to have occurred upon satisfaction of all the applicable conditions in the P3 Agreement, as confirmed by the Contracting Authority’s issuance of a certificate in accordance with the procedures and within the time frame established in the P3 Agreement.

“Final Completion Certificate” means the Contracting Authority’s certificate issued pursuant to Section 7.10.4.5 of the P3 Agreement.

“Final Completion Date” means the date that Final Completion is achieved.

“Final Completion Deadline” means the date by which the Company must achieve Final Completion, as such date may be extended under the terms of the P3 Agreement, initially set at 24 months following the RSA Date.

“Final Completion Payment” means the amount payable to the Company by the Contracting Authority under the P3 Agreement upon Final Completion.

“Final Completion Payment Account” means the “Final Completion Payment Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Final Completion Payment Date” means the date on which the Company receives the Final Completion Payment for achievement of Final Completion under the P3 Agreement.

“Final Design” means the general design stage, consistent of all elements, collections of elements, or areas of the Project at 100% design completion, as more fully set forth in Part 2A, Section 3.6 of the Technical Provisions, and depending on the context: the term “Final Design” may refer to (a) the Final Design Documents, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents.

“Final Design Documents” means the complete final construction plans (including plan sheets, specifications, technical memoranda, reports, studies, calculations, drawings, elevations, sections, details and diagrams) and specifications needed for performance of Construction Work, which includes all Submittals specified as required to be part of the Final Design or Final Design Documents under the Technical Provisions.

“Final Environmental Impact Study (FEIS)” means the Final Environmental Impact Statement and Draft Section 4(f) Evaluation of the Project dated August 2013.

“Final Maturity Date” means the earlier of (a) September 30, 2050 and (b) the last Semi-Annual Payment Date occurring no later than the date that is twenty-nine (29) years following the Substantial Completion Date.
“Finance Documents” means:

(a) the Indenture;
(b) any Supplemental Indenture executed with respect to the Bonds;
(c) the Bonds;
(d) the Series 2016 Loan Agreement and any Additional Parity Bonds Loan Agreements, if any;
(e) any Notes;
(f) the TIFIA Loan Agreement;
(g) the TIFIA Note;
(h) the Equity Contribution Agreement;
(i) the Collateral Agency Agreement;
(j) the other Security Documents;
(k) the Intercreditor Agreement;
(l) any Additional Finance Documents;
(m) the Fee Letter;
(n) any Hedging Agreements; and

any other agreement, document or instrument relating to the foregoing and designated as a Finance Document in writing by the Company and the Intercreditor Agent.

“Financial Close” means the satisfaction or waiver of all conditions precedent to funding of the Project Debt.

“Financial Close Deadline” means the date by which the Company is obligated to achieve Financial Close, as such date may be extended under the terms of the P3 Agreement, initially 180 days after the Proposal Date.

“Financial Close Security” means the bond or letter of credit in the amount of $20 million provided by the Company to the Contracting Authority pursuant to the P3 Agreement.

“Financial DRB” means the Financial Dispute Resolution Board under the P3 Agreement.

“Financial Model” means the update by the Company under the P3 Agreement to the Base Case Financial Model provided at Financial Close, including the Financial Model Formulas and the related output, assumptions and information used by or incorporated in each of the Financial Model Formulas as of Financial Close.

“Financial Model Formulas” means the mathematical formulas submitted in the Financial Proposal and Financial Model, as the same may be changed under Section 3.3 of the P3 Agreement, for projecting Equity IRR, which mathematical formulas are used as part of the Base Case Financial Model, the updated Financial Model as of Financial Close and each subsequent Financial Model Update, but without the data and information used by or incorporated in the model or update.
“Financial Model Update” means any update to the Base Case Financial Model by the Company in accordance with the P3 Agreement, including the Financial Model as of Financial Close and subsequent updates.

“Financial Modeling Data” means all back-up information regarding the basis for the Company’s estimates, projections and calculations in the Proposal, in the Base Case Financial Model, the Financial Model as of Financial Close and Financial Model Updates of revenues, pricing, costs, expenses, repayment of Project Debt, Distributions and Equity IRR, including:

(a) Pricing Sheets;

(b) The assumptions book submitted with the Proposal, fully describing all assumptions underlying the estimates, projections and calculations in the Base Case Financial Model, revisions to the Base Case Financial Model in accordance with the P3 Agreement, and updates to such assumptions book related to Financial Model Updates;

(c) The step-by-step instructions on the procedure to run and to optimize the Financial Model Formulas and Base Case Financial Model submitted with the Proposal, and updates of the Financial Model Formulas and Base Case Financial Model related to Financial Model Updates; and

(d) All other supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge, fee and revenue information used by the Company in the creation and derivation of its Proposal or of any Financial Model Update, or related to any update required under the P3 Agreement.

“Financial Plan” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date (as defined in the TIFIA Loan Agreement) in accordance with the TIFIA Loan Agreement and (b) any updates thereto required pursuant to the TIFIA Loan Agreement.

“Financial Proposal” means the Company’s plan for financing the Project and incorporated by reference in Exhibit 17 of the P3 Agreement.

“Fiscal Year” means (a) with respect to the Contracting Authority, the consecutive 12 month period starting on July 1 and ending on June 30 or any other consecutive 12 month period selected by the Company and approved by the Contracting Authority, and (b) with respect to the Company, the period commencing on January 1 of each year and terminating on the next succeeding December 31.

“Fitch” means Fitch Ratings Limited.

“Fixed Equipment” means all equipment and other components of the Purple Line System that are affixed to real property within the Project ROW.

“Fixed Facilities” means the track, Stations, buildings, parking lots, storage yard, and similar assets for the Purple Line System within the Project ROW.

“Fleet Defect” means cumulative failures or other Non-Conforming Work with respect to 10% or more of any part, system, or component in the same or similar applications with respect to the LRVs, Option LRVs and associated Equipment only within a consecutive 12-month period, where such items are covered by the LRV Supply Contractor’s warranty under the LRV Supply Contract.

“Float” means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect the Company’s ability, to achieve Revenue Service Availability, by the RSA Deadline. Float is generally identified on the Project Schedule as the difference between the early completion times and late completion times for activities. The term includes float contained
within an activity as well as any period containing an artificial activity (that is, an activity that is not encompassed within the meaning of the definition of D&C Work, in the case of the Company.

“Flow of Funds” means the order of priority in which and the purposes for which the Collateral Agent will make withdrawals, transfers and payments from the Revenue Account in the amounts and at the times set forth under “PROJECT ACCOUNTS AND FLOW OF FUNDS—Flow of Funds—Revenue Account – On and After the RSA Date” in the Official Statement.

“Fluor” means Fluor Corporation, a Delaware corporation and parent of Fluor Enterprises.


“Fluor Sponsor Cash Collateral Sub-Account” means a sub-account of the Sponsor Cash Collateral Account established and created in the name of the Company.

“Force Majeure Event” means:

(a) with respect to the P3 Agreement, the occurrence of any of the following events, in each case beyond the control of the Parties, to the extent that the event delays the Critical Path:

(i) Act of war, invasion, armed conflict, violent act of foreign enemy, military or armed blockade regardless of location, or any military or armed takeover of the Project or the Site;

(ii) Any act of terrorism, riot, insurrection, civil commotion or sabotage that (i) causes direct physical damage to the Project, the DB Work or the Site or (ii) otherwise directly causes substantial interruption to Construction Work included in the DB Work or manufacturing or assembly of LRVs;

(iii) Nuclear explosion that (i) causes direct physical damage to the Project or the Site, or (ii) otherwise directly causes substantial interruption to Construction Work included in the DB Work or manufacturing or assembly of LRVs;

(iv) Fire or explosion directly impacting the physical improvements of the Project or performance of DB Work at the Site;

(v) Flood, earthquake or landslide resulting in material damage to (A) Project improvements (whether during the Design-Build Period or O&M Period) or (B) the primary LRV assembly facility identified in the Proposal;

(vi) Any national or regional strike not specific to the Design-Build Contractor, acts or omissions of a port or transportation authority, unavailability or shortages of materials that directly causes interruption to construction of the Project;

(vii) Quarantine affecting DB Work to be performed by the Design-Build Contractor;

(viii) Unusually severe weather (including tornados and any storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration’s National Hurricane Center or similar body) resulting in material damage to (i) Project improvements (whether during the Design-Build Period or O&M Period) or (ii) the primary LRV assembly facility identified in the Proposal;
(ix) Any other event within the Project ROW limits that has a material adverse impact on the Work and that arises from a state of emergency declared by the Maryland Governor, but excluding Emergencies consisting of or arising out of traffic accidents;

(x) Changes in Law that do not qualify as Relief Events but nevertheless result in a delay to the Critical Path;

(xi) Any delay by a Third Party in performance of its obligations under a Third Party Agreement that is excused due to occurrence of a force majeure event under the terms of the Third Party Agreement;

(xii) Any delay in performance of Utility Work by a Utility Owner excused due to the occurrence of a force majeure event under the terms of the relevant Contracting Authority Utility Agreement;

(xiii) Any delay in approval of the NPS Special Use Permit beyond one hundred and eighty (180) days from the date that NPS acknowledges receipt of the Design-Build Contractor’s complete and conforming application for such permit, meeting NPS quality requirements and including all supplemental information requested by NPS following receipt of the initial application package;

(xiv) Any protest specifically against the Purple Line System during the Design-Build Period that directly causes substantial interruption to Construction Work included in the DB Work; and

(b) with respect to the Design-Build Contract, the occurrence of any of the following events, in each case beyond the control of the Company and the Design-Build Contractor, to the extent that the event delays the critical path:

(i) Act of war, invasion, armed conflict, violent act of foreign enemy, military or armed blockade regardless of location, or any military or armed takeover of the Project or the site;

(ii) Any act of terrorism, riot, insurrection, civil commotion or sabotage that (i) causes direct physical damage to the Project, the DB Work or the site or (ii) otherwise directly causes substantial interruption to construction work included in the DB Work or manufacturing or assembly of LRVs;

(iii) Nuclear explosion that (i) causes direct physical damage to the Project or the Site, or (ii) causes radioactive contamination of the Project or the site requiring hazardous materials management, (iii) otherwise directly causes substantial interruption to construction work included in the DB Work or manufacturing or assembly of LRVs;

(iv) Fire or explosion directly impacting the physical improvements of the Project or performance of DB Work at the site;

(v) Flood, earthquake or landslide resulting in material damage to (i) Project improvements (whether during the Design-Build Period or O&M Period) or (ii) the primary LRV assembly facility identified in the proposal;

(vi) Any national or regional strike not specific to the Design-Build Contractor, acts or omissions of a port or transportation authority, unavailability or shortages of materials that directly causes interruption to construction of the Project;

(vii) Quarantine affecting DB Work to be performed by the Design-Build Contractor;
(viii) Unusually severe weather (including tornados and any storm or weather disturbance that
is named by the National Oceanic and Atmospheric Administration's National Hurricane
Center or similar body) resulting in material damage to (i) Project improvements
(whether during the Design-Build Period or O&M Period) or (ii) the primary LRV
assembly facility identified in the Proposal;

(ix) Any other event within the Project right-of-way limits that has a material adverse impact
on the work and that arises from a state of emergency declared by the Maryland
Governor, but excluding emergencies consisting of or arising out of traffic accidents;

(x) Changes in law that do not qualify as Relief Events but nevertheless result in a delay to
the critical path;

(xi) Any delay by a third party in performance of its obligations under a third party agreement
that is excused due to occurrence of a force majeure event under the terms of the third
party agreement;

(xii) Any delay in performance of utility work by a utility owner excused due to the
occurrence of a force majeure event under the terms of the relevant Contracting Authority
utility agreement;

(xiii) Any delay in approval of the NPS Special Use Permit beyond 180 days from the date that
NPS acknowledges receipt of the Design-Build Contractor's complete and conforming
application for such permit, meeting NPS quality requirements and including all
supplemental information requested by NPS following receipt of the initial application
package; and

(xiv) Any protest specifically against the Purple Line system during the Design-Build Period
that directly causes substantial interruption to construction work included in the DB
Work;

except to the extent that the event or consequences of the event arose out of any act, omission, negligence,
recklessness, willful misconduct, breach of contract or violation of applicable laws by any Design-Build Contractor-
related entity, or could reasonably have been avoided by the exercise of caution, due diligence, or reasonable efforts
by any the Design-Build Contractor-related entity; and

(c) with respect to the O&M Contract, the occurrence of any of the following events, in each case
beyond the control of the Company and the O&M Contractor, to the extent that the event
materially and adversely impacts O&M Contractor's ability to meet its obligations:

(i) Act of war, invasion, armed conflict, violent act of foreign enemy, military or armed
blockade regardless of location, or any military or armed takeover of the Project or the
site;

(ii) Any act of terrorism, riot, insurrection, civil commotion or sabotage that (i) causes direct
physical damage to the Project, the Services or the site or (ii) otherwise directly causes
substantial interruption to construction work included in the Services, manufacturing or
assembly of option LRVs or the Services;

(iii) Nuclear explosion that (i) causes direct physical damage to the Project or the site, or
(ii) causes radioactive contamination of the Project or the site requiring hazardous
materials management, (iii) otherwise directly causes substantial interruption to
construction work included in the Services, manufacturing or assembly of option LRVs
or the Services;
(iv) Fire or explosion directly impacting the physical improvements of the Project or performance of Services at the site;

(v) Flood, earthquake or landslide resulting in material damage to (i) Project improvements (whether during the Design-Build Period or O&M Period); (ii) the primary LRV assembly facility identified in the proposal; or (iii) otherwise causing an unplanned service interruption during the O&M Period;

(vi) Any national or regional strike not specific to O&M Contractor, acts or omissions of a port or transportation authority, unavailability or shortages of materials that directly causes direct losses during operation of the Project;

(vii) Quarantine affecting Services to be performed by O&M Contractor;

(viii) Unusually severe weather (including tornados and any storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration’s National Hurricane Center or similar body) resulting in material damage to (i) Project improvements (whether during the Design-Build Period or O&M Period) or (ii) the primary LRV assembly facility identified in the proposal;

(ix) Any other event within the Project right-of-way limits that has a material adverse impact on the Services and that arises from a state of emergency declared by the Maryland Governor, but excluding emergencies consisting of or arising out of traffic accidents;

(x) Any delay by a third party in performance of its obligations under a third party agreement that is excused due to occurrence of a force majeure event under the terms of the third party agreement;

(xi) Any delay in performance of utility work by a utility owner excused due to the occurrence of a force majeure event under the terms of the relevant Contracting Authority utility agreement; and

(xii) Any delay in approval of the NPS Special Use Permit beyond 180 days from the date that NPS acknowledges receipt of Design-Build Contractor’s complete and conforming application for such permit, meeting NPS quality requirements and including all supplemental information requested by NPS following receipt of the initial application package;

except to the extent that the event or consequences of the event arose out of any act, omission, negligence, recklessness, willful misconduct, breach of contract or violation of applicable laws by any O&M Contractor-related entity, or could reasonably have been avoided by the exercise of caution, due diligence, or reasonable efforts by any O&M Contractor-related entity.

“Free Cash Flow” of the Company in respect of a period means:

(a) All Project Revenues (excluding Progress Payments, the RSA Payment, the Final Completion Payment, Termination Compensation, Special Lifecycle Payments and any other extraordinary non-recurring items) received during such period; PLUS

(b) The aggregate amount transferred from the Availability Payment Start-Up Reserve Account during such period; LESS

(c) All O&M Expenditures and Capital Expenditures (including, without duplication, Renewal Expenditures) paid by the Company during such period (excluding Capital Expenditures paid with proceeds of Senior Secured Obligations or Equity Contributions made during such period); LESS
(d) Deposits into the Rehabilitation Reserve Account from the Revenue Account during such period; 
PLUS

(e) Transfers from the Rehabilitation Reserve Account during such period.

provided, that any amounts on deposit in any Material Project Contract Account, while so deposited, shall not be 
included as “Project Revenues” at any time for purposes of this definition.

“FTA” means Federal Transit Administration.

“Funding Agreement” means:

(a) Any loan agreement, funding agreement, account maintenance or control agreement, insurance or 
reimbursement agreement, intercreditor agreement, subordination agreement, trust indenture, 
agreement from any Equity Member in favor of any Lender, hedging agreement, interest rate swap 
agreement, guaranty, indemnity agreement, agreement between any Contractor and any Lender, or 
other agreement by, with or in favor of any Lender pertaining to Project Debt (including any 
Refinancing), other than Security Documents;

(b) Any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of 
the Company for Project Debt (including any Refinancing), and

(c) Any amendment, supplement, variation or waiver of any of the foregoing agreements or 
instruments.

“Funding Insufficiency” means as of any Construction Funds Transfer Date, an amount equal to the 
greater of (a) zero and (b) the aggregate amount of the Project Costs due and payable (as reasonably determined by 
the Company) minus any amounts reserved in the Construction Account and all sub-accounts thereof (including any 
Bond Proceeds Sub-Account or the TIFIA Loan Proceeds Sub-Account) and, in each case, available to pay such 
Project Costs in accordance with the Collateral Agency Agreement.

“Funding Shortfall” means any circumstance where on any date prior to the RSA Date, the aggregate 
amount of funds available to the Company from the Construction Account, the TIFIA Loan, each Sponsor’s Unused 
Capital Commitments, Progress Payments and other payments owed under the P3 Agreement and any other source 
of funds permitted under the 2016 Loan Documents during the Design-Build Period is less than the aggregate of:

(a) the aggregate amount of all Project Costs incurred by the Company for the design and construction 
of the Project, which, in each case, are due and payable but have not yet been paid; and

(b) the aggregate amount of Project Costs required to be incurred by the Company for the design and 
construction of the Project required to achieve Revenue Service Availability (as approved by the 
Lenders’ Technical Advisor in its reasonable belief).

“Funds” means the funds created by the Indenture.

“Funds Transfer Certificate” means a certificate prepared by the Company in accordance with the terms 
of the Collateral Agency Agreement substantially in the form attached to the Collateral Agency Agreement 
containing the certifications by the Company required by the Collateral Agency Agreement with respect to a 
requested transfer of funds.

“FWS” means the U.S. Fish and Wildlife Service.

“GAAP” means generally accepted accounting practice as defined by the American Institute of Certified 
Public Accountants or such other nationally recognized professional body, in effect from time to time in the United 
States of America.

“General Escalation Factor” means the escalation factor calculated in accordance with the P3 Agreement.

“General Portion” means the general portion of the Availability Payments, which is intended to pay, among other things, the Company’s debt service on the 2016 Bonds.

“Good Industry Practice” means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced designer, engineer, constructor, LRV manufacturer, other supplier, operator or maintenance provider, as applicable, operating in the United States under the same or similar circumstances and conditions, seeking in good faith to comply with its contractual obligations, the Contract Documents and all applicable Laws and Governmental Approvals. With respect to storm water management for construction activities, Good Industry Practice means Best Management Practices.

“Governmental Approval” means any registration, required filing, permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided or issued by Governmental Authorities including State, local, or federal regulatory agencies, which authorize or pertain to the Work.

“Governmental Authority” means any nation, state, sovereign or government, any federal, regional, state or local government or political subdivision thereof or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Person or matters in question.

“Governmental Entity” means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than MDOT or MTA.

“Grace Period” means a period, not to exceed 48 hours during any 30-day period, during which the Company is temporarily excused from assessment of Deductions and OTP Factors based on the occurrence of a Force Majeure Event or Non-Concessionaire Caused Disruption (excluding any event set out in clause (a), (i), (j) or (l) of the definition of Non-Concessionaire-Caused Disruption.

For example:

(a) If during a 30-day period a single Force Majeure Event starts on day one and lasts through day 18, the first 48 hours of such event would be considered the Grace Period. In accordance with Section 15.5.6 to the P3 Agreement, only 10% of the applicable OTP Factors would be allocated to the Company for days 3 through 16, and only 5% of the applicable OTP Factors would be allocated for days 17 and 18.

(b) If during a 30-day period a Non-Concessionaire Caused Disruption occurs on day 1 that lasts for 24 hours and a Force Majeure Event starts on day 20 and lasts for three days, there will be a Grace Period of 24 hours for the Non-Concessionaire Caused Disruption and of 24 hours for the Force Majeure Event. In accordance with Section 15.5.6 to the P3 Agreement, only 10% of the applicable OTP Factors would be allocated to the Company for days 21 and 22.

(c) If during a 30-day period (“month 1”) a Non-Concessionaire Caused Disruption occurs on day 1 that lasts for 24 hours and a Force Majeure Event subsequently occurs that starts on day 29 and lasts for three days, extending through the end of the first day of the subsequent 30-day period (“month 2”), then:
During month 1:

(a) The two-day Grace Period would apply to days 1 (the day of the Non-Concessionaire Caused Disruption) and 29 (the first day of the Force Majeure Event); and

(b) In accordance with Section 15.5.6 to the P3 Agreement, only 10% of the applicable OTP Factors would be allocated to the Company for service disruptions during day 30 (the second day of the Force Majeure Event).

During month 2:

(a) the first day of the two-day Grace Period would apply to day 1 (the third day of the Force Majeure Event); and

(b) the remaining Grace Period day would be available for future events during that period.

“Grace Period Event” means a Force Majeure Event or Non-Concessionaire Caused Disruption (excluding any event set out in clause (a), (i), (j) or (l) of the definition of Non-Concessionaire Caused Disruption).

“Grantor” means Purple Line Transit Partners LLC.

“Guarantor” means any Person that is the obligor under any guaranty in favor of the Contracting Authority required or otherwise given under the P3 Agreement, including any guaranty of the Design-Build Contract or any O&M Contract.

“Guaranteed DB Long Stop Date” has the meaning given in APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Schedule of Performance.”

“Guaranteed DB RSA Date” has the meaning given in APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Schedule of Performance.”

“Handback” means delivery of the Project assets by the Company to the Contracting Authority upon expiration of the Term or Early Termination Date.

“Hazardous Material” means any (a) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental materials, organic compounds or inorganic compounds, as defined by any Environmental Law; (b) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that is or becomes listed, regulated or addressed under any Environmental Law; (c) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever which may give rise to liability under clause (a) or (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (d) petroleum hydrocarbons excluding de minimis amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles; and (e) hazardous building materials including asbestos or asbestos-containing materials, lead or PCBs in structures and/or other improvements on or in the Site or in subsurface artifacts (other than mineral asbestos naturally occurring in the ground). The term “Hazardous Materials” includes Hazardous Waste and contaminated materials.

“Hazardous Materials Management” means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with, in the case of the Company, the Project, Project ROW or the Work (including demolition Work), including investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever approach is effective, most cost-efficient and permitted under applicable Law.
“Hazardous Materials Remediation Allowance” means the fund in the amount specified in the P3 Agreement established by the Contracting Authority, to be used to pay for certain Hazardous Materials Management Work.


“Headway” means the amount of time that elapses between the arrivals of Trains at time points travelling in a specific direction.

“Hedge Providers” means any entity that becomes a party to a Hedge Agreement and which has become a party to the Intercreditor Agreement by joinder or otherwise, and its successors and assigns.

“Hedging Agreements” means any agreements entered into, or to be entered into, by the Company and a Hedge Provider in respect of any Hedging Transaction.

“Hedging Obligations” means, collectively, the payment of (a) all scheduled amounts payable to the Hedge Providers by the Company under the Hedging Agreements (including interest accruing after the date of any filing by the Company of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Company), net of all scheduled amounts payable to the Company by such Hedge Providers, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Company to the Hedge Providers under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedge Providers to the Company under such Hedging Agreements; provided, that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Termination Obligations” means the aggregate amount payable to the Hedge Providers by the Company upon the early unwind of all or a portion of any Hedging Agreements, net of all amounts payable to the Company by such Hedge Providers upon the early unwind of all or a portion of such Hedging Agreements. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases.

“Holder” or “Bondholder” of a Bond means the registered owner of such Bond as shown in the registration records of the Trustee.

“Incidental Utility Work” means all of the following work necessary for the construction of the Project:

(a) Temporary relocations;

(b) Relocations of Service Lines;

(c) Protections in Place;

(d) The adjustment of utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work;

(e) All work necessary to remove any utilities (whether or not in use as of the Proposal Date) in situations for which leaving the utilities in place is not feasible or not permitted, or for facilities which the Company, proposes be removed to accommodate or permit construction of the Project, regardless of whether replacements for such utilities are being installed in other locations; and
(f) All work necessary to abandon in place any utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.).

“Incremental Cost” means those costs, if any, which the Company incurs that are directly attributable to a particular circumstance and which the Company would not have incurred but for the circumstance. In determining such costs, one would determine the total cost which the Company, would have incurred had the circumstance not occurred, and subtract such amount from the costs actually incurred (including, in the case of the Company, reasonable mitigation costs, subject to the P3 Agreement). The difference is the “increment.”

As an example, if the Company originally had to relocate three underground water lines, and an unanticipated fourth water line is discovered in the same area which can be relocated by the same crew that qualifies as a Relief Event, the Incremental Cost allowable with respect to such Relief Event would be the costs of keeping the crew working the additional time to relocate the fourth water line, and would not include any portion of the expense of moving the crew to the Site in the first place or the expense of demobilizing the crew on completion. If the Critical Path is delayed as the result of such a discovery, and the Contracting Authority directs acceleration in lieu of allowing a time extension, the Incremental Costs would also include the “but for” costs of acceleration. If the Critical Path is delayed as the result of such discovery but the Contracting Authority does not direct acceleration, then the Incremental Costs will not include (a) any costs that may be incurred to accelerate the schedule or (b) any additional costs that may be incurred with respect to the Project Debt or other delay costs and damages, although the Change Order may include compensation for Delay Costs and Delay Interest to the extent allowed under in the P3 Agreement.

“Indebtedness” of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services, (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person in respect of letters of credit, bankers’ acceptances, bank guaranties, surety bonds or similar extensions of credit, (g) all obligations of such Person in respect of Hedging Agreements, (h) indebtedness secured by a Security Interest on property owned or being purchased by such Person, whether or not such indebtedness shall have been assumed by such Person or is limited in recourse and (i) all Indebtedness of others referred to in clauses (a) through (h) above and other payment obligations (collectively, “Guaranteed Indebtedness”) guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Guaranteed Indebtedness or to advance or supply funds for the payment or purchase of such Guaranteed Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Guaranteed Indebtedness or to assure the holder of such Guaranteed Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss.

“Indemnified Party(ies)” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Company Indemnity.”

“Indenture” means the Indenture of Trust, to be dated as of June 1, 2016, between the Bond Issuer and the Trustee.

“Indenture Account Collateral” all deposit accounts, securities accounts and funds established under the Indenture and funds deposited therein and all monies, funds, Permitted Investments, certificates, investment property, instruments, securities, “security entitlements” (within the meaning of Section 8-102(a)(17) of the UCC) and other “financial assets” (within the meaning of Section 8-102(a)(9) of the UCC) and all other property from time to time credited to such deposit accounts, securities accounts and funds; and all deposit accounts and any and all other bank accounts related to such accounts and funds and established pursuant to the Indenture, and all proceeds, products and accessions of and to any and all of the foregoing, including whatever is received or receivable upon
any collection, exchange, sale or other disposition of any of the foregoing and any property into which any of the foregoing is converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the foregoing.

“Independent Engineer” means the independent engineering consultant retained by the Contracting Authority and the Company in accordance with the P3 Agreement.

“Indirect Participant” means U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly.

“Initial Baseline Schedule” means the preliminary CPM schedule submitted with the Proposal, to be used to monitor progress of the Work, prior to approval by the Company of the Baseline Schedule, and to be used as the basis for development of the Baseline Schedule.

“Initial Fleet” means 25 LRVs and, when delivered, the O&M Spare LRV.

“Initial Funding Agreements” means the Funding Agreements establishing the rights and obligations pertaining to the Initial Project Debt, which Funding Agreements are specifically identified in the Contract Documents.

“Initial Permitted Distribution” means the first Permitted Distribution the Company makes pursuant to and in accordance with the terms of the Finance Documents.

“Initial Project Debt” means the Project Debt originally to finance the Project and Work, in the total face amount at each lien priority, and with the particular Lenders, set forth in the Contract Documents, which Project Debt is evidenced by the Initial Funding Agreements and secured by the Initial Security Documents.

“Initial Security Documents” means the Security Documents securing the Initial Project Debt, which Security Documents are specifically identified in the Contract Documents.

“Initial Senior Loan Agreement” means the Series 2016 Loan Agreement, to be dated as of June 1, 2016.

“Initial Senior Obligations” means, without duplication, the 2016 Bonds and the obligations of the Company under the Initial Senior Loan Agreement, in an aggregate principal up to $313,035,000.

“Initial Senior Obligations Closing Date” means the date of issuance of the Initial Senior Obligations.

“Initial Senior Obligations Percentage” means, as of any date of determination, (a) the amount of the net proceeds of the Initial Senior Obligations that have been withdrawn on or prior to such date from the Construction Account pursuant to the Collateral Agency Agreement divided by (b) the total amount of the net proceeds of the Initial Senior Obligations deposited into the Construction Account on the 2016 Bonds Closing Date.

“Insolvency Law” means the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“Instructions to Proposers (ITP)” means the instructions to Proposers included in the RFP

“Instruments” all instruments, certificated securities, chattel paper (whether tangible or electronic) or negotiable documents.
“Institutional Lenders” means:

(a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operations and maintenance or projects;

(b) any (i) bank, trust company (whether acting individually or in a fiduciary capacity), savings and loan organization or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or bank qualified to do business as such, as applicable under the laws of the United States of America or any state thereof, or (iii) pension fund, foundation or university or college endowment fund; provided that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions;

(c) any “qualified institutional buyer” under Rule 144(a) under the Securities Act of 1933, 15 U.S.C. §77a, et seq., or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms; or

(d) any other financial institution or entity designated by the Company and approved in writing by the Contracting Authority; provided that such institution or entity, in its activity under the P3 Agreement, is acceptable under then current guidelines and practices of the Contracting Authority.

provided, however, that each such entity (other than entities described in clause (c) and clause (d) of this definition), or combination of such entities if the Institutional Lender is a combination or such entities, shall have individual or combined assets, as applicable, of not less than $1 billion. The foregoing dollar minimums shall automatically increase at the beginning of each calendar year by the percentage increase, if any, in the CPI during the immediately preceding calendar year, determined by comparing the CPI most recently published for the immediately preceding year with the CPI most recently published for the second preceding year.

“Insurance Advisor” means AON Risk Consultants or any replacement insurance advisory firm selected by the Company, subject to the TIFIA Lender’s rights under Section 23(f) of the TIFIA Loan Agreement.

“Insurance Advisor Report” means a copy of the report of the Insurance Advisor addressed to the TIFIA Lender or accompanied by a reliance letter in favor of the TIFIA Lender, duly executed by the Insurance Advisor and in form and substance reasonably satisfactory to the TIFIA Lender, authorizing the TIFIA Lender’s reliance thereon.

“Insurance Payment” means the relevant payment identified in Section 5 of Appendix A to Exhibit 4D to the P3 Agreement.

“Insurance Policies” means for purposes of the P3 Agreement, all of the insurance policies the Company is required to carry under Section 11.1 and Exhibit 7A to the P3 Agreement.

“Insurance Premium Benchmark Amount” means, (i) with respect to the relevant period, the higher of the Escalated Benchmark Insurance Premiums for each Benchmarking Reference Period and the Base Relevant Insurance Cost, and (ii) with respect to Terrorism Insurance Policies, the Base Relevant Insurance Cost for Terrorism Insurance Policies, as escalated in accordance with the P3 Agreement.

“Insurance Unavailability” means either:

(a) Any Insurance Policy coverage required under the P3 Agreement is completely unavailable from insurers meeting the requirements set forth in the P3 Agreement; or

(b) Provision of all such Insurance Policy coverages has become unavailable at Commercially Reasonable Insurance Rates from insurers meeting the requirements as set forth in the P3 Agreement.

For the purpose of clause (b), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for project-financed transit facilities, and the Company shall bear the burden of proving that premium increases are the result of such changes in general market conditions. No increase in insurance premiums attributable to particular conditions of the Project or Project ROW, or to claims or loss experience of any Concessionaire-Related Entity or Affiliate, whether under an Insurance Policy required to be placed under the P3 Agreement or in connection with any unrelated work or activity of Concessionaire-Related Entities or Affiliates, shall be considered in determining whether Insurance Unavailability exists or has occurred.

“Insured Parties” means:

(a) for purposes of the P3 Agreement, MTA, MDOT, the State, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees and any other named insured, Insurance Policy owner or holder under any Insurance Policy prescribed under the P3 Agreement. Except with respect to CSX Transportation, Inc., in the event that any Utility Agreement or Third Party Agreement includes insurance requirements, the term “Insured Parties” shall include the relevant Utility Owner or Third Party for the duration of the term of such agreement and to the extent of insurance required under such agreement. Except with respect to CSX Transportation, Inc., from and after the date of termination or expiration of any such agreement and performance of all obligations of the Company under such agreement that survive termination or expiration, the term “Insured Party” shall no longer include the relevant Utility Owner or Third Party. and

(b) for purposes of the Design-Build Contract and the O&M Contract, the State Insured Parties and the Company Insured Parties.

“Intellectual Property” means:

(a) for purposes of the P3 Agreement, all current and future legal and/or equitable rights and interests in know-how (including trade secrets and confidential business information which have been recorded in or on any media), patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, trade secret rights, designs (registered and unregistered), other design rights, logos, utility models, circuit layouts, plant varieties, database rights, business and domain names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, all analogous rights in other jurisdictions and applications (drafted or pending) of or for any of the foregoing, subsisting in or relating to the Work, Project, Project design data or other Project-related data. Intellectual Property includes software used in connection with the Project (including software used for management of Project operations), Source Code and Source Code Documentation, the Financial Model Formulas, Base Case Financial Model, Financial Modeling Data and trade secret information contained in the Financial Proposal. Intellectual Property is distinguished from Submittals, physical construction and equipment itself and from data, sketches, charts, calculations, plans, drawings, layers, depictions, specifications, manuals, electronic files, artwork, correspondence and other documents created or collected under the terms of the P3 Agreement or otherwise developed under the P3 Agreement, and other work product and other related materials that disclose Intellectual Property; and
(b) for all other purposes, all other tangible and intangible property and fixtures of the Grantor, including all current and future legal and/or equitable rights and interests in the know-how (including trade secrets and confidential business information which have been recorded in or on any media), patents, (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, designs (registered and unregistered), other design rights, logos, utility models, circuit layouts, plant varieties, database rights, business and domain names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, all analogous rights in other jurisdictions and applications (drafted or pending) of or for any of the foregoing, subsisting in or relating to the Work, Project, Project design data or other Project-related data.

“Intellectual Property Escrow” means one or more escrows with the Escrow Agent, in the event the Design-Build Contractor elects to deposit the Proprietary Intellectual Property with a neutral custodian rather than delivered such Proprietary Intellectual Property directly to the Contracting Authority.

“Intercreditor Agent” means U.S. Bank National Association in its capacity as intercreditor agent acting on behalf of the Applicable Secured Creditors.

“Intercreditor Agreement” means the Subordination and Intercreditor Agreement, dated as of June 17, 2016, by and among the Collateral Agent, the TIFIA Lender, the Trustee on behalf of the Holders and the Intercreditor Agent on behalf of itself and the other Secured Parties and each other Secured Creditor (or representative on behalf of one or more other Secured Creditors).

“Intercreditor Vote” means a vote of the Applicable Secured Creditors in accordance with the procedures set forth in the Intercreditor Agreement in connection with any direction or decision of the Intercreditor Agent or the Collateral Agent that is requested or required in connection with any proposed Modification to any Finance Document to which such agent is party, or any decision of the Required Creditors that is required.

“Interest Payment Date” means (i) for the Bonds, each March 31 and September 30, or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing on September 30, 2016 and continuing for so long as the Bonds are outstanding, (ii) for the TIFIA Loan, each March 31 and September 30, or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing on the first March 31 or September 30 following the Capitalized Interest Period (as defined in the TIFIA Loan Agreement), and (iii) for any other Secured Obligations, the date or dates on which interest is payable on such Secured Obligations as set forth in the documents pursuant to which such Secured Obligations were incurred. For the avoidance of doubt, this definition is subject to the Collateral Agency Agreement.

“Interest Payments” means, with respect to an Interest Payment Date for the Bonds, the interest (including the interest component of the Redemption Price due in connection with any mandatory redemption payment on any Bond) due on the Bonds on such date.

“Interface Agreement” means the Interface Agreement – Purple Line Project, dated as of April 7, 2016, by and among the Design-Build Contractor, the O&M Contractor and the Company (as may be amended or restated from time to time).

“Interim Payment Date” means any day occurring during a Payment Period that (a) is a date on which interest on or principal of Senior Obligations is scheduled to be paid and (b) is not a Semi-Annual Payment Date.

“Interim Payment Period” means, at any time that interest on or principal of any Senior Obligations is scheduled to be paid on an Interim Payment Date, any period from (and including) the immediately preceding Payment Date to (but excluding) such Interim Payment Date.

“IRS” means the Internal Revenue Service.
“Inventory” means all inventory and all other goods of the Grantor (including any embedded software) that are held by the Grantor for sale, lease or furnishing under a contract of service (including to its subsidiaries or Affiliates), that are so leased or furnished or that constitute raw materials, work in process or material used or consumed in its business, all goods obtained by the Grantor in exchange for any such goods, all products made or processed from any such goods and all substances, if any, commingled with or added to any such goods.

“Investment” in any Person means any loan or advance to such Person, any purchase or other acquisition of any equity interests or Indebtedness or the assets comprising a division or business unit or a substantial part or all of the business of such Person, any capital contribution to such Person or any other direct or indirect investment in such Person, including, without limitation, any acquisition by way of a merger or consolidation (or similar transaction) and any arrangement pursuant to which the investor incurs Indebtedness of the types referred to in (j) or (k) of the definition of “Indebtedness” in respect of such Person.

“Investment Grade Rating” means equal to or higher than “Baa3” (or the equivalent) by Moody’s, equal to or higher than “BBB-” (or the equivalent) by S&P or Fitch, or the equivalent investment grade rating from any other Nationally Recognized Rating Agency.

“Issuer Documents” means the Bond Purchase Agreement, the Series 2016 Loan Agreement, the Indenture and the Tax Certificate.

“J. P. Morgan” means J. P. Morgan Securities LLC.

“Key Contract” means any one of the following:

(a) All prime Contracts for Construction Work and Design Work;

(b) The Contract(s) for supply of LRVs and Option LRVs (whether it is a Prime Contract or a Subcontract);

(c) All prime Contracts for O&M Work;

(d) All prime project or program management services Contracts; and

(e) All other prime Contracts with a single Contractor (or a single Contractor and its affiliates) that individually or in the aggregate total in excess of $25 million on a term (not annual) basis.

The term “Key Contracts” means all such Contracts in the aggregate or more than one of such Contracts. For purposes of this definition, the term “prime” means a direct contractual relationship between the Company and a Contractor.

“Key Contractor” means each Contractor under any Key Contract or all of them, as the context requires.

“Key Personnel” means, collectively, those individuals appointed by the Company and approved by the Contracting Authority from time to time to fill the “Key Personnel” positions. The specific individuals appointed by the Company and approved by the Contracting Authority to initially fill certain of the Key Personnel positions are each a “Key Person” and identified in Part 2A, Section 2.3 of the Technical Provisions.

“Labor Peace Agreement” means the agreement relating to the O&M Work described in the P3 Agreement.

“Lane” means The Lane Construction Corporation, a Connecticut corporation.

“Late Payment Rate” means a floating rate equal to the LIBOR in effect from time to time plus 400 basis points, but not to exceed the Statutory Rate.
“Law” or “Laws” means (i) with respect to the P3 Agreement, (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or other Dispute), (c) any binding judicial or administrative writ, order, judgment, injunction, award or decree (other than regarding a Claim or other Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by the Contracting Authority within the scope of its administration of the Contract Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws (the term “Laws,” however, excludes Governmental Approvals) and (ii) for all other purposes, any federal, state, local and municipal laws, rules and regulations, orders, codes, directives, permits, approvals, decisions, decrees, ordinances or by-laws having the force of law and any common or civil law, whether adopted or enacted prior to or after the date of the P3 Agreement including binding court and judicial decisions having the force of law, and includes any amendment, extension or re-enactment of any of the same in force from time to time and all other instruments, orders and regulations made pursuant to statute, including those made by any Relevant Authority.

“Legal Requirement” means any requirement under a Governmental Approval or any Requirements of Law.

“Lender” means each of the holders and beneficiaries of Security Documents and their respective successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

“Lenders’ Contribution Notice” means a notice delivered by the Collateral Agent to a Sponsor indicating that a Capital Contribution is required to be made by such Sponsor by a certain date (such date to be at least seven (7) Business Days after the date of service of such notice) in accordance with the terms of the Equity Contribution Agreement.

“Lenders’ Technical Advisor (LTA)” means Turner & Townsend cm2r Inc., or any replacement engineering firm selected by the Company, subject to the TIFIA Lender’s rights under the TIFIA Loan Agreement

“Lenders’ Technical Advisor’s Report” means the report by the Lenders’ Technical Advisor dated as of May 29, 2016, appended to the Official Statement as Appendix I.

“LIBOR” means, for any day, the 1-month London Interbank Offered Rate for deposits in the applicable currency as set by the British Bankers Association (or the successor thereto if the British Bankers Association is no longer making a London Interbank Offered Rate available) (“BBA”) and published by the BBA at approximately 11:00 a.m. London time on such day. For any day that is not a Business Day, the LIBOR for such day shall be the rate published by the BBA on the immediately preceding Business Day.

“Lifecycle Deficit Amount” has the meaning set forth in “FINANCING FOR THE PROJECT—TIFIA Loan Agreement—Representations, Warranties and Covenants—Rehabilitation Reserve Account.”

“Lifecycle Deficit Certificate” has the meaning set forth in “FINANCING FOR THE PROJECT—TIFIA Loan Agreement—Representations, Warranties and Covenants—Rehabilitation Reserve Account.”

“Lifecycle Payment” means the relevant portion of each Availability Payment allocable to anticipated costs (and directly related contingencies and reserves) with respect to Renewal Work, as represented in the P3 Agreement, or the Special Lifecycle Payments.

“Lifecycle Portion” means the lifecycle portion of the Availability Payments, which is intended to pay for vehicle and infrastructure rehabilitation and replacement.

“Light Rail Transit (LRT)” means a transit mode that is typically an electric railway with a light volume traffic capacity compared to heavy rail. It is characterized by: (a) passenger rail cars operating singly (or in short,
usually two car, trains) on fixed rails in shared or exclusive ROW; (b) low or high platform loading; and (c) LRV power drawn from an overhead electric line via a trolley or pantograph.

“Light Rail Vehicle (LRV)” means (a) with respect to the Design-Build Contract, the rolling stock to be supplied by the Design-Build Contractor for the Project (including option LRVs), including all spare LRVs, and refers to the smallest user-carrying unit that can operate independently (the term includes all equipment contained in a LRV), (b) with respect to the O&M Contract, the rolling stock to be supplied by O&M Contractor pursuant to the O&M Contract and Design-Build Contractor pursuant to the Design-Build Contract for the Project, including all spare LRVs, and refers to the smallest user-carrying unit that can operate independently, and (c) the P3 Agreement, the rolling stock to be supplied by the Company for the Project, including all spare LRVs, and refers to the smallest user-carrying unit that can operate independently. The term includes all equipment contained in a LRV.

“Limits of Disturbance” means the limits of disturbance identified in the Record of Decision for the Project issued by FTA.

“Line-by-Line” means, in the context of comparison of insurance premiums for benchmarking purposes, that the premiums will be reviewed separately for each type of insurance coverage rather than reviewing premiums for all of the insurance required under the P3 Agreement. “Stand-alone” terrorism Insurance Policy/ies are, for purposes of this definition, a separate type of insurance coverage.

“Liquid Market” is a term relevant to Termination Compensation, and means that there are two or more willing Persons (each of whom is capable of being a Suitable Substitute and of meeting the minimum requirements of a Qualifying Proposer) doing business in the United States or prepared to qualify to do business in the United States that are capable of meeting the Contracting Authority’s requirements for a Replacement Concessionaire and are willing to participate in a competitive procurement for the work and services remaining to be performed by the Company under the P3 Agreement for systems similar to the System, such that a Resolicitation Process can reasonably be expected to result in payment of consideration for the Resolicited Agreement in the range of values that would provide a reasonably likely indicator as to Estimated Fair Value.

“Listed Events” means any of the following events with respect to the 2016 Bonds:

(i) principal and interest payment delinquencies;
(ii) non-payment related defaults, if material;
(iii) unscheduled draws on debt service reserves reflecting financial difficulties;
(iv) unscheduled draws on credit enhancements reflecting financial difficulties;
(v) substitution of credit or liquidity providers, or their failure to perform;
(vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (as defined in IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2016 Bonds, or other material events affecting the tax status of the 2016 Bonds;
(vii) modifications to rights of the Bondholders and Beneficial Owners, if material;
(viii) Bond calls, if material and tender offers;
(ix) defeasances;
(x) release, substitution or sale of property securing repayment of the Bonds, if material;
(xi) rating changes;
(xii) Bankruptcy Event, insolvency, receivership or similar event of the Company;

(xiii) the consummation of a merger, consolidation, or acquisition involving the Company or the sale of all or substantially all of the assets of the Company, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(xiv) appointment of a successor or additional trustee or the change of name of a trustee under the Indenture, if material.

“LLC Agreement” means the limited liability company agreement of the Company, dated as of March 1, 2016.

“LPL” means LPL Financial LLC.

“Long Stop Date” means 12 months after the RSA Deadline, as such deadline may be extended from time to time under the P3 Agreement.

“Loss” or “Losses” means, whether asserted, suffered or incurred by a Party or a third party, any loss, damage, injury, liability, obligation, cost, response cost, expense, including attorneys’, accountants’ and expert witness fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the P3 Agreement), fee, charge, judgment, penalty or fine. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

“Loss Proceeds” means (a) with respect to the Collateral Agency Agreement, all payments and proceeds (i) received by the Company as a result of a Taking of any assets or property of the Company by any Person pursuant to such Taking or pursuant to a sale of any such assets or property to a purchaser with such power under threat of such Taking and (ii) of insurance (other than proceeds of business interruption insurance and delay in start-up insurance), payable to or received by the Company (whether by way of claims, return of premiums, ex gratia settlements or otherwise), provided, that in no event shall any Third Party Liability Insurance Proceeds constitute “Loss Proceeds,” and (b) with respect to the TIFIA Loan Agreement, any proceeds of insurance resulting from any event of loss.

“Loss Proceeds Account” means the “Loss Proceeds Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“LPA” means the MNII Fund Limited Partnership Agreement.

“LRV Miles” means, with respect to a Train Trip, the number of miles specified in the relevant Baseline Service Plan for those trips, being fixed distances based on the physical distance between the outbound ends of the platform at the Station Stops (and therefore not based on LRV odometer readings) multiplied by the number of LRVs scheduled to be used for that Train Trip.

“LRV Option” means each of the options described in the P3 Agreement, giving the Contracting Authority the right to require the Company to provide additional LRVs.

“LRV Option Price” means the price for Option LRVs determined in accordance with the P3 Agreement.

“LRV Supplier or Light Rail Vehicle Supplier” means CAF USA, Inc. or such other Person as may supply LRVs.

“LRV Supply Milestones” means the milestones set out in Part B of Exhibit 4A to the P3 Agreement.

“Maintenance Escalation Factor” means the escalation factor calculated in accordance with the P3 Agreement.
“Maintenance Plans” means the plans prepared by the Company in accordance with the Technical Provisions, describing the Maintenance Work and maintenance procedures for the infrastructure, Fixed Facilities, Fixed Equipment, LRVs, Systems and other parts or portions of the Project within the O&M Limits.

“Maintenance Volume Adjustment” means the unit price per LRV Mile for the Baseline Service Plan in effect during the relevant time period as provided in Exhibit 4D to the P3 Agreement.

“Maintenance Work” means Work to be performed during the O&M Period under the P3 Agreement relating to maintenance, repair, preservation, modification, and Renewal Work, but excluding Work to be performed during the O&M Period relating to operation, management and administration of the Project, including operation of the Purple Line System.

“Major Construction Contract” means each Contract or Subcontract for performance of Construction Work (including design-build contracts) during the O&M Period with a value of $100,000 or more.

“Majority Holders” means the Holders owning a majority in the aggregate principal amount of the then Outstanding 2016 Bonds.

“Make Whole Redemption Price” means the price that is the greater of (i) one hundred two percent (102%) of the Amortized Value of such 2016 Bonds to be redeemed plus accrued and unpaid interest on such 2016 Bonds to be redeemed on the redemption date; or (ii) an amount equal to the sum of the present values of the remaining scheduled payments of principal and interest on the 2016 Bonds to be redeemed, from and including the date of redemption to (a) November 30, 2021 with respect to the 2016A Bonds, the 2016B Bonds and the 2016C Bonds, (b) September 30, 2026 with respect to the 2016D Bonds maturing on or after March 31, 2027, and (c) the maturity date with respect to the 2016D Bonds maturing before March 31, 2027, discounted to the date on which the 2016 Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months at a discount rate equal to the Applicable Tax-Exempt Bond Rate.

“Mandatory Payment” means payments in respect of mandatory prepayments and mandatory redemptions solely to the extent not payable from amounts on deposit in a Project Account other than the Revenue Account pursuant to the terms of the Collateral Agency Agreement.

“Mandatory Prepayment Account” means the “Mandatory Prepayment Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“MAPG” means the general portion of the Monthly Availability Payment for the relevant Contract Month.

“MAPM” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Payments to the Company—Availability Payments.”

“MAPO” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Payments to the Company—Availability Payments.”

“MARC” means Maryland Area Regional Commuter.

“Market Re-Solicitation Method” means the calculation methodology described in Attachment 1 to Exhibit 13B to the P3 Agreement where the amount payable to the Company is based on a Resolicitation Process.

“Material Adverse Effect” means:

(a) with respect to the 2016 Loan Documents, a material adverse effect on:

(i) The business, property or condition (financial or otherwise) of the Company;

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(ii) The legality, validity or enforceability of any 2016 Loan Document to which the Company is a party;

(iii) The Company’s ability to observe and perform its material obligations under any 2016 Loan Document to which it is a party;

(iv) The validity, perfection or priority of the Security Interest created pursuant to the Security Documents; or

(v) The rights of the Senior Secured Parties under the 2016 Loan Documents, including the ability of the Senior Secured Parties to enforce their rights and remedies under the 2016 Loan Documents;

(vi) provided, that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein, (ii) financial, banking, currency or capital markets fluctuations or conditions, including changes in interest rates, (iii) conditions affecting the transportation industry generally, (iv) events that are Relief Events or Force Majeure Events, or (v) a change in the credit rating of any debt obligations of the State of Maryland; and

(b) with respect to the TIFIA Loan Agreement, a material adverse effect on:

(i) the Project or the Project Revenues;

(ii) the business, operations, properties, condition (financial or otherwise) or prospects of the Company or any other Company Related Party;

(iii) the legality, validity or enforceability of any material provision of any Related Document;

(iv) the ability of the Company, any Company Related Party or any Principal Project Party to enter into, perform or comply with any of its material obligations under any Related Document to which it is a party;

(v) the validity, perfection or priority of the Liens provided under the Security Documents on the Collateral in favor of the Secured Parties; or

(vi) the TIFIA Lender’s rights or remedies available under any TIFIA Loan Document.

“Material Project Contract Accounts” means certain accounts required or permitted to be established pursuant to the Material Project Contracts, in Company’s name, in addition to the Project Accounts, the Operating Account and any Other Operating Accounts, subject to the limitations and conditions set forth in the Finance Documents.

“Material Project Contracts” means:

(a) the P3 Agreement;

(b) the Design-Build Contract;

(c) each Design-Build Guaranty;

(d) the O&M Contract; and

(e) each O&M Guaranty;

in each case as amended or replaced in accordance with the terms of the Finance Documents.
“Materially Inaccurate” means with respect to the description or identification of a Utility in the Utility Information:

(a) The existence of an underground utility (excluding appurtenances and Service Lines) that conflicts with the Project shall be considered a material inaccuracy if the utility is not identified at all in the Utility Information.

(b) The Utility Information regarding the size of an underground utility shall be considered materially inaccurate if one of the following applies, with regard to any difference (whether larger or smaller) between the utility’s actual inside diameter, excluding appurtenances (the “actual size”) and the inside diameter indicated for such utility in the Utility Information (the “stated size”):

(i) The utility’s stated size is 12” or less, and the utility’s actual size is 24” or more,

(ii) The utility’s stated size is greater than 12” but less than or equal to 36”, and the utility’s actual size differs from the stated size by more than 50% of the stated size,

(iii) The utility’s stated size is greater than 36” but less than or equal to 72”, and the utility’s actual size differs from the stated size by more than 25% of the stated size, or

(iv) The utility’s stated size is greater than 72”, and the utility’s actual size differs from the stated size by more than 15% of the stated size.

(c) Inaccuracies in the information regarding the location of an underground utility based on test pit and survey data shall be considered material only if (i) the utility's actual centerline, at the location of the test pit or survey, is more than two feet distant from the horizontal centerline location shown in that information, and/or (ii) any point or feature of the utility at the location of the test pit or survey is more than one foot distant from the elevation shown for that point or feature. If no elevation is shown for a particular utility, then vertical location is not grounds for finding material inaccuracy with respect to such utility.

(d) Inaccuracies in information regarding the location of an underground utility based on utility designation information shall be considered material only if the utility's actual centerline location is more than five feet distant from the horizontal centerline location shown in that information, without regard to vertical location.

(e) No other inaccuracies in the utility information in the Contract Drawings or Engineering Data shall be considered material.

“Maximum Debt to Equity Ratio” means the ratio of (a) the sum of the aggregate principal amount of all Senior Obligations (excluding the portion thereof repaid from the Revenue Service Availability Payment) and the TIFIA Loan (taking into account any such Indebtedness contemplated pursuant to the Financial Plan most recently approved by the TIFIA Lender to be drawn following the Substantial Completion Date and applied to the payment of Total Project Costs) to (b) the amount of all Equity Contributions which have been made by the Equity Sponsors pursuant to the terms of the Equity Contribution Agreement that have been applied to the payment of Total Project Costs (other than any Total Project Costs that would, or the reimbursement of which would, constitute a Restricted Payment) or are on deposit in the Equity Funding Sub-Account of the Construction Account and will be applied to the payment of such Total Project Costs (including amounts drawn or withdrawn from any Equity Credit Support, if any, but excluding any (i) Equity Contributions deposited into any Project Account that cause the amount on deposit therein to exceed the applicable required balance thereof as of the date of such deposit, and (ii) Equity Contributions that are repaid from Progress Payments), which shall, at a maximum, be 89.2:10.8.

“MBTA” means the Migratory Bird Treaty Act.

“MDOT” means the Maryland Department of Transportation.
“Meridiam” means Meridiam Infrastructure Purple Line, LLC, a Delaware limited liability company.

“Meridiam Funds” means each of (a) Meridiam Infrastructure North America Fund II, LP, a Delaware limited partnership, (b) Meridiam Infrastructure North America Fund II AIV, LP, a Delaware limited partnership, (c) Meridiam Infrastructure North America Fund II AIV II, LP, a Delaware limited partnership, (d) Meridiam Infrastructure North America Fund II (Domestic), LP, a Delaware limited partnership, and (e) any other fund with respect to which MINA is the investment manager and that is managed and controlled by MINA.

“MINA” means Meridiam Infrastructure North America Corporation, a Delaware corporation.

“Minor Service Change” means any changes in Train Service within the parameters that apply to Minor Service Changes identified in the Technical Provisions.

“Model Auditor” means BDO LLP or any successor thereto selected by the Company and reasonably acceptable to the Required Creditors.

“Modification” means (a) with respect to the P3 Agreement, any written alteration in any provision of the Contract Documents, whether accomplished in accordance with a provision of the P3 Agreement, or by mutual action of the Parties, which includes Service Level Changes, Change Orders, supplemental agreements and Contract amendments and (b) with respect to any Finance Document, any amendment, consent, supplement, waiver or other modification of the terms and provisions thereof.

“Monthly Availability Payments” means the amount payable by the Contracting Authority to the Company each month under the P3 Agreement with respect to the prior Contract Month, calculated in accordance with the P3 Agreement.

“Monthly Lifecycle Payment” means the portion of each Availability Payment allocable to replacement, refreshment and/or refurbishment of the Fixed Facilities, Fixed Equipment and LRVs (including LRV equipment), calculated in accordance with the P3 Agreement.

“Monthly Operations Performance Factor” means the result of the calculation for each month during the O&M Period determined in accordance with the P3 Agreement.

“Monthly Transfer Date” means the 27th of each month occurring after the RSA Date; provided, that if such day is not a Business Day, the Monthly Transfer Date shall be the immediately preceding Business Day.

“Moody’s” means Moody’s Investors Service, Inc.

“MSAS” means Meridiam SAS, the management holding company of Meridiam.

“MSRB” means the Municipal Securities Rulemaking Board established pursuant to Section 15(B)(b)(1) of the Securities Exchange Act of 1934, as amended, or any successor organization.

“MTA” means the Maryland Transit Administration.

“Multiemployer Plan” means a multiemployer plan as defined in section 4001(a)(3) of ERISA with respect to which the Company or any ERISA Affiliate has liability.

“Nationally Recognized Rating Agency” means S&P, Moody’s, Fitch or DBRS or any other nationally recognized statistical rating organization, identified by the Securities and Exchange Commission.

“NEPA” means the National Environmental Policy Act.

“Net Cash Flow” means, with respect to any period, an amount equal to:
(a) the sum of (i) all Project Revenues received by the Company during such period (excluding (A) the proceeds of the Senior Obligations, the TIFIA Loan and any other Permitted Debt, (B) any equity contributions, loans or similar extensions of credit or investments in the Company made by any Sponsor, (C) Progress Payments, the Revenue Service Availability Payment, the Final Completion Payment, the Special Lifecycle Payments and Termination Compensation, (D) liquidated damages (other than delay liquidated damages received by the Company) and (E) Loss Proceeds (as defined in the TIFIA Loan Agreement) (other than proceeds from business interruption or delay in start-up insurance received by the Company and applied in accordance with the Collateral Agency Agreement), and (ii) amounts withdrawn from the Availability Payment Start-Up Reserve Account during such period, minus

(b) the sum of the following (without duplication):

(i) all Operations and Maintenance Expenses and Capital Expenditures paid during such period, excluding Capital Expenditures and Renewal Expenditures (without duplication) that are funded with (A) the proceeds of any Senior Obligations, (B) the proceeds of equity contributions, loans or similar extensions of credit or investments in the Company made by any Sponsor made during such period, (C) Loss Proceeds (other than proceeds from business interruption or delay in start-up insurance) or (D) with respect to Renewal Expenditures, amounts deposited in or credited to the Rehabilitation Reserve Account in accordance with the Collateral Agency Agreement;

(ii) to the extent not otherwise excluded from Project Revenues for any reason, the amount of any deductions from Availability Payments payable to, or penalties payable by, the Company pursuant to the P3 Agreement;

(iii) deposits to the Rehabilitation Reserve Account during such period; and

(iv) a one-time deposit to the TIFIA Debt Service Reserve Sub-Account in the amount of $7,183,556 made with a portion of the MAPG portion of the Availability Payment projected by the P3 Agreement to be made on or about the date which is seventeen (17) months following the RSA Date; provided that this deposit shall only be included as part of the calculation under this clause (b) during any period which includes the date on which this one-time deposit is made.

"Net Loss Proceeds" means (a) with respect to the TIFIA Loan Agreement, remaining Loss Proceeds after excluding any proceeds of business interruption insurance, delay-in-start-up insurance, proceeds covering liability of the Company to third parties, and Loss Proceeds used or to be used by the Company to repair or restore the Project in accordance with the Collateral Agency Agreement and (b) with respect to the Collateral Agency Agreement, as defined in APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT.”

“New Agreement” has the meaning given in the Direct Agreement, relating to replacement agreements entered into by the Collateral Agent or Substituted Entity.

“New Electronic Payment System (NEPP)" means the new fare system that WMATA is implementing through a contract with Accenture.

“New Starts Full Funding Grant Agreement” means an agreement between the MTA and the FTA relating to a discretionary grant for the Project.

“Non-Bankruptcy Event of Default” means an Event of Default pursuant to the Series 2016 Loan Agreement, other than a Bankruptcy Event of Default.
“Non-Concessionaire Contractor” means any contractor, supplier or other Person performing work in the vicinity of the Project for or through an entity not in ultimate contractual privity (directly or through one or more intermediaries, excluding the Contracting Authority) with the Company.

“Non-Concessionaire Caused Disruption” means, with respect to the O&M Contract and the Design-Build Contract, any of the following events occurring in the O&M Period:

(a) an order issued by the Contracting Authority or an agent of the Contracting Authority which affects service, including an order to slow down or stop train service on the system;

(b) any change in service required to accommodate performance of work (i) by a utility owner pursuant to a permit issued by an authority having jurisdiction or (ii) by a third party, provided the Contracting Authority has agreed in writing to the service change;

(c) a derailment, grade crossing accident, collision or any other accident involving LRVs;

(d) obstruction of any grade crossing or the transitway caused by third parties, excluding obstructions due to vehicular or pedestrian traffic;

(e) on-board train passenger activity during Revenue Service hours that causes interruption to system operations, including requests for an emergency stop of the train or sick or injured passengers requiring medical attention;

(f) (i) failure, under the O&M Contract, of any non-O&M Contractor to comply with the O&M Contractor’s reasonable instructions regarding coordination, scheduling, or safety; or any unlawful or negligent act of such contractor and (ii) failure, under the Design-Build Contract, of any non-Design-Build Contractor to comply with the Design-Build Contractor’s reasonable instructions regarding coordination, scheduling, or safety; or any unlawful or negligent act of such contractor;

(g) disruptions due to trespassers (including suicide attempts and blockages of the transitway in connection with an unlawful demonstration) or other criminal action by third parties;

(h) (i) power network change in voltage or (ii) loss of electrical supply to two or more traction power substations concurrently due to a failure of the electricity supplier, that, in either case, has a material adverse effect on LRT operations;

(i) actions of governmental authorities or emergency response personnel who require access to the system, interrupting operation of the system;

(j) delay in or suspension of service required by police or other public official having jurisdiction, or reasonably occurring in anticipation of the response of police or such public official (for example, suspension due to suspicious luggage or package);

(k) to the extent that the event is not covered by insurance and relief from Deductions is not already provided in the O&M Contract or the Design-Build Contract, as applicable, disruptions due to:

(i) Relief Events or Force Majeure Events; or

(ii) excluding facilities providing electrical power to the system (which are addressed in clause (h) above), any unexpected damage to a utility (A) serving the Project and located within the Project right-of-way or (B) located within the transitway or at a station serving LRVs for the Purple Line system;
The Contracting Authority’s failure to perform or observe any of its material covenants or obligations under the P3 Agreement or the contract documents under the P3 Agreement or to comply with law or governmental approvals; and

Reduction in service during an unusually severe weather event, to ensure compliance with safety standards; so long as O&M Contractor with respect to the O&M Contract or the Design-Build Contractor with respect to the Design-Build Contract, as applicable, notifies Company, as soon as practicable before or during the event (or if earlier notification is impracticable, promptly after commencing the reduction in service);

except, (a) to the extent such event or consequences of the event (i) arose out of (A) any breach of contract by an O&M Contractor-related entity or a Design-Build Contractor-related entity, as applicable, (B) any act or omission by an O&M Contractor-related entity or a Design-Build Contractor-related entity, as applicable, that is inconsistent with the Contract Documents or governmental approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of laws by any O&M Contractor-related entity or a Design-Build Contractor-related entity, as applicable, or (ii) could reasonably have been avoided by O&M Contractor or a Design-Build Contractor-related entity, as applicable.

“Noncompliance Event” means any Activity Noncompliance Event, any Operations Availability Noncompliance Event and any other event expressly stated to be a Noncompliance Event within the O&M Contract or each of them as the context requires.

“Noncompliance Points” means the points that may be assessed for Noncompliance Events determined in accordance with Article 16 and the Activity Noncompliance Occurrence Table.

“Nonconforming Work” means any Work (including any product of the Work) that does not conform to the requirements of the Contract Documents, the Governmental Approvals, applicable Law, the Design Documents or the Construction Documents, including any failure to comply with Buy America requirements under Exhibit 16 to the P3 Agreement and any Work required to be repaired or replaced under Part 2C, Section 1.7 of the Technical Provisions in connection with the Reliability Demonstration Test.

“Non-Discriminatory Change in O&M Standards” means any change in the O&M Standards (including changes requiring Technology Enhancements and Changed D&C Standards applicable to Design Work and Construction Work included in the O&M Work) that is not a Discriminatory Change in O&M Standards.

“Non-LRV Lifecycle Payment” is the portion of the Monthly Lifecycle Payment associated with all infrastructure except for LRVs as set out in the P3 Agreement.

“Non-Recourse Parties” means the Pledgors and any Affiliates of the Company.

“Non-Voting Creditor” means any of the following: (i) the Company, any Sponsor or any of their respective Affiliates that from time to time holds any Secured Obligation, (ii) any Secured Party that has agreed to vote in respect of the Secured Obligations held by it at the direction or subject to the approval or disapproval of the Company, any Sponsor or any of their respective Affiliates or (iii) a Hedge Provider shall be entitled to participate in any Intercreditor Vote.

“Normal Service” has the meaning specified in Part 3 of the Technical Provisions.

“Notes” means any promissory notes issued by the Company relating to the Series 2016 Loan Agreement or any Additional Parity Bonds Loan Agreement, if any.

“Notice of Concessionaire Default” means a written notice provided by the Contracting Authority concerning the Contracting Authority’s determination that a Concessionaire Default has occurred, with respect to any default for which a cure period is allowed under the P3 Agreement.
“Notice of Determination” means the notice described in the P3 Agreement, concerning the Contracting Authority’s determination regarding cure of a Noncompliance Event and assessment of Noncompliance Points.

“Notice of Termination for Convenience” means written notice issued by the Contracting Authority to the Company terminating the P3 Agreement in whole or in part for convenience.

“NPS Special Use Permit” means the special use permit to construct, maintain and operate in the Baltimore-Washington Parkway in the vicinity of MD410 (Riverdale Road) which is required under the NPS ROD, to be obtained by the Design-Build Contractor prior to commencement of construction work included in the DB Work.

“NPS ROD” means the National Park Service Purple Line Record of Decision, dated July 16, 2014.

“NTP” means notice to proceed.

“O&M Commencement Date” means the RSA Date under the P3 Agreement unless revenue service commences before the RSA Deadline, in which case the O&M Commencement Date is the date that Revenue Service commences.

“O&M Contract” means the Operations and Maintenance Contract, dated as of April 7, 2016, between the Company and the O&M Contractor, and any replacement contract entered into by the Company in accordance with the terms of the Finance Documents.

“O&M Contractor” means Purple Line Transit Operators, LLC, whose members are Fluor Enterprises, ACI and CAF USA.

“O&M Contractor’s Equity Member(s)” means any Person with a direct equity interest in O&M Contractor.

“O&M Contractor Indemnified Party” means the O&M Contractor, each of its parents and affiliates, and the directors, officers, agents, employees, successors and assigns of each of them.

“O&M Contractor Operating Annual Turnover” means the then-current (indexed) O&M Monthly Availability Payments payable to the O&M Contractor for the relevant Contract Year, but excluding the O&M Lifecycle Payments and the Company’s costs (if any) as set forth in the exhibit to the O&M Contract.

“O&M Direct Agreement” means the Direct Agreement (Operations and Maintenance Contract and Interface Agreement), to be dated on or prior to Financial Close, by and among the Company, the O&M Contractor and the Collateral Agent.

“O&M Expenditures” means all actual cash maintenance and operation costs and expenses (excluding costs of Discretionary Capital Expenditures, Restricted Payments that would otherwise be considered O&M Expenditures and payments in respect of Indebtedness other than as explicitly set forth in this definition) incurred and paid (or, if applicable, forecasted to be incurred and paid) in connection with the operation and maintenance of the Project in any particular time period to which said term is applicable, including payments made pursuant to P3 Agreement and the O&M Contract (including Renewal Expenditures (including such expenditures necessary to satisfy the Handback Requirements)), payments for taxes (excluding income taxes), insurance, consumables, advertising or marketing, payments under real property agreements pursuant to which the Company has rights in the Project, salaries to employees, and other payments pursuant to any agreement for the management, operation or maintenance of the Project, reasonable fees and expenses of the legal and other advisors and consultants paid by the Company in connection with the management, maintenance or operation of the Project, fees paid in connection with obtaining, transferring, maintaining or amending any Governmental Approvals, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Company, amounts required for the acquisition of any Qualified Hedge or for deposits into any account maintained in accordance with the Collateral Agency Agreement for such purposes, and reasonable general and administrative expenses, but exclusive in all cases
of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“O&M Extended Delay” means (a) an O&M Extended FM Event or (b) any Contracting Authority-caused delay that has materially prevented or delayed the O&M Contractor from performing a substantial portion of its obligations under the O&M Contract for a period of 220 days or more in the aggregate within a period of 365 consecutive days.

“O&M Extended Delay Notice” has the meaning given in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—Termination Due to O&M Extended Delay or the P3 Agreement Termination for Extended Delay.”

“O&M Extended FM Event” means with respect to any rolling 12-month period, any single Force Majeure Event or Relief Event (other than a Contracting Authority change or Contracting Authority-caused delay) that (a) has/have materially prevented or delayed the O&M Contractor from performing a substantial portion of its obligations under the O&M Contract for a period of 180 days or (b) has resulted in damage or loss to a material portion of the Project that the Contracting Authority has determined is not in the public interest to repair or replace.

“O&M Guarantors” means, collectively, Fluor, ACI, and CAF.

“O&M Guaranty” means, individually and collectively, (i) the Guarantee to be dated on or prior to Financial Close by Fluor in favor of the Company, (ii) the Guarantee to be dated on or prior to Financial Close by ACI in favor of the Company and (iii) the Guarantee to be dated on or prior to Financial Close by CAF in favor of the Company, and in each case, any replacement contract entered into from time to time in accordance with the terms of the Finance Documents.

“O&M Letter of Credit” means a “Concessionaire O&M Letter of Credit” (as defined in the O&M Contract) required to be provided by the O&M Contractor to the Company in accordance with the requirements of the O&M Contract.

“O&M Letter of Credit Consent to Assignment” means any consent by the issuing bank of the O&M Letter of Credit to assignment by the Company to the Collateral Agent of the letter of credit proceeds of the O&M Letter of Credit.

“O&M Lifecycle Payments” means lifecycle payments, corresponding to the “Lifecycle Payments” under the P3 Agreements but excluding the Special Lifecycle Payments, with respect to the O&M renewal work and the O&M handback renewal work, subject to the provisions set forth in the O&M Contract.

“O&M Limits” means the limits of the area for which the Company has responsibility to operate and maintain during the O&M Period in accordance with the Technical Provisions.

“O&M Management Plan(s)” means those management plans, manuals, policies, procedures and reports identified in Part 3, Section 1.1 of the Technical Provisions et seq.

“O&M Monthly Availability Payment” has the meaning set forth in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Payments to the O&M Contractor; the Contracting Authority’s Costs—O&M Monthly Availability Payments.”

“O&M P&P Bonds” means, individually and in the aggregate, as applicable: (a) any one or more payment bonds required to be delivered by the O&M Contractor to the Company pursuant to the O&M Contract in respect of any Major Construction Contract (as defined in the O&M Contract) and (b) any one or more performance bonds required to be delivered by the O&M Contractor to the Company pursuant to the O&M Contract in respect of any Major Construction Contract (as defined in the O&M Contract).
“O&M Parent Guaranty Consent and Agreement” means, individually and collectively, (i) the Consent and Agreement (Fluor Parent Guaranty), to be dated on or prior to Financial Close by Fluor, (ii) the Consent and Agreement (Alternate Concepts Parent Guaranty), to be dated on or prior to Financial Close by ACI, and (iii) the Consent and Agreement (CAF Parent Guaranty), to be dated on or prior to Financial Close by CAF, in each case, agreed and accepted by the Company and the Collateral Agent, and in each case, any replacement contract entered into from time to time in accordance with the terms of the Finance Documents.

“O&M Performance Security Instrument” means, individually and in the aggregate, as applicable:

(a) the O&M Guaranty;
(b) the O&M P&P Bonds;
(c) the O&M Letter of Credit; and
(d) any other performance security instrument required to be delivered by or on behalf of the O&M Contractor to, or for the benefit of, the Company from time to time pursuant to or in connection with the O&M Contract.

“O&M Period” means that portion of the P3 Term commencing on the O&M Commencement Date and ending on the earlier to occur of (a) the early termination date under the P3 Agreement or (b) 30 years after the O&M Commencement Date, provided that if the O&M Commencement Date is after the RSA Deadline under the P3 Agreement (that is, if Revenue Service Availability under the P3 Agreement is delayed due to a reason other than a Relief Event or Force Majeure Event), then the O&M Period ends 30 years after the RSA Deadline under the P3 Agreement.

“O&M Spare LRV” means (a) with respect to the Design-Build Contract, the LRV that the Company is required under the P3 Agreement to supply as part of the work that, under the P3 Agreement, is (i) not part of the initial fleet delivered during the Design-Build Period and (ii) not a P3 Agreement option LRV, (b) with respect to the O&M Contract, the LRV that the Company is required under the P3 Agreement to supply as part of the Work that, under the P3 Agreement, is (x) not part of the Initial Fleet delivered during the Design-Build Period and (y) not a P3 Option LRV, and (c) with respect to the P3 Agreement, the LRV supplied by or through the Company as part of the Work that is (i) not part of the Initial Fleet delivered during the Design-Build Period and (ii) not an Option LRV.

“O&M Standards” means the Codes and Standards and the Safety Standards, that are applicable to the O&M Work under the Contract Documents.

“O&M Term” has the meaning set forth in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Overview.”

“O&M Work” means Work to be performed during the O&M Period, including Technology Enhancements, Operations Work, Maintenance Work, supply of the Renewal Work, but excluding any D&C Work remaining to be performed following Revenue Service Availability.


“Operating Account” means the “Operating Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Operating Plan” means the plan that the Company develops and submits to the Contracting Authority in accordance with the requirements in Part 3, Section 1.1 of the Technical Provisions, describing the Project’s predetermined operating plan.

“Operating Volume Adjustment” means the unit price per operating hour for the Baseline Service Plan in effect during the relevant time period as provided in Exhibit 4D to the P3 Agreement.
“Operational Phase Mitigation” means Work performed during the O&M Period to mitigate impacts of EMI at a Research Facility in accordance with the Technical Provisions.

“Operational Phase Mitigation Plan” means the document setting forth the Company’s approach to Operational Phase Mitigation in accordance with Part 2B, Section 11.3.5.4 of the Technical Provisions.

“Operations and Maintenance Expenses” means all actual cash maintenance and operation costs and expenses (excluding costs of Discretionary Capital Expenditures, Restricted Payments that would otherwise be considered Operations and Maintenance Expenses and payments in respect of Indebtedness other than as explicitly set forth in this definition) incurred and paid (or, if applicable, forecasted to be incurred and paid) in connection with the operation and maintenance of the Project in any particular time period to which said term is applicable, including payments made pursuant to P3 Agreement and the O&M Contract (including Renewal Expenditures (including such expenditures necessary to satisfy the Handback Requirements)), payments for taxes (excluding income taxes), insurance, consumables, advertising or marketing, payments of fees, costs and expenses payable to the Secured Parties pursuant to the terms of the TIFIA Loan Documents or in respect of the Senior Obligations pursuant to the Senior Loan Documents, payments under real property agreements pursuant to which the Company has rights in the Project, salaries to employees, and other payments pursuant to any agreement for the management, operation or maintenance of the Project, reasonable fees and expenses of the legal and other advisors and consultants paid by the Company in connection with the management, maintenance or operation of the Project, fees paid in connection with obtaining, transferring, maintaining or amending any Governmental Approvals, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Company, amounts required for the acquisition of any Qualified Hedge or for deposits into any account maintained in accordance with the Collateral Agency Agreement for such purposes, fees paid to rating agencies, and reasonable general and administrative expenses, but exclusive in all cases of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“Operations Control Center (OCC)” means the control location used to manage, control and monitor the Train Service and all associated activities.

“Operations Escalation Factor” means the escalation factor calculated in accordance with Section 4 of Part B of Exhibit 4D to the P3 Agreement.


“Operations Availability Deduction(s)” means the amount of financial deductions relating to an Operations Availability Noncompliance Event calculated in accordance with the P3 Agreement.

“Operations Availability Noncompliance Event” means an event listed in the P3 Agreement that causes the accrual of an OTP Factor.

“Operations Work” means Work to be performed during the O&M Period, relating to the operation, management and administration of the Project including the Purple Line System that is neither Maintenance Work nor Renewal Work, and excluding work remaining to be performed by the Design-Build Contractor under the Design-Build Contract following Revenue Service Availability. For purposes of the monthly Availability Payment, Operations Work shall be included as MAPO.

“Option LRVs” means the LRVs the Contracting Authority has the right to request pursuant to the P3 Agreement.

“Original Equity IRR” means the “Sponsor Equity IRR (pre-tax)” listed in the Base Case Financial Model.

“Originating Station” means the Station at which a Train enters Revenue Service and begins a Trip.
“Other Operating Accounts” means certain accounts if, in the reasonable judgment of the Company, the creation of which will enable the Company to facilitate construction and operations and maintenance of the Project, as permitted in and subject to the Series 2016 Loan Agreement, the TIFIA Loan Agreement and any Additional Finance Documents, in connection with the construction and operations of the Project.

“Other Permitted Senior Secured Indebtedness” means any borrowings or Indebtedness of the Company permitted to be incurred under the Finance Documents (including the TIFIA Loan Agreement prior to the termination thereof), which are equal as to priority of payment with the Bond Obligations and equal in priority with respect to the Collateral (in each case, subject to any excluded Collateral contemplated in the Security Documents) pursuant to the Security Documents (and subject to the Intercreditor Agreement) as the Bond Obligations, including any Hedging Transactions related thereto, issued at fixed interest rates (including fixed interest rates attained through Hedging Transactions); provided, that, (x) if the Bond Obligations are then outstanding, one or more of the following sets of conditions with respect to such Indebtedness set forth in clauses (a), (b), (c) or (d) below are met and (y) any conditions required pursuant to the terms of the applicable Finance Documents (including the requirements for “Additional Senior Obligations” under the TIFIA Loan Agreement prior to the termination thereof) are met:

(a) Indebtedness the proceeds of which may be used to complete the construction of the Project or to comply with obligations under the Material Project Contracts, so long as the Company certifies to the Collateral Agent, and the Lenders’ Technical Advisor confirms, that, in the reasonable belief of the Company (and the Lenders’ Technical Advisor), (i) sufficient funds are not expected to be available, as the case may be, (x) to complete the construction of the Project to a level sufficient to achieve Revenue Service Availability by the then-projected RSA Date or (y) for the Company to comply with its obligations under the Material Project Contracts, (ii) the additional investment is necessary to, as the case may be, (x) complete construction of the Project or (y) comply with obligations under the Material Project Contracts and (iii) the proceeds of such Indebtedness, together with other available funds, are expected to be sufficient to, as the case may be, (x) complete the Project to a level sufficient to achieve Revenue Service Availability by the then-projected RSA Date or (y) comply with obligations under the Material Project Contracts; provided that the aggregate amount of Other Permitted Senior Secured Indebtedness incurred pursuant to this clause (a) may not, without the written consent of the Majority Holders, exceed ten percent (10%) of the principal amount of the 2016 Bonds issued as of the Closing Date;

(b) Indebtedness the proceeds of which may be used to refurbish, upgrade, modify, expand or add to the Project, including for the purpose of complying with the P3 Agreement, so long as the Company certifies to the Trustee, and the Lenders’ Technical Advisor confirms, that (i) there will be no fundamental change in the use of the Project, (ii) the proceeds of such Indebtedness, together with other available funds, shall be sufficient for the proposed purpose, (iii) the additional investment is not expected to have a Material Adverse Effect and (iv) based on a revised Base Case Model (containing current projections as of the time of such issuance and which the Company has reviewed and certified to be correct and accurate in all material respects, based upon assumptions that the Company believes are reasonable, and as confirmed by the Model Auditor), the projected Total Debt Service Coverage Ratio for each Calculation Period through the final maturity date of the 2016 Bonds, after giving effect to such Indebtedness, is not less than the Total Debt Service Coverage Ratio forecast for each such Calculation Period in the Base Case Model as of the Closing Date;

(c) Indebtedness the proceeds of which may be used to refinance or replace any or all of the Senior Secured Obligations, so long as (i) the net proceeds thereof (after deducting any deposits required to satisfy debt service reserve requirements and costs of issuance not to exceed two percent (2%) of the principal amount of such Indebtedness) do not exceed the principal amount of the Senior Secured Obligations outstanding and being refinanced or replaced and (ii) debt service on the Senior Secured Obligations, after the incurrence of such Indebtedness (excluding any Senior Secured Obligations that will be refinanced or replaced with a portion of the proceeds of such Indebtedness), in each year of the remaining term of the 2016 Bonds, is not more than the debt...
service on the Senior Secured Obligations forecast for each such year in the Base Case Model as of the Closing Date; or

(d) Indebtedness the proceeds of which may be used to refinance or replace any or all of the Senior Secured Obligations subsequent to the RSA Date for purposes not covered in clauses (a), (b) or (c) above, so long as based on a revised Base Case Model (containing current projections as of the time of such issuance and which the Company has reviewed and certified to be correct and accurate in all material respects, based upon assumptions that the Company believes are reasonable, and as confirmed by the Model Auditor) the projected Total Debt Service Coverage Ratio for each Calculation Period through the final maturity date of the 2016 Bonds, after giving effect to such Indebtedness, is not less than the Total Debt Service Coverage Ratio forecast for each such Calculation Period in the Base Case Model as of the Closing Date;

provided, further that for each of clauses (a) through (d) above, the following additional conditions apply:

(i) no Default or Event of Default, in each case, with respect to the 2016 Loan Documents, has occurred and is continuing or would result from the issuance of any such Other Permitted Senior Secured Indebtedness, unless, with the consent of the Majority Holders, the issuance of any such Other Permitted Senior Secured Indebtedness would cure such Default or Event of Default;

(ii) each Nationally Recognized Rating Agency then rating the 2016 Bonds has confirmed that the incurrence of such Other Permitted Senior Secured Indebtedness shall not result in a downgrade of the rating of the 2016 Bonds below the higher of (x) the then-current rating of the 2016 Bonds or (y) an Investment Grade Rating;

(iii) executed counterparts of all financing documents related to such Other Permitted Senior Secured Indebtedness shall have been delivered to the Collateral Agent and the Trustee (including an accession agreement with respect to the Intercreditor Agreement and the Collateral Agency Agreement); and

(iv) such Other Permitted Senior Secured Indebtedness shall have principal and interest payment dates that are the same as the 2016 Bonds.

“Other Permitted Senior Secured Indebtedness Effective Date” means with respect to any Other Permitted Senior Secured Indebtedness, such other date on which the applicable Finance Document will come into effect pursuant to the terms thereof.

“OTP Factors” means those factors set forth in Table 1 of Appendix D to Exhibit 4D of the P3 Agreement.

“Outstanding” means, as of the date of determination, all 2016 Bonds that have been executed, authenticated and delivered under the Indenture, except:

(a) any 2016 Bond, or portion thereof, on which all principal and interest due or to become due on or before maturity has been paid;

(b) any 2016 Bond, or portion thereof, on which the Redemption Price due or to become due has been paid in accordance with the redemption provisions applicable to such Bond;

(c) 2016 Bonds in lieu of which other 2016 Bonds have been executed, authenticated and delivered pursuant to the provisions of the Indenture relating to the transfer and exchange of 2016 Bonds or the replacement of mutilated, lost, stolen or destroyed 2016 Bonds;

(d) 2016 Bonds that have been cancelled by the Trustee or that have been surrendered to the Trustee for cancellation; and
“Outstanding Committed Investment” means all payments made by the Equity Members or their Affiliates to the Company in the form of Committed Investment described in clause (a) of the definition of Committed Investment or in the form of Subordinate Debt, to the extent that such amounts have not been repaid by Distributions under clause (a) of the definition of Distributions, provided if the amount established as Outstanding Committed Investment is less than zero, then, for purposes of the calculation of Termination Compensation, Outstanding Committed Investment shall be deemed to be zero.

“Outstanding TIFIA Loan Balance” means the aggregate principal amount drawn by the Company and then outstanding (including capitalized interest) with respect to the TIFIA Loan, as determined in accordance with the TIFIA Loan Agreement.

“Oversight” (whether capitalized or not) means monitoring, inspecting, sampling, measuring, spot-checking, reviewing, attending, observing, testing, investigating, auditing and conducting any other ongoing oversight respecting any part or aspect of the Project or the Work, by any Person so entitled, including all the activities described in the P3 Agreement.

“P3 Agreement” means the Public-Private Partnership Agreement, dated as of April 7, 2016, by and among the State, the Contracting Authority and the Company, as modified pursuant to the Amended and Restated Financial Close Notice, dated May 23, 2016, by the Company and accepted and agreed as of May 23, 2016 by MTA and to be amended by the First Amendment to P3 Agreement, which, inter alia, grants the Company the right to perform the design, construction, financing, operation and maintenance of the Project.

“P3 Agreement Term” or “P3 Term” means the period commencing on the P3 Effective Date and ending on the date specified the P3 Agreement.

“P3 Direct Agreement” means the Direct Agreement, to be dated on or prior to Financial Close, by and among MDOT, MTA, the Company and the Collateral Agent.

“P3 Early Termination Date” means the effective date of termination of the P3 Agreement, prior to the stated expiration of the P3 Agreement Term, under the P3 Agreement.

“P3 Effective Date” means the date of execution, by both the Contracting Authority and the Company, of the P3 Agreement.

“P3 RSA Date” means the date the Independent Engineer issues, under the P3 Agreement, the Certificate of P3 Revenue Service Availability for the Project.

“P3 RSA Deadline” means 2,125 days following the date on which Financial Close occurs, unless (a) the Contracting Authority issues an agreed limited NTP under the P3 Agreement and (b) Financial Close occurs prior to June 6, 2016, in which case the P3 RSA Deadline is March 11, 2022, as such deadline may be extended from time to time under the P3 Agreement.

“PABs Issuer” means Maryland Economic Development Corporation.

“PABs Issuer MOU” means the Memorandum of Understanding between MTA and the Bond Issuer dated September 2, 2014, related to the issuance of the PABs.

“PABs Mandatory Prepayment Sub-Account” means the “PABs Mandatory Prepayment Sub-Account” of the Mandatory Prepayment Account established and created in the name of the Company pursuant to Collateral Agency Agreement.

“Partial Service Payment” means the Insurance Payment, Lifecycle Payment, QVA Payment and PSGS Payment plus the sum of MAPO and MAPM (including QOVA and QMVA as the case may be) for the relevant
month multiplied by the ratio of actual LRV miles supplied by the Company for that month to the Total Baseline LRV Miles for that month. For each period of each day, this calculation will compare actual LRV Miles where the Company meets the conditions of Part 3, Section 3.2 of the Technical Provisions to the number of originally scheduled LRV Miles for that period. For the purpose of this definition, each term not defined in this APPENDIX B – “Definitions of Terms” but used in this definition has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Payments to the Company—Availability Payments."

“Patriot Act” means the USA Patriot Act, Title III of Pub. L., 107-56 (signed into law October 26, 2001).

“Parties” refers to the parties to the applicable Finance Document or Material Project Contract.

“Payment Bond” means the payment bond(s) to secure payment for labor and materials, as required under the Design-Build Contract to be provided by the Design-Build Contractor to the Company and the Contracting Authority (through the Company).

“Payment Date” means each Semi-Annual Payment Date or Interim Payment Date.

“Payment Mechanism” means the process for determining Availability Payments owing to the Company under the P3 Agreement as set forth in Exhibit 4D to the P3 Agreement.

“Payment Period” means the period covered by each Monthly Availability Payment.

“PCMO” means project construction management office.

“PCO Notice” means the written notice of a potential Change Order for a Relief Event or Force Majeure Event required to be provided by the Company under Section 15.2.2 of the P3 Agreement.

“Peak Period” means the AM Peak Period and the PM Peak Period (as such terms are defined in Part 3, Exhibit 3.1 of the Technical Provisions) for the relevant Baseline Service.

“Percentage Interest” means, as it relates to the ownership of the Company, (a) with respect to Meridiam, 70%, (b) with respect to Star America, 15%, and (c) with respect to Fluor Enterprises, 15%.

“Performance Monitoring Report” means any of the monthly, quarterly and annual performance monitoring reports required under the Technical Provisions.

“Performance Requirements” means the requirements in Part 3 of the Technical Provisions which specify acceptable minimum thresholds of performance by the Company during the O&M Period.

“Performance Security” means (a) with respect to the Design-Build Contract, the performance bonds and/or other form of security, approved by the Company under the Design-Build Contract or the Contracting Authority under the P3 Agreement securing performance of the DB Work, as required under the Design-Build Contract to be provided by the Design-Build Contractor, or (b) with respect to the P3 Agreement, the performance bonds, letters of credit and/or other form of security, approved by Owner securing performance of the Work, required under the P3 Agreement.

“Permitted Debt” means, with respect to the TIFIA Loan Agreement:

(a) the TIFIA Loan;

(b) the Initial Senior Obligations in an aggregate principal amount not to exceed $313,035,000;

(c) any Additional Senior Obligations;
(d) purchase money obligations or capitalized leases incurred to finance discrete items of equipment not comprising an integral part of the Project that are payable as Operations and Maintenance Expenses and that in the aggregate do not require payments by the Company in any Company Fiscal Year in excess of $250,000;

(e) trade accounts payable (other than for borrowed money) so long as such trade accounts payable are payable not later than ninety (90) days after the respective goods are delivered or the respective services are rendered;

(f) Permitted Subordinated Debt;

(g) Indebtedness incurred in respect of Qualified Hedges; and

(h) amounts payable by the Company under the Principal Project Contracts in effect as of the Effective Date to the extent the same constitute Indebtedness.

“Permitted Disposition” means any following: (a) sales or other dispositions in the ordinary course of business or contemplated by or permitted under the Material Project Contracts, (b) sales or other disposition of damaged, obsolete, worn out or defective property in the ordinary course of business, (c) the sale, transfer or other disposition of Permitted Investments, (d) sales, transfers or other dispositions that would constitute Permitted Indebtedness or Permitted Security Interests, (e) sales or other dispositions of surplus property not required for the construction or operation of the Project in the ordinary course of business, or (f) the sale, lease, assignment, transfer or other disposition of any of Company’s property, business or assets having a fair market value not exceeding $5,000,000 in the aggregate in any fiscal year.

“Permitted Distribution” means any Restricted Payment permitted pursuant to satisfaction or waiver of the Restricted Payment Conditions.

“Permitted Hedging Termination Obligations” means Hedging Termination Obligations under any Hedging Agreement arising as a result of a Permitted Hedging Termination (as defined in the TIFIA Loan Agreement) or as a result of a tax or illegality event or upon failure of the Company to pay any Hedging Obligations when due.

“Permitted Indebtedness” means, (a) with respect to the Series 2016 Loan Agreement and Indenture:

(i) Any Indebtedness of the Company under the Finance Documents;

(ii) Any Other Permitted Senior Secured Indebtedness;

(iii) Any Indebtedness of the Company to a Sponsor or another Affiliate of the Company as a result of shareholder loans made to the Company and, in each case, repayable only from otherwise distributable amounts that are subject to the Restricted Payment Conditions;

(iv) Purchase money obligations in an amount not to exceed $5,000,000 adjusted annually for inflation, incurred to finance discrete items of equipment not comprising an integral part of the Project that extend to, and are secured by, only the equipment being financed, as long as such Indebtedness does not exceed the purchase price paid for such equipment;

(v) Current accounts payable arising, and accrued expenses incurred, in the ordinary course of business which are payable in accordance with customary practices that are not overdue by more than ninety (90) days (unless subject to a good faith contest);

(vi) Reimbursement obligations in respect of letters of credit to be provided by the Company to third parties pursuant to the Material Project Contracts;
(vii) Amounts payable under the Material Project Contracts to the extent the same constitute Indebtedness;

(viii) Unsecured Indebtedness (other than Sponsor Subordinated Loans) in an aggregate principal amount not to exceed, including any hedging arrangements related thereto, $5,000,000 at any one time outstanding, adjusted annually for inflation; and

(ix) Any other Indebtedness approved in writing by the Majority Holders; and

(b) with respect to the Collateral Agency Agreement and the other Security Documents, any Indebtedness to the extent permitted by the terms of the Finance Documents (including the TIFIA Loan Agreement prior to the termination thereof).

“Permitted Investments” means:

(a) For the purposes of the Collateral Agency Agreement, any investments to the extent permitted by the terms of the Finance Documents (including the TIFIA Loan Agreement prior to the termination thereof); and

(b) For purposes of the TIFIA Loan Agreement, with respect to the investment of the proceeds of the TIFIA Loan or any funds on deposit in the Project Accounts:

(i) Government Obligations;

(ii) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a)(i) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Government;

(iii) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a)(i) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(iv) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated, at the time such agreement or contract is entered into, in one of the two (2) highest Rating Categories for comparable types of obligations by any Nationally Recognized Rating Agency;

(v) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Nationally Recognized Rating Agency at least equal to the then applicable rating of the United States of America by such Nationally Recognized Rating Agency; and

(vi) forward delivery agreements that are obligations of an entity whose senior long-term debt obligations, deposit rating or claims-paying ability are rated, or guaranteed by an entity whose obligations are rated (at the time the investment is entered into), in one of the three (3) highest Rating Categories for comparable types of obligations by any Nationally Recognized Rating Agency (so long as such Nationally Recognized Rating Agency, at the time such investment is entered into, has entered into a “ratings surveillance” agreement with the Company with respect to the Senior Obligations); provided that (i) the underlying investments delivered under any such forward delivery agreement meet the requirements of a Permitted Investment pursuant to clause (a)(i) of this definition, and (ii)
the TIFIA Lender shall have given its prior written approval of any such forward delivery agreement;

(c) During any period, any of the following (except to the extent not permitted under the TIFIA Loan Agreement during a period in which the TIFIA Obligations are outstanding):

(i) Direct obligations of, or obligations for the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America);

(ii) Bonds, debentures or notes issued by any of the following Federal Agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks;

(iii) Obligations issued or guaranteed by an agency of the United States of America or Person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the Congress;

(iv) Evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (b)(i), (b)(ii) and (b)(iii) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated;

(v) Certificates of deposit where the certificates are collaterally secured by securities of the type described in clauses (b)(i), (b)(ii), (b)(iii) and (b)(iv) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by an agency of the government;

(vi) Repurchase agreements when collateralized by securities of the type described in clauses (b)(i), (b)(ii), (b)(iii) and (b)(iv) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(vii) Investments in commercial paper maturing within two hundred and seventy (270) days from the date of acquisition thereof and having, at such date of acquisition, the highest short-term credit rating obtainable from S&P or from Moody’s;

(viii) Investments in certificates of deposit, banker’s acceptances and time deposits maturing within one hundred and eighty (180) days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(ix) Investment agreements, including guaranteed investment contracts, repurchase agreements and forward delivery agreements, that are obligations of an entity whose senior long term debt obligations, deposit rating or claims-paying ability are rated, or guaranteed by an entity whose obligations are rated, (at the time the investment is entered into) not lower than A3 by Moody’s or its equivalent from another Nationally Recognized Rating Agency; or
Money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, and having a rating at least as high as the credit rating assigned by a Nationally Recognized Rating Agency to obligations of the United States.

“Permitted Security Interest” means:

(a) with respect to the Series 2016 Loan Agreement and Indenture:

(i) Any Security Interest arising by operation of law or in the ordinary course of business in connection with or to secure the performance of bids, tenders, contracts, leases, statutory obligations, surety bonds or appeal bonds;

(ii) Any mechanic’s, materialmen’s, workmen’s, repairmen’s, employees’, warehousemen’s, carriers’ or any like Security Interest or right of set-off arising in the ordinary course of business or under applicable law, securing obligations incurred in connection with the Project which are not overdue by more than thirty (30) days or which are adequately bonded or are being contested in good faith;

(iii) Any right of title retention in connection with the acquisition of assets in the ordinary course of business;

(iv) Any Security Interest for taxes, assessments or governmental charges not yet due or being contested in good faith;

(v) Any Security Interest arising out of judgments or awards fully covered by insurance or with respect to which an appeal or proceeding for review is being prosecuted, enforcement has been stayed or bonded;

(vi) Any Security Interest created pursuant to or contemplated by the Finance Documents, or to secure Bond Obligations, TIFIA Obligations or the Other Permitted Senior Secured Indebtedness;

(vii) Any right of set-off arising under a Material Project Contract or Finance Document;

(viii) Any other Security Interest granted over assets with a value not exceeding $1,000,000 in the aggregate at any one time, adjusted annually for inflation;

(ix) Any Security Interest securing Indebtedness described in clauses (b), (d) and (h) of the definition of “Permitted Indebtedness”;

(x) Any Security Interest incurred or deposit made in the ordinary course of business in connection with workers’ compensation, unemployment insurance or other forms of governmental insurance or benefits;

(xi) Any Security Interest arising solely by virtue of any statutory or common law provision relating to banker’s liens, rights to set-off or similar rights;

(xii) Licenses or sublicenses of intellectual property granted in the ordinary course of business;

(xiii) With respect to rights to property on the Project provided by the Contracting Authority pursuant to the Material Project Contracts, any easements, covenants, conditions, rights-of-way or other exceptions or defects or irregularities to title with respect to the Project that exist as of the Closing Date;

(xiv) Any other Security Interest approved in writing by the Majority Holders; and
(xv) Without duplication, any other Security Interest permitted under the TIFIA Loan Agreement as in effect on the Closing Date; and

(b) with respect to the Collateral Agency Agreement and the other Security Documents, any Security Interests to the extent permitted by the Finance Documents (including the TIFIA Loan Agreement prior to the termination thereof).

“Permitted Subordinated Debt” means unsecured Indebtedness of the Company to an Affiliate of the Company that is (a) pledged to the Collateral Agent for the benefit of the Secured Parties, (b) applied to pay Total Project Costs, (c) repayable solely from monies released from the Distribution Account and (d) subject to subordination terms reasonably satisfactory to the TIFIA Lender.

“Permitted Subordinated Loans” means, to the extent permitted by the terms of the Finance Documents (including the TIFIA Loan Agreement prior to the termination thereof), unsecured Indebtedness (excluding Sponsor Subordinated Loans) in an aggregate principal amount not to exceed, including any hedging arrangements related thereto, $5,000,000 at any one time outstanding, adjusted annually for inflation.

“Person” means (a) with respect to the P3 Agreement any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity, as well as MTA and MDOT and (b) for all other purposes, an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Planned Service Interruption” means a Service Interruption due to: (a) Maintenance Work planned by the Company with at least 60 days’ notice to the Contracting Authority (i.e., submittal of a complete Workblock Request Package to the Contracting Authority) and approved by the Contracting Authority; (b) maintenance activities planned by a Utility or Third Party and Approved by the Contracting Authority; or (c) any other Service Interruption requested by the Contracting Authority.

“Pledge Agreements” means (i) that certain Pledge Agreement, dated as of the Effective Date, by and between Meridiam Infrastructure Purple Line, LLC and the Collateral Agent, (ii) that certain Pledge Agreement, dated as of the Effective Date, by and between Fluor Enterprises, Inc. and the Collateral Agent and (iii) that certain Pledge Agreement, dated as of the Effective Date, by and between Star America Purple Line, LLC and the Collateral Agent.

“Pledged Collateral” means(i) the Pledged Membership Interests, (ii) the Pledged Debt, and (iii) subject to the Pledge Agreements, all proceeds, dividends and distributions payable with respect to products and accessions of and to any and all of the foregoing, including, without limitation, “proceeds” as defined in Section 9-102(a)(64) of the UCC, including whatever is received upon any sale, exchange, collection or other disposition of any of the Pledged Membership Interests, and any property into which any of the Pledged Membership Interests are converted, whether cash or non-cash proceeds, and any and all other amounts paid or payable under or in connection with any of the Pledged Membership Interests.

“Pledged Debt” means any Indebtedness owed to the Pledgor by the Company from time to time, including any instruments (as such term is defined in the UCC) or payment intangibles (as such term is defined in the UCC) evidencing or relating to such Indebtedness, including, without limitation, the Indebtedness listed in the Pledge Agreements.

“Pledged Membership Interests” means (i) all of the Pledgor’s limited liability company interests (as defined in Section 18-101(8) of Title 6 of the Delaware Code) in the Company; (ii) all options, warrants and rights to purchase limited liability company interests in the Company and any security certificates or other documents, instruments or certificates representing its limited liability company interests in the Company and all dividends, distributions, cash, securities, instruments and other property from time to time paid, payable or otherwise distributed in respect of or in exchange for all or any part of its limited liability company interests in the Company
and all proceeds thereof; (iii) all rights to vote or otherwise control the Company; (iv) all other rights, privileges, authority and powers as a member of the Company; and (v) all other rights under the LLC Agreement.

“Pledgors” means Meridiam, Fluor Enterprises and Star America.

“Post-Tax” means payment of or provision for United States federal and State income tax liability of the Company and specifically excludes (i) tax payable by the Equity Members, (ii) any foreign income tax and other tax of any kind and (iii) any withholding tax, including any tax that the Company is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt or equity interests in the Company or an Equity Member under 26 U.S.C. Sections 1441 through 1446 notwithstanding 26 U.S.C. Section 1461.

“Post-Termination Services Amount” means for the whole or any part of any month or months for the period from the Termination Date to the time of payment of the Termination Compensation, an amount equal to the Availability Payment for that month or months, assuming no Noncompliance Points, which would have been payable in that month or months under the P3 Agreement had the P3 Agreement not been terminated less an amount equal to the aggregate of (without double-counting):

(a) for any O&M Work that has been terminated and therefore will not be performed by the Company, the greater of (i) all cost components related to the provision of the O&M Work, excluding costs of lifecycle work, and (ii) the reasonable costs to the Contracting Authority of alternative provision of the O&M Work pursuant to the standards set out in and otherwise pursuant to the P3 Agreement (whether or not any O&M Work is performed);

(b) all cost components related to the provision of insurance; and

(c) Rectification costs incurred by the Contracting Authority.

(d) The Post-Termination Services Amount can be an amount that is less than zero.

“Preemption” means a scheme for activation of the street intersection traffic signal phase that is required for passage of Trains whereby the Train phase is always implemented by the time the Train arrives at the intersection.

“Pre-Refinancing Data” means all relevant data in relation to a proposed Refinancing other than a proposed Exempt Refinancing under clause (c) or (d) of the definition of Exempt Refinancing and calculation of the estimated Refinancing Gain, including:

(a) Details of actual and projected timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the anticipated date of Refinancing, and of projected timing and amounts of the investment of equity and Subordinate Debt, if any, from the anticipated date of Refinancing to the end of the Term;

(b) Information on the actual and projected cash flows of the Company from the Effective Date to the anticipated date of Refinancing, and of projected cash flows of the Company from the anticipated date of Refinancing to the end of the Term;

(c) Details of the actual and projected timing and amounts of Distributions from the Effective Date to the anticipated date of Refinancing and of projected timing and amounts of Distributions from the anticipated date of Refinancing to the end of the Term.

(d) A copy of the Pre-Refinancing Base Case Financial Model as updated by the Company, which shall be identical to any presented to the proposed Refinancing Lender(s);
(e) A copy of the proposed Post-Refinancing Base Case Financial Model as updated by the Company, which shall be identical to any presented to the proposed Refinancing Lender(s);

(f) Information on all relevant assumptions, including tax assumptions taking into account any amounts to be paid to the Contracting Authority, and where appropriate back-up data and tax letters, assumptions and other documentation, for the projections in the Pre-Refinancing and Post-Refinancing Base Case Financial Models as updated by the Company;

(g) A detailed calculation of the estimated Refinancing Gain and the Contracting Authority’s share thereof (if any) following the procedures set forth in Exhibit 5G to the P3 Agreement; and

(h) All other information the Contracting Authority may reasonably request in relation to the proposed Refinancing and related calculations and assumptions.

“Pricing Sheets” means certain documents submitted in connection with the Proposal.

“Prime Contractor” means any Contractor that has a direct contract with the Company.

“Principal Payment Date” means (i) for the Bonds, the dates upon which any principal amounts thereunder are scheduled to be paid (including (a) any mandatory sinking fund redemption date in respect of a Principal Related Payment, or (b) any other mandatory prepayment or mandatory redemption date in respect of a Mandatory Payment permitted to be made pursuant to the Finance Documents (including the TIFIA Loan Agreement)) as set forth in the 2016 Loan Documents, including the maturity dates set forth in the inside cover page of the Official Statement, or, if any such date is not a Business Day, then the Business Day immediately succeeding such date, (ii) for the TIFIA Loan, each March 31 and September 30 (and any mandatory prepayment date), or if any such day is not a Business Day, then the Business Day immediately succeeding such date, commencing with the Debt Service Payment Commencement Date, and (iii) for any other Secured Obligations, the date or dates on which principal of such Secured Obligations is due and payable (including (a) any mandatory sinking fund redemption date in respect of a Principal Related Payment, or (b) any other mandatory prepayment or mandatory redemption date in respect of a Mandatory Payment permitted to be made pursuant to the Finance Documents (including the TIFIA Loan Agreement)) as set forth in the documents pursuant to which such Secured Obligations were incurred.

“Principal Project Contracts” means:

(a) the P3 Agreement;

(b) the Design-Build Contract;

(c) each DB Performance Security Instrument;

(d) the O&M Contract;

(e) each O&M Performance Security Instrument;

(f) the Interface Agreement; and

any document that replaces or supplements any of the documents listed above.

“Principal Project Party” means the (a) the State, acting by and through MDOT and MTA, (b) DB Contractor, (c) DB Contractor’s Equity Members, (d) Design-Build Guarantors, (e) O&M Contractor, (f) O&M Contractor’s Equity Members and (g) O&M Guarantors, and any other Person (other than (i) the Company or (ii) any surety or letter of credit issuer under the DB Performance Security Instruments or O&M Performance Security Instruments) party to a Principal Project Contract, in each case, from the time that and for so long as the related Principal Project Contract is and remains in effect.
“Principal Related Payment” means payments in respect of scheduled principal payments and mandatory sinking fund payments, applicable to the outstanding Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any.

“Priority” means the a scheme for activation of the street intersection traffic signal phase that is required for passage of Trains whereby the Train phase is implemented sooner or extended longer but does not guarantee that the Train will not have to stop.

“Private Activity Bonds (PABs)” means bonds, notes or other evidence of indebtedness issued by the PABs Issuer in accordance with the provisions of Internal Revenue Code sections 142(a)(15) and (m).

“Proceeds” means “proceeds” as such term is defined in the UCC or under other relevant law and, in any event, shall include, but shall not be limited to, (i) any and all proceeds of, or amounts (in whatsoever form, whether cash, securities, property or other assets) received under or with respect to, any insurance, indemnity, warranty or guaranty payable to the Company from time to time, and claims for insurance, indemnity, warranty or guaranty effected or held for the benefit of the Company, in each case with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever, whether cash, securities, property or other assets) made or due and payable to the Company from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (iii) any and all other amounts (in any form whatsoever, whether cash, securities, property or other assets) from time to time paid or payable under or in connection with any of the Collateral (whether or not in connection with the sale, lease or other disposition of the Collateral).

“Progress Payments” means (a) with respect to the P3 Agreement, has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Payments to the Company—Progress Payments” and (b) for all other purposes, means the payments to be made by the Contracting Authority to the Company based on monthly invoices submitted during the Design-Build Period, based on progress determinations.

“Project” means (a) for purposes of the Official Statement, the financing, development, design, construction, equipping, supply of light rail vehicles for and operation and maintenance of a 16.2 mile light rail transit line that extends from Bethesda in Montgomery County to New Carrollton in Prince George’s County, (b) for purposes of the Finance Documents (other than the TIFIA Loan Agreement), the Design-Build Contract, the O&M Contract, and P3 Agreement, the Purple Line Light Rail Project described in Part 1 of the Technical Provisions, to be developed by the Company as described in the Technical Provisions and other Contract Documents, including (i) the LRVs, facilities, equipment, subsystems and other components of the Purple Line System, (ii) other structures and improvements to be developed by the Company, including Utility improvements, and (iii) all other work product of the Company relating to the foregoing. Notwithstanding the foregoing, as used in provisions relating to the O&M Work, the term “Project” excludes facilities developed by the Company during the Design-Build Period that are owned and maintained by third parties as described in Part 1 of the Technical Provisions, and (c) for purposes of the TIFIA Loan Agreement, the Purple Line Light Rail Project, which: (a) is an approximately 16.2 mile east-west light rail transit line that will extend from the Bethesda Metrorail Station in Montgomery County, Maryland to the New Carrollton Metrorail Station in Prince George’s County, Maryland; (b) will connect (i) both branches of the Metrorail Red Line at Bethesda and Silver Spring, Maryland, the Green Line at College Park, Maryland, and the Orange Line at New Carrollton, Maryland, (ii) all three MARC commuter rail lines, (iii) local and regional bus systems, and (iv) Amtrak’s Northeast Corridor; (c) will be at-grade, with the exception of (i) under Plymouth Street in East Silver Spring, Maryland, where it will operate in a tunnel for approximately one-quarter (1/4) mile due to steep grades, and (ii) three elevated structures at Connecticut Avenue, the Silver Spring Transit Center, and Riverdale Park, totalling less than one mile; (d) will operate primarily in exclusive or dedicated lanes for fourteen (14) miles, with three sections of mixed traffic operations, on Wayne Avenue, Paint Branch Parkway, and Ellin Road; (e) will be served by twenty-one (21) stations, with sixteen (16) at-grade stations, three (3) stations located on aerial structures, and two (2) below-grade stations; (f) will include two (2) yard and shop facilities; (g) will include reconstruction of and upgrades to all or a portion of (i) the Capital Crescent Trail, (ii) the Montgomery County Trail and (iii) the University of Maryland Bicycle Path; (h) will include off-board fare collection utilizing a “proof of payment” system; and (i) will include light rail vehicles that (i) will be electrically powered through the use of an overhead wire system and (ii) will be given signal priority or pre-emption at most traffic intersections.
“Project Accounts” means (a) with respect to the Collateral Agency Agreement, collectively, (i) each of the Securities Accounts, (ii) the Operating Account, (iii) any Other Operating Account, (iv) any Material Project Contract Account permitted thereby and (v) each such other account specified or to be specified as being a “Project Account” in the Collateral Agency Agreement, including any sub-accounts thereof, from time to time; and (b) with respect to the TIFIA Loan Agreement, collectively, the Construction Account, the Revenue Account, the Senior Debt Service Account, the TIFIA Debt Service Account, the Debt Service Reserve Account, the Termination Compensation Account, the Revenue Service Availability Payment Account, the Final Completion Payment Account, the Special Lifecycle Payment Account, the Availability Payment Start-Up Reserve Account, the Rehabilitation Reserve Account, the Tax Reserve Account, the Voluntary Prepayment Account, the Equity Lock-Up Account, the Loss Proceeds Account, the Mandatory Prepayment Account, the Sponsor Cash Collateral Account, the Operating Account and each Other Operating Account, each Additional Parity Bonds Proceeds Account, each Material Project Contract Account, if any, permitted under the TIFIA Loan Agreement and the Collateral Agency Agreement, and any sub-account of the foregoing accounts.

“Project Adjusted Costs” means those costs and expenses that have actually been incurred by or on behalf of the Company directly in connection with the Work, less Progress Payments, RSA Payments, Final Completion Payments and any unscheduled payments (including those related to Relief Events and Change Orders) previously paid by the Contracting Authority to the Company. The term “Project Adjusted Costs” excludes capitalized interest and other financing costs, professional and advisory fees (other than fees payable to Contractors for performance of Work), Company overhead and administrative expenses, wages earned, accrued unused vacation time and any other employee payments required by law or employment agreement with Company employees, and demobilization costs.

“Project Costs” means all costs and expenses paid or incurred or to be paid or incurred in connection with or incidental to the acquisition, design, construction, rehabilitation, equipping, operations, maintenance, commissioning and financing of the Project, including legal, administrative, engineering, planning, design, insurance, due diligence development and financing costs, the contract price of the Design-Build Contract, amounts payable under all construction, engineering, technical and other contracts (including any Technical Assistance and Management Services Fees) entered into by the Company in connection with performing its obligations under the P3 Agreement and in accordance with the Finance Documents, all O&M Expenditures (including Renewal Expenditures) and all Discretionary Capital Expenditures (if any) incurred or to be incurred prior to the Final Completion Date, financing costs, including debt service payments, costs of issuance, fees, interest during construction, initial working capital costs, funding of reserves including the Rehabilitation Reserve Account, the sub-accounts of the Debt Service Reserve Account, the Availability Payment Start-Up Reserve Account, and any other reserves contemplated by the P3 Agreement or the Finance Documents, development costs payable (or reimbursable) on or promptly following the Closing Date, mobilization payments under the Design-Build Contract or in respect of O&M Work, all administrative costs, including budgeted overhead and operating expenses, fees and expenses payable in connection with Equity Letters of Credit, any fees, administrative costs or expenses and indemnification payments due to (i) the Senior Secured Parties and the TIFIA Lender under the Finance Documents, (ii) to other parties under any Other Permitted Senior Secured Indebtedness, if any, and (iii) to the payment of any rating agency fees and expenses, and any taxes payable from the Tax Reserve Account.

“Project Debt” means bona fide indebtedness (including subordinated indebtedness) for or with respect to funds borrowed or obligations incurred (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more Security Documents satisfying the terms in the P3 Agreement. Project Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto and lease financing obligations. Project Debt excludes (a) any indebtedness of the Company or any Equity Member of the Company that is secured by anything less than the entirety of the Company’s Interest, such as indebtedness secured only by an assignment of economic interest in the Company or of rights to cash flow or dividends from the Company, (b) debt that constitutes consideration paid for the sale of the economic rights in the Company or the Company’s Equity Members, (c) equity bridge loans, and (d) any increase in indebtedness to the extent resulting from an agreement or other arrangement the Company enters into after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination giving rise to an obligation of the Contracting Authority to pay Termination
Compensation, including the Company’s receipt of a Notice of Termination for Convenience and occurrence of a Contracting Authority Default of the type entitling the Company to terminate the P3 Agreement. In addition, no debt shall constitute Project Debt unless and until the Collateral Agent provides the Contracting Authority with notice thereof and the related Funding Agreements and Security Documents in accordance with the relevant Direct Agreement. Project Debt includes any TIFIA financing and obligations arising with respect to such TIFIA financing.

“Project Debt Termination Amount” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Termination of the P3 Agreement—Termination Due to Court Ruling.”

“Project Execution Plan (PEP)” means a separate, detailed plan regarding (a) the prosecution of Utility Work (including performance of Betterments) for a Utility Owner, agreed upon in writing and executed by the Company, the Contracting Authority and the Utility Owner or (b) the prosecution of Third Party Work for a Third Party, agreed upon in writing and executed by the Company, the Contracting Authority, and the Third Party. Additional information regarding Project Execution Plans is provided in the Technical Provisions, the Third Party Agreements, and the Contracting Authority Utility Agreements. Depending on the context, the term “Project Execution Plan” may refer to an individual plan or to all of the plans in the aggregate. The aggregate Project Execution Plan is part of the Project Management Plan.

“Project Life Coverage Ratio” means, for any Calculation Date, the ratio of (a) the net present value of all projected Net Cash Flow for each Calculation Period over the remaining scheduled Term, in each case, discounted at the projected Weighted Average Interest Cost for each such Calculation Period, to (b) the sum of (i) the outstanding balance of the Senior Obligations (other than the balance of the Senior Obligations to be repaid in whole or in part by the Revenue Service Availability Payment, the Final Completion Payment and the Special Lifecycle Payments) and (ii) the outstanding balance of the TIFIA Loan, in each case, as of such Calculation Date.

“Project Management Office (PMO)” means the Company-established temporary Project office facility, described in the Technical Provisions, from which the Company administers the design and construction of the Project.

“Project Management Plan (PMP)” means the document setting forth the Company’s prescribed approaches to, and plan for, the scope of Work, described in the Technical Provisions, as it may be modified and updated from time to time, following approval thereof by the Contracting Authority.

“Project Proceeds” means any (i) delay-related liquidated damages compensation received by the Company pursuant to or in connection with any Material Project Contract; and (ii) the proceeds of any delay in start-up and contingent business interruption insurance and loss of advance profits insurance received by the Company (net of any applicable taxes in respect of the Company and net of any amounts payable therefrom to the Contracting Authority).

“Project Revenues” means all amounts received by the Company derived from or related to the operation or ownership of the Project, including: (a) payments under the P3 Agreement, including Progress Payments, the RSA Payment, the Final Completion Payment, Availability Payments (including the Special Lifecycle Payments) and Termination Compensation; (b) payments under any other Material Project Contract, DB Performance Security Instrument (as defined in the TIFIA Loan Agreement), O&M Performance Security Instrument (as defined in the TIFIA Loan Agreement) or the Interface Agreement (including warranty payments or delay liquidated damages); (c) all income derived from Permitted Investments; (d) proceeds from business interruption and delay in start-up insurance policies; (e) all proceeds of the sale or other disposition of any part of the Project; (f) Loss Proceeds not applied to restore, rebuild, repair, replace or remediate the Project; (g) revenue from any lease or other contract; (h) all net cash payments received by the Company under or in connection with any Hedging Agreements; and (i) all other amounts arising or derived from or paid in respect of the Project. Project Revenues do not include amounts available from time to time under any liquidity support arrangements (including any Acceptable Letter of Credit with respect to any Reserve Account).
“Project Schedule” means the CPM schedule for all D&C Work leading up to and including Revenue Service Availability and Final Completion, and for tracking the performance of D&C Work, as the same may be revised and updated from time to time in accordance with the Technical Provisions.

“Project-Specific Locations” means (a) the site where LRVs are assembled and (b) areas outside of the Project ROW where activities incidental to construction of the Project are being performed by Contractors, including field office sites, storage sites, staging areas dedicated to the Project, temporary work areas and parking areas, but excluding any permanent locations of the Company or any Contractor, or any of its subcontractors, as applicable.

“Property Acquisition Schedule” means the schedule for acquisition of ROW and other property in either Exhibit 9 to the P3 Agreement.

“Proposal” means the Company’s response to the RFP.

“Proposal Date” means December 8, 2015.

“Proprietary Intellectual Property” means Intellectual Property that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent laws or copyright laws.

“Protection in Place” means any action taken to avoid damaging a utility facility which does not involve removing or relocating that facility, including staking the location of a facility, exposing the facility, locating construction equipment so as to avoid impacts to facilities, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered a Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a phased Utility Adjustment and not a Protection in Place. The term “Protection in Place” includes both temporary measures and permanent installations meeting the foregoing definition.

“Punch List” (whether capitalized or not) means an itemized list of D&C Work which remains to be completed after the RSA Date, as applicable, as a condition to Final Completion, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

“Purchase Date” means the date set for purchase of the 2016A Bonds, the 2016B Bonds and the 2016C Bonds in connection with the Bond Issuer’s right to elect to purchase such bonds pursuant to the Indenture.

“Purchase Price” means the purchase price of the 2016A Bonds, the 2016B Bonds and the 2016C Bonds in connection with the Bond Issuer’s right to elect to purchase such bonds pursuant to the Indenture, which is equal to one hundred percent (100%) of the principal amount of such bonds.

“Purple Line” means the planned 16.2 mile light rail transit line that extends from Bethesda in Montgomery County to New Carrollton in Prince George’s County.

“Purple Line System” means the light rail system described in Part 1 of the Technical Provisions.

“Qualified Hedge” means, to the extent from time-to-time permitted by law, with respect to Permitted Debt, any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 16(q).

“Qualified Hedge Provider” means a Qualified Issuer that is a counterparty to a Qualified Hedge; provided that, with respect to any Variable Interest Rate Senior Obligations consisting of commercial bank loans, the TIFIA Lender’s consent will be required for any related Qualified Hedge Provider that is not also making such loans to the Company.
“Qualifying Proposals” is a term relevant to Termination Compensation, and means a proposal submitted by a Qualifying Proposer that is responsive to the requirements specified in the solicitation documents for the Resolicited Agreement, including provision of an acceptable technical proposal and payment of a lump sum amount.

“Qualifying Proposer” is a term relevant to Termination Compensation, and means a proposer that meets the minimum requirements specified in the solicitation documents for the Resolicited Agreement, including (i) willingness to accept the terms of the Resolicited Agreement and accept responsibility for the performance of the Company’s remaining obligations under the Contract Documents, (ii) financial ability to pay the lump sum amount proposed as consideration for the Resolicited Agreement; (iii) experience in and technical capability of performing work of the type remaining to be performed under the Contract Documents; and (iv) any other qualifications criteria reasonably established by the Contracting Authority.

“Quality Assurance (QA)” means all planned and systematic actions by the Company necessary to provide confidence that QC is performed in accordance with the Quality Management Plan, that all Work complies with the Contract Documents and that all materials incorporated in the Work, all equipment and all elements of the Work will perform satisfactorily for the purpose intended. QA actions include monitoring and verification of design through auditing, spot-checking and participation in the review of the Design Documents and Working Plans; and monitoring and verification of construction, manufacturing/process facilities and equipment, on-site equipment and QC documentation through auditing, spot inspections and reconciliation of material acceptance and rejection based on QC testing and Verification Sampling and Testing at production sites and the Site. Quality Assurance also includes documentation of all QA efforts.

“Quality Assurance Oversight (QAO)” means all planned and systematic Oversight actions by the Contracting Authority necessary to provide confidence that the Company is performing QA and QC in accordance with the Quality Management Plan. The term "Quality Assurance Oversight" also includes consultation and provision of written comments by the Contracting Authority, documentation of QA activities, any final inspection or similar undertaking and processes carried out to determine Final Completion status.

“Quality Control (QC)” means the total of all activities performed by the Company to ensure that the Work meets the requirements of the Contract Documents. For design this includes procedures for design quality, checking, and design review including reviews for constructability, and review and approval of Working Plans. For construction this includes procedures for materials handling and construction quality; inspection, sampling, testing and acceptance/rejection of materials, plants, production and construction; material certifications; calibration and maintenance of equipment; production process control; and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

“Quarterly Maintenance Volume Adjustment” or “QMVA” means the amount of the Quarterly Volume Adjustment calculated in accordance with Section 2.3(c) of Part B of Exhibit 4D to the P3 Agreement.

“Quarterly Operating Volume Adjustment” or “QOVA” means the amount of the Quarterly Volume Adjustment calculated in accordance with Section 2.3(b) of Part B of Exhibit 4D to the P3 Agreement.

“Quarterly Volume Adjustment” means the quarterly adjustment to Availability Payments calculated in accordance with Section 2.5(a) of Part B of Exhibit 4D to the P3 Agreement.

“RBC” means RBC Capital Markets, LLC.

“Rebate Amount” means the amount required to be rebated to the United States pursuant to Section 148 of the Code or successor provisions applicable to the Bonds.

“Record Date” means the fifteenth day of the calendar month in which an Interest Payment Date occurs.

“Record Documents” means construction drawings, specifications and related documentation furnished by the Company to reflect the actual conditions and location in detail of Work as constructed and installed, which may
be generated initially as marked-up Release for Construction Documents, revised subsequently as-finished revised drawings and documents, and updated thereafter as required by the Technical Provisions.

“Record of Decision” means the record of FTA’s decision in accordance with NEPA approving the environmental impact statement for the Project.

“Recoverable Costs” means:

(a) The reasonably required costs of any assistance, action, activity or work undertaken by the Contracting Authority which the Company is liable for or is obligated to reimburse the Contracting Authority for under the terms of the Contract Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of the Contracting Authority staff and employees performing such action, activity or work; plus

(b) Reasonably required out-of-pocket costs the Contracting Authority incurs to publicly procure any such third party contractors; plus

(c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the Maryland Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or work, including in connection with defending claims by and resolving disputes with third party contractors; plus

(d) Interest on all the foregoing sums at the Late Payment Rate, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

“Rectification” means, with respect to any Activity Noncompliance Occurrence, fixing the problem so that the future operations comply with the requirements of the O&M Contract. This includes: (a) restoring any functional capability which has been disabled or otherwise fails to comply with the requirements with respect to the Activity Noncompliance Occurrence; (b) repairing any defect, hazard, or other condition which was not in compliance with such requirements; and (c) formally notifying the Contracting Authority’s authorized representative and the Company that Rectification has been completed.

“Rectification Costs” means an amount equal to the reasonable and proper costs incurred or reasonably anticipated to be incurred by the Contracting Authority in curing or otherwise addressing any default by the Company and procuring performance of the Company’s obligations pursuant to the P3 Agreement.

“Rectification Time” means, with respect to any Activity Noncompliance Occurrence, the period within which Rectification of the event must be completed as specified in the "Rectification Time" column of the Activity Noncompliance Occurrence Table, calculated from the date and time the Company first obtained knowledge or had reason to know of the Activity Noncompliance Occurrence regardless of whether the Contracting Authority has delivered a notice to the Company or entered the Activity Occurrence into the electronic database.

“Redemption Price” means the principal, interest and premium, if any due on a 2016 Bond on the date on which it is redeemed prior to maturity pursuant to the redemption provisions applicable to such 2016 Bond.

“Reference Documents” means the documents provided with and so designated in the RFP, which are provided for disclosure purposes only and without any warranty as to their accuracy, completeness or fitness for any particular purpose.
“Refinancing” means:

(a) Any amendment, variation, novation, extension, renewal, supplement, refunding, defeasance or replacement of any Project Debt, Funding Agreement or Security Document (other than any Subordinate Debt and Subordinate Security Documents);

(b) The issuance by the Company of any indebtedness in addition to the Initial Project Debt, secured or unsecured;

(c) The disposition of any rights or interests in, or the creation of any rights of participation with respect to, Project Debt, Funding Agreements and Security Documents or the creation or granting by the Company or any Lender of any other form of benefit or interest in either Project Debt, Funding Agreements and Security Documents or the Company’s Interest whether by way of security or otherwise; or

(d) Any other arrangement put in place by the Company or another Person which has an effect similar to any of clauses (a) through (c) above.

“Refinancing Data” means all relevant data in relation to a Refinancing other than an Exempt Refinancing and calculation of the Refinancing Gain, including:

(a) details of actual timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the date of Refinancing, and of projected timing and amounts of the investment of equity and Subordinate Debt, if any, from the date of Refinancing to the end of the Term;

(b) information on the actual cash flows of the Company from the Effective Date to the date of Refinancing, and of projected cash flows of the Company from the date of Refinancing to the end of the Term;

(c) details of the actual timing and amounts of Distributions from the Effective Date to the date of Refinancing and of projected timing and amounts of Distributions from the date of Refinancing to the end of the Term;

(d) A copy of the final Pre-Refinancing Base Case Financial Model as updated by the Company, which shall be identical to any presented to the Refinancing Lender(s);

(e) A copy of the final Post-Refinancing Base Case Model as updated by the Company, which shall be identical to any presented to the Refinancing Lender(s);

(f) Information on all relevant assumptions, including tax assumptions taking into account any amounts to be paid to the Contracting Authority, and where appropriate back-up data and tax letters, assumptions and other documentation (if any), for the projections in the Pre-Refinancing and Post-Refinancing Base Case Financial Models as updated by the Company;

(g) A detailed calculation of the Refinancing Gain and the Contracting Authority’s share thereof (if any) following the procedures in Exhibit 5G of the P3 Agreement; and

(h) All other information the Contracting Authority may reasonably request in relation to the Refinancing and related calculations and assumptions.

“Refinancing Gain” means the amount determined in accordance with Exhibit 5G to the P3 Agreement.

“Rehabilitation Reserve Account” means the “Rehabilitation Reserve Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.
“Rehabilitation Reserve Required Balance” means, on any date of determination, an amount equal to (a) the sum of (i) the portion of each Availability Payment that comprises Lifecycle Payments (other than Special Lifecycle Payments) received by the Company from the Contracting Authority as of such date plus (ii) the Lifecycle Deficit Amount (as calculated as of such date), minus (b) all amounts withdrawn from the Rehabilitation Reserve Account to pay Renewal Expenditures as of such date.

“Related Documents” means the Senior Loan Documents (as defined in the TIFIA Loan Agreement), the TIFIA Loan Documents (as defined in the TIFIA Loan Agreement), and the Principal Project Contracts.

“Related Transportation Facility(ies)” means all existing and future transit systems, bridges, tunnels, highways, streets, rail lines and roads, or other transportation facilities of any mode, including upgrades and expansions thereof, that are or will be connecting with or crossing under or over the Project. For purposes of this definition, “future” transit systems, etc., means those transit systems, etc., identified in any Third Party’s formal, approved budget document for capital projects as of the Setting Date.

“Release” or “Release of Hazardous Materials” means, with respect to Hazardous Materials, any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

“Release Date” means the earlier of the (i) date on which the Collateral Agency Agreement has been terminated in accordance with the terms thereof and (ii) the date on which Capital Contributions in an aggregate amount equal to the Aggregate Capital Commitment of each Sponsor have been made in accordance with the Equity Contribution Agreement; provided that in no event shall the Release Date be earlier than the RSA Date, except as otherwise allowed under the P3 Agreement.

“Release for Construction Documents” means Design Documents that have been authorized to be used as the basis for Construction Work, in accordance with the design management portion of the approved Project Management Plan, as more fully set forth in Part 2A, Section 3.7 of the Technical Provisions.

“Relevant Authority” means the government of the United States of America, the State, the cities and counties within the State and any other agency, or subdivision of any of the foregoing, including any federal, state or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the State or the cities and counties within the State. "Relevant Authority" shall not include the Contracting Authority.

“Relevant Event” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Excuse from Compliance.”

“Reliability Demonstration Test” has the meaning set forth in Part 2C, Section 1.7 of the Technical Provisions.

“Relief Event” means:

(a) with respect to the P3 Agreement, (1) Contracting Authority Changes and (2) any of the following events to the extent that the event materially and adversely affects performance of the Company’s obligations under the Contract Documents, in each case subject to the requirements, limitations and deductibles in the P3 Agreement regarding entitlement to relief as well as the duty to prevent occurrences and to mitigate consequences of such events:

(i) Contracting Authority-Caused Delay;

(ii) Subject to certain limitations, discovery of Differing Site Conditions;
(iii) Subject to certain limitations, discovery on or under the Site (excluding Additional Properties and Project-Specific Locations) of any paleontological or cultural (including archaeologic and historical) resources;

(iv) Subject to certain limitations, discovery at, near or on the Project ROW of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date), to the extent that the Company is required to stop the Work or perform Extra Work as a result of the discovery;

(v) Subject to certain limitations, discovery that the Utility Information is Materially Inaccurate with respect to any underground utility facility (excluding Service Lines), except where the existence of a Utility in the correct location and/or size, as applicable, was known to the Company as of the Setting Date, or would have become known to the Company as of the Setting Date by undertaking reasonable inquiry, prior to the Setting Date, with Utility Owners, including by requesting and reviewing Utility plans provided by Utility Owners;

(vi) Discovery of Hazardous Waste required by applicable Law to be recycled, treated, stored or disposed at a “Designated Facility” as defined in COMAR 26.13.01.03, discovered during or in connection with the demolition of buildings, fixtures or other improvements, in the categories for which unit prices are provided in the P3 Agreement;

(vii) (i) Discovery of Pre-Existing Hazardous Materials within the Site, excluding Known or Suspected Hazardous Materials and excluding Hazardous Materials within Additional Properties and Project-Specific Locations, or (ii) any sudden spill of Hazardous Material by a Person other than a Concessionaire-Related Entity not covered by item (f) above which occurs during the Term and (A) renders use of the Transitway, roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation or (B)(1) is required by applicable Law to be recycled, treated or stored, or (2) is required by applicable Law to be disposed at a “Designated Facility” as defined in COMAR 26.13.01.03;

(viii) With respect to D&C Work:

(A) Discriminatory Changes in Law; and

(B) any other Change in Law that (A) required a material modification in the Project design, (B) results in imposition of additional mitigation requirements on the Project respecting (i) impacts on paleontological, biological or cultural (including archaeologic and historical) resources or (ii) other environmental impacts, or (C) prevents renewal of any Governmental Approval;

(ix) With respect to O&M Work:

(A) Changes in Law, excluding changes in federal Law other than (A) changes in federal Law to the extent specified in the P3 Agreement, (B) changes in federal Law that materially modify tasks to be performed by operations and maintenance personnel and (C) any change in federal Law requiring execution of a Section 13(c) agreement for the Project;

(B) Discriminatory Changes in O&M Standards;

(C) Non-Discriminatory Changes in O&M Standards to the extent specified in the P3 Agreement;
(D) Changes in Transitway traffic signal timing affecting Station-to-Station run times;

(E) Changes in traffic signal Priority or Preemption in the Transitway affecting Station-to-Station run times;

(F) Permanent and planned power network change in voltage by the Utility Owner supplying electricity to the Purple Line System that has a material adverse effect on LRT operations;

(G) Any change in the Work or delay to or interference with the Work directly attributable to projects undertaken by Third Parties within the Project ROW during the Design-Build Period that are not identified in (i) the Contract Documents or (ii) any Third Party’s formal, approved budget document for capital projects as of the Setting Date;

(H) During the Design-Build Period, subject to the limitations and obligations specified in the P3 Agreement, damage to improvements or project assets at the Site (excluding Additional Properties and Project-Specific Locations) due to Force Majeure Events, to the extent that (i) the damage is due to an event that is not of a type required to be covered by insurance under the Contract Documents (including self-insurance) if the Contracting Authority has agreed to self-insure as specified in the terms of the P3 Agreement where the Company is unable to obtain insurance as described in the P3 Agreement, or (ii) the costs of repair or replacement exceed the insurance limits;

(I) During the O&M Period, solely for the purposes of determining the Contracting Authority’s responsibility under the relevant provision of the P3 Agreement and, subject to certain limitations and obligations specified in the P3 Agreement, damage to improvements or project assets due to Force Majeure Events or other events beyond the Company’s reasonable control;

(J) Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any portion of the Work;

(K) Subject to certain limitations, occurrence of a Utility Owner Delay; and

(L) Assessment of sales or use tax on LRVs;

except to the extent that the event or consequences of the event (i) arose out of (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission by a Concessionaire-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Concessionaire-Related Entity, or (ii) could reasonably have been avoided by any Concessionaire-Related Entity;

(b) with respect to the Design-Build Contract, (1) Contracting Authority changes and (2) any of the following events to the extent that the event materially and adversely affects performance of the Design-Build Contractor’s obligations under the Contract Documents, in each case subject to the requirements, limitations and deductibles in the Design-Build Contract regarding entitlement to relief as well as the duty to prevent occurrences and to mitigate consequences of such events:

(i) Contracting Authority-caused delay;
Subject to the limitations specified in the Design-Build Contract, discovery of differing site conditions;

Subject to the limitations specified in the Design-Build Contract, discovery on or under the Site (excluding additional properties and Project-specific locations) of any paleontological or cultural (including archaeological and historical) resources;

Subject to the limitations specified in the Design-Build Contract, discovery at, near or on the Project right-of-way of any threatened or endangered species (regardless of whether the species is listed as threatened or endangered as of the Setting Date), to the extent that the Design-Build Contractor is required to stop the DB Work or perform Extra DB Work as a result of the discovery;

Subject to the limitations specified in the Design-Build Contract, including with respect to compensation payable to Design-Build Contractor, discovery that the utility information is materially inaccurate with respect to any underground utility facility (excluding service lines), except where the existence of a utility in the correct location and/or size, as applicable, was known to the Design-Build Contractor as of the Setting Date, or would have become known to the Design-Build Contractor as of the Setting Date by undertaking reasonable inquiry, prior to the Setting Date, with utility owners, including by requesting and reviewing utility plans provided by utility owners;

Discovery of hazardous waste required by applicable law to be recycled, treated, stored or disposed at a “Designated Facility” as defined in COMAR 26.13.01.03, discovered during or in connection with the demolition of buildings, fixtures or other improvements, in the categories for which unit prices are provided in the P3 Agreement;

(i) discovery of pre-existing hazardous materials within the site, excluding known or suspected hazardous materials and excluding hazardous materials within additional properties and Project-specific locations, or (ii) any sudden spill of hazardous material by a person other than a Design-Build Contractor-related entity not covered by item (f) above and (A) renders use of the transitway, roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation or (B)(1) is required by applicable law to be recycled, treated, or stored, or (2) is required by applicable law to be disposed at a “Designated Facility” as defined in COMAR 26.13.01.03;

With respect to DB Work:

(A) Discriminatory changes in law, and

(B) any other change in law that (I) requires a material modification in the Project design, (II) results in imposition of additional mitigation requirements on the Project respecting (a) impacts on paleontological, biological or cultural (including archaeological and historical) resources or (b) other environmental impacts, or (III) prevents renewal of any governmental approval;

(C) [Not used]

(D) [Not used]

(E) Any change in the DB Work or delay to or interference with the DB Work directly attributable to projects undertaken by third parties within the Project right-of-way during the Design-Build Period that are not identified in (i) the Contract Documents or (ii) any third party’s formal, approved budget document for capital projects as of the Setting Date;
(F) During the Design-Build Period, subject to the limitations and obligations specified in the Design-Build Contract, including with respect to the Design-Build Contractor’s responsibility for certain loss and damage, damage to improvements or project assets at the site (excluding additional properties and project-specific locations) due to Force Majeure Events, to the extent that (i) the damage is due to an event that is not of a type required to be covered by insurance under the Contract Documents (including self-insurance if the Contracting Authority has agreed under the P3 Agreement to self-insure as specified in the terms of the P3 Agreement where the Company is unable to obtain insurance as described in the P3 Agreement), or (ii) the costs of repair or replacement exceed the insurance limits;

(G) Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any portion of the DB Work;

(H) Subject to the limitations specified in the Design-Build Contract with respect to the Design-Build Contractor’s responsibility for certain costs associated with a utility owner delay, occurrence of a utility owner delay; and

(I) Assessment of sales or use tax on LRVs;

except to the extent that the event or consequences of the event (i) arose out of (A) any breach of contract by a Design-Build Contractor-related entity, (B) any act or omission by a Design-Build Contractor-related entity that is inconsistent with the Contract Documents or governmental approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of laws by any the Design-Build Contractor-related entity, or (ii) could reasonably have been avoided by any the Design-Build Contractor-related entity; and

(c) with respect to the O&M Contract, (1) Contracting Authority changes and (2) any of the following events to the extent that the event materially and adversely affects performance of O&M Contractor’s obligations under the Contract Documents, in each case subject to the requirements, limitations and deductibles in the O&M Contract regarding entitlement to relief as well as the duty to prevent occurrences and to mitigate consequences of such events:

(i) Contracting Authority-caused delay;

(ii) Subject to certain limitations in the O&M Contract, discovery of differing site conditions;

(iii) Subject to certain limitations in the O&M Contract, discovery on or under the site (excluding additional properties and Project-specific locations) of any paleontological or cultural (including archaeological and historical) resources;

(iv) Subject to certain limitations in the O&M Contract, discovery at, near or on the Project right-of-way of any threatened or endangered species (regardless of whether the species is listed as threatened or endangered as of the Setting Date), to the extent that O&M Contractor is required to stop the Services or perform extra services as a result of the discovery;

(v) (i) discovery of pre-existing hazardous materials within the site, excluding known or suspected hazardous materials and excluding hazardous materials within additional properties and Project-specific locations, or (ii) any sudden spill of hazardous material by a Person other than a O&M Contractor-related entity not covered by item (f) above and (a) renders use of the transitway, roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation or (B)(1) is required by
applicable law to be recycled, treated or stored, or (2) is required by applicable law to be disposed at a “Designated Facility” as defined in COMAR 26.13.01.03;

(vi) With respect to the Services:

(A) Changes in law, excluding changes in federal law other than (A) changes in federal law, (B) changes in federal law that materially modify tasks to be performed by operations and maintenance personnel and (C) any change in federal law requiring execution of a Section 13(c) agreement for the Project;

(B) Discriminatory changes in O&M standards;

(C) Non-discriminatory changes in O&M standards;

(D) Changes in transitway traffic signal timing affecting station-to-station run times; and

(E) Changes in traffic signal priority or preemption in the transitway affecting station-to-station run times;

(vii) Permanent and planned power network change in voltage by the utility owner supplying electricity to the Purple Line system that has a material adverse effect on LRT operations;

(viii) Any change in the Services or delay to or interference with the Services directly attributable to projects undertaken by third parties within the Project right-of-way during the Design-Build Period that are not identified in (i) the Contract Documents or (ii) any third party's formal, approved budget document for capital projects as of the Setting Date;

(ix) During the O&M Period, solely for the purposes of determining Company's responsibility under the O&M Contract for damage to Project improvements and, subject to the limitations and obligations specified in the O&M Contract, damage to improvements or project assets due to Force Majeure Events or other events beyond O&M Contractor’s reasonable control;

(x) Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any portion of the Services; and

(xi) Assessment of sales or use tax on option LRVs;

except to the extent that the event or consequences of the event (i) arose out of (A) any breach of contract by a O&M Contractor-related entity, (B) any act or omission by a O&M Contractor-related entity that is inconsistent with the Contract Documents or governmental approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of laws by any O&M Contractor-related entity, or (ii) could reasonably have been avoided by any O&M Contractor-related entity.

“Relief Event Costs” means the portion of any previous payments to the Company that compensated the Company for costs attributable to Relief Events which the Company has not yet incurred.

“Remedial Plan” means each plan described in Section 16.6.3 of the P3 Agreement.

“Remedial Plan Default” means (a) any Concessionaire Default under Section 17.1.1(b), (e) or (i) of the P3 Agreement that is curable but that the Company fails to cure within the applicable period specified in Section 17.1.2, excluding Activity Noncompliance Occurrences and Noncompliance Events, or (b) a Concessionaire Default
under Section 17.1.1 (r) or (s) of the P3 Agreement, if the Contracting Authority determines that the default justifies exercise of the remedies in Section 5.5.2 or 16.6 of the P3 Agreement, excluding Activity Noncompliance Occurrences or Noncompliance Events.

“Remedies Instruction” means a written instruction to the Intercreditor Agent regarding the exercise of remedies in respect of a Finance Document under which a default or an event of default has occurred and is continuing.

“Renewal Expenditures” means the amounts payable by the Company to the O&M Contractor in accordance with the TIFIA Loan Agreement and the O&M Contract with respect to the Renewal Work.

“Renewal Work” means the capital replacement, reconstruction, overhaul, refurbishment and reinstatement of the Project within the O&M Limits including the Fixed Facilities, Fixed Equipment, LRVs and other Project assets to be carried out by the Company during the Term to maintain compliance with the Contract Documents. For purposes of the monthly Availability Payment, Renewal Work shall be included as the Lifecycle Payment.

“Replacement Concessionaire” is a term relevant to Termination Compensation, and means the Suitable Substitute selected to enter into a replacement concession agreement pursuant to the Resolicitation Process.

“Request for Change Order” means the submittal required under Section 15.2.3.1 of the P3 Agreement providing detailed information regarding a proposed Change Order for a Relief Event or Force Majeure Event.

“Request for Change Proposal” means a written notice issued by the Contracting Authority to the Company setting forth a proposed Contracting Authority Change and requesting the Company’s assessment of cost and schedule impacts thereof, in Section 14.1.2 of the P3 Agreement.

“Request for Proposals (RFP)” means that certain Request for Proposals to Design, Build, Finance, Operate and Maintain the Purple Line Project through a Public-Private Partnership Agreement, issued by the Contracting Authority on July 28, 2014, as amended.

“Required Creditors” means (a) for so long as any Senior Secured Obligations remain outstanding, Senior Secured Creditors (other than any Hedge Provider) holding more than fifty percent (50%) of the aggregate principal amount outstanding of the Senior Secured Obligations (other than any Hedging Obligations or Hedging Termination Obligations), and (b) for so long as no Senior Secured Obligations (other than, following the occurrence of a Company Bankruptcy Related Event, the TIFIA Obligations) remain outstanding and all commitments to advance loans under any Finance Document with respect to Senior Secured Obligations (other than, following the occurrence of a Company Bankruptcy Related Event, the TIFIA Obligations) have been terminated and any TIFIA Obligations remain outstanding, the TIFIA Lender; provided that in no event shall the Required Creditors include any Non-Voting Secured Creditor.

“Required Insurance Policies” means the types of insurance relating to its business, the construction of the Project, and the operation and maintenance of the Project, with responsible insurers as is customarily maintained in the United States of America with respect to works and properties of like character against accident to, loss of or damage to such works or properties, in each case, in accordance with the requirements of the P3 Agreement and all additional recommendations included in the Insurance Advisor Report.

“Required Minimum Insurance Policies” means the Insurance Policies prescribed under the Contract Documents and subject to the benchmarking provisions, as defined in Section 11.1.8.11(c)(i) of the P3 Agreement.

“Requirement of Law” means any treaty or rule of public international law, any national, state, regional, territorial, provincial, county, city, municipal or administrative laws, rules, orders, judgments, regulations, statutes, ordinances, codes, published decrees, requests, guidelines or directives of any Governmental Authority, including (i) any determination of an arbitrator or a court or other Governmental Authority and (ii) any covenants, restrictions and conditions filed in the applicable real estate records and applicable to the Site.
“Rescue Refinancing” means any Refinancing that:

(a) Occurs due to the failure or imminent failure of Concessionaire to comply with any material financial obligation under any Funding Agreement or Security Document;

(b) Results in the cure of such failure or imminent failure;

(c) Does not result in an increase in the Equity IRR beyond the Original Equity IRR; and

(d) Does not result, singly or in the aggregate, in an actual or potential increase of the Project Debt Termination Amount (determined without including any Exempt Refinancings) by more than 10%.

“Research Facility” means a scientific or research laboratory or scientific or research equipment located in the following buildings at the University of Maryland, College Park: H.J. Patterson Building (073); Microbiology Building (231); Bio/Psychology Building (144); Biosciences Research Facility (413); Plan Sciences Building (036); Geology Building (237); Physics Building (082); Glen L. Martin Engineering Building (088); Chemistry Building (091); Chemical and Nuclear Engineering Building (#90); JM Patterson Building (083).

“Reserve Account” means (a) with respect to the Collateral Agency Agreement, each of (i) each Senior Debt Service Reserve Sub-Account; (ii) the TIFIA Debt Service Reserve Sub-Account; and (iii) the Rehabilitation Reserve Account, and (b) with respect to the TIFIA Loan Agreement, the Debt Service Reserve Account (and any sub-accounts thereof), the Availability Payment Start-Up Reserve Account and the Rehabilitation Reserve Account.

“Reserved Rights” means the rights of the Bond Issuer to:

(a) enter into Supplemental Indentures as provided in the Indenture;

(b) to receive payments or reimbursement of Issuer costs and expenses as provided in the Indenture, any Supplemental Indenture, the Series 2016 Loan Agreement and/or any Additional Parity Bonds Loan Agreements;

(c) be held harmless and indemnified pursuant to the Series 2016 Loan Agreement and/or as provided in any Additional Parity Bonds Loan Agreement;

(d) receive notices and other documents as required under the Indenture, any Supplemental Indenture, the Series 2016 Loan Agreement and/or any Additional Parity Bonds Loan Agreements to be delivered to the Bond Issuer;

(e) enforce and to give or withhold, in accordance with the Indenture, consent to any amendment, change or modification to: (i) any provision of the Series 2016 Loan Agreement except those provisions set forth in (A) Section 2.02 thereof (other than any amendment, change or modification to clauses (a) through (e) of Section 2.02), (B) Article VI thereof (other than any amendment, change or modification to Sections 6.11 or 6.35 thereof); (C) Article VIII thereof (other than any amendment, change or modification to clauses (a), (b) or (c) of Section 8.01 thereof, to the extent of any Event(s) of Default relating to the Company’s failure to make any payment to the Bond Issuer, a misrepresentation referred to clauses (a) through (e) of Section 2.02, or a breach of Sections 6.11 or 6.35); (ii) any provision of an Additional Parity Bonds Loan Agreement except for the provisions therein substantially similar to, or having the same effect as the sections and clauses excluded from being Reserved Rights pursuant to subclauses (A) through (C) in clause (i) above with respect to the Series 2016 Loan Agreement for which the Bond Issuer’s consent shall not be required but provided further with the same exception that the Bond Issuer’s consent shall always be required for any amendment, change or modification to any section in an Additional Parity Bonds Loan Agreement regarding use of proceeds and tax covenants to the extent those Additional Parity Bonds are federally tax-advantaged; and (iii) any
other term or provision designated to be a Reserved Right pursuant to any Supplemental Indenture and/or any Additional Parity Bonds Loan Agreement; and

(f) give or withhold in accordance with the Indenture consent to any amendment, change or modification to the Indenture, any Supplemental Indenture, the Series 2016 Loan Agreement and/or any Additional Parity Bonds Loan Agreements that has the effect of narrowing or limiting the scope of the Reserved Rights enumerated in clauses (a) through (e) above.

“Residual Life” means, for an element of the Work, the period remaining until the element will next require reconstruction, rehabilitation, restoration, renewal or replacement. The Residual Life of an element would be equal to its originally calculated Useful Life less its age if (a) the element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by the Company, and (b) the Company has performed the type of routine maintenance of the element which is normally included as an annually recurring cost in transit facility maintenance and repair budgets, and as a result thereof the element complies throughout its originally calculated Useful Life with each applicable Performance Requirement. The Residual Life of an element would be different from its originally calculated Useful Life minus its age if any of the foregoing conditions is not true.

“Resolicitation Process” is a term relevant to Termination Compensation, and has the meaning set forth in Section 1.2 of Attachment 1 to Exhibit 13B to the P3 Agreement.

“Resolicited Agreement” is a term relevant to Termination Compensation, and means an agreement on substantially the same terms as the P3 Agreement in effect as at the Early Termination Date and which replaces the P3 Agreement, but with the following amendments:

(a) If the Early Termination Date is before the RSA Date, then the RSA Deadline will be extended to allow the Replacement Concessionaire to achieve Revenue Service Availability prior to the Long Stop Date;

(b) The Term of the Resolicited Agreement will be the period commencing on the date on which the Resolicited Agreement becomes effective and ending upon expiration or earlier termination of such agreement;

(c) Any accrued Noncompliance Points will be cancelled; and

(d) Other amendments deemed advisable by the Contracting Authority that do not adversely affect the Company or as otherwise agreed between the parties to reflect the Project circumstances as of the Early Termination Date.

“Response” means, with respect to the O&M Contract, with respect to any Activity Noncompliance Occurrence, the following actions by O&M Contractor following occurrence of the event:

(a) establishing the location, investigating the nature and cause of the event and attending the site if necessary;

(b) appointing a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorize any required action;

(c) taking any necessary actions to make the non-compliant system or item safe and secure, thereby as a minimum fulfilling all health and safety requirements;

(d) taking any and all necessary actions to establish temporary measures that mitigate the effect of the event and maintain to the extent possible the normal functioning of the system;
(e) when necessary, giving Company and the Contracting Authority an assessment of the problem, the action taken, details of any work required with timescales and any limitations that this may impose on operations and maintenance; and

(f) formally advising the operations control center and Company that the Response has been completed.

“Response Time” means the time for the O&M Contractor to complete its Response measured from the date and time the O&M Contractor first obtained knowledge or had reason to know of the Activity Noncompliance Occurrence regardless of whether the Company has delivered a notice to the O&M Contractor or entered the Activity Noncompliance Occurrence into the electronic database as specified in the Activity Noncompliance Occurrence Table.

“Restricted Payment” means (A) with respect to the Collateral Agency Agreement, (i) any payment of a dividend or other equity distribution of property in respect of any capital stock of the Company, (ii) any payment of any amounts in respect of Sponsor Subordinated Loans, and (iii) prior to the termination of the TIFIA Loan Agreement, any payment of Subordinated Management Fees; provided, that, notwithstanding anything contained herein, the following shall not constitute Restricted Payments: (a) the transfer or withdrawal of funds from any Project Account following substitution of an Acceptable Letter of Credit for cash on deposit in such Project Account in accordance with the applicable terms of the Finance Documents; (b) amounts required to be paid by the Company to the Design-Build Contractor or the O&M Contractor under the applicable Material Project Contracts; (c) any Technical Assistance and Management Services Fees; (d) any development fees payable to the Sponsors on or promptly following the Closing Date in accordance with the Base Case Model; (e) any fees payable to the Sponsors or to any future equity owners of the Company, or any affiliate thereof, in respect of letters of credit issued by, for the account of or on behalf of any Sponsor in favor of or on behalf of the Company, including Equity Letters of Credit; (f) the transfer or withdrawal of funds from the Tax Reserve Account in accordance with the Collateral Agency Agreement; and (g) the payment or reimbursement of other Project Costs, subject to clauses (i), (ii) and (iii) of this definition, shall not be deemed to be Restricted Payments; and (B) with respect to the TIFIA Loan Agreement, (i) any distribution or other payment in respect of an outstanding equity interest in the Company, or in respect of any redemption, repurchase or other acquisition thereof (or otherwise permit the withdrawal of capital from the Company), (ii) any payment of, interest on or other amounts in respect of any debt for borrowed money owed by the Company to any holder of an outstanding equity interest in the Company, or (iii) any payment to any Affiliate of the Company or of any holder of an equity interest in the Company (other than (v) the transfer or withdrawal of funds from any Project Account following substitution of an Acceptable Letter of Credit for cash on deposit in such Project Account permitted pursuant to the Collateral Agency Agreement, (w) any development fees payable to the Equity Sponsors on or promptly following the 2016 Bonds Closing Date in accordance with the Base Case Model, (x) payments of Equity Letter of Credit fees to the extent scheduled in the Base Case Financial Model and made in accordance with the Collateral Agency Agreement, (y) payments permitted pursuant to the provisions of the affiliate transactions covenant of the TIFIA Loan Agreement, including amounts required to be paid by the Company to the DB Contractor or the O&M Contractor under the applicable Principal Project Contracts and (z) the transfer or withdrawal of funds from the Tax Reserve Account in accordance with the Collateral Agency Agreement).

“Restricted Payment Condition Satisfaction Date” means, for any transfer (x) to the Distribution Account pursuant to clause "Eighteenth" of the Flow of Funds or (y) from the Equity Lock-Up Account pursuant to the terms of the Collateral Agency Agreement, with respect to:

(a) (i) the Coverage Ratio Restricted Payment Conditions, (ii) the restricted payment conditions set forth in clauses (ii), (iv) and (v) of the definition of “Restricted Payment Conditions” under the TIFIA Loan Agreement as set forth in “FINANCING FOR THE PROJECT—TIFIA Loan Agreement—Representations, Warranties and Covenants—Distributions” and (iii) the restricted payment conditions set forth in clause (d) of the definition of “Restricted Payment Conditions” under the Collateral Agency Agreement, the Calculation Date immediately preceding the applicable Restricted Payment Date;

(b) (i) the restricted payment conditions set forth in clauses (iii) and (viii) of the definition of “Restricted Payment Conditions” under the TIFIA Loan Agreement as set forth in “FINANCING FOR THE
(c) the restricted payment conditions set forth in clauses (i), (vi), (vii), (ix) and (x) of the definition of “Restricted Payment Conditions” under the TIFIA Loan Agreement as set forth in “FINANCING FOR THE PROJECT—TIFIA Loan Agreement—Representations, Warranties and Covenants—Distributions,” the applicable Restricted Payment Date.

“Restricted Payment Conditions” means, with respect to the Collateral Agency Agreement:

(a) all transfers and distributions required to be made pursuant to clause “First” through “Sixteenth” of the Flow of Funds as of the applicable Semi-Annual Transfer Date have been satisfied in full and any Reserve Account required to be established and funded as of such date has been fully funded to its required level as of such date, or, to the extent permitted under the Finance Documents, replaced with an Acceptable Letter of Credit;

(b) the Total Debt Service Coverage Ratio as of the applicable Calculation Date (i) is not less than 1.20:1.00 for the most recent twelve (12) month period ending on such Calculation Date (or, if prior to the first anniversary of the Revenue Service Availability of the Project, for any shorter period from such Revenue Service Availability of the Project annualized for a twelve (12) month period) and (ii) is projected to be at least 1.20:1.00 for the next twenty-four (24) month period commencing on such Calculation Date, in each case, as set forth in a Senior Coverage Certificate provided by the Company to the Collateral Agent setting forth such Total Debt Service Coverage Ratio;

(c) no Default or Event of Default, in each case, with respect to the 2016 Loan Documents has occurred and is continuing, or would occur as a direct result of the requested Restricted Payment;

(d) the Final Completion Payment Date has occurred and the 2016B Bonds have been paid in full under and in accordance with the 2016 Loan Documents;

(e) prior to the termination of the TIFIA Loan Agreement, each of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) have been satisfied in accordance with the TIFIA Loan Agreement; and

(f) the Contracting Authority has not exercised its right to terminate the P3 Agreement in respect of a Concessionaire Default or it has rescinded any Contracting Authority Termination Notice.

“Restricted Payment Date” means the 10th day following any Calculation Date (or if such day is not a Business Day, the immediately preceding Business Day), or at the Company’s election, the first Monthly Transfer Date following any Calculation Date.

“Restricted Person” means a Person (or any managing member, general partner or controlling investor of such Person) that, after exhaustion of all rights of appeal, is suspended or debarred from bidding, proposing or contracting with any federal or State department or agency.

“Revenue Account” means the “Revenue Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Revenue Service” means operation of the System carrying fare-paying passengers.

“Revenue Service Availability” means that all D&C Work is complete (except for Punch List items that do not affect normal and safe use and operation of the System and any D&C Work that, by its nature, is to be performed after the RSA Date), and all other prerequisites for start of Revenue Service have been met. Revenue Service Availability is deemed to have occurred upon the satisfaction of all the conditions for the Project in the P3
Agreement, as confirmed by the Independent Engineer’s issuance of a Certificate of Revenue Service Availability in accordance with the procedures and within the time frame established in the P3 Agreement.

“Revenue Service Availability (RSA) Date” means the date the Independent Engineer issues a Certificate of Revenue Service Availability for the Project.

“Revenue Service Availability (RSA) Deadline” means 2,092 days following the date on which Financial Close occurs, unless (a) the Contracting Authority issues an agreed limited NTP under the P3 Agreement, and (b) Financial Close occurs prior to June 18, 2016, in which case the RSA Deadline is March 11, 2022, as such deadline may be extended from time to time under the P3 Agreement.

“Revenue Service Availability (RSA) Funding Date” means the earlier of (a) the date that is ten (10) Business Days prior to the RSA Deadline or (b) the RSA Date.

“Revenue Service Availability (RSA) Payment” means the amount payable to the Company upon Revenue Service Availability, as described in Section 7.10.2 to the P3 Agreement. The amount of the RSA Payment is stated in Exhibit 4A, Part A to the P3 Agreement.

“Revenue Service Availability (RSA) Payment Account” means the “Revenue Service Availability Payment Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Revenue Service Availability (RSA) Payment Date” means the date on which the Company receives the RSA Payment for achievement of Revenue Service Availability under the P3 Agreement.

“Revenue Service Hours” means the daily hours in which Revenue Service is provided from the first pull out to the last pull in, as such terms are commonly used in the LRT industry.

“Revenue Vehicle Miles” means the aggregate distance, measured in total LRV Miles, when LRVs are available to the general public and there is an expectation of carrying passengers. This includes service running mileage but does not include deadhead travel or vehicle testing.

“Revised Financial Model” means the Base Case Financial Model, as it may be updated from time to time pursuant to the TIFIA Loan Agreement or in connection with the issuance of Additional Senior Obligations.

“ROW” means right of way.

“ROW Maps” means and consists of the “Plats” and the “Right of Way Plans” contained in Book 4 (Contract Drawings) prepared for the Project depicting within the boundary lines shown therein the land or property which the Contracting Authority has made or will make available for the Project. Information contained on the “Plats” and/or deeds shall supersede any similar information on the “Right of Way Plans.”

“RSA Extension Period” means the period between the original RSA Deadline and ending on the earlier to occur of the extended RSA Deadline or the actual RSA Date, excluding any portion of said period affected by a concurrent delay (that is, a delay that is concurrent with the delay caused by a Relief Event or Force Majeure Event but that is attributable to a cause other than a Relief Event or Force Majeure Event).

“RSA Funding Date” means the earlier of (a) the date that is ten (10) Business Days prior to the RSA Deadline or (b) the RSA Date.

“Rule” means Rule 15c2-12(b)(5) under the Securities Exchange Act of 1934, as amended.

“S&P” or “Standard & Poor’s” means S&P Global.
“Safety and Security Plan” means the Company’s safety and security plan for the O&M Work, as more particularly described in Part 3, Section 1.9 of the Technical Provisions.

“Safety Compliance” means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project or the DB Work, as applicable, to correct a specific safety condition or risk of the Project that the Contracting Authority under the P3 Agreement has reasonably determined to exist by investigation or analysis (excluding a safety condition that exists despite compliance with the Contract Documents).

“Safety Standards” means those provisions of the Technical Provisions that the Contracting Authority has identified as such under the P3 Agreement (and the Company hereunder). Safety Standards are considered to be important measures to protect public safety, worker safety or the safety of property and may be so designated based on judgments regarding importance made by FTA or other third parties. As a matter of clarification, provisions of Technical Provisions primarily directed at durability of materials or equipment, where the durability is primarily a matter of lifecycle cost rather than protecting public or worker safety, are not Safety Standards.

“Salini” means Salini Impregilo, S.p.A., a società per azioni formed under the laws of Italy and the ultimate parent company of Lane.

“Salini Group” means the Salini Impregilo Group.

“Sanctioned Country” means country or territory that is the subject or the target of territorial Sanctions (as of the Closing Date, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctions” means any sanctions administered or enforced by the U.S. Government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“Schedule Activity” means the smallest division of the Work at each WBS Level to be tracked in the Project Schedule. Schedule activities are activities critical in ensuring that Revenue Service Availability is timely achieved, Renewal Work is timely performed and the Handback Requirements are timely met. Schedule Activities include Quality Assurance tasks, environmental tasks, fabrication of structural steel and precast and prestressed concrete structures, material and equipment procurement, Utility Work (whether performed by Concessionaire-Related Entities or others) and delivery to the site or storage locations and maintenance of traffic tasks, as well as O&M Work.

“Schedule of Values” means the estimated cost/planned value for 100% of the D&C Work performed during the Design-Build Period, which documents the WBS and approved Project Schedule, as it may be updated from time to time, in accordance with Part 2A, Section 9.2.1 of the Technical Provisions.

“SEC” means the Securities and Exchange Commission.

“Secured Accounts” means all accounts and general intangibles (including payment intangibles) of the Grantor constituting a right to the payment of money, including all moneys due and to become due to the Grantor in repayment of any loans or advances, in payment for goods (including Inventory and Equipment) sold or leased or for services rendered, in payment of tax refunds, insurance refund claims and all other insurance claims and proceeds, tort claims, securities and other investment property, as well as the Indenture Account Collateral and Account Collateral.

“Secured Creditors” means, collectively, (i) the Trustee, (ii) the TIFIA Lender, (iii) any Hedge Providers; and (iv) any holder of Senior Secured Obligations.

“Secured Obligations” means (i) the Senior Secured Obligations and (ii) the TIFIA Obligations.
“Secured Parties” means, collectively, the Senior Secured Parties and the TIFIA Lender.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire any of the foregoing.

“Securities Accounts” has the meaning set forth in APPENDIX F—“SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT.”

“Securities Intermediary” means U.S. Bank National Association or any successor thereto, acting as the securities intermediary.

“Security Agreement” means the Security Agreement, dated as of the Effective Date, between the Company and the Collateral Agent.

“Security Document” means (a) with respect to the P3 Agreement, any mortgage, deed of trust, pledge, lien, indenture, trust agreement, hypothecation, assignment, collateral assignment, account control agreement, financing statement under the enacted Uniform Commercial Code of any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Lender as security for Project Debt or the Company’s obligations pertaining to Project Debt and encumbering the Company’s Interest and (b) for all other purposes, the collective reference to (i) the Collateral Agency Agreement; (ii) the Security Agreement; (iii) each Pledge Agreement; (iv) the Equity Contribution Agreement; (v) each Equity Letter of Credit; (f) the Direct Agreements; (vi) each Control Agreement, if any, and (vii) any other agreement, document or instrument hereafter entered into or delivered by the Company or any other Person which purports to create a Security Interest in favor of the Collateral Agent for the benefit of the Secured Parties.

“Security Interest” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, or any financing lease having substantially the same effect as any of the foregoing.

“Segregated Collateral” means, collectively, (a) each Bond Proceeds Sub-Account and all respective amounts on deposit therein or credited thereto, (b) the TIFIA Loan Proceeds Sub-Account and all amounts on deposit therein or credited thereto and (c) each Debt Service Reserve Sub-Account and all respective amounts on deposit therein or credited thereto (including any Applicable Reserve Letter of Credit), (d) any additional sub-account of the Construction Account established for the deposit of proceeds of any Other Permitted Senior Secured Indebtedness and (e) each sub-account of the Mandatory Prepayment Account.

“Semi-Annual Payment Date” means each March 31 and September 30 or, if such date is not a Business Day, the next Business Day immediately succeeding such March 31 or September 30.

“Semi-Annual Transfer Date” means each Monthly Transfer Date that is the Monthly Transfer Date immediately preceding a Calculation Date.

“Senior Coverage Certificate” means a certificate signed by the Company’s Authorized Representative, calculating the Total Debt Service Coverage Ratio as of the applicable Calculation Date (i) for the most recent twelve (12) month period ending on such Calculation Date (or, if prior to the first anniversary of the Revenue Service Availability of the Project, for any shorter period from such Revenue Service Availability of the Project annualized for a twelve (12) month period) and (ii) for the next twenty-four (24) month period commencing on such Calculation Date.
“Senior Debt Service” means, with respect to the Senior Obligations, for any period, as of any date of calculation, an amount equal to the sum of all principal and interest with respect to the Senior Obligations accruing and payable in respect of such period (after giving effect to any net payments made under any Hedging Obligations during such period), as set forth in the most recent Revised Financial Model (or in the Base Case Financial Model to the extent that no Revised Financial Model has been approved by the TIFIA Lender). In determining the principal amount of Senior Obligations due in such period, payment shall be assumed to be made in accordance with any amortization schedule established for such Senior Obligations. In calculating Senior Debt Service for any future period (except as otherwise specifically provided herein):

(a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon); and

(b) to the extent the requirements of the TIFIA Loan Agreement have been waived so that clause (a) of this definition no longer applies, any Variable Interest Rate Senior Obligations for which the interest rate payable thereon has not yet been determined shall be deemed to bear interest at all times prior to the maturity date thereof at a rate which is the highest twelve (12) month rolling average of one (1) month LIBOR over the past ten (10) years preceding the date of calculation plus the Bank Lending Margin; provided that if such index is no longer published, the index to be used shall be that index which the TIFIA Lender, in consultation with the Company, determines most closely replicates it.

“Senior Debt Service Account” means the “Senior Debt Service Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Senior Debt Service Coverage Ratio” means, as of any Calculation Date, the ratio of Net Cash Flow to Senior Debt Service (excluding (a) the portion of the Senior Debt Service applicable to Senior Obligations repaid from the Revenue Service Availability Payment, the Final Completion Payment, and the Special Lifecycle Payments and (b) any interest accrued prior to the Revenue Service Availability Date) for the Calculation Period ending on such Calculation Date.

“Senior Debt Service Reserve Required Balance” means, individually and collectively, (i) the 2016D Bonds Debt Service Reserve Required Balance, (ii) the required reserve balance applicable to any Senior Debt Service Reserve Sub-Account established with respect to any other Senior Secured Obligations pursuant to the related Additional Finance Documents, and (iii) upon and following the occurrence of a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, the TIFIA Debt Service Reserve Required Balance.

“Senior Debt Service Reserve Sub-Account” means any sub-account of the Debt Service Reserve Account.

“Senior Interest Payment Sub-Account” means the “Senior Interest Payment Sub-Account” of the Senior Debt Service Account established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Senior Loan Agreement Default” means any “Event of Default” under the Series 2016 Loan Agreement, and/or any Additional Parity Bonds Loan Agreement, if applicable.

“Senior Loan Agreements” means the Series 2016 Loan Agreement and any Additional Parity Bonds Loan Agreement.

“Senior Loan Documents” means the Indenture, the Senior Loan Agreements, the Intercreditor Agreement, the Security Documents, any Hedging Agreement, and all other agreements, instruments and documents executed and delivered pursuant to or in connection with any of the foregoing.
“Senior Obligations” means the Initial Senior Obligations and any Additional Senior Obligations.

“Senior Principal Payment Sub-Account” means the “Senior Principal Payment Sub-Account” of the Senior Debt Service Account established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Senior Secured Creditors” means each of (a) the Holders of the 2016 Bonds, (b) any Hedge Providers, (c) the holders of Other Permitted Senior Secured Indebtedness, if any, and (d) upon and following the occurrence of a Company Bankruptcy Related Event, the TIFIA Lender and each TIFIA Agency Assignee, in the case of each of clauses (a) through (d) above, that is (or whose Designated Representative is) a party to the Intercreditor Agreement or becomes (or whose Designated Representative becomes) a party to the Intercreditor Agreement as contemplated in such agreement.

“Senior Secured Obligations” means (a) the Bond Obligations and (b) any obligations of the Company comprising Other Permitted Senior Secured Indebtedness which are not Additional Parity Bonds, in each case, including all amounts that would be owed by the Company pursuant to the Series 2016 Loan Agreement, any Additional Parity Bonds Loan Agreement or other Additional Finance Document relating to Other Permitted Senior Secured Indebtedness which are not Additional Parity Bonds, but for the fact that collection or receipt of such amounts is unenforceable or not allowed due to a pending Bankruptcy Event of the Company.

“Senior Secured Parties” means (i) the Collateral Agent, the Trustee, the Bond Issuer, the Holders of the 2016 Bonds and the Holders of the Additional Parity Bonds, if any, and any holders of (and any representatives of) any Other Permitted Senior Secured Indebtedness, if any, and (ii) upon and following the occurrence of a Company Bankruptcy Related Event, if any portion of the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, the TIFIA Lender and each such TIFIA Agency Assignee.

“Series 2016 Agreements” means the Series 2016 Loan Agreement together with the Indenture.

“Series 2016 Debt Service Fund” means the “Purple Line Series 2016 Debt Service Fund” created by and designated as such in the Indenture.

“Series 2016 Interest Account” means the “Series 2016 Interest Account” created by and designated as such under the Indenture.

“Series 2016 Loan Agreement” means the Senior Loan Agreement, dated as of June 1, 2016, between the Bond Issuer and the Company.

“Series 2016 Principal Account” means the “Series 2016 Principal Account” created by and designated as such under the Indenture.

“Series 2016 Rebate Fund” means the “Purple Line Series 2016 Rebate Fund” created by and designated as such in the Indenture.

“Series 2016 Redemption Account” means the “Series 2016 Redemption Account” created by and designated as such in the Indenture.

“Service Interruption” means any event that requires Normal Service to be suspended on all or part of the Purple Line System.

“Service Level” means the level of transit service required for mainline operations, determined based on required operating hours and headways. Part 3, Exhibit 3.1 of the Technical Provisions identifies operating hour and headway requirements for Service Levels 1, 2 and 3.

“Service Level Change” means a Major Service Change or a Minor Service Change or other change in Service Level, as contemplated under Part 3, Section 3.6 of the Technical Provisions.
“Service Line” means a utility line, the function of which is to connect directly the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another utility line located off such property, which other utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Governmental Entity's local lighting and electrical systems, traffic control systems, street lights, communications systems and/or irrigation systems.

“Service Plan” means the Company’s plan defining the regularly-scheduled Revenue Service consistent with Part 3, Section 1.1.3 of the Technical Provisions.

“Services” has the meaning set forth in “THE PRINCIPAL PROJECT DOCUMENTS—The O&M Contract—Scope of Services.”

“Service Line” means a utility line, the function of which is to connect directly the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another utility line located off such property, which other utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a Utility Owner’s facilities to activate or energize a Governmental Entity’s local lighting and electrical systems, traffic control systems, street lights, communications systems and/or irrigation systems.

“Setting Date” means September 22, 2015.

“Severe Market Disruption” means any occurrence of exceptional circumstances in the financial markets in Europe, the United States of America, Asia and/or Canada that:

(a) Results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets (for example: (i) an outbreak of hostilities, escalation of hostilities or other national or international calamity or crisis; (ii) with respect to the New York Stock Exchange, or other major United States stock exchange, (A) imposition of a general suspension in trading or (B) the enforced fixing of minimum or maximum prices for trading; (iii) an enforced, declared general banking moratorium by either the federal government or a State of New York Governmental Entity having jurisdiction; or (iv) a material disruption in commercial banking or securities settlement or clearance services in the United States); and

(b) Materially and adversely affects access by the Company to such markets.

“Silver Spring ATC Work” means D&C Work, performed under the P3 Agreement.

“Sinking Fund Installments” means, as of any date of calculation, the amount of money required hereby to be paid on a single future date for the retirement of any Outstanding Bonds, but does not include any amount payable by the Bond Issuer by reason only of the maturity of a Bond, and said future date is deemed to be the date when a Sinking Fund Installment is payable and said Outstanding Bonds are deemed to be the Bonds entitled to such Sinking Fund Installments.

“Site” means:(a) during the Design-Build Period, the Project ROW, Utility Easements and other areas within the Limits of Disturbance, and also includes Project-Specific Locations; and (b) during the O&M Period, the areas within the O&M Limits.

“Source Code and Source Code Documentation” mean software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or
modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, revisions, additions, substitutions, replacements, updates, upgrades and corrections made to the foregoing items.

“Special Event” means a scheduled activity, such as a sporting event at the University of Maryland or a festival in Washington, D.C., which will require a deviation from Normal Service, will generate increased ridership on the Project and may affect Project operations because of changes in street traffic conditions. The Contracting Authority determines whether and when a Special Event will occur.

“Special Lifecycle Payment” means, with respect to each Contract Month, the amount scheduled for such Contract Month in the P3 Agreement, representing amounts required for the payment of debt service on Project Debt incurred by the Company to finance the O&M Spare LRV, those non-revenue service vehicles, spare parts, spare components, spare equipment, tools, materials, expendables and consumables necessary for operation and maintenance of the Project during the O&M Period that were not delivered to the Contracting Authority at or prior to Revenue Service Availability as identified in the Operating Plan, Asset Management Plan, Maintenance Plan and Maintenance Manuals.

“Special Lifecycle Payment Account” means the “Special Lifecycle Payment Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Special Record Date” means a special date fixed to determine the names and addresses of Holders of Bonds for purposes of paying defaulted interest on the 2016 Bonds.

“Sponsor Subordinated Loans” means any Indebtedness of the Company to a Sponsor or another Affiliate of the Company as a result of shareholder loans made to the Company and, in each case, repayable only from otherwise distributable amounts that are subject to the Restricted Payment Conditions, which, prior to the termination of the TIFIA Loan Agreement, shall also satisfy the requirements of “Permitted Subordinated Debt” (as defined in the TIFIA Loan Agreement).

“Sponsors” or “Equity Sponsors” means each of (i) Meridiam, (ii) Fluor Enterprises and (iii) Star America.

“Star America” means Star America Purple Line, LLC, a wholly-owned subsidiary of Star America Fund GP, LLC, acting in its capacity as general partner of Star America Infrastructure Fund, LP and Star America Infrastructure Fund Affiliates, LP.

“Star America Funds” means (a) Star America Infrastructure Fund, LP, a Delaware limited partnership, (b) Star America Infrastructure Fund Affiliates, LP, a Delaware limited partnership, and (c) any other fund with respect to which Star America is the general partner and which is controlled by Star America.

“Star America GP” means Star America Fund GP LLC, a Delaware limited liability company, acting in its capacity as general partner of the Star America Funds.

“Starting Insurance Benchmarking Premiums” means the final, calculated value, on an insurance Line-by-Line basis that is the greater of (a) the premium amounts (as supported by invoices) for all Actual Benchmark Insurance Policies placed for the first full annual insurance period following the Final Completion Date, as adjusted for Excluded Premium Increases and (b) the Base Relevant Insurance Cost.

“State” means the State of Maryland.

“State Indemnified Party(ies)” means with respect to the Design-Build Contract and the O&M Contract, MTA, MDOT, the State, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees. In the event that any utility agreement or third party agreement includes indemnification requirements, the term “State Indemnified Parties” will include the utility owner or third party that
is a party to that agreement, subject to certain limitations in the Design-Build Contract and the O&M Contract, as applicable.

“State Insured Parties” means, with respect to the Design-Build Contract and the O&M Contract, MTA, MDOT, the State, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees and any other named insured, Insurance Policy owner or holder under any insurance policy prescribed under the P3 Agreement. Except with respect to CSX Transportation, Inc., in the event that any utility agreement or third party agreement includes insurance requirements, the term “State Insured Parties” shall include the relevant utility owner or third party for the duration of the term of such agreement and to the extent of insurance required under such agreement. Except with respect to CSX Transportation, Inc., from and after the date of termination or expiration of any such agreement and performance of all obligations of the Design-Build Contractor or the O&M Contractor, as applicable, under such agreement that survive termination or expiration, the term “State Insured Party” shall no longer include the relevant utility owner or third party.

“Statement of Qualification” means the Company’s Statement of Qualification, provided in response to the Request for Qualifications.

“Station” means, depending on the context, (a) any facility and its appurtenances used to load and unload passengers to and from a LRV, as more fully described in the Technical Provisions or (b) WMATA and Contracting Authority transit centers, identified in Part 1 of the Technical Provisions. Stations may be located on the surface, underground in a tunnel, or above ground on a Structure.

“Statutory Rate” means the interest rate applicable to late payments by public agencies under Section 15-101, et seq. of the State Finance and Procurement Article, Annotated Code of Maryland.

“Step-in Party” means (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders; or (b) any Person approved by the Contracting Authority as a Substituted Entity, in each case where such Person is not a Restricted Person.

“Step-out Notice” means the notice given by a Step-in Party of its intent to terminate its obligations to the Contracting Authority under the Contract Documents respecting the event giving rise to the Step-in Notice, in which event such Step-in Party shall be released from all obligations under the Contract Documents respecting such event, except for any obligation or liability of the Step-in Party arising on or before the effective date in the Step-out Notice.

“Structure” means (whether capitalized or not) means, as context may require, bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, end walls, buildings, sewers, service pipes, under drains, foundation drains, steps, fences and other features which may be encountered in the Work and not otherwise classified.

“Submittal(s)” means any document, work product or other written or electronic end-product, report or item (excluding notices, correspondence and submittals under Articles 14 through 17 of the Design-Build Contract) required to be delivered or submitted by the Design-Build Contractor to the Company or to the Contracting Authority (through the Company) under the Contract Documents, the Project Management Plan or the O&M Management Plan.

“Subordinate Debt” means the bona fide indebtedness for funds borrowed that (a) is held by any Equity Member or an Affiliate, or by a purchaser or assignee of such indebtedness held at any previous time by any Equity Member or Affiliate, and (b) is inferior in priority of payment and security to all Project Debt held by Persons that are not Equity Members or Affiliates.


“Subordinated Loans” means Permitted Subordinated Loans and Sponsor Subordinated Loans.
“Subordinated Management Fees” means management and other fees pursuant to a TAMSA that are not Technical Assistance and Management Services Fees.

“Subsidiary” or “Subsidiaries” means, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or more than fifty percent (50%) of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, controlled or held by such Person.

“Substantial Completion” means the opening of the Project to passenger traffic for public transportation as defined in 49 U.S.C. § 5302(a)(10).

“Substantial Completion Date” is the date the opening of each and every public transportation element of the Project to public transportation as defined in 49 U.S.C. 5302(a)(10).

“Substituted Entity” means a third party proposed by the Collateral Agent and approved by the Contracting Authority under a Direct Agreement to act in the Company’s stead and not merely as a Step-in Party, in each case where such Person is (a) a Suitable Substitute and (b) not a Restricted Person.

“Subsystem” means a group of items satisfying a logical group of functions within a particular system.

“Supplemental Indenture” means any indenture supplementing or amending the Indenture.

“Suitable Substitute” means a Person, approved in writing by the Contracting Authority in accordance with the Direct Agreement that:

(a) has the legal capacity, power and authority to become the party to and perform the obligations of the Company under the P3 Agreement;

(b) is in compliance with the Contracting Authority's rules, regulations and has adopted written policies regarding organizational conflicts of interest consistent with the Contracting Authority's conflicts of interest policy;

(c) has ensured that all of its subcontractors are in compliance with the Contracting Authority's rules, regulations and has adopted written policies regarding organizational conflicts of interest consistent with the Contracting Authority's conflicts of interest policy;

(d) employs individuals having the appropriate qualifications, experience and technical competence to timely perform the Company's obligations under the Contract Documents and the Principal Project Documents; and

(e) otherwise has the resources available (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of the Company under the Contract Documents and the Principal Project Documents.

“Surety” means each properly licensed surety company, insurance company or other Person approved by the Contracting Authority, which has issued a Payment Bond or Performance Security in the form of a performance bond.

“Surplus Lines Insurer” means an insurance company that is approved or authorized to do business on a non-admitted basis in the State that satisfies the same financial ratings and other requirements otherwise applicable to an Eligible Insurer.
“System” means, depending on the context, (a) the Purple Line System or (b) (often used in the lower case) an interacting combination of elements within the Purple Line System that accomplish a defined objective, including hardware, software, firmware, people, information, techniques, facilities, services and other support elements.

“System Security Plan” means the Company’s plan described in Part 2A, Section 8.4 of the Technical Provisions.

“T&T” means Turner & Townsend.

“Taking” means any condemnation, confiscation or seizure of, or requisition of title to, the Project, the Site or any material portion thereof (including pursuant to an Event of Eminent Domain).

“TAMSA” means any technical assistance and management services agreement, including secondment employment and personnel agreements, entered into between the Company and the Sponsors (or affiliates thereof).

“Tax-Exempt Bonds” means the 2016 Bonds and any other Bonds with respect to which there shall have been delivered to the Bond Issuer an opinion of Bond Counsel to the effect that the interest on such Bonds is excludable from gross income for federal income tax purposes.

“Tax Regulatory Agreement” means, with respect to any issuance of 2016 Bonds or other tax-exempt borrowings comprising Additional Parity Bonds, (a) one or more certificates or agreements that sets forth the Bond Issuer’s or the Company’s expectations regarding the investment and use of proceeds of any series of such Bonds and other matters relating to Bond Counsel’s opinion regarding the federal income tax treatment of interest on such Bonds, including any instructions delivered by Bond Counsel in connection with any such certificate or agreement; and (b) any amendment or modification of any such certificate or agreement that is accompanied by an opinion of Bond Counsel stating that the amendment or modification will not adversely affect the exclusion of interest on such bonds from gross income for federal income tax purposes.

“Tax Reserve Account” means the “Tax Reserve Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Tax Reserve Required Balance” means, as of the Closing Date, an amount equal to the projected corporate income Tax liability of the Sponsors in connection with the Project attributable to their respective ownership interests in the Company as set forth in the Base Case Model, as calculated in accordance with the Base Case Model, for the period from the Closing Date to and including the RSA Deadline (without giving effect to any extension thereof under the P3 Agreement.

“Taxes” means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, Revenues or act, business, status or transaction of the Company, including any interest, penalty or addition to such amounts, and including utility rates or rents, in all cases whether disputed or undisputed.

“Technical Advisor Certificate” means a certificate prepared by the Lenders’ Technical Advisor substantially in the form appended to the Collateral Agency Agreement.

“Technical Assistance and Management Services Fees” means any compensation owed by the Company pursuant to any TAMSA for services provided to the Company; provided that any Technical Assistance and Management Services Fees shall be as set forth in the Base Case Model at the Closing Date, or as set forth in any subsequent operating budget certified as reasonable by the Lenders’ Technical Advisor.
“Technical Documents” means, with respect to the O&M Contract and the Design-Build Contract, all the standards, criteria, requirements, conditions, procedures, specifications and other provisions in the manuals and documents identified in the Technical Provisions or Book 3, to the extent described or referenced in any corresponding errata sheets of the Technical Provisions or Book 3, as such provisions may (a) have been generally revised from time to time up to the Proposal Date (or, where applicable, other date specifically in the P3 Agreement) or (b) be changed, added to or replaced in accordance with the P3 Agreement, in each case to the extent applicable to the DB Work or the Services, as applicable.

“Technical DRB” means the technical Dispute Resolution Board under the P3 Agreement.

“Technical Proposal” means the portions of the Proposal, other than the Financial Proposal, incorporated by reference in Exhibit 17 of the P3 Agreement.

“Technical Provisions” means (a) with respect to the O&M Contract and the Design-Build Contract, the provisions in Book 2, as the same may be amended pursuant to the P3 Agreement which describe the scope of the Work, including the DB Work, and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the Project, in each case to the extent applicable to the DB Work or the Services, as applicable, and (b) with respect to the P3 Agreement, modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to operational technology, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements and specifically includes modifications, updates, or revisions made to software or any related documentation that correct errors or support new models of input-output devices with which the software is designed to operate, but excludes any such modifications, additions, refinements, substitutions, revisions, replacements or upgrades to LRVs.

“Technology Enhancements” means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to operational technology, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements. The term “Technology Enhancements” specifically includes modifications, updates, or revisions made to software or any related documentation that correct errors or support new models of input-output devices with which the software is designed to operate, but excludes any such modifications, additions, refinements, substitutions, revisions, replacements or upgrades to LRVs.

“Term” means the period commencing on the Effective Date of the P3 Agreement and ending on the date specified in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Rights and Obligations of the Company—Project ROW.”

“Terminal Station” means the Bethesda or New Carrollton Station.

“Termination Compensation” means the measure of compensation owing from the Contracting Authority to the Company upon termination of the P3 Agreement prior to the stated expiration of the Term as determined in accordance with the P3 Agreement.

“Termination Compensation Account” means the “Termination Compensation Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Termination Date” means, with respect to the P3 Agreement, (a) the date of expiration of the Term or (b) if applicable, the Early Termination Date.

“Termination Due to Court Ruling” has the meaning given in APPENDIX C—“SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Termination of the P3 Agreement—Termination Due to Court Ruling.”

“Termination for Convenience” has the meaning given in APPENDIX C— “SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Termination for Convenience—Termination Due to Court Ruling.
“Termination for Convenience Amount” means the Termination Compensation payable following a Termination for Convenience, determined on a fair market value basis in accordance with Exhibit 13B of the P3 Agreement.

“Termination Notice” means notice by a Deposit Account Bank that it no longer wishes to act as a Deposit Account Bank or that it will no longer be subject to the terms of a Control Agreement, or that it will no longer act upon the instructions of the Company or the Collateral Agent in accordance with the applicable Control Agreement as a result of its determination that such action would result in the violation of any applicable Law, rule or regulation or for any other reason.

“Termination Payment” has (a) with respect to the Design-Build Contract, the meaning set forth in APPENDIX D—“SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT—Termination of the Design-Build Contract—Default by the Company and Design-Build Contractor Remedies” and (b) with respect the meaning set forth in APPENDIX E—“SUMMARY OF CERTAIN PROVISIONS OF THE O&M CONTRACT—Termination of the O&M Contract—Default by the Company and O&M Contractor Remedies.”

“Test Program Plan” means a plan describing the planned set of tests to be performed on an LRV, Fixed Equipment, Fixed Facility, Subsystem, System, or an integrated set of Subsystems or Systems.

“Third Party” means Montgomery County, Prince George’s County, University of Maryland College Park, WMATA, the Maryland-National Capital Park and Planning Commission, CSX Corporation, CSX Transportation, Inc., and any other Person specifically designated by the Contracting Authority as a Third Party.

“Third Party Agreement” means the agreements with the Third Parties identified in Part 1, Section 8 of the Technical Provisions.

“Third Party Liability Insurance Proceeds” means insurance proceeds, if any, payable to or received by the Company under workers’ compensation, unemployment insurance or other similar forms of governmental insurance or benefits or to compensate third party liability claims.

“Threat and Vulnerability Assessment (TVA)” means the analysis included in the System Security Plan, as required by the Technical Provisions, that examines threats to and vulnerabilities of the transit system and evaluates the risk and consequences from security threats.

“Threatened or Endangered Species” means any species listed by the USFWS as threatened or endangered under the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, et seq. or any species listed as threatened or endangered under the State’s endangered species act.


“TIFIA Agency Assignee” means any federal government agency or instrumentality (other than the TIFIA Lender) holding any portion of the TIFIA Loan, only for such time as the TIFIA Loan is held by such other federal government agency or instrumentality and only with respect to the portion of the TIFIA Loan that is held thereby.

“TIFIA Coverage Certificate” means a certificate signed by the Company’s Authorized Representative certifying as to (i) the Total Debt Service Coverage Ratio and the Senior Debt Service Coverage Ratio as of such Calculation Date and as of the Calculation Date immediately preceding such Calculation Date, (ii) the projected Total Debt Service Coverage Ratio and the projected Senior Debt Service Coverage Ratio as of such Calculation Date and for each of the four (4) Calculation Dates immediately succeeding such Calculation Date, and (iii) the Project Life Coverage Ratio as of such Calculation Date, delivered pursuant to the TIFIA Loan Agreement.
“TIFIA Credit Program” means the federal credit assistance program established by the Transportation Infrastructure Finance and Innovation Act, 23 U.S.C. § 601 et seq., as amended.

“TIFIA Debt Service” means, with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Company of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Company), in each case, (a) as set forth in the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, and (b) due and payable on such Semi-Annual Payment Date in accordance with the TIFIA Loan Agreement.

“TIFIA Debt Service Account” means the “TIFIA Debt Service Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“TIFIA Debt Service Reserve Required Balance” means, (a) as of any date of determination on or prior to September 30, 2022, $16,378,791, and (b) as of any date of determination thereafter, an amount equal to one hundred percent (100%) of TIFIA Debt Service that will become due and payable by the Company in the six (6) consecutive months following such date of determination.

“TIFIA Debt Service Reserve Sub-Account” means the “TIFIA Debt Service Reserve Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“TIFIA Event” means any of the following:

(a) any change to, amendment of or addition to the terms set out in the TIFIA Term Sheet, including the identity of the contractors, the terms of the commercial contracts and the terms of the security packages, that has a materially adverse effect on the Company;

(b) the unavailability of a TIFIA Loan after Commercial Close up to and including the initial Financial Close Deadline for the Project as of the date of the Concessionaire FC Notice due to no direct fault of the Company or its Affiliates, agents or advisors; or

(c) the TIFIA Joint Program Office insists on terms materially inconsistent with the TIFIA Term Sheet (other than a change to the TIFIA Rate (for which the Contracting Authority bears the risk and benefit) or TIFIA Structuring Assumptions for which the Contracting Authority bears the risk and benefit) that the Contracting Authority reasonably determines will result in a failure to achieve Financial Close by the Financial Close Deadline;

provided, however, that neither (a) nor (c) shall be deemed to be a TIFIA Event if: (i) the change, is agreed to by the Company, (ii) the change is to the TIFIA Rate (for which the Contracting Authority bears the risk and benefit), (iii) the change is to the TIFIA Structuring Assumptions (for which the Contracting Authority bears the risk and benefit), unless the change would require the replacement of some or all of the TIFIA Loan with a new tranche of Initial Project Debt that was not identified in the Financial Proposal, (iv) the change, amendment of or addition to the terms is related to a request by the Company for improvements to the TIFIA Term Sheet on its own behalf or on behalf of its Lenders, and the TIFIA Joint Program Office declined to make such improvements; or (v) if the Company has not used diligent and reasonable efforts to achieve Financial Close, including negotiating in good faith mutually agreeable terms with the TIFIA Joint Program Office and furnishing all required information, including credit ratings, in a timely manner.

“TIFIA Interest Payment Sub-Account” means the “TIFIA Interest Payment Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“TIFIA Interest Rate” shall be 2.41 percent (2.41%) per annum.
“TIFIA Joint Program Office” means the administrator of the TIFIA Credit Program on behalf of the Secretary of the USDOT.

“TIFIA Lender” means the United States Department of Transportation.

“TIFIA Loan” means (a) with respect to the P3 Agreement, a loan from the United States Department of Transportation in accordance with the TIFIA Credit Program and (b) for all other purposes, the loan to the Company on the terms and subject to the conditions set forth in the TIFIA Loan Agreement, in a principal amount not to exceed $874,595,239 (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Company.

“TIFIA Loan Agreement” means the TIFIA Loan Agreement, dated as of June 14, 2016, between the Company and the TIFIA Lender.

“TIFIA Loan Proceeds Sub-Account” means the “TIFIA Loan Proceeds Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“TIFIA Mandatory Prepayment Sub-Account” means the “TIFIA Mandatory Prepayment Sub-Account” of the Mandatory Prepayment Account established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“TIFIA Note” means the promissory note delivered by the Company in substantially the form appended to the TIFIA Loan Agreement.

“TIFIA Obligations” means any obligations of the Company incurred in connection with the TIFIA Loan Agreement, including all amounts that would be owed by the Company or a Company Related Party pursuant to the TIFIA Loan Agreement but for the fact that collection or receipt of such amounts is unenforceable or not allowed due to a pending Bankruptcy Event of the Company.

“TIFIA Principal Payment Sub-Account” means the “TIFIA Principal Payment Sub-Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“TIFIA Senior Debt Service Reserve Sub-Account” means a new Senior Debt Service Reserve Sub-Account to be established in the Debt Service Reserve Account pursuant to the Collateral Agency Agreement upon the occurrence of a Company Bankruptcy Related Event.

“Total Debt Service Coverage Ratio” or “Total DSCR” means (a) with respect to the TIFIA Loan Agreement, means, as of any Calculation Date, the ratio of (a) Net Cash Flow to (b) the sum of (i) Senior Debt Service (excluding (A) the portion of the Senior Debt Service applicable to Senior Obligations repaid from the Revenue Service Availability Payment, the Final Completion Payment, and the Special Lifecycle Payments and (B) any interest accrued prior to the Revenue Service Availability Date) and (ii) TIFIA Debt Service (excluding the portion of TIFIA Debt Service repaid from the Final Completion Payment and the Special Lifecycle Payments), in the case of clauses (a) and (b) above, for the Calculation Period ending on such Calculation Date, and (b) with respect to the Indenture, for any twelve-month period ending on a Calculation Date (or prior to the first anniversary of the RSA Date, for any shorter period from the RSA Date annualized for a twelve-month period), the ratio of A divided by B where:

A = Free Cash Flow for the period; and

B = all scheduled mandatory principal and interest payments for such period on account of (i) the 2016A Bonds and any other Senior Secured Obligations then outstanding for the period (excluding (a) the portion of the debt service applicable to Senior Secured Obligations repaid from the RSA Payment, the Final Completion Payment and Special Lifecycle Payments and (b) any interest accrued prior to the RSA Date) and (ii) the TIFIA Loan then outstanding for the period (excluding the portion of the debt service applicable to the TIFIA Loan repaid from the RSA Payment, the Final Completion Payment and Special Lifecycle Payments).
“Total Trip Run Time” or “Ttot” means the amount of time in minutes it takes a train to depart an originating terminal station at one end of the line to the ending terminal station at the other end of the line and includes the turnback time at the ending termination station, as determined under the Technical Provisions prior to the RSA Date under the P3 Agreement and under the Technical Provisions from time to time during the O&M Period.

“Total Value of D&C Construction Work” means the amount specified in the line item for “Total Value of D&C Construction Work” in Exhibit 4A.

“Traction Power” means power used as metered at the primary side of the traction power transformer used for providing electricity to the LRVs for locomotion and any power drawn from the secondary side of the traction power.

“Traffic signals and traffic congestion (Tsc)” means the variable component of Total Trip Run Time based on traffic signals and traffic congestion (including pedestrian delay) conditions, which is initially established based on certain tables in the P3 Agreement and is subject to modification based on measurements of actual conditions under the Technical Provisions. The value is the difference between travel with no delays due to traffic signals and traffic congestion versus travel including delays due to traffic signals and traffic congestion. There will be different Tsc values for each of the periods identified in the Technical Provisions, for each direction of travel (eastbound and westbound), and Tsc values will also vary by season.

“Train” means a set of one or more LRVs coupled together and operated as a single unit or train set.

“Train Trip” means the travel of one Train from its scheduled Originating Station to the Terminal Station at the opposite end of the line when Trains are operating along the entire line. At times when it is not possible for a Train to travel along the entire length of the line (e.g., in cases of Service Interruptions preventing travel to the Terminal Station), a “Train Trip” means the travel of one Train from its scheduled Originating Station to the Service Interruption area and then return of the Train to the Originating Station.

“Train Service” means providing Trains for the Users to travel from one point on the line to another.

“Transaction Documents” means the 2016 Loan Documents and the Material Project Contracts.

“Transitway” means the dedicated right-of-way for the Purple Line System.

“Traylor” means Traylor Bros., Inc., an Indiana corporation.

“Treasury Regulations” means the temporary, proposed or final federal income tax regulations promulgated by the U.S. Department of the Treasury, together with the other published written guidance thereof, as applicable.

“Trial Running” is the final step in confirming and demonstrating readiness for Revenue Service, as described in Part 2C, Section 4.7 of the Technical Provisions.

“Trust Estate” means the property and rights granted to the Trustee pursuant to the Indenture.

“Trustee” means U.S. Bank National Association, in its capacity as trustee on behalf of the Holders.

“TTF” means Transportation Trust Fund.

“UMD” means the University of Maryland at College Park.

“Underwriters” means J.P. Morgan and RBC.
“Uniform Commercial Code” or “UCC” means the Uniform Commercial Code, as in effect from time to time in any applicable jurisdiction.

“Unplanned Service Interruption” means any Service Interruption that is not a Planned Service Interruption.

“Unused Capital Commitment” means, with respect to each Sponsor and on any date of determination, the Aggregate Capital Commitment of such Sponsor less the aggregate amount of any Capital Contributions previously made by such Sponsor pursuant to the Equity Contribution Agreement.

“Upgrades” means alterations, improvements, modifications or changes that the Company makes to any portion of the Project, as originally designed and constructed, at any time after the RSA Date, except as part of ordinary maintenance or Renewal Work, including Capacity Improvements. Upgrades may include alterations, improvements, modifications or changes that require an amendment or supplement to the final environmental impact documents for the Project or that are to be located outside the boundaries of the original Project ROW. Upgrades exclude Technology Enhancements and any alterations, improvements, modifications or changes undertaken in the use or development of a Business Opportunity.

“Useful Life” means, for an element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

“User(s)” means members of the public lawfully present on or using the Transitway or Alternate Service.

“Utility or utility” means a privately, publicly, or cooperatively owned facility (which term includes lines, systems and other facilities, and includes municipal and/or government facilities) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system as well as streetlights associated with roadways owned by local agencies. However, when used in the context of Utility Adjustments of facilities to accommodate the Project, the term “Utility” or “utility” excludes (a) storm water facilities, and (b) traffic signals, ramp metering systems, flashing beacon systems, and lighting systems for the mainline Project. The necessary appurtenances to each utility facility shall be considered part of the facility, including the utility source, guide poles, Service Lines, supports, etc. Without limitation, any service lateral connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service lateral.

“Utility Adjustment” means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned utility facilities as well as newly-abandoned facilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate the Project or the Work, with respect to the P3 Agreement. The term “Utility Adjustment,” however, excludes work associated with facilities owned by any railroad. For any utility crossing the Project ROW, the Utility Work for each crossing of the Project ROW by that utility shall be considered a separate Utility Adjustment. For any utility installed longitudinally within the Project ROW, the Utility Work for each continuous segment of that utility located within the Project ROW shall be considered a separate Utility Adjustment. The term “Utility Adjustments” specifically excludes any work relating to storm water facilities providing drainage for the Project ROW. The term “Relocation” used in Contracting Authority Utility Agreements has the same meaning as “Utility Adjustment.”

“Utility Agreement” means either a Contracting Authority Utility Agreement, Concessionaire Utility Agreement.

“Utility Easement” means a permanent replacement easement, license, franchise, permit and/or other interest required for relocation of a Utility to real property located outside of the right of way boundaries in the ROW Maps.

“Utility Information” means the information regarding Utilities included in the Contract Drawings and Engineering Data. The Utility Information includes survey information and information from record documents.
regarding existing utilities, utility maps included as an overlay on the survey, and SUE maps depicting existing Utilities potentially impacted by the Project.

“Utility Owner” means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

“Utility Owner Delay” means a delay to the Critical Path directly attributable to (a) a Utility Owner’s failure to meet any time parameters for performance in the Utility Agreement(s) to which it is a party or (b) a Utility Owner’s unreasonable refusal to approve relocation of a utility facility within the boundaries of the properties identified in Exhibit 9 to the P3 Agreement resulting in a requirement to acquire additional Utility Easements. The term “Utility Owner Delay” does not include any failure to perform by a Utility Owner which is excused under the force majeure provisions of the Utility Agreement, and does not include any requirement to acquire additional Utility Easements resulting from the Company’s design.

“Utility Work” means the design and construction necessary for a Utility Adjustment. Any Utility Work furnished or performed by the Company is part of the D&C Work.

“Variable Interest Rate” means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the Senior Loan Agreement pursuant to which such Permitted Debt is incurred. Such Senior Loan Agreement shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect or (b) the time or times upon which any change in such variable interest rate shall become effective.

“Variable Interest Rate Senior Obligations” means any Senior Obligations under a Senior Loan Agreement that accrue interest at a Variable Interest Rate.

“Voluntary Equity Contributions” means any Equity Contributions that do not constitute Capital Contributions.

“Voluntary Prepayment Account” means the “Voluntary Prepayment Account” established and created in the name of the Company pursuant to the Collateral Agency Agreement.

“Verification Sampling and Testing” means sampling and testing performed to validate the quality of the product. The Contracting Authority, or its designee, will perform Verification Sampling and Testing as part of its QA Oversight efforts.

“Weighted Average Interest Cost” means, for each Semi-Annual Payment Date, a rate calculated as follows: the sum of (a) the applicable true interest cost(s) for the Senior Obligations (other than the balance of the Senior Obligations to be repaid in whole or in part by the Revenue Service Availability Payment, the Final Completion Payment and the Special Lifecycle Payments) multiplied by the ratio of (i) the outstanding principal amount of such Senior Obligations to (ii) the aggregate principal amount of all of the Senior Obligations (other than the balance of the Senior Obligations to be repaid in whole or in part by the Revenue Service Availability Payment, the Final Completion Payment and the Special Lifecycle Payments) and the Outstanding TIFIA Loan Balance as of such Semi-Annual Payment Date; and (b) the interest rate on the TIFIA Loan multiplied by the ratio of (i) the Outstanding TIFIA Loan Balance to (ii) the aggregate principal amount of all of the Senior Obligations (other than the balance of the Senior Obligations to be repaid in whole or in part by the Revenue Service Availability Payment, the Final Completion Payment and the Special Lifecycle Payments) and the TIFIA Loan as of such Semi-Annual Payment Date.

“WMATA” means Washington Metropolitan Area Transit Authority.

“Work” means the work required to be furnished and provided by the Company under the Contract Documents, including activities to obtain financing as well as all administrative, design, engineering, construction, demolition, supply of LRVs and Fare System Equipment, Utility Adjustments, support services, financing services, operations, maintenance and other work of renewal, reconstruction, repair or reinstatement of Project improvements.
and equipment, and management services, except for those efforts which the Contract Documents expressly specify will be performed by Persons other than Concessionaire-Related Entities.

“Work Breakdown Structure” means a deliverable-oriented hierarchical structure that breaks the Work into elements that have distinct identification and that contain specific scope characteristics. Each descending WBS level represents an increasingly detailed delineation of elements of the total Project scope. The WBS will contain elements of Design Work, Construction Work and O&M Work. There shall be clearly identifiable linkage between the WBS and Schedule Activities. The WBS numbering convention shall be compatible with Project Schedule coding and may be compatible with document control coding.

“Workblock Request Package” means the submittal requesting track time as specified in Part 3, Section 3.2.2 of the Technical Provisions.
APPENDIX C

SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT

The following is a summary of selected provisions of the P3 Agreement and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Company or the Trustee. Unless otherwise stated, any reference in this Official Statement to any agreement shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.

Rights and Obligations of the Company

Concession

The Company has agreed, as and when required by the P3 Agreement, to finance, develop, design, construct, equip, supply LRVs for, operate and maintain the Purple Line, including performance of Renewal Work and handback of the Purple Line at the end of the Term, and to perform such other activities relating to the foregoing for the Project.

Project ROW

The Contracting Authority has agreed to grant to the Company and related entities the right to enter onto any real property, improvements and fixtures within the lines delineating the right of way boundaries in the ROW Maps, as such boundaries may be modified from time to time, and at such times indicated, in accordance with the Contract Documents (including boundary adjustments associated with acquisition of Additional Properties) (“Project ROW”).

Term

The Term will end 30 years after the earlier of the Revenue Service Availability (RSA) Deadline and the date of issuance of the Certificate of Revenue Service Availability by the Independent Engineer, subject to (a) the right of the Parties to terminate the P3 Agreement early in accordance with the P3 Agreement or otherwise at law and (b) the effect of Extended Delays on the Term. Notwithstanding any of the above, the Term will end 30 years after the Extended Delay Payment Date.

The RSA Deadline is 2,092 days following the date on which Financial Close occurs, unless (a) the Contracting Authority issues an agreed limited NTP and (b) Financial Close occurs prior to June 18, 2016, in which case the RSA Deadline is March 11, 2022, as such deadline may be extended in accordance with the applicable provisions of the P3 Agreement.

Provisions Relating to Financing of Company’s Obligations

Security

The Company may grant security interests in or assign all right, title and interest of the Company in, to, under or derived from the P3 Agreement and the other Contract Documents (the “Company’s Interest”) to Lenders for purposes of securing the Project Debt, if the funds advanced are obligated to be used exclusively for the purposes of: (a) developing, designing, constructing, supplying and equipping the Purple Line (including LRVs), and operating and maintaining the Purple Line, including making payments to Utility Owners, or performing other Work; (b) paying interest and principal on Project Debt; (c) paying reasonable development fees to Concessionaire-Related Entities for services related to the Purple Line; (d) paying fees and premiums to any Lender of the Project Debt or such Lender’s agents; (e) paying costs and fees in connection with the closing and administering of any permitted Project Debt; (f) making payments due under the Contract Documents to the Contracting Authority or any other Person; (g) making payment
of Taxes; (h) funding reserves required under the P3 Agreement, Funding Agreements or Security Documents, applicable securities laws, or Environmental Laws; (i) making permitted Distributions; and (j) refinancing any Project Debt in connection with the purposes in clauses (a) through (i) above. The Security Documents collectively must encumber the entire Company’s Interest, but this will not affect the Company’s ability to enter into Subordinate Security Documents as permitted by the Funding Agreements or equipment lease financing. The Company will not pledge or encumber the Company’s Interest or any portion of such interest, to secure any indebtedness of any Person other than (a) the Company, (b) any special purpose entity that owns the Company but no other assets and has purposes and powers limited to the Project and Work, (c) a special purpose entity subsidiary owned by either the Company or a the special purpose entity described in clause (b), or (d) the PABs Issuer.

All rights concerning the Company’s Interest acquired by Lenders under any Funding Agreement or Security Document (e.g., foreclosure and step-in rights) will expressly state that, upon exercise of such rights, the Lender will be acting as the Company under the Direct Agreement, in its own capacity or by and through the Collateral Agent, and thus be subject to the provisions of the Contract Documents. Project Debt (excluding Subordinate Debt) will be issued and held only by Institutional Lenders determined at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that (a) qualified investors other than Institutional Lenders may acquire and hold interests in Project Debt, but only if an Institutional Lender acts as Collateral Agent for such Project Debt and (b) PABs may be issued, acquired and held by parties other than Institutional Lenders but only if an Institutional Lender acts as indenture trustee for the PABs.

Each note, bond or other negotiable or non-negotiable instrument evidencing Project Debt or any other obligations owed to any Person described in the preceding paragraph in connection with the Project will include, or will refer to a document controlling or relating to any such note, bond or other such instrument that includes, a conspicuous recital and provisions:

(a) in the case of Project Debt other than PABs, stating that payment of the principal of and interest on such Project Debt is a valid claim only as against the obligor and the security pledged by the Company or the obligor is not an obligation, moral or otherwise, of the State, the Contracting Authority, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power, and no assets, of the State, the Contracting Authority, or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon; and

(b) with respect to PABs, stating that (i) the PABs are special and limited obligations of the PABs Issuer, payable solely from and secured exclusively by the revenues and other amounts pledged under the relevant indenture, including the payments to be made by the Company under the loan agreement entered into between the PABs Issuer and the Company in connection with the loan of the proceeds from the sale of the PABs by the PABs Issuer to the Company and are not payable from taxes or appropriations made by the General Assembly, (ii) the PABs do not constitute an indebtedness, or a pledge of the faith and credit, of the Contracting Authority, the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation, (iii) the PABs are limited, special obligations of the PABs Issuer payable solely from amounts paid by the Company pursuant to the relevant Funding Agreement, and (iv) the PABs do not constitute a charge against the faith, credit or taxing power of the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation.

The Security Documents collectively will encumber the entire Company’s Interest, but this will not affect the Company’s ability to enter into Subordinate Security Documents as permitted by the Funding Agreements or equipment lease financing.

No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against the Company’s Interest will extend to or affect the interest of
the Contracting Authority in (a) the Project (including the LRVs), (b) the Project ROW or (c) the Contract Documents.

Each Funding Agreement and Security Document subject to the Direct Agreement will require the Collateral Agent to deliver any hard copy written notice it gives to the Company under any Funding Agreement or Security Document relating to any “Event of Default” (or its equivalent, as defined in any Funding Agreement or Security Document that is subject to the Direct Agreement) to the Contracting Authority concurrently with delivery of such notice to the Company. Each Funding Agreement and Security Document, in either case not subject to the Direct Agreement, will require the Lender to deliver a copy of any default-related notice to the Contracting Authority concurrently with delivery of such notice to the Company. Each Funding Agreement and Security Document that provides Lender remedies for default by the Company under such Funding Agreement or Security Document, will require the Collateral Agent to deliver notice concurrently to the Contracting Authority, the Company and any other Person, for every notice of election or enforcement of remedies under such Funding Agreement or Security Document, including an election to sell or foreclose, notice of sale or foreclosure or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Funding Agreement or Security Document.

Each relevant Funding Agreement and Security Document that may be in effect during any part of the period that the Handback Requirements apply will expressly permit, without condition or qualification except as allowed below. The Company to (a) issue additional Project Debt, secured by the Company’s Interest, for the added limited purposes of funding work in accordance with the Handback Requirements and Safety Compliance and (b) otherwise comply with its obligations in the Contract Documents regarding Renewal Work, the Asset Management Plan, Safety Compliance and the Handback Requirements. Lenders then holding Project Debt may limit additional Project Debt if other funds are then, in the Contracting Authority’s determination, readily available to the Company for the purpose of funding the Work. No Lender then holding Project Debt is required to grant senior or pari passu lien or payment status to any such additional Project Debt. The Lenders then holding Project Debt may impose reasonable and customary requirements as to performance and supervision of the Work, provided that such requirements may not be more onerous than the requirements in their respective existing Funding Agreements or Security Documents. No Funding Agreement for such additional Project Debt may grant to any Lender the right to apply monies in any account funded by other Project Debt towards payment of any Handback Requirements costs. Notwithstanding the preceding sentence, following foreclosure or transfer in lieu of foreclosure, any Lender or Substituted Entity that succeeds to the entire Company’s Interest in accordance with the Direct Agreement may use monies in any account funded to pay Handback Requirements costs, consistent with restrictions in the Direct Agreement.

Each Funding Agreement and Security Document will expressly state that:

(a) The Lender shall not name or join the Contracting Authority, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative of any of them in any legal proceeding seeking collection of the Project Debt or other obligations secured thereby or the foreclosure or other enforcement of the Funding Agreement or Security Document, except, in each case, (i) to the extent that an agency, instrumentality or political subdivision of the State is being named in its capacity as the conduit issuer of PABs under Section 10-101 et seq. of the Economic Development Article of the Annotated Code of Maryland and (ii) as such language may be modified in the Funding Agreements or the Security Documents approved by the Contracting Authority as provided in the Direct Agreement.

(b) The Lender shall not seek any damages or other amounts from the Contracting Authority, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative of any of them, whether for Project Debt or any other amount, except (i) damages from the Contracting Authority only for a violation by the Contracting Authority of its express obligations to Lenders in the Direct Agreement, if applicable, and (ii) damages and other amounts due from the Contracting Authority in (a) the Project (including the LRVs), (b) the Project ROW or (c) the Contract Documents.
Authority under the P3 Agreement where the Lender has succeeded to the rights and interests of the Company under the Contract Documents, whether by way of assignment or subrogation, or (iii) to the extent such damages or other amounts are being sought from an agency, instrumentality or political subdivision of the State in its capacity as the conduit issuer of PABs under Section 10-101 et seq. of the Economic Development Article of the Annotated Code of Maryland. The Contracting Authority shall be entitled to take reasonable steps to ensure the Company’s compliance with this clause (b), including contacting the Lender before execution of the Funding Agreement and Security Document.

(c) The Lender and the Collateral Agent shall respond to any request from the Contracting Authority or the Company for consent to a modification or amendment of any of the Contract Documents within a reasonable period of time.

Each Security Document will expressly state that the Collateral Agent shall have the right to take all actions, and shall perform all obligations, assigned to Collateral Agent under the Direct Agreement.

**Refinancing**

For all Refinancings other than Exempt Refinancings and Rescue Refinancings, the Contracting Authority’s prior written approval is required. The Contracting Authority will have no obligations or liabilities in connection with any Refinancing other than its obligations relating to Lender’s rights in the Direct Agreement. Other than an Exempt Refinancing and a Rescue Refinancing, no Refinancing is permitted before the Final Completion Date, except to the extent the Company demonstrates to the Contracting Authority’s reasonable satisfaction that (a) the Committed Investment will not decrease as a result of the Refinancing to a level below the certain equity requirements, and (b) the Refinancing will produce Refinancing Gain that will be shared with the Contracting Authority under the P3 Agreement. If the Refinancing is with a new Lender, the new Lender may be added to an existing Direct Agreement or the Contracting Authority will enter into a new Direct Agreement with the new Lender, if such Lender so elects.

Exempt Refinancing means: (a) Any Refinancing that was fully and specifically identified and taken into account in the Base Case Financial Model; (b) (i) Amendments, modifications, supplements or consents to Funding Agreements and Security Documents, and (ii) The exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision that, in either case, do not, individually or in the aggregate, provide a financial benefit to the Company; (c) Movement of monies between the Project accounts in accordance with the terms of Funding Agreements and Security Documents; (d) Any of the following acts by a Lender of senior lien priority Project Debt: (i) The syndication of any of such Lender’s rights and interests in the senior Funding Agreements; (ii) The grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, with respect to the senior Funding Agreements in favor of any other Lender of senior lien Project Debt or any other investor; or (iii) The grant by such Lender of any other form of benefit or interest in either the senior Funding Agreements or the revenues or assets of the Company, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor; and (e) Periodic resetting and remarketing of tax-exempt or taxable bonds that bear interest at a variable or floating rate and are money market eligible under SEC Rule 2a-7.

Rescue Refinancing means any Refinancing that: (a) Occurs due to the failure or imminent failure of the Company to comply with any material financial obligation under any Funding Agreement or Security Document; (b) Results in the cure of such failure or imminent failure; (c) Does not result in an increase in the Equity IRR beyond the Original Equity IRR; and (d) Does not result, singly or in the aggregate, in an actual or potential increase of the Project Debt Termination Amount (determined without including any Exempt Refinancings) by more than 10%.

In connection with any proposed Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), the Company will promptly submit to the Contracting Authority a summary of the proposed Refinancing, together with a schedule setting forth the various
activities, each with schedule durations, to be accomplished from commencement through the close of the proposed Refinancing.

At least 30 days (five days with respect to subsection (c) below) before the proposed date for closing any Refinancing (except an Exempt Refinancing under clauses (b), (c) or (d) of the definition of Exempt Refinancing, in each case subject to subsection (c) below), the Company will:

(a) Provide draft proposed Funding Agreements and Security Documents and initial versions of available Pre-Refinancing Data, and any other submittals required by Exhibit 5G of the P3 Agreement;

(b) If the Company believes the Refinancing is a Rescue Refinancing or an Exempt Refinancing (other than an Exempt Refinancing under clause (b) of the definition of Exempt Refinancing), provide notice to the Contracting Authority setting out the facts to support the basis for characterization of the transaction as an Exempt Refinancing or Rescue Refinancing; and

(c) With respect to any TIFIA Loan, provide notice to the Contracting Authority of any dilution, syndication or transfer of interest of the TIFIA Joint Program Office in any such TIFIA Loan; provided, however, that the Company will use good faith efforts to provide such notice earlier than 5 days before the proposed date for closing any transaction to effect such dilution, syndication or transfer of interest.

Within 15 days after receipt of the materials required under subsection (b) above, the Contracting Authority will review and determine (a) whether the proposed Refinancing is an Exempt Refinancing or Rescue Refinancing, and if neither, (b) whether to approve or disapprove the proposed Refinancing, (c) whether the proposed Refinancing will result in a Refinancing Gain, and (d) if applicable, the means for payment of the Contracting Authority’s portion of the Refinancing Gain. The Contracting Authority’s failure to deliver to the Company notice of such determination and selection within such time period will not prejudice the Contracting Authority’s right to disapprove the proposed Refinancing, to receive any portion of Refinancing Gain, or its selection of the means for payment of such portion.

At least seven days before the proposed date for closing the Refinancing, the Company will deliver to the Contracting Authority final drafts of the proposed Funding Agreements and Security Documents, together with updated versions of the Pre-Refinancing Data.

Within five business days after close of the Refinancing, the Company will deliver to the Contracting Authority copies of all signed Funding Agreements and Security Documents in connection with the Refinancing, and the final Refinancing Data.

Within 10 business days after close of the Refinancing, the Contracting Authority and the Company will meet and confer to agree upon the final calculation of the Refinancing Gain. Once the final calculation is made, the Company will pay the Contracting Authority its portion of the Refinancing Gain if the selected means of payment is a lump sum payment. If there is any dispute regarding the amount owing, the Company will pay the undisputed amount to the Contracting Authority and the amount in dispute will be subject to resolution under the Dispute Resolution Procedures.

Refinancing Limitations, Requirements and Conditions

Other than an Exempt Refinancing and a Rescue Refinancing, no Refinancing is permitted before the Final Completion Date, except to the extent the Company demonstrates to the Contracting Authority’s
reasonable satisfaction that (a) the Committed Investment will not decrease as a result of the Refinancing to a level below the equity requirements described below, and (b) the Refinancing will produce Refinancing Gain that will be shared with the Contracting Authority under Exhibit 5G of the P3 Agreement.

Throughout the period between the date of Financial Close and the RSA Date, the Company will maintain Committed Investments totaling not less than 10% of an amount equal to the sum of the Committed Investment (less dividends or return of capital) and the total debt principal outstanding after the RSA Payment (less any debt principal repaid with the Final Completion Payment), each expressed in year-of-expenditure terms, except to the extent: (a) the Company must reduce the amount of Committed Investments below 10% as part of a workout of a breach or default under the Initial Funding Agreements or Initial Security Documents; or (b) the amount of Committed Investments is reduced below 10% because the Company incurs additional Project Debt in connection with a Rescue Refinancing.

The Company will bear all risks for any Refinancing that negatively affects its Equity IRR, debt service coverage ratios or financial performance.

**Equity Requirements**

If the Contracting Authority renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering a consent and estoppel certificate under the Direct Agreement, then concurrently with close of the Refinancing, and as a condition precedent to the Company’s right to close the Refinancing, the Company will reimburse the Contracting Authority all of the Contracting Authority’s Recoverable Costs incurred in connection with the Refinancing. The Contracting Authority will deliver to the Company a written invoice and demand before the scheduled date of closing. If for any reason the Refinancing does not close, the Company will reimburse such the Contracting Authority’s Recoverable Costs within 10 days after the Contracting Authority delivers to the Company a written invoice and demand for such costs.

**Lenders’ Rights under the Direct Agreement**

The rights of the Contracting Authority under the Concessionaire Default and Termination provisions are subject to the terms of any Direct Agreement.

**Contracting Authority Cooperation**

The Contracting Authority will reasonably assist the Company in obtaining approvals for issuance of debt by other Governmental Entities required by the Financial Proposal, including by providing documents and information required to comply with any requirements under applicable Laws in connection with such issuance or approvals. Notwithstanding the foregoing, but subject to the Company’s right to terminate the P3 Agreement in connection with the Contracting Authority’s failure to execute the New Starts Full Funding Grant Amendment required for a draw on a TIFIA Loan, the Contracting Authority does not bear any risk for the failure of the Company to obtain funding from these potential sources, and such failure, if any, will not diminish the Company’s obligations under the P3 Agreement.

**Design and Construction**

The Company will: (a) expeditiously and diligently progress performance of all Work to be performed prior to the RSA Date, as well as any Work remaining to be performed after such date by (i) the Design-Build Contractor or (ii) the LRV Supplier, through the Design-Build Contractor, for the initial LRV order, which excludes for purposes of clarity the O&M Spare LRV, LRV components and related consumables obtained and supplied during the O&M Period (“D&C Work”) with the goal of achieving Revenue Service Availability and Final Completion by the applicable Contract Deadlines; (b) carry out or do all things necessary to perform the D&C Work and design and construct the Purple Line in accordance with the Contract Documents and Good Industry Practice; (c) ensure that each of the following is fit for its intended function and uses: (i) all goods, equipment, consumables, and materials used or supplied by each
entity related to the Company in connection with the Purple Line and the D&C Work and (ii) those LRV components obtained as part of the D&C Work; (d) provide maintenance and other services; (e) ensure adequate materials, equipment and resources are available to ensure compliance with the requirements of the Contract Documents under normal conditions and reasonable anticipated abnormal conditions; (f) ensure all materials and equipment are of good quality and new unless otherwise expressly stated; (g) ensure the Purple Line will be free of defects, including design defects, errors and omissions; (h) ensure the Site is kept in a neat and clean condition at all times; (i) cooperate with the Contracting Authority and Authorities Having Jurisdiction in all matters relating to the D&C Work, including their review, inspection and oversight of D&C Work; and (j) remove and replace Nonconforming Work and/or materials, whether discovered or rejected by the Contracting Authority or the Company, or otherwise remedy such Nonconforming Work and/or materials in an acceptable manner approved, in advance, by the Contracting Authority.

Contracting Authority’s Access

The Contracting Authority, its representatives, designees and contractors, and the Independent Engineer will have (a) safe and unrestricted access to the Purple Line at all times, (b) safe access during normal business hours to the Company’s Purple Line offices, operations buildings, Project-Specific Locations (including LRV assembly facility and production facilities), and (c) unrestricted access to data respecting the Work. The Contracting Authority will provide written notice to the Company at least one business day in advance of visits to production facilities and the LRV assembly facility.

Interface with Related Transportation Facilities

The Company will be responsible for interfaces and integration of the Purple Line with Related Transportation Facilities, including integration with roadway networks, operational connections to the MARC commuter rail system, intermodal connections and interfaces with facilities owned by WMATA and other transit service providers, in accordance with requirements specified in the Technical Provisions and other Contract Documents.

The Company will cooperate and coordinate with the Contracting Authority and any third party that owns, manages, operates or maintains a Related Transportation Facility with regard to the construction, maintenance and repair programs and schedules for the Work and the Related Transportation Facility, in order to minimize disruption to the operation of the Purple Line and the Related Transportation Facility.

To assist the Company, the Contracting Authority will provide to the Company during normal working hours, and upon reasonable prior notice, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of the Contracting Authority or its contractors and consultants pertaining to Related Transportation Facilities. The Company, at its expense, will have the right to make copies of the same to the extent of the Contracting Authority’s rights with respect to such plans, surveys, drawings, etc. The Company, at its expense, will conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to identify the Related Transportation Facilities and comply with the requirements in this section.

At the Company’s request from time to time, the Contracting Authority will provide reasonable assistance to the Company in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that the Company may have against any such third parties. Such assistance may include the Contracting Authority’s participation in meetings and discussions. In no event will the Contracting Authority be required to bring any legal action or proceeding against any such third party. At the Company’s request, the Contracting Authority and the Company will work jointly to establish a scope of work and budget for the Contracting Authority’s Recoverable Costs in connection with providing such cooperation to the Company. Subject to any agreed scope of work and budget, the Company will reimburse the Contracting Authority for all reasonable costs, including the Contracting Authority’s Recoverable Costs, it incurs in connection with rendering such assistance within 10 days after receipt of the Contracting Authority’s request.
Design-Build Period Progress Payments

The Contracting Authority will make payments for the D&C Work following receipt of periodic requests for payment submitted by the Company subject to certain withholding or reduction provisions. The amount payable is subject to certain limitations and may be reduced in accordance with the Contract Documents. The periodic requests for payment will identify amounts owing for Progress Payments, Allowances, Change Orders, incentive payments, the Contracting Authority’s share of Independent Engineer costs, the RSA Payment and the Final Completion Payment, and will include information as required by the Contracting Authority for the purpose of allowing the Contracting Authority to pass through costs to third parties.

Upon receipt of the Company’s final invoice, together with all supporting materials, by the Contracting Authority’s Authorized Representative and verification by the Contracting Authority’s Authorized Representative that certain material is stored at the approved location, the Contracting Authority’s Authorized Representative will authorize payment. The Company will pay the material provider the amount shown on the invoice within 10 days of receipt of payment from the Contracting Authority. Evidence of payment will be provided to the Contracting Authority. Failure to make invoice payments as specified will be cause to deduct the monies from future estimates and/or deny future stored materials invoices.

Site Conditions

The Company acknowledges and agrees that:

(a) It has investigated and satisfied itself as to the conditions affecting the D&C Work, including those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages or similar physical conditions at the Site, the conformation and conditions of the ground, and the character of equipment and facilities needed in connection with the D&C Work;

(b) It has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site;

(c) Any failure by the Company to acquaint itself with the available information relating to the conditions affecting the D&C Work will not relieve the Company from responsibility for estimating properly the difficulty or cost of successfully performing the D&C Work;

(d) Except to the extent that the Contract Documents permit the Company to rely on certain information provided by the Contracting Authority as a baseline for determining whether a Relief Event has occurred: (i) the Company will have no right to rely on surveys, data, reports or other information provided by the Contracting Authority or other Persons concerning surface or subsurface conditions, including information relating to Utilities, Hazardous Materials, contaminated groundwater, paleontological resources, cultural (including archaeological and historic) resources, flooding conditions and seismic conditions, affecting the Work, the Site or surrounding locations; and (ii) such information is for the Company’s reference only and has not been verified.

Governmental Approvals

The Contracting Authority is responsible for obtaining the Contracting Authority-Provided Approvals, which means the Governmental Approvals listed in Exhibit 8 of the P3 Agreement. As of the Effective Date, all such Contracting Authority-Provided Approvals have been issued and the Company acknowledges receipt of said Contracting Authority-Provided Approvals. The Contracting Authority is responsible, subject to certain limitations, for costs of litigation relating to the Contracting Authority-
Provided Approvals. The Company will obtain all Governmental Approvals required for the Project and the Work, other than the Contracting Authority-Provided Approvals, and will bear the risk of any delay in obtaining such approvals as well as the risk of conditions imposed on performance of the Work by such approvals. The Company will deliver to the Contracting Authority true and complete copies of all new or amended Governmental Approvals other than the Contracting Authority-Provided Approvals.

The Technical Provisions include requirements to be met by the Company to ensure that the Purple Line will comply with the requirements of the Environmental Approvals. The Contracting Authority delegates to the Company, and the Company accepts, all obligations, commitments and responsibilities of the Contracting Authority under the Environmental Approvals, except to the extent that Part 2A, Section 5 of the Technical Provisions states that the Contracting Authority retains certain obligations.

Throughout the Term and the course of the Work, the Company will: comply with all Environmental Laws; comply with all conditions, and requirements imposed by all Governmental Approvals; perform all commitments and mitigation measures in all Environmental Approvals, except to the extent that the Contract Documents specifically state that the Company is not responsible for such commitments and mitigation measures; and undertake all actions required by, or necessary to maintain in full force and effect, (i) all Governmental Approvals to be obtained by the Company and (ii) the Contracting Authority-Provided Approvals, to the extent specified in the Technical Provisions and Books 3 through 5.

Utilities

The Company will ensure completion of all Utility Adjustments necessary to accommodate the Purple Line are completed in accordance with the Project Schedule and the requirements of the Contract Documents; conduct reasonable site investigation and exploration before commencement of Construction Work in any particular area to correctly identify all Utilities in the area; include in the design all utilities to ensure that Utility services are not mistakenly disrupted by the Construction Work; ensure that all Utility Work performed by Concessionaire-Related Entities complies with the Contract Documents; and coordinate, monitor and otherwise undertake appropriate efforts to ensure timely performance of Utility Work by Utility Owners, in coordination with the D&C Work, and in compliance with the standards and other applicable requirements specified in the Contract Documents and Contracting Authority Utility Agreements. The Company will keep the Contracting Authority informed of any concerns regarding work by Utility Owners, and the Contracting Authority agrees to cooperate as reasonably requested by the Company to ensure proper performance by the Utility Owners.

Utility Adjustments mean each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned utility facilities as well as newly-abandoned facilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate the Project or the Work. Utility Adjustments, however, do not include work associated with facilities owned by any railroad. For any utility crossing the Project ROW, the Utility Work for each crossing of the Project ROW by that utility will be considered a separate Utility Adjustment. For any utility installed longitudinally within the Project ROW, the Utility Work for each continuous segment of that utility located within the Purple Line ROW will be considered a separate Utility Adjustment. The term “Utility Adjustments” specifically excludes any work relating to storm water facilities providing drainage for the Project ROW. The term “Relocation” used in Contracting Authority Utility Agreements has the same meaning as “Utility Adjustment”.

The Company is responsible for proper completion of the Utility Work required for the Purple Line, in accordance with the Contract Documents, regardless of the nature or provisions of the Utility Agreements and regardless of whether the Company or its Contractors, or the Utility Owner or its contractors, is performing the Utility Work. No extension of time will be allowed for delays associated with Utility Work, and no additional compensation will be allowed relating to Utility Work, except to the extent specifically permitted by the Contract Documents.
The Company will be responsible for: all costs of Utility Work performed by Concessionaire-Related Entities; all payments owing to Utility Owners for Utility Work under Concessionaire Utility Agreements (if any); a share of the costs of acquisition of property required for Utility Easements; all costs of Incidental Utility Work; and all costs of materials furnished by Utility Owners under Contracting Authority Utility Agreements. The Contracting Authority is responsible for payments owing to Utility Owners under the Contracting Authority Utility Agreements, except as otherwise provided.

Completion

Revenue Service Availability Deadline

The Company will exercise its best efforts to achieve Revenue Service Availability on or before the RSA Deadline. Revenue Service Availability means that all D&C Work is complete (except for Punch List items that do not affect normal and safe use and operation of the System and any D&C Work that, by its nature, is to be performed after the Revenue Service Availability Date), and all other prerequisites for start of Revenue Service have been met. Failure to achieve Revenue Service Availability by the Long Stop Date is a Concessionaire Default. Contracting Authority approval is required for any proposed opening before the RSA Deadline. Any request for early opening must be submitted to Contracting Authority at least 12 months before the date on which the Company wishes the O&M Period to commence.

The Independent Engineer’s Certificate of Revenue Service Availability may be issued only after satisfaction of the following conditions to Revenue Service Availability:

(a) The Company has completed all D&C Work required for running normal and safe passenger service on the System at Service Level 1, including (a) full access to all points of entry and exit and (b) completion of all Construction Work other than punch list items approved by the Contracting Authority;

(b) The Company has successfully completed each Test Program Plan, including providing the Contracting Authority with all of the required certificates and reports listed in Part 2C, Section 4.7 of the Technical Provisions;

(c) All systems and equipment installed by or on behalf of the Company comply, in all respects, with applicable Laws and are operational and functional;

(d) The Company has substantially completed the Capital Crescent Trail enabling safe use by the public of said trail for its entire length, as determined in the Contracting Authority’s discretion;

(e) D&C Work remaining to be performed is limited to (a) punch list items approved by the Contracting Authority and (b) any other D&C Work that the Contract Documents contemplate will be performed after the RSA Date;

(f) All Submittals required by the Project Management Plan or Contract Documents to be submitted and/or approved by the Contracting Authority before Revenue Service Availability have been submitted to and approved by the Contracting Authority (as applicable), including the final Threat and Vulnerability Assessment;

(g) The Company has delivered to the Contracting Authority:

(i) documents and evidence that electromagnetic interference caused by System operations between stationing 598+00 and 658+00 as described in the “Spectral Analysis of Radiated Emissions – Trial Running,” defined in Part 2B, Section 11.3.5.4 of the Technical Provisions, does not exceed the greater of
0.1 mG or the ambient level immediately prior to the energization of traction power as described by the “Spectral Analysis of Existing background Radiation levels – Pre-Energization,” as defined in Part 2B, Section 11.3.5.4 of the Technical Provisions; or

(ii) a Contracting Authority-approved Operational Phase Mitigation Plan that includes mitigation measures designed to reduce the impacts to Research Facilities below said maximum level, in accordance with Part 2B, Section 11.3.5.1 of the Technical Provisions;

(h) There exists no uncured Concessionaire Default that is the subject of a notice, unless (a) Revenue Service Availability will effect its full and complete cure, or (b) with respect to a non-monetary Concessionaire Default relating to an obligation that does not constitute a condition to Revenue Service Availability, (i) the Company has a right to cure and is diligently pursuing cure within the applicable cure period or (ii) Collateral Agent has a right to cure and is diligently pursuing cure within the applicable cure period specified in the Direct Agreement; provided, however, that the Collateral Agent’s and the Company’s respective cure periods will be deemed to run concurrently, and not serially, for purposes of this condition to Revenue Service Availability;

(i) The Company has delivered to the Contracting Authority (a) all manufacturer warranties required under, and in the form and content specified by the Technical Provisions and (b) all required documents and other evidence of warranties;

(j) The Company demonstrates to the Contracting Authority’s reasonable satisfaction that the Company has acquired and properly stored, or arranged for immediate availability, or incorporated into its Asset Management Plan arrangements to obtain, non-revenue service vehicles, the O&M Spare LRV, a reasonable inventory of all spare parts, spare components, spare equipment, tools, materials, expendables and consumables necessary for operation and maintenance of the Purple Line during the O&M Period as identified in the Operating Plan, Asset Management Plan, Maintenance Plan and Maintenance Manuals;

(k) The Company has (a) completed training of operations and maintenance personnel in accordance with Part 2C, Section 3.1.3 of the Technical Provisions, (b) delivered to the Contracting Authority a certificate, in form acceptable to the Contracting Authority, executed by the Company that it and its Contractors are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the Purple Line in accordance with the terms of the Contract Documents including the approved Staff Management Policies and Procedures Manual, (c) delivered to the Contracting Authority training records evidencing compliance with training requirements including copies of course completion certificates issued to each of the subject personnel and (d) the Company has completed and documented completion of all training required to allow full access to the Site to those individuals designated by the Contracting Authority in accordance with Part 3, Section 1 of the Technical Provisions;

(l) The Contracting Authority has reviewed and approved the final plans required in Part 3, Section 1 of the Technical Provisions;

(m) The Company has received, and paid all associated fees for, all applicable Governmental Approvals (excluding Contracting Authority-Provided Approvals) and other third party approvals required for use and operation of the Purple Line System, such Governmental Approvals and other third party approvals are in full force and effect, there exists no uncured material violation of the terms of any such Governmental Approval or other third party approvals and all such Governmental Approvals are in final form and are not subject to appeal;
(n) All Insurance Policies required to be in effect during the O&M Period (excluding insurance for capital asset replacement work) have been obtained and are in full force and effect and the Company has delivered to the Contracting Authority verification thereof;

(o) Any Performance Security required for the O&M Period has been obtained, delivered to the Contracting Authority and is in full force and effect;

(p) The Company has provided evidence that (a) all deposits to the Intellectual Property Escrow(s) required to be provided at or before Revenue Service Availability have been made and (b) all Cost and Pricing Data required to be provided at or before Revenue Service Availability has been delivered to the Contracting Authority;

(q) The Company has satisfied any other requirements for commencement of O&M Work in the Technical Provisions (i.e., requirements that are expressly identified as conditions to Revenue Service or Revenue Service Availability as well as other requirements that must be completed prior to Revenue Service), including obtaining the Contracting Authority’s Approval of the Submittals required by Part 3, Section 1.17 of the Technical Provisions; and

(r) The Company has provided evidence satisfactory to the Contracting Authority that the Company’s Equity Member(s) have completed direct investment of good and immediately available funds, including the purchase of equity shares in and/or the provision of Subordinate Debt, to the Company.

**Final Completion**

Promptly after achieving Revenue Service Availability, the Company will perform all remaining D&C Work. If the Contracting Authority disputes the Independent Engineer’s determination of Revenue Service Availability, then the following items will be required to be completed as a condition to Final Completion:

(a) The Contracting Authority has determined that all conditions to Revenue Service Availability have been satisfied;

(b) All remaining D&C Work has been completed, including completion of all punch list items and landscape establishment Work in accordance with Part 2B, Section 10.7 of the Technical Provisions;

(c) The Project ROW, other areas within the Limits of Disturbance and any Project-Specific Locations in the vicinity of the Project ROW will be cleaned of all surplus and discarded materials, spilled materials, excess materials left deposited on the permanent Work as a result of the D&C Work, falsework, and rubbish and temporary structures and buildings, placed thereon by Concessionaire-Related Entities;

(d) Project-Specific Locations will be reshaped, seeded and mulched, or otherwise restored to the extent required by the condition on which access was provided;

(e) The Company has delivered, and the Contracting Authority has accepted, all Submittals required as conditions precedent to Final Completion in accordance with Part 2A, Section 10 of the Technical Provisions (including Contracting Authority approval of (i) as-built survey sheets for the Purple Line and (ii) a complete set of the Record Documents in form and content required by Part 2A, Section 26 of the Technical Provisions);

(f) If any Authority Having Jurisdiction requires any form of certification of design, engineering or construction with respect to the Purple Line or any portion thereof,
including any certifications from the Engineer of Record and architect of record for the Purple Line, the Company has caused such certificates to be executed and delivered and has concurrently issued identical certificates to the Contracting Authority;

(g) All D&C Work that the Company is obligated to perform for, or on behalf of, Third Parties and Utility Owners has been accepted by the Contracting Authority for, or on behalf of, such Third Parties and Utility Owners, as provided under the Contract Documents, and the Company has paid for all work performed by third parties that the Company is obligated to pay for, other than disputed amounts;

(h) The Company has provided evidence that (i) all deposits to the Intellectual Property Escrow(s) required at or before Final Completion have been made and (ii) all Cost and Pricing Data required to be provided at or before Final Completion has been delivered to the Contracting Authority;

(i) There exist no uncured Concessionaire Defaults that are the subject of a notice, or with the giving of notice or passage of time, or both, could become a Default Termination Event except for (i) any Concessionaire Default for which Final Completion will effect full and complete cure or for which corrective work is proceeding under the warranty provisions of P3 Agreement or (ii) any Concessionaire Default relating to the O&M Work if the Company has a right to cure and is diligently prosecuting such cure;

(j) The Company has submitted to the Contracting Authority (i) documentation of DBE utilization and (ii) if the DBE Goal is not met, documentation supporting good faith efforts (including with respect to compliance with the DBE Participation Plan);

(k) The Company, all relevant Contractors and the O&M Contractor have delivered to Contracting Authority certified copies of Labor Peace Agreement; and

(l) the Company has provided to the Contracting Authority the certificates and reports listed in Part 2C, Section 4.7 of the Technical Provisions. If any such certificate or report was previously provided subject to restrictions, exceptions, waivers or other temporary measures as permitted by Part 2C, Section 2.7 of the Technical Provisions, all such exceptions, waivers and other temporary measures will have been resolved in accordance with Part 2C, Section 2.7.4 of the Technical Provisions, and a final certificate or report will be provided reflecting the resolution.

When the Company believes that it has satisfied all conditions to Final Completion, it will provide notice to the Contracting Authority to that effect, including certification, in form reasonably acceptable to the Contracting Authority, stating that the Company has satisfied all the criteria. Following receipt of such notice and certification, the Contracting Authority will conduct such additional inspections and investigations either jointly or independently as it deems advisable to determine whether Final Completion has been achieved. Within three business days after the Contracting Authority’s receipt of such notice from the Company, the Contracting Authority will either (a) issue a certificate of Final Completion or (b) provide notice to the Company stating the reasons why the conditions to Final Completion have not been satisfied. The certificate of Final Completion will indicate the actual date on which the Company achieved Final Completion.

**Final Completion Deadline**

The Final Completion Deadline Date is the date by which the Company must achieve Final Completion, as such date may be extended under the terms of the P3 Agreement, initially set at 24 months following the RSA Date.
Operation and Maintenance

The Company is responsible for performance of O&M Work in accordance with requirements specified in the Contract Documents, including Part 3 of the Technical Provisions. O&M Work means Work to be performed during the O&M Period, including Technology Enhancements, Operations Work, Maintenance Work, supply of the Renewal Work, but excluding any D&C Work remaining to be performed following Revenue Service Availability.

The Company will obtain (as applicable), maintain, repair and replace elements of the System as appropriate throughout the duration of the O&M Period, including maintenance, repair and replacement of consumable and life-expired items and rehabilitation or overhaul of the LRVs.

Security and Incident Response

The Company is responsible for the security of the Purple Line and safety and security of the workers and public throughout the Term. The Company will perform or otherwise take all measures identified in the Safety and Security Plan required by Part 3, Section 1.9 of the Technical Provisions, as approved by the Contracting Authority. The Company will be responsible for site security and will take measures, consistent with Good Industry Practice, to prevent damage to or destruction of Purple Line improvements by any third party or by any Force Majeure Event.

The Maryland State Police or other State law enforcement services will provide law enforcement services, including enforcement of applicable laws and the Purple Line fare policy and establishment of concurrent jurisdiction with other law enforcement agencies of the State and any political subdivision of the State. The Company acknowledges and agrees that: (a) The MTA Police Force is empowered to enforce all applicable Laws and to enter the Purple Line, and that any person engaged by the Contracting Authority to provide law enforcement services has the authority to enter the Purple Line (including trains in revenue and non-revenue service, Stations and Purple Line facilities), at any and all times to carry out their duties; (b) All law enforcement officers of the State and any political subdivision, as applicable, have the same powers and jurisdiction within the limits of the Project ROW (and otherwise with respect to the Purple Line) as such law enforcement officers have in their respective areas of jurisdiction, including the roads and highways of the State, as applicable; and (c) No provision of the P3 Agreement is intended to surrender, waive or limit any police powers of the MTA Police Force or any other Governmental Entity, and all such police powers are expressly reserved.

Power Supply

The Contracting Authority is responsible for directly paying for electrical power required for Purple Line System operations, including electrical power required for Purple Line System facilities and platforms as well as traction power, as described in “—Energy Painshare/Gainshare Formula” below. The Company will ensure the Purple Line is connected to the power grid in accordance with Part 2B, Sections 6.5.2 and 9.4.1 of the Technical Provisions and will take appropriate action to facilitate start-up of permanent power service to the Purple Line before commencement of trial running. The Contracting Authority is responsible for working with the electric power provider to establish electrical power rates and fees prior to the start of Trial Running.

From and after start-up of permanent power service, the Company will take appropriate steps to ensure efficient energy usage and will otherwise conform to the approved Energy Management Plan. The Company will provide monthly Electrical Power Usage Reports to the Contracting Authority regarding electricity usage during the prior month and year to date together with such other related information as the Contracting Authority may reasonably request, within five business days after delivery of the monthly invoice to the Company from the supplier of permanent electrical power. Such reports will form the basis for adjustments to Monthly Availability Payments.
Energy Painshare/Gainshare Formula

Owner will retain the risk of changes in electricity prices during the O&M Period in order to mitigate power commodity price risk for the Purple Line. Owner will contract for supply of power required for Purple Line System operations, including facilities and platforms as well as traction power.

A pain-share / gain-share (PS/GS) approach will be used to promote energy-efficient solutions during the O&M Period. Exhibit 4D of the P3 Agreement includes the Company’s commitments regarding maximum power usage for Service Levels 1 through 3 during each month of the O&M Period, separately identifying annual volume consumption for commitments for two types of electricity: (1) Traction Power and (2) Electricity for Other Uses. More detailed analysis of consumption for Electricity for Other Uses will be performed during final design. If (1) the final design analysis results are reviewed and validated by Owner and (2) the Company utilizes good energy efficiency practices recognized in the industry for both design and the execution of O&M Work, then solely for the purposes of the calculations performed in the final paragraph of this section “—Energy Painshare/Gainshare Formula”, the Company’s actual Electricity for Other Uses consumption will be measured relative to the updated consumption estimate identified during final design. Under no circumstances will the final design estimate of consumption for Electricity for Other Uses be less than 4,000,000 or greater than 12,000,000 kWh per year.

During the O&M Period, the Company’s actual electricity consumption for each electricity type will be measured relative to Attachment 1 of Appendix E to Exhibit 4D of the P3 Agreement using the Electrical Power Usage Report, subject to the exception described below.

The Company’s actual Traction Power consumption used in the final paragraph of this section “—Energy Painshare/Gainshare Formula” will be measured relative to the relevant maximum power usage commitment for Traction Power for the Service Level in effect in each month (adjusted proportionately for fractions of a month and leap year as applicable). The Company’s relevant commitment regarding maximum power usage for Traction Power will be adjusted linearly using actual Revenue Vehicle Miles to account for: (a) Owner-directed schedule changes, including Special Events and Minor Service Changes; and (b) Non–Concessionaire Caused Disruptions, Force Majeure or Relief Events that stopped, reduced or increased the number of Trips.

Based on these adjusted maximum power usage commitments and actual electricity consumption:

(a) If the Company’s actual electricity consumption for any given year is less than the adjusted maximum power usage commitment amount for either Traction Power or Electricity for Other Uses, the Company will be entitled to a bonus payment for energy efficiency for the relevant power usage commitment. Notwithstanding the foregoing, for the purposes of this paragraph the Company’s, actual Traction Power consumption will be measured relative to a commitment amount of 16,000,000 kWh per year regardless of which Service Level is in effect. For each maximum power usage commitment, the amount of the annual energy bonus payment will be equal to the lesser of (a) Owner’s relevant average rate for electricity consumption that year ($ per kWh) for that power type and (b) 130% of the relevant rate for electricity ($0.07 per kWh for Traction Power and $0.14 per kWh for Electricity for Other Uses, each as adjusted per ESCG for the relevant Contract Year), multiplied by 70% of the electricity volume consumption savings. Owner will pay the Company 1/12 of the annual energy bonus payment in each of the 12 months following Owner’s receipt of the annual Electrical Power Usage Report.

(b) The inverse also applies if the Company’s actual electricity consumption for any given year is higher than the adjusted maximum power usage commitment amount for either Traction Power or Electricity for Other Uses. In such event, Owner will make an energy efficiency deduction from the Company’s Availability Payments. For each maximum power usage commitment, the amount of the annual energy efficiency deduction will be equal to the lesser of (i) Owner’s relevant average rate for electricity consumption ($ per kWh) for that power type for that year, and (ii) 130% of the relevant rate for electricity ($0.07 per kWh for Traction Power and $0.14 per kWh for Electricity for Other Uses, each as adjusted per ESCG for the relevant Contract Year), multiplied by 70% of the additional electricity consumption amount.
Owner will subtract 1/12 of the annual energy efficiency deduction from the APs in each of the 12 months following Owner receipt of the annual Electrical Power Usage Report.

**Fare Collection and Fare System**

The Company will be responsible for operations, maintenance and renewal of the Fare System Equipment; stocking ticket vending machines, collecting cash from such machines, depositing cash receipts and arranging for proceeds of credit and other electronic transactions to be deposited into a designated Contracting Authority account; maintaining generally accepted fiscal controls and procedures in accordance with the Contracting Authority and State of Maryland requirements; providing accounting reports regarding all transactions and deposits; and monitoring the Fare System Equipment, and providing reports regarding, any intrusion or tampering with said equipment.

The O&M Work does not include the obligation to pay credit card transaction costs associated with fares purchased from the Fare System Equipment, or to pay WMATA fees for the New Electronic Payment Program (NEPP) server maintenance. The Contracting Authority will directly pay WMATA and/or credit card companies for these costs.

The Availability Payment formula is not dependent on the value of revenues collected. However, Noncompliance Points may be assessed for any Noncompliance Event, and failure to collect properly, deposit and account for fare revenues deposits constitutes a Concessionaire Default.

The Lifecycle Payments do not include replacement of the entire Fare System during the Term or any replacement of Fare System Equipment components after Contract Year 15. Before Contract Year 15 (or before the end of the expected useful life of the initial Fare System, if earlier than Contract Year 15) the Parties will consult regarding the scope of such replacements and associated changes to the O&M Work and will proceed to negotiate a Change Order. For the avoidance of doubt, MAPO and MAPM include all Fare System operating and maintenance costs during the entire Term. This Change Order will only address changes in such costs to the extent that the new Fare System Equipment results in changes in the Fare System requirements from those identified in the Technical Provisions.

**Noncompliance Points System**

A Noncompliance Point system will be used to measure the Company’s performance levels and trigger certain remedies in parallel with the Payment Mechanism. The Company will establish and maintain an electronic database of Activity Noncompliance Occurrences, Activity Noncompliance Events and Operations Availability Noncompliance Events, and will enter each Activity Noncompliance Occurrence, Activity Noncompliance Event and Operations Availability Noncompliance Event into the database in real time upon discovery. The format and design of the database will be subject to the Contracting Authority’s approval.

The Company will prepare monthly Performance Monitoring Reports and submit them to the Contracting Authority. Each Performance Monitoring Report will include a report of all Activity Noncompliance Occurrences, Activity Noncompliance Events and Operations Availability Noncompliance Events occurring during the preceding month. Within a reasonable time after receiving the monthly Performance Monitoring Report, the Contracting Authority will deliver to the Company a notice setting forth: (a) for each Activity Noncompliance Occurrence the applicable Response Time, Rectification Time and Application (Maximum Exposure) Time (if any), the Contracting Authority determination whether the Activity Noncompliance Occurrence was responded to or rectified, and the Noncompliance Points to be assessed with respect to such event; and (b) for each Operations Availability Noncompliance Event, the resulting OTP Factors and the calculation of the Daily Operations Performance Factor for each day and Monthly Operations Performance Factor for the month and the Noncompliance Points to be assessed with respect to such calculation (a “**Notice of Determination**”). OTP Factors mean the factors set forth in Table 1 of Appendix D to Exhibit 4D of the P3 Agreement (“**OTP Factors**”).
The Contracting Authority may assess Noncompliance Points if a Noncompliance Event has occurred and (a) the electronic database or monthly Performance Monitoring Report indicates a Noncompliance Event has occurred, (b) the Contracting Authority is notified or otherwise becomes aware of a Noncompliance Event, or (c) the Contracting Authority serves Notice of Determination.

In addition to Noncompliance Points, Noncompliance Events will also result in Deductions from Monthly Availability Payments. The Company acknowledges that damages incurred by the Contracting Authority due to the Company’s failure to comply with the availability and performance standards for which Deductions are allowed under the P3 Agreement would be difficult and impracticable to measure and prove, and that the Deductions allowed constitute reasonable compensation to the Contracting Authority for such damages. The Contracting Authority has certain rights to increase Oversight, “step-in” rights and rights to require Company to replace the O&M Contractor relating to accumulation of Noncompliance Points.

Noncompliance Event means any Activity Noncompliance Event, any Operations Availability Noncompliance Event and any other event expressly stated to be a Noncompliance Event within the Agreement or each of them as the context requires.

Activity Noncompliance Event means any Activity Noncompliance Occurrence which: (a) has not been responded to within any applicable Response Time; (b) has not been rectified within any applicable Rectification Time; or (c) following the expiration of a Rectification Time, has not been rectified within any further Application (Maximum Exposure) Time. Activity Noncompliance Occurrences are those events listed in the Activity Noncompliance Occurrence Table of Part 3, Section 2 of the Technical Provisions. Operations Availability Noncompliance Events mean the Events listed in Table 1 of Appendix D to Exhibit 4D of the P3 Agreement.

Remedial Plan

The Company acknowledges and agrees that any uncured Concessionaire Default will undermine the confidence and trust essential to the success of the public-private arrangement under the P3 Agreement and will have a material, cumulative adverse impact on the value of the P3 Agreement to the Contracting Authority. With respect to certain types of Concessionaire Defaults, the Contracting Authority will defer exercise of its termination remedy so as to allow the Company to take action, but the Company acknowledges and agrees that the Contracting Authority has the right to terminate if the Company fails to take action in accordance with Remedial Plan provisions.

In order to mitigate such adverse impacts, if the Company fails to cure a Remedial Plan Default within the initial cure period for such default or the Company accumulates (i) 2,400 Noncompliance Points for Operations Availability Noncompliance Events in any one Payment Period, or (ii) 1,440 Noncompliance Points for Activity Noncompliance Events in any one Payment Period, or (iii) a combination of 4,800 Noncompliance Points for all Noncompliance Events over the course of three consecutive Payment Periods (determined on a rolling basis); then the Contracting Authority may require the Company to prepare and submit a remedial plan for Contracting Authority approval.

Within 15 days after the Company’s receipt of notice from the Contracting Authority requiring a Remedial Plan to be submitted, the Company will prepare a remedial plan, and submit it to the Contracting Authority for approval. The Remedial Plan will include a schedule for specific actions to be taken by the Company to improve its performance and will provide for the Company to take appropriate action to improve the Company’s quality management practices, plans and procedures. As a condition to approval by the Contracting Authority, the Company will revise the plan to include all remedial actions required by the Contracting Authority, which may include requirements to revise and restate management plans, to implement changes to organizational and management structure, to undertake enhanced monitoring and inspections, to change Key Personnel and other important personnel, to replace of Contractors, and to deliver security to the Contracting Authority.
Following approval of a Remedial Plan by the Contracting Authority, the Company will implement all remedial actions required by the plan, with the goals of: Improving the Company’s performance; Reducing in the next Payment Period the assessed Noncompliance Points by at least 50% when compared to the prior Contract Month; and Ensuring that any Remedial Plan Default will not continue or be repeated. Upon the Company’s satisfaction of such requirements, (a) the uncured Remedial Plan Default will be cured and (b) the Contracting Authority will reduce by 25% the number of accumulated Noncompliance Points assessed that resulted in the requirement to implement a Remedial Plan.

The Company’s failure to comply with such Remedial Plan provisions (including delivery of a draft Remedial Plan within the specified time period, making all required revisions to the draft plan, and implementation of remedial actions in accordance with the plan) will constitute a material Concessionaire Default which the Contracting Authority may determine is a Default Termination Event without allowing any additional cure period.

Advertising and Business Opportunities

The Contracting Authority reserves all rights and opportunities relating to advertising on the Purple Line and, as between the Company and the Contracting Authority, within the limits of the area for which Company has responsibility to operate and maintain during the O&M Period (the “O&M Limits”), including use of Stations, LRVs and other Purple Line physical assets for advertising purposes and to develop and pursue itself or through others worldwide, entrepreneurial, commercial and business activities that are ancillary or collateral to the use and operation of the Purple Line and Project ROW (“Business Opportunities”).

The Company will cooperate and grant all necessary access to the Contracting Authority and any third party designees authorized by the Contracting Authority in connection with the Contracting Authority's exercise of its rights relating to advertising and Business Opportunities. The Company will be compensated for reasonable costs and expenses incurred directly by the Company in installing and maintaining facilities for advertising or Business Opportunities (other than routine maintenance), through a Change Order.

Except as authorized by the Contracting Authority, the Company will not engage in, and will not permit: any advertising within the O&M Limits (including on or within LRVs); use of occupation of the Purple Line for any Business Opportunities; and operation of any business on LRVs, at Stations or within the Project ROW, including (i) the sale of products or services; or (ii) the sale or rental of any wire, cable, transmission or receiving device or any other utility on, or transmission or receipt of any electronic communication to or from, any part of the Purple Line.

The Company may request the Contracting Authority to consider Business Opportunities. If the Contracting Authority consents, the parties will execute a Modification memorializing the agreement reached, including as to any revenue and cost sharing. Unless otherwise expressly stated in the Modification, the Contracting Authority will be entitled to all revenues generated by Business Opportunities arising out of, relating to or resulting from the Purple Line or in the Airspace. Notwithstanding the foregoing, the Company will be compensated for reasonable costs and expenses it incurs that are directly attributable to implementation of such Business Opportunities (other than routine maintenance), through a Change Order as well as any support efforts the Change Order requires the Company to provide.

Payments to the Company

The Company is compensated by the Contracting Authority pursuant to the P3 Agreement through the Progress Payments and Availability Payments.
Payments during Design-Build Period

The Contracting Authority will make payments for the D&C Work following receipt of periodic requests for payment submitted by the Company subject to withholding or reduction. Certain payments will be made based on monthly invoices submitted during the Design-Build Period, based on progress determinations (the “Progress Payments”), equal to 85% of the value of D&C Work eligible for Progress Payments performed during the period covered by the invoice. Progress determinations will be based on substantiated progress and the approved Schedule of Values. Payments for the LRVs will be made based on specified milestones as described below. Additional payments will be made from specified Allowances, equal to 100% of the value of the Allowance Work during the period. The following chart provides information regarding the value of various components of the D&C Work:

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Hazardous Materials Remediation Allowance</td>
<td>$70,000.00</td>
</tr>
<tr>
<td>B</td>
<td>Art in Transit Allowance</td>
<td>$6,070,000.00</td>
</tr>
<tr>
<td>C</td>
<td>Fare System Allowance</td>
<td>$15,000,000.00</td>
</tr>
<tr>
<td>D</td>
<td>Total Value of D&amp;C Design Services</td>
<td>$103,045,092.62</td>
</tr>
<tr>
<td>E</td>
<td>Total Value of D&amp;C Construction Services</td>
<td>$1,647,784,519.02</td>
</tr>
<tr>
<td>F</td>
<td>Total Value of Demolition Pricing</td>
<td>$595,000.00</td>
</tr>
<tr>
<td>G</td>
<td>Total Value of D&amp;C Construction Work (sum of items E and F)</td>
<td>$1,648,379,519.02</td>
</tr>
<tr>
<td>H</td>
<td>Number of LRVs in initial order</td>
<td>25</td>
</tr>
<tr>
<td>I</td>
<td>Individual LRV price</td>
<td>$8,254,047.13</td>
</tr>
<tr>
<td>J</td>
<td>Total price for initial LRV order</td>
<td>$206,351,178.36</td>
</tr>
<tr>
<td>K</td>
<td>LRV Supply Milestone amounts</td>
<td>see table below</td>
</tr>
<tr>
<td>L</td>
<td>Cap on payments</td>
<td>see table below</td>
</tr>
<tr>
<td>M</td>
<td>Excepted Revenue Service Availability Payment</td>
<td>$100,000,000.00</td>
</tr>
<tr>
<td>N</td>
<td>Final Completion Payment</td>
<td>$30,000,000.00</td>
</tr>
<tr>
<td>O</td>
<td>Excess Liability Allowance</td>
<td>$1,500,000.00</td>
</tr>
</tbody>
</table>

Invoices for mobilization for Construction Work may be submitted, such invoices not to exceed 85% of 6% of the “Total Value of D&C Construction Work” specified in the schedule above. An initial installment up to 25% of the total mobilization amount may be invoiced upon the Contracting Authority approval to commence non-Construction Work; a second installment equal to 35% of mobilization (bringing the total to 60%) may be invoiced upon the Contracting Authority approval to commence Construction Work; and the final installment of 40% of mobilization (bringing the total to 100%) may be invoiced when D&C Work valued at 20% of the Total Value of the D&C Construction Work is complete.

Payments equal to 85% of the milestone amounts stated below will be made upon completion of each LRV Supply Milestone, subject to the annual cap on payments.
<table>
<thead>
<tr>
<th>LRV Supply Milestone</th>
<th>Unit of Payment</th>
<th>LRV Supply Milestone Payment Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobilization; LRV management plan, QA assurance program</td>
<td>Lump sum</td>
<td>$6,190,535.51</td>
<td>$6,190,535.51</td>
</tr>
<tr>
<td>Review and Comment of the detailed engineering and production schedules, and Preliminary Design with arrangement drawings</td>
<td>Lump Sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Review and Comment on Final Design Submittals</td>
<td>Lump Sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Prototype factory test</td>
<td>Lump sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Begin assembly of each LRV (except prototype and the O&amp;M Spare LRV)</td>
<td>Per LRV</td>
<td>$2,063,511.78</td>
<td>$51,587,794.50</td>
</tr>
<tr>
<td>Prototype field test</td>
<td>Lump sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Complete assembly and factory test of each LRV (except prototype and the O&amp;M Spare LRV)</td>
<td>Per LRV</td>
<td>$2,641,295.08</td>
<td>$66,032,377.00</td>
</tr>
<tr>
<td>Provision of manuals, training and test equipment</td>
<td>Lump sum</td>
<td>$10,317,558.92</td>
<td>$10,317,558.92</td>
</tr>
<tr>
<td>Successful completion of performance verification testing of each LRV (including prototype but excluding the O&amp;M Spare LRV)</td>
<td>Per LRV</td>
<td>$1,238,107.07</td>
<td>$30,952,676.75</td>
</tr>
</tbody>
</table>

TOTAL LRV ORDER PRICE $206,351,178.36

D&C Progress Payment Cap

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
<th>Cumulative Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year 2016</td>
<td>$190,000,000</td>
<td>$190,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2017</td>
<td>$220,000,000</td>
<td>$410,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2018</td>
<td>$220,000,000</td>
<td>$630,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2019</td>
<td>$180,000,000</td>
<td>$810,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2020</td>
<td>$50,000,000</td>
<td>$860,000,000</td>
</tr>
</tbody>
</table>

The RSA Payment, in the amount of $100,000,000, is payable following issuance of the Independent Engineer’s Certificate of Revenue Service Availability. The Final Completion Payment, in the amount of $30,000,000, is payable following achievement of Final Completion, as certified by the Company and agreed by the Contracting Authority, or as determined pursuant to Dispute Resolution Procedures.

In no event will the Contracting Authority have any obligation to pay the Company any Progress Payment amount that would result in payment for any activity in excess of 85% of the value of the activity under the Schedule of Values. However, if the D&C Payment Cap has not yet been reached and Work
performed during a prior period was not eligible for payment because the value of the Work exceeded the payment limitation for such period, that Work may be included in subsequent invoices.

Allowance payments will be equal to 100% of the value of Allowance Work performed during the period covered by the invoice, provided that such payments may not exceed the amounts specified in the P3 Agreement for each Allowance, as such amounts may be modified by Change Order. The value of Allowance Work may be determined based on measured units multiplied by unit prices, substantiated progress and Schedule of Values, or force account records. For unit priced items, full compensation for all expenses involved in conforming to the requirements for measuring and weighing materials will be considered as included in the unit prices for the materials being measured or weighed and no additional compensation will be allowed therefor.

If, as of Final Completion or such earlier date as Allowance Work is completed, the Allowance has not been fully expended, a Change Order will be issued reducing the Allowance amount(s) to match actual expenditures made.

As an inducement to the Company to achieve certain goals, the Contracting Authority has established a monetary incentive payment program applicable to certain Work for performance that meets or exceeds prescribed criteria.

The cumulative amount of Progress Payments made by the Contracting Authority as of any date, in combination with mobilization payments and Allowance payments may not exceed the cumulative D&C Payment Cap.

**Availability Payments**

The Contracting Authority will pay Availability Payments to the Company during the O&M Period. The obligation of the Contracting Authority to make Availability Payments is based on, and is subject to, the Purple Line being open for public transit as measured through the Company’s compliance with the Contract Documents.

The Monthly Availability Payment will be calculated and earned by the Company according to the following methodology, as described below and as further described in Exhibit 4D of the P3 Agreement:

\[
MAP_n = MAPG_n + (MAPO_n \times ESCO_n) + (MAPM_n \times ESCM_n) + (I \times ESCG_n) + LCP_n - \Sigma D + PSGS + QVA
\]

Where:

- \(MAP_n\) means the Monthly Availability Payment for the relevant Contract Month calculated in accordance with the above formula.
- \(MAPG_n\) means the general portion of the Monthly Availability Payment for the relevant Contract Month (no escalation).
- \(MAPO_n\) means the operational portion of the Monthly Availability Payment as set out in the column headed “MAPO_n” in Section 1 table below.
- \(ESCO_n\) means the Operations Escalation Factor applicable to the relevant Contract Year.
- \(MAPM_n\) means the maintenance portion of the Monthly Availability Payment as set out in the column headed “MAPM_n” in table below.
- \(ESCM_n\) means the Maintenance Escalation Factor applicable to the relevant Contract Year.
- \(I\) means the Insurance Payment for the relevant Contract Month.
- \(ESCG_n\) means the General Escalation Factor applicable to the relevant Contract Year.
$LCP_p$ means the Lifecycle Payment for the relevant Contract Month, as such amount may be adjusted under the terms of the P3 Agreement, as summarized above.

$\Sigma D$ means the sum of all Deductions for the relevant Contract Month for Noncompliance Events, calculated in accordance with the provisions set out in Part C of Exhibit 4D.

$PSGS$ means any addition/ or deduction arising pursuant to “—Energy Painshare/Gainshare Formula.

$QVA$ means the Quarterly Volume Adjustment in the months where it is applicable.

The Monthly Availability Payment may be subject to adjustments for the actual number of days in the relevant Contract Month, an Operating Volume Adjustment, a Maintenance Volume Adjustment and Quarterly Volume Adjustment.

Adjustments to the Availability Payments establish differential payments for different levels of service that may be provided by the Company. In addition to any other deductions or withholdings, the Availability Payments will be subject to adjustment for Noncompliance Events and other adjustments resulting from other provisions under the P3 Agreement, subject to the limitation on adjustments during a Contracting Authority step-in.

**Appropriations**

The Contracting Authority will prepare, before the end of each fiscal year, its annual budget request submission to the Governor and include in its budget request funds necessary to make scheduled payments to the Company for the coming fiscal year under the P3 Agreement. The Contracting Authority will use its best efforts to obtain the authorization and appropriation of all necessary funds before the beginning of the coming fiscal year. If the Contracting Authority becomes aware that it will not obtain appropriations for any fiscal year sufficient, in combination with other available funds, to pay all compensation owing to the Company under the P3 Agreement for such year, the Contracting Authority will promptly notify the Company regarding the anticipated shortfall, and will consult with the Company to discuss the situation and possible solutions. If the Contracting Authority determines that it will not have funds available to make any of the payments owing, the Contracting Authority will suspend all Work. If the Contracting Authority determines that there will be a partial shortfall, the Contracting Authority will suspend all or a portion of the Work so as to ensure that the Contracting Authority has sufficient funds to make payments owing for Work performed. Any such suspension will be considered a Contracting Authority Change.

**Payment for Certain Backfill Material and Disposal Costs**

The Total Value of D&C Construction Work is based, in part, upon the assumption that excavation required for the Purple Line will produce at least 496,000 tons of select backfill material for Backfill Uses during performance of the Work. If Purple Line excavation fails to produce select backfill material in at least the estimated quantity available for Backfill Uses or adverse weather conditions unreasonably inhibit the use of such backfill material, the Company will be entitled to a “Backfill Change Order.” The Backfill Change Order will provide for payment based on delivery tickets at a unit price of $28.20 for each ton of #57 stone required to be obtained for Backfill Uses due to the shortfall.

The Company will exercise diligent efforts to maximize production of select backfill material available for Backfill Uses. The Company will provide monthly reports regarding the quality and quantity of materials produced through excavation, quantities of #57 stone obtained for Backfill Uses, and an updated estimate regarding the total quantity of select backfill material that will be produced and available for Backfill Uses, including appropriate backup information and any other information reasonably requested by the Contracting Authority. If the Company establishes that a shortfall exists despite the Company’s diligent efforts as described above, the Contracting Authority will process and issue a Backfill...
Change Order covering the estimated quantities of #57 stone required as a result of the shortfall, not to exceed $14,000,000. As the Work proceeds, the Backfill Change Order will be subject to adjustment (increased or decreased) based on updated estimates and actual quantities, but will in no event exceed $14,000,000.

**LRV Provisions**

**Title**

Title to each LRV included in the D&C Work will pass to the Contracting Authority, free and clear of all liens or other charges of any kind or nature, upon payment in connection for the D&C Work by the Contracting Authority to the Company, which final payment will be made following satisfactory completion of all acceptance testing for such LRV. Title to each of the Option LRVs and the O&M Spare LRV will pass upon delivery to the Contracting Authority. Title to all other materials, equipment, tools and supplies furnished under the Contract Documents for incorporation into the Purple Line or that are required for operation or maintenance of the Purple Line will pass to the Contracting Authority, free and clear of all liens or other charges of any kind or nature, upon the earlier of (a) incorporation into the Purple Line or, for items that will not be incorporated into the Purple Line, delivery to the Site or (b) the date of payment by the Contracting Authority to the Company for such item, including payments in the form of Progress Payments, the RSA Payment, payments for Change Orders and Availability Payments.

**LRV Option**

The Contracting Authority has three separate options to require the Company to purchase Option LRVs and commission said LRVs: (a) LRV Option A for the committed number of additional LRVs required for a change from Service Level 1 to Service Level 2; (b) LRV Option B for the committed number of additional LRVs required to enable the Company to meet the Peak Period Headways for Service Level 1 or Service Level 2, as applicable, if the combined traffic signal and traffic congestion delay value is 1.00 through 6.00 minutes higher than Bid Combined Tsc (as defined below) in a Peak Period; and (c) LRV Option C for the committed number of additional LRVs required to enable the Company to meet the Peak Period Headways for Service Level 1 or Service Level 2, as applicable, if Actual Combined Tsc (as defined below) is 6.01 through 12.00 minutes higher than Bid Combined Tsc in a Peak Period.

Actual Combined Tsc means the sum of the eastbound Actual Tsc value and the westbound Actual Tsc value for each of the periods identified in Part 3, Exhibit 3.1 of the Technical Provisions. Bid Combined Tsc means the sum of the eastbound Tsc value and the westbound Tsc value in Table AA-5 of Section 3 to Exhibit 2 of the P3 Agreement, for each period identified said form.

The LRV Options may be exercised independently of each other. LRV Option A may be exercised at any time during the period starting at Financial Close and ending on the seventh anniversary of Commercial Close. LRV Options B, and C may only be exercised during the period starting on the fifth anniversary of Commercial Close and ending on the seventh anniversary of Commercial Close.

LRV Option A includes five additional LRVs: option price of $9,234,296 per LRV, subject to escalation, as described below.

LRV Option B includes one additional LRV: option price of $13,796,112, subject to escalation as described below; provided that if LRV Options A and B are exercised concurrently, the price per LRV under LRV Option B will be the same price that applies under LRV Option A.

LRV Option C includes two additional LRVs: option price of $10,931,144 per LRV, subject to escalation as described below; provided that if LRV Options A and C are exercised concurrently, the price per LRV under this LRV Option C will be the same price that applies under LRV Option A.
Escalation of the LRV Option Price will be based on:

(a) 25% of the percentage change between (i) an average of the previous 12 months of monthly index values to be determined by reference to the most recently published Escalation Index 1 monthly index value as of the Proposal Date and (ii) an average of the previous 12 months of index values to be determined by reference to the most recently published Escalation Index 1 monthly index value as of the business day immediately preceding the date on which the LRV Option is exercised,

(b) 25% of the percentage change between (i) an average of the previous 12 months of monthly index values to be determined by reference to the most recently published Escalation Index 3 monthly index value as of the Proposal Date and (ii) an average of the previous 12 months of the index values to be determined by reference to the most recently published Escalation Index 3 monthly index value as of the business day immediately preceding the date on which the LRV Option is exercised, and

(c) 50% of the percentage change between (i) an average of the previous 12 months of monthly index values to be determined by reference to the most recently published Escalation Index 4 monthly index value as of the Proposal Date and (ii) an average of the previous 12 months of the index values to be determined by reference to the most recently published Escalation Index 4 monthly index value as of the business day immediately preceding the date on which the LRV Option is exercised.

A change from Service Level 1 to Service Level 2 will require performance of certain additional Work relating to the OMF as described in the Technical Proposal. Accordingly, in connection with exercise of LRV Option A, the Parties will negotiate a Change Order specifying the price, delivery schedule and scope of such additional Work.

**Option LRV Requirements**

The Company will ensure that each Option LRV (a) is compatible and interchangeable with the other LRVs provided under P3 Agreement to the extent needed for the Company to meet the Performance Requirements and provide safe and reliable operations, (b) incorporates all relevant upgrades available as of the date of manufacture that have been incorporated into the Initial Fleet as of such date; provided, however, that if a replacement or alternative LRV Supplier has been approved by the Contracting Authority, then the Company’s obligation to ensure incorporation of “all relevant upgrades available” will be to the maximum extent possible, so long as the Option LRV provided by the replacement or alternative LRV Supplier otherwise conforms to clauses (a), (c) and (d) of this paragraph, (c) is manufactured in accordance with the requirements of Part 2B, Section 12 and to the specifications applicable to the LRVs originally procured by the Company for the Purple Line, and (d) is tested as part of the manufacturing process and placement into service in accordance with Part 2B, Section 12.6.3 of the Technical Provisions.

The Company is responsible for providing LRVs sufficient to enable Performance Requirements to be met at each Service Level described in the Contract Documents, without any right to rely on provision of additional LRVs through exercise of the LRV Option or otherwise, except as otherwise provided below. The Company will remove and replace, or repair, any defective LRVs (including LRVs with Fleet Defects) supplied by the Company, at the Company’s sole expense.

**Provision of Additional LRVs for Service Level 2 or Service Level 3**

Additional LRVs may be required in order for the Company to meet the Performance Requirements concerning System availability for Service Level 2 or Service Level 3. Accordingly, if the Contracting Authority wishes to require implementation of Service Level 2 or Service Level 3, but has not exercised one or more LRV Options that will increase the LRV fleet size to the number of LRVs that the
Proposal states are required for the relevant Service Level, the Contracting Authority will be responsible for providing additional LRVs for the Purple Line that meet the requirements applicable to Option LRVs.

If the Contracting Authority plans to purchase LRVs from a source other than the Company, the Contracting Authority will ensure that warranties are obtained from the vendor consistent with Good Industry Practice. The Company will review and comment on the proposed contract documents, including technical specifications, and will notify the Contracting Authority of any issues that appear likely to affect the Company’s obligations under the P3 Agreement, including costs of performance of the Work as well as the Company’s ability to meet the Performance Requirements. To the extent that an adverse impact on the Company’s rights and/or obligations under the P3 Agreement is attributable to any differences between the LRVs supplied by the Contracting Authority’s third party vendor and the LRVs that the Company would have obtained had the Contracting Authority exercised an LRV Option, such differences will be treated as a Contracting Authority Change.

If the Contracting Authority has exercised LRV Option A, then the start date for moving to Service Level 2 will be the date established for delivery and commissioning of the LRV Option Vehicles. If the Contracting Authority has made other arrangements to provide the additional LRVs required to meet the Performance Requirements for Service Level 2, then the start date for moving to Service Level 2 will coincide with the date on which such additional LRVs are placed into service. In all cases, the Change Order in connection with the exercise of LRV Option A will include a completion date consistent with such start date. If the Contracting Authority has exercised LRV Option A, the Company has the option to make LRV Deferral Payments to the Contracting Authority and thereby defer the start date for moving to Service Level 2 by up to 24 months. The amount of each LRV Deferral Payment will be calculated as a percentage of the total value of the relevant LRV Option order, as follows: (1) for delays up to 12 months after the established date, 0.4% per month; (2) for delays during the following six months (that is, months 13 through 18), 0.7% per month; and (3) for delays during the following six months (that is, months 19 through 24), 1.0% per month. If the Company wishes to defer the start date for less than a full month, the payment for that month will be prorated based on the actual number of days in the month and the total number of deferral days. The aggregate total of LRV Deferral Payments for an LRV Option may not exceed 15% of the total value of the relevant LRV Option order. The Company will notify the Contracting Authority in writing of its intent to defer the start date at least 30 days before the scheduled start date, will provide written updates at least monthly thereafter, and will give the Contracting Authority at least 180 days’ advance notice of the actual date that the higher Service Level will commence.

Provision of Additional LRVs if Actual Combined Tsc Is Higher than Bid Combined Tsc in a Peak Period

Additional LRVs may be required in order for the Company to maintain Peak Period headways in a Peak Period if the Actual Combined Tsc for such period is at least 1.00 minutes higher than the Bid Combined Tsc for such period.

Until the seventh anniversary of Commercial Close, The Contracting Authority has the right to provide such LRVs by exercising an LRV Option, but after such date any additional LRVs would either be provided pursuant to a Change Order or purchased separately from P3 Agreement. The Contracting Authority is not obligated to provide additional LRVs or direct a Minor Service Change to address the impacts of changes between Bid Combined Tsc and Actual Combined Tsc for a Peak Period unless the Company demonstrates that the need for the additional LRVs is directly attributable to the fact that the Actual Combined Tsc for a Peak Period is at least 1.00 minute higher than Bid Combined Tsc for such period. The Company is required to maintain Peak Period headways in a Peak Period, without any obligation of the Contracting Authority to provide additional LRVs or any other remedy unless (a) the Actual Combined Tsc is at least 1.00 minute higher than the Bid Combined Tsc for that Peak Period, and (b) the Company demonstrates that its need for the additional LRVs is directly attributable to the fact that the Actual Combined Tsc is at least 1.00 minute higher than Bid Combined Tsc in that Peak Period.

The Contracting Authority may direct a Minor Service Change to address the impacts of changes between Bid Combined Tsc and Actual Combined Tsc, regardless of whether it has exercised an LRV
Option in connection with such a change. Regardless of whether the Actual Combined Tsc for a Peak Period is at least 1.00 minutes higher than Bid Combined Tsc for such period, the Contracting Authority has the right to elect not to exercise the LRV Options and instead to proceed with other actions in connection with calculation of Total Trip Run Time and Tsc.

**Intellectual Property Rights**

Except for Concessionaire Intellectual Property, all Intellectual Property, all work product and other related materials, including all Submittals and other materials specifically developed under the Contract Documents, all physical construction and equipment itself and from data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, records, film, tape, articles, memoranda, correspondence and other documents created or collected under the terms of the P3 Agreement or otherwise developed under the P3 Agreement, made by the Company related to the RFP (including the Proposal), exchanges of information during the pre-proposal and post-proposal periods and other work product and other related materials that disclose Intellectual Property, have been specially ordered and commissioned by the Contracting Authority, and will be considered a work-made-for-hire, as that term is defined in Section 101 of Title 17 of the U.S. Code (Copyright Law).

To the extent that all such work product and related materials, are determined by a court of competent jurisdiction, the U.S. Copyright Office, or the U.S. Patent & Trademark Office not be a work-made-for-hire or where the Contracting Authority is not the owner or author, the Company agrees to assign to the Contracting Authority, or cause all Contractors and Subcontractors, if applicable, all rights, title and interest in all Intellectual Property, excluding Concessionaire Intellectual Property, in such work product and related materials. The Company will deliver copies of all Concessionaire Intellectual Property owned by the Company and which it uses in performing the O&M Work either to the Contracting Authority or to an escrow.

The Company and Concessionaire-Related Entities may not use Contracting Authority Intellectual Property or any of the work-made-for-hire described above except in connection with the Work or as otherwise approved by the Contracting Authority in writing.

During the performance of the P3 Agreement, the Company will be responsible for any loss of or damage to the Contracting Authority Intellectual Property and any of the work-made-for-hire described above while in the possession or control of any Concessionaire-Related Entity. Any such loss or damage will be restored at the Company’s expense.

During the Term and the period of performance of any post-termination obligations, the Company will provide full and unrestricted access to all of the work-made-for-hire described above, within 24 hours of receipt of notice from the Contracting Authority requesting such access.

All Concessionaire Intellectual Property will remain exclusively the property of the Company, its Affiliates or Contractors, as applicable, subject to the Contracting Authority’s rights as stated in the Contract Documents, including, specifically, the license specified below.

The Company grants to the Contracting Authority a perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Concessionaire Intellectual Property solely in connection with the Purple Line; provided that the Contracting Authority may exercise such license only at the following times:

(a) From and after the expiration or earlier termination of the Term for any reason whatsoever;

(b) During any time that the Contracting Authority is exercising its step-in rights, in which case the Contracting Authority may exercise such license only in connection with the Project;
(c) During any time that a receiver is appointed for the Company, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which the Company is the debtor; and

(d) During any time that the Company has been replaced.

The Contracting Authority may not sell any Concessionaire Intellectual Property or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any Concessionaire Intellectual Property for any purpose other than as set forth below. The Contracting Authority has the right to transfer the license to any Governmental Entity that succeeds to the Contracting Authority’s interests in all or any portion of the Project, or to the power and authority of the Contracting Authority generally or with respect to all or any portion of the Project. The license is divisible in the event of a transfer of or with respect to a portion of the Project permitted under the P3 Agreement.

The Contracting Authority’s right and license to the Concessionaire Intellectual Property includes use, reproduction, modification, adaptation and disclosure, and sublicense to others relating to interfaces and interconnections between the Purple Line and other facilities, and specifically to grant the owners of such other projects (and any of their agents) a sublicense to use applicable Concessionaire Intellectual Property for and at such interfaces and interconnections, in each case subject to the below covenants.

The Contracting Authority will:

(a) Not disclose any Concessionaire Intellectual Property to any third party other than (i) the Contracting Authority’s employees, agents, officers, directors, representatives, consultants and sublicensees who agree to be bound by confidentiality obligations of the Contracting Authority under the P3 Agreement or (ii) disclosures under the Maryland Public Information Act;

(b) Enter into a commercially reasonable confidentiality agreement if requested by the Company with respect to the licensed Concessionaire Intellectual Property; and

(c) Include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Concessionaire Intellectual Property and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

The Company will not acquire any license, interest or other right in or to any Contracting Authority Intellectual Property, or any work product and other related materials, including all physical construction and equipment itself and from data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, correspondence and other documents created or collected under the terms of any agreement (including the P3 Agreement) or otherwise developed under the terms of any agreement (including the P3 Agreement) and other work product and other related materials that disclose such Contracting Authority Intellectual Property, nor will the Company have any license, interest or other right to any improvements, modifications, enhancements or derivative works to or of the Contracting Authority Intellectual Property, whether such improvements, modifications, enhancements or derivative works are developed by the Contracting Authority, the Company, any Contractor or Subcontractor, individually or jointly.

Subject to the terms and conditions of the P3 Agreement, The Contracting Authority grants to the Company a revocable, non-exclusive, non-transferable, non-sub-licensable (without the Contracting Authority’s prior written consent) license to use and implement, solely in connection with the performance of the Work and for the Term (including any period of the Company’s performance of post-termination or post-expiration obligations), the Contracting Authority Intellectual Property. If the Company, any
Affiliate, any Contractor or any Subcontractor creates or develops any improvements, modifications, enhancements or derivative works to or of the Contracting Authority Intellectual Property, the Company will promptly notify the Contracting Authority thereof and provide to the Contracting Authority all data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, correspondence and other documents, information and other work product and other related materials that disclose such Contracting Authority Intellectual Property related to such improvements, modifications, enhancements or derivative works. Any and all such improvements, modifications, enhancements or derivative works created or developed by the Company, any Affiliate, any Contractor or any Subcontractor will be deemed to be a Submittal under the terms of the P3 Agreement.

**Insurance**

At a minimum, the Company will procure or cause to be procured and keep in effect certain Insurance Policies. Each Insurance Policy will be procured from an insurer that qualifies as an Eligible Insurer or, with respect to certain excess Insurance Policies, as a Surplus Lines Insurer at the time of policy placement and throughout the coverage term, unless the Contracting Authority approves otherwise in writing.

Eligible Insurer means an insurance company meeting the requirements of applicable Law, licensed or authorized to do business in the State and rated at least “A - ” by Standard and Poor’s or “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating, both at policy inception and for the duration of its placement of insurance (“Eligible Insurer”). Surplus Lines Insurer means an insurance company that is approved or authorized to do business on a non-admitted basis in the State that satisfies the same financial ratings and other requirements otherwise applicable to an Eligible Insurer (“Surplus Lines Insurer”).

**Deductibles and Self-Insured Retentions**

The Contracting Authority’s liability for insurance deductibles is limited to the amounts, if any, included as part of a Compensation Amount or Termination Compensation and deductibles paid with respect to claims under the Additional Excess Liability Insurance Policy or Policies. The Contracting Authority will have no liability for amounts in excess of the coverage required or provided, except to the extent expressly permitted under the P3 Agreement. “Deductible” includes a self-insured retention and/or any co-insurance.

If an Insurance Policy provides coverage with respect to an occurrence or event other than a Relief Event, then the Company will pay all insurance deductibles, and the Contracting Authority will have no liability for deductibles or claim amounts in excess of the required coverage.

With respect to an occurrence or event other than a Relief Event, the Contracting Authority may elect to advance or pay a deductible or any claim amount in excess of the required or provided coverage, in which case the Contracting Authority will have the right to recover such payment, in full, through deductions from the Availability Payments, direct billing, or any other method deemed appropriate by the Contracting Authority.

**Primary Coverage**

Each Insurance Policy will provide expressly that its coverage is primary and noncontributory with respect to all insureds, except for coverage that is specifically denominated as excess coverage to a specified Insurance Policy required under the Contract Documents. Any excess coverage will provide expressly that it will become primary and noncontributory once the policy limits of the specified Insurance Policy are eroded. If, in connection with the Project, the Company procures any additional or other insurance or expressly self-insures beyond the specifications in the Contract Documents (excluding excess coverage contemplated above), then the Insured Parties will be named as an additional insured. Notwithstanding the foregoing, the Insured Parties are not required to be named as additional insureds on
any directors and officers, crime, fiduciary, employment or additional professional errors and omissions coverage procured by the Company.

Verification of Coverage

The Company will deliver to the Contracting Authority a written and signed binder of insurance, together with pro forma or exemplar “specimen” copies of Insurance Policies and all endorsements: fifteen business days before the Company is required to procure or cause to be procured any Insurance Policy, including insurance coverage required of Contractors; and fifteen business days before the expiration or termination date of each Insurance Policy, or at such later date as the Company may request for the Contracting Authority’s approval (but in no event later than five business days before the expiration or termination date of such Insurance Policy). The evidence/binder of insurance will be in a form reasonably acceptable to the Contracting Authority and be personally and manually signed by a representative or agent of the insurer upon binding of insurance, evidence of payment of deposit insurance premiums will also be provided to the Contracting Authority; provided, however, that such requirement is waived with respect to the initial insurance delivered in connection with Financial Close pursuant to Amended and Restated Concessionaire FC Notice so long as the Company provides evidence of such payment at or before the time period stated in each binder for the first premium payment thereunder. Each binder of insurance must be accompanied by a signed broker letter of undertaking stating that the insurance complies with all of the requirements of the P3 Agreement.

The evidence of insurance must be original documents, state the signer’s company affiliation, title and phone number, state the identity of all insurers, named insureds and additional insureds, state the type and limits of coverage, deductibles, subrogation waiver, termination provisions of the policy and other essential policy terms, attach all policy forms and endorsements, in full, and include a statement of non-cancellation.

The Company may provide electronic copies of the written and signed binder of insurance, pro forma or exemplar “specimen”, copies of Insurance Policies and all endorsements, provided written copies of such documents are delivered, to the Contracting Authority within 10 business days after delivery of the electronic copies (five business days before the expiration or termination date of such Insurance Policy).

As soon as they become available, but in no event later than 60 days after binding of coverage or renewal, as applicable, the Company will deliver to the Contracting Authority (i) a complete certified and signed copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all related endorsements and (ii) satisfactory evidence of payment in full of the applicable premiums that are due.

If the Company has not provided the Contracting Authority with proof of coverage within five days after the Contracting Authority delivers to the Company request for such proof or Notice of a Concessionaire Default for such failure, the Contracting Authority may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force, (i) obtain such an Insurance Policy; and the Company will reimburse the Contracting Authority for the cost thereof (including premiums, commissions, taxes and any and all other costs and expenses incurred in connection with obtaining any such insurance) upon demand, and (ii) suspend all or any portion of Work and shut down System operations until the Contracting Authority receives from the Company proof of coverage (or until the Contracting Authority obtains an Insurance Policy, if it elects to do so).

Contractor Insurance Requirements

The Company’s obligations regarding Contractors’ insurance are contained in Exhibit 7A of the P3 Agreement. If the Company and/or any Contractor fails to procure and keep in effect the Contractor’s insurance required of it under Exhibit 7A of the P3 Agreement and the Contracting Authority provides Notice of a Concessionaire Default for such failure, the Company may, within the applicable cure period, cure such Concessionaire Default by (i) procuring or causing such Contractor to obtain the requisite insurance and providing the Contracting Authority proof of insurance, or (ii) terminating the Contractor and
removing its personnel from the worksite. In connection with any such cure, the Company will be responsible for ensuring there is no gap or interruption in coverage. A consolidated insurance program, with the Contracting Authority’s prior approval, is acceptable to satisfy all insurance requirements, provided that it otherwise meets all requirements.

**Project-Specific Insurance**

Except as otherwise provided in Exhibit 7A of the P3 Agreement, all Insurance Policies will be purchased specifically and exclusively for the Project and extend to all aspects of the Work, with coverage limits devoted solely to the Project.

**Policies with Insureds in Addition to the Company**

Except with respect to professional errors and omissions Insurance Policies, all Insurance Policies that are required to insure named insureds in addition to the Company will comply with the following provisions:

Each Insurance Policy will contain a separation of insureds provision such that the Insurance Policy will be written or endorsed so that (i) no acts or omissions of an insured will cancel or diminish coverage of any other insureds and (ii) insurance will apply separately to each named insured, except with respect to the erosion of the specified limits of the insurer’s liability.

The Insurance Policy will be written so that any failure on the part of a named insured to comply with reporting or notice provisions or other conditions of the Insurance Policies, any breach of a warranty included in such Insurance Policy, any action or inaction of a named insured or others, or any change in the ownership or control of the Company or the Company’s Interest will not affect coverage provided to the other named insureds (and their respective members, directors, officers, employees, agents and Project consultants). Furthermore, if commercially available, no Insurance Policy will have an exclusion for change in control with respect to the Company or the Company’s Interest.

All endorsements adding additional named insureds to required Insurance Policies will: (i) contain no limitations, conditions, restrictions or exceptions to coverage other than those that apply to all other named insureds, including the first named insured, under the Insurance Policy; and (ii) state that the interests and protections of each such named insured will not be affected by any misrepresentation, act or omission of another named insured or any breach by another named insured of any provision in the policy which would otherwise result in forfeiture or reduction or limitation of coverage.

**Additional Terms**

Each Insurance Policy will be endorsed to state that coverage or limits of coverage cannot be canceled, voided, suspended or changed by endorsement or other change in policy language (including for non-payment of premium) except after 45 days’ prior written notice (or 10 days in the case of cancellation for nonpayment of deposit premium at the inception of the policy) has been given to the Contracting Authority and during which time no cure has been effected by any insured. Payment of claims under an Insurance Policy is not considered an adverse modification to coverage or to coverage limits.

No Insurance Policy will provide coverage on a “claims made” basis (with the exceptions of any professional liability, contractor’s pollution liability and operator’s pollution liability Insurance Policies) unless otherwise expressly stated in Exhibit 7A of the P3 Agreement. If the policy is permitted to be written on a “claims made” basis, coverage must be continued without interruption throughout the O&M Period and for a period of 10 years after termination or expiration of the P3 Agreement (except as otherwise provided in Exhibit 7A of the P3 Agreement with respect to professional liability Insurance Policy or Policies). If “claims made” coverage is terminated at any time, then an extended automatic and pre-paid reporting period of not less than 10 years after termination or expiration must be included.

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No self-insurance is permitted with respect to any risk or occurrence required to be insured by the P3 Agreement without the prior consent of the Contracting Authority.

Each Insurance Policy, and any other liability policy of insurance placed by or on behalf of the Company relating to the Work or the Project, will contain a provision acknowledging or be endorsed to acknowledge the rights of the Contracting Authority and certain other Persons to select and approve its own defense counsel as required by applicable Law, and/or counsel approved by the Governmental Entity and reasonably acceptable to the insurance carrier, with respect to matters covered by the policy.

Each Insurance Policy will provide that the Contracting Authority and any other Governmental Entity that is an insured has the right to settle or compromise the claim with such insurer(s)’ prior consent, which will not be unreasonably withheld, delayed, conditioned or denied.

Waivers of Subrogation

The Company and all of the insurance carriers providing Insurance Policies will each waive all subrogation rights against all other Insured Parties for any claims to the extent covered and paid by insurance. If the Company is deemed to self-insure a claim or loss, then the Company’s waiver will apply as if it carried the required insurance. The Company will require all Contractors and their respective insurance carriers to provide similar waivers in writing each in favor of all other Concessionaire-Related Entities and Insured Parties. Each Insurance Policy, including workers’ compensation if permitted under the applicable worker’s compensation insurance Laws, will be endorsed to include a waiver of any right of subrogation by the Company and each insurance carrier against the Insured Parties or a consent to the insured’s waiver of recovery in advance of loss.

No Recourse

Except as otherwise provided, there will be no recourse against the Contracting Authority or any of the other Insured Parties (other than the Company) for payment of premiums or other amounts with respect to the Insurance Policies.

Support of Indemnifications

The commercial general liability Insurance Policy and any other liability Insurance Policy will provide coverage of the Company’s indemnity liabilities under the Principal Project Documents, to the maximum extent commercially available, either specifically as a grant of coverage or as insured contracts under an exception to any contractual liability exclusion in such Insurance Policies.

No Insurance Policy will preclude coverage of the Company’s indemnity obligations, including specifically indemnification obligations to the Indemnified Parties, under the Principal Project Documents arising out of, relating to or resulting from the Project or the Work. For purposes of this paragraph, normal and customary exclusions may be included in such Insurance Policies to the extent (i) not prohibited by the P3 Agreement and (ii) unrelated to agreements, obligations, or indemnity obligations with respect to the Project or the Work.

The Company’s indemnification obligations under the Contract Documents are not limited to the type or amount of insurance coverage that the Company is required to provide under the P3 Agreement.

Adjustments in Coverage Amounts

At least once every five years during the O&M Period, the Company will retain an independent, unaffiliated, qualified and reputable insurance broker or advisor not involved in the Project and experienced in insurance brokerage and underwriting practices for major transportation facility projects, to prepare a report analyzing the policy limits and deductibles currently in place and recommending any adjustments to such limits and deductibles having regard to (i) the nature of the Project and the Work, (ii) the Insurance
Policies which the Company has placed, or caused to be placed, at that time and the risks insured under those Insurance Policies, (iii) the risks sought to be insured, (iv) the terms on which insurance is available, (v) the commercial reasonableness of those terms, (vi) the insurances and risk management practices generally applying in industry with respect to the required Insurance Policies and other insurance coverages, (vii) any events that have an impact on the cost of procuring insurance in the global insurance market generally, and (viii) other factors which the Contracting Authority and the Company may agree to be appropriate. The Company must provide such report at its own cost.

The Company will deliver the report to the Contracting Authority, within 90 days before each adjustment date. The Contracting Authority will have 45 days after receiving such report to approve or disapprove the proposed adjustments to the limits and deductibles.

If the report shows an increase or decrease in premiums by more than 30% from the premiums charged for the corresponding Insurance Policy during the preceding period, the Parties will consider changes in the policy limits or deductibles to reduce the premiums. If the Parties fail to agree upon any adjustment, the Contracting Authority will determine the adjustment, subject to the Dispute Resolution Procedures. The Parties acknowledge that any such adjustment is intended to result in a permanent adjustment to the insurance requirements under Exhibit 7A of the P3 Agreement, and that this process will not be used to address temporary fluctuations in insurance premiums, which are to be addressed through the benchmarking provisions.

In determining adjustments to limits and deductibles, the Company and the Contracting Authority will take into account (i) claims and loss experience for the Purple Line, provided that premium increases due to adverse claims experience will not be a basis for justifying increased deductibles, (ii) the condition of the Purple Line, (iii) the Renewal Work record for the Purple Line, (iv) the Safety Compliance and Noncompliance Points record for the Purple Line and (v) then-prevailing Good Industry Practice for insuring comparable transportation projects.

The Company is solely responsible for any premium amounts arising from increased limits and/or increased deductible payments that are made as a result of the loss experience of the Company, any Concessionaire-Related Entity or any Affiliate. The Contracting Authority agrees, however, that such adjustments will not increase the aggregate limits required by more than 100% from the requirements specified in Exhibit 7A of the P3 Agreement (for example, a limit of $10,000,000 will not be increased to more than $20,000,000).

If, on a policy-by-policy basis, the insurance premiums for the Insurance Policies adjusted exceed the premiums under the preceding policy, The Contracting Authority will increase the Availability Payment by an amount equal to 100% of the increase in such premiums until the next adjustment date. If, on a policy-by-policy basis, the insurance premiums for the Insurance Policies adjusted are less than the preceding policy’s premiums, the Contracting Authority will decrease the Availability Payment in an amount equal to 100% of the decrease in such premiums until the next such adjustment date.

If the Contracting Authority directs a decrease of aggregate limits for an Insurance Policy below the policy limits identified in Exhibit 7A of the P3 Agreement, and a Loss arises during the same insurance period that is not insured to the unadjusted Insurance Policy limit, then the Contracting Authority will be responsible for any amount not fully insured solely as a result of such adjustment up to the unadjusted Insurance Policy limit. If the Contracting Authority directs an increase in the deductible for an Insurance Policy, and a Loss arises during the same insurance period that is covered by such Insurance Policy, then the Contracting Authority will be responsible for the difference between the adjusted and unadjusted deductible amount. Except as otherwise expressly provided in the Contract Documents, no provisions in this section “Adjustments in Coverage Amounts” will be deemed to relieve the Company of its responsibility for Losses exceeding the unadjusted Insurance Policy limit and for payment of the amount of unadjusted deductibles in connection with any claim on an Insurance Policy.
**Defense Costs**

No defense costs will be included within or erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of any pollution liability and professional liability policies.

**Contesting Denial of Coverage**

If any insurance carrier under an Insurance Policy denies coverage with respect to any claims reported to such carrier, upon the Company’s request, the Contracting Authority and, to the extent necessary, the other Insured Parties will cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage. If the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then the Company will bear all costs of contesting the denial of coverage.

**Insolvent Insurer**

The Company will exercise best efforts to promptly secure alternative coverage in compliance with the insurance requirements so as to avoid any lapse in insurance coverage if an insurer providing any of the Insurance Policies (a) becomes the subject of any order of liquidation, (b) becomes insolvent, (c) is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the Maryland Insurance Administration or the insurance regulators of any other state or jurisdiction, (d) becomes the subject of any proceeding in any state or jurisdiction for the liquidation or winding up of its affairs or in which a liquidator, conservator or custodian is appointed at the request of any Governmental Entity, or (e) if its rating is lowered below that specified in the definition of “Eligible Insurer.”

**Requirements Not Limiting**

Requirements of specific coverage features or limits contained are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any Insurance Policy, and specific reference to a given coverage feature is not intended by to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

All insurance coverage and limits provided by the Company, or by third parties on behalf of the Company, and, in either case, available to settle claims will be exhausted to the full extent of the policy and other limits of the insurance coverage before other relief, if any, is afforded under the terms of the P3 Agreement; nothing contained in the P3 Agreement limits, or will be deemed to limit, the application of such insurance coverage against any eligible claim before application of other relief under the P3 Agreement.

Except as otherwise provided in the Contract Documents, the Company may meet its Insurance Policy and related obligations with any reasonable combination of underlying, primary, umbrella and excess insurance policies, so long as, in each case, the Company meets all the coverage, limits and all other requirements.

**Lender Insurance Requirements; Additional Insurance Policies**

If under the terms of any Funding Agreement or Security Document, the Company is obligated to, and does, carry insurance coverage with higher limits, lower deductibles, or broader coverage than required under the P3 Agreement, the Company’s provision of such insurance will satisfy the applicable requirements of the P3 Agreement provided such Insurance Policy meets all the insurance requirements.

If the P3 Agreement carries property or casualty insurance coverage insuring risks to any Concessionaire-Related Entity arising out of, relating to or resulting from the Work or the Project in
addition to that required under the P3 Agreement (excluding, except as prescribed in Exhibit 7A of the P3 Agreement for pre-Financial Close Work, if any, insurance that is part of the Company’s corporate insurance program), then the Company will include the Insured Parties as named insureds.

Application of Insurance Proceeds

All insurance proceeds received for physical property damage to the Purple Line under any Insurance Policies, other than any business interruption or delay in start-up insurance maintained as part of such Insurance Policies, will be first applied to repair, restore or replace each part or parts of the Purple Line or the Work with respect to which such proceeds were received.

Unavailability of Required Coverages

If the Company demonstrates to the Contracting Authority’s reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to procure the required Insurance Policy coverages, and if despite such diligent efforts and through no fault of the Company any Insurance Unavailability exists or occurs, the Contracting Authority may seek out, through review of the global insurance and reinsurance markets, coverage at Commercially Reasonable Insurance Rates. If coverage is found, the Company will place such insurance at the premium negotiated by the Contracting Authority, not to exceed Commercially Reasonable Insurance Rates, so long as such coverage complies with the applicable prescriptions, following which the relevant Insurance Unavailability will no longer exist. If the Contracting Authority is unsuccessful in identifying coverage, the Contracting Authority will consider in good faith approving alternative insurance packages and programs presented by or through the Company that provide coverage as comparable to that contemplated in the P3 Agreement as is possible under then-existing insurance market conditions.

If the Contracting Authority approves alternative insurance requirements because of Insurance Unavailability, then (a) subject to certain limitations under the P3 Agreement, the Contracting Authority will be responsible for any loss to the extent that the unavailable Insurance Policy or portion thereof would have covered the loss, for the duration of the Insurance Unavailability and (b) the Contracting Authority will be entitled to a reduction in the Monthly Availability Payments totaling 100% of the insurance premiums that the Company avoids as a result of the modification of the insurance requirements. In determining the Company’s avoided insurance premiums, the Parties will calculate the amount of insurance premiums the Company would have been obligated to pay (up to the Commercially Reasonable Insurance Rates) had there been no modification of insurance requirements; provided that if relevant comparison data is not then available, it will be assumed that the Company would have been obligated to pay 100% of the total avoided insurance premiums up to the greater of (A) the Commercially Reasonable Insurance Rates or (B) the premiums assumed in the Financial Model.

If the required Insurance Policies are available from insurers meeting the financial requirements but not at Commercially Reasonable Insurance Rates, then the Contracting Authority may by notice to the Company elect not to approve modification of insurance requirements and to pay 100% of the premiums that exceed the Commercially Reasonable Insurance Rates.

In the event of Insurance Unavailability, the Contracting Authority may elect to instead terminate the P3 Agreement under the applicable termination provisions. The Company may elect to continue the P3 Agreement, subject to assumption of certain risks. Further provisions relating to termination apply, should an uninsured event, due to the Insurance Unavailability, occur after the Company elects to continue the P3 Agreement.

If the required insurance coverage is not subject to an Insurance Unavailability, the Contracting Authority’s decision to approve or disapprove a variance from the insurance requirements, and the terms of any such approval or disapproval, will be final and binding on the Company and not subject to appeal under the Dispute Resolution Procedures.
If Insurance Unavailability exists or occurs, the Company will review the global insurance and reinsurance markets at least quarterly (before the O&M Period) and at least annually no later than 120 days before insurance program renewal, to track changes in market conditions and adjust insurance coverages as soon as the coverages become available at Commercially Reasonable Insurance Rates. The Company will keep the Contracting Authority currently informed of insurance market conditions and deliver to the Contracting Authority the information obtained from such quarterly (or annual, after commencement of the O&M Period) reviews.

The provisions of this section “Unavailability of Required Coverages” apply to the Excess Liability Insurance Policy(ies) in addition to all other Insurance Policies required under the Contract Documents.

**Insurance Premium Benchmarking**

The P3 Agreement allocates the risk between the Contracting Authority and the Company of certain significant increases in insurance premiums for Insurance Policies (excluding “stand-alone” Terrorism Insurance Policy/ies) specified during the O&M Period for the period starting on the first anniversary of the O&M Commencement Date and ending at the end of the Term (“Benchmarking Term”), on a Line-by-Line basis, through an insurance benchmarking process. Certain Insurance Policies may be placed for multi-year terms. At least once every three years during the Benchmarking Term, the Parties will complete the benchmarking process as to each O&M Period Insurance Policy (excluding “stand-alone” Terrorism Insurance Policy/ies). Each Party has the right to require benchmarking to be undertaken more than once every three years during the Benchmarking Term, but no more frequently than annually. the Contracting Authority will pay the insurance premium-related portion of the Availability Payment as outlined in Exhibit 4D of the P3 Agreement, Section 1.5 (as such premium-related portion may be adjusted).

Increases in insurance premiums attributable to any of the following factors will be excluded from the value of the premium for an Insurance Policy (including “stand-alone” Terrorism Insurance Policy/ies) subject to the benchmarking process: (a) Additional or extended coverages or limits beyond those required, unless requested by the Contracting Authority in advance; (b) Deductibles less than the maximum deductibles, unless requested by the Contracting Authority in advance; (c) Premium increases due to poor operations, claims, losses or other experience of the Company or any Concessionaire Related Entity; (d) Any fees paid or to be paid to any broker or agent of the Company or any Concessionaire Related Entity by or on behalf of the Company or any Concessionaire Related Entity or any other insured or agent thereof, any commissions and any indirect, incentive, or contingent commissions or other amounts in relation to policies placed or services provided by such broker or agent; and (e) Other variations from the requirements for Insurance Policies, unless requested by the Contracting Authority in advance (together, the “Excluded Premium Increases”).

Not later than 60 days after the commencement of the Benchmarking Term and annually thereafter with respect to each Benchmarking Reference Period, the Company will submit a report ("Insurance Review Report") to the Contracting Authority that includes at least the following: (a) unless previously submitted to the Contracting Authority (including submission with preceding annual Insurance Review Reports with respect to multi-year Insurance Policies), the written binders of insurance in the form and with all of the content required, or complete, certified and signed copies of each such Insurance Policy (including all endorsements), in each case for the subject annual insurance period (“Actual Benchmark Insurance Policies”); (b) the premium invoices for each of the Actual Benchmark Insurance Policies (or annual pro rata allocation for Actual Benchmark Insurance Policies with terms greater than one year); (c) if any of the Actual Benchmark Insurance Policies (or such pro rata allocation) varies from the insurance requirements, then a comprehensive written analysis and explanation by the Company’s licensed insurance broker setting forth (i) the effect (if any) that factors described in the preceding paragraph have had on the premiums, (ii) the Excluded Premium Increases, if any, and an explanation of the manner in which the Excluded Premium Increases were computed and (iii) the increase, if any, in the insurance premiums that would have occurred absent the factors described in the preceding paragraph; and (d) detailed calculations of the final amount of the
insurance premiums for the Actual Benchmark Insurance Policies, adjusted for surcharges, refunds, Excluded Premium Increases, and other increases due to the factors described in the preceding paragraph, as well as all related backup documentation sufficient to describe how these amounts were computed.

On an annual basis (unless multi-year policies remain in place from prior years and do not require renewal or replacement at that time), the Company will place actual Insurance Policies required for the subject insurance period (the “Actual Insurance Policies”). The Company will maintain copies of all of the Actual Insurance Policies (including all endorsements) and all of the Insurance Review Reports and make these documents available following each renewal period to the Contracting Authority or its designee for the entire Term plus 10 years.

**Contracting Authority’s Review**

Each year during the Benchmarking Term, the Contracting Authority will review the Company’s Insurance Review Reports, with accompanying data required, as applicable, promptly following receipt.

The Contracting Authority may, at its sole expense, independently assess the accuracy of the information in any Insurance Review Report or update including retaining actuaries or other advisors, obtaining independent quotes for the Required Minimum Insurance Policies or performing its own assessment as to the impact of factors described above, the amount of Excluded Premium Increases, and the amount of increases in the insurance premiums for the Actual Benchmark Insurance Policies or Actual Insurance Policies that would have occurred absent the factors described above.

If the Contracting Authority elects to independently assess, then the Company will cooperate in good faith with any reasonable requests for additional information from the Contracting Authority or its insurance and/or actuarial advisor(s) and will promptly provide all such information to the Contracting Authority or its insurance and/or actuarial advisor(s).

**Starting Insurance Benchmarking Premiums**

The Starting Insurance Benchmarking Premiums for the Actual Benchmark Insurance Policies will be calculated and established promptly after receipt of the first Insurance Review Report during the Benchmarking Term (including the annualized pro rata allocation of premium for multi-year Insurance Policies). The “Starting Insurance Benchmarking Premiums” (excluding “stand-alone” Terrorism Insurance Policy/ies) means the higher of (a) premiums actually charged or incurred for Actual Insurance Policies in place as of the O&M Commencement Date (or the annualized pro rata allocation of premiums for multi-year Insurance Policies) and (b) premiums for the Actual Insurance Policies identified in such first Insurance Review Report (or annualized, pro-rata equivalent of the premiums). The “Starting Insurance Benchmarking Premiums” for “stand-alone” Terrorism Insurance Policy/ies means the Base Relevant Insurance Cost for Terrorism Insurance Policy/ies.

The Starting Insurance Benchmarking Premiums for all Insurance Policies will be escalated annually for each 12-month period during the Benchmarking Term (each such period, a “Benchmarking Reference Period”). The Starting Insurance Benchmarking Premiums will be escalated based on the percentage change between (a) the average of the previous 12 monthly index values to be determined by reference to the most recently published Escalation Index 1 monthly index value, as of the Proposal Date and (b) the average of the previous 12 months of index values to be determined by reference the most recently published Escalation Index 1 monthly index value as of the first day of the relevant annual insurance period. The benchmark premium amount for each Benchmarking Reference Period, as adjusted, is referred to as the “Escalated Benchmark Insurance Premiums”.

No Insurance Policy benchmarking adjustment of the Availability Payment will occur before the second anniversary of the O&M Commencement Date. At that time, the Escalated Benchmark Insurance Premiums for each Benchmarking Reference Period commencing with the second year after the O&M
Commencement Date will be compared with the Base Relevant Insurance Cost. Following each such comparison, with respect to all Insurance Policies excluding “stand-alone” Terrorism Insurance Policy/ies, the higher of the two figures will be the “Insurance Premium Benchmark Amount” for the relevant period. With respect to “stand-alone” Terrorism Insurance Policy/ies, the “Insurance Premium Benchmark Amount” for the relevant period is the Base Relevant Insurance Cost for Terrorism Insurance Policy/ies, as escalated under the provisions described below.

The Insurance Premium Benchmark Amount will be used in the benchmarking process for each relevant period for performing the benchmarking assessment (i.e., at least once every three years during the Benchmarking Term but no more frequently than annually, at either Party’s initiation) during the remainder of the Benchmarking Term. The relevant Insurance Premium Benchmark Amount is the amount, determined as provided above, on an annual basis (hereafter, the “relevant period”). For example, if the Company initiates benchmarking assessment in the second year of the Benchmarking Term, then, with respect to Insurance Policies other than the “stand-alone” Terrorism Insurance Policy/ies, the Insurance Premium Benchmark Amount will be for the higher of the Escalated Benchmark Insurance Premium, on a Line-by-Line basis, and the Base Relevant Insurance Cost, on a Line-by-Line basis, for the preceding policy year (distinguished from the average of the prior two years’ Escalated Benchmark Insurance Premiums compared to the average of the prior two years’ Base Relevant Insurance Cost). The benchmarking assessment procedures are as follows:

(a) The Contracting Authority will use the applicable Insurance Premium Benchmark Amount to measure the difference in premium costs on a Line-by-Line basis for the relevant period. The Company and the Contracting Authority will determine the difference between the Insurance Premium Benchmark Amount and the insurance premiums for the Actual Insurance Policies for the Benchmarking Reference Period as such premiums may be adjusted for Excluded Premium Increases.

(b) Both Parties acknowledge that the actual insurance premiums are to be reduced by the Excluded Premium Increases for the purpose of the insurance benchmarking process and the Availability Payment adjustment described below.

(c) No later than 30 days after the Company’s submission of each updated Insurance Review Report, the Contracting Authority will make its determination of the eligible premium increases subject to the Availability Payment adjustment described below. In the event of a dispute, the Contracting Authority’s determination will be subject to appeal under the Dispute Resolution Procedures.

(d) If, on a Line-by-Line basis, the insurance premiums for the Actual Insurance Policies for the Benchmarking Reference Period (as adjusted for Excluded Premium Increases) exceed 120% of the applicable Insurance Premium Benchmark Amount, the Contracting Authority will increase the Availability Payment for that benchmarking period in an amount equal to 80% of the excess amount until the next benchmarking period. If, on a Line-by-Line basis, the insurance premiums for the Actual Insurance Policies for the Benchmarking Reference Period (as adjusted for Excluded Premium Increases) is less than 80% of the applicable Insurance Premium Benchmark Amount, the Contracting Authority will reduce the Availability Payment for that benchmarking period in an amount equal to 80% of the difference.

Whenever completion of the benchmarking process is required under the P3 Agreement, the Company will obtain firm quotes from three or more established and recognized insurance providers for the Insurance Policies required during each benchmarking cycle. No increase will be made to the Availability Payment unless the Company has demonstrated that as a result of such firm quotes, all premium quotes are above or below the 120% threshold after adjustments for Excluded Premium Increases.
Adjustments Instead of or in Addition to Benchmarking.

Within a reasonable time following receipt of any Insurance Review Report, the Contracting Authority may direct the Company to modify any Insurance Policies, for the Benchmarking Reference Period or, if a multi-year Insurance Policy, for the entire policy term, either in combination with or instead of making benchmarking adjustments. (As an example, the Contracting Authority may, instead of applying the foregoing benchmarking regime, direct the Company to increase the deductible and/or decrease the policy limit for a specified Insurance Policy so as to reduce premiums.) The intent is to effect a temporary response to premium fluctuations (with the intent of retaining the unadjusted insurance prescriptions under Exhibit 7A of the P3 Agreement) and not to adjust the insurance prescriptions under Exhibit 7A of the P3 Agreement permanently, on a going-forward basis. The minimum insurance policies do not prohibit any cost associated with insurance that exceed the insurance limits.

If the Contracting Authority directs such a modification, a claim arises during the same insurance period that is not fully insured solely as a result of such modification, and either a final judgment on the claim is issued that the Company is legally required to pay after exhausting all appeals or the claim is settled on terms approved by the Contracting Authority in advance, then the Contracting Authority will pay to the Company, in connection with such judgment or settlement, 100% of the amount of the Loss not covered by insurance that would have been covered but for the Contracting Authority’s directed modification. If the Contracting Authority has directed modification of the deductible amount for an Insurance Policy, and if a claim arises during the same annual insurance period that is not fully insured solely as a result of such modification, and either a final judgment on the claim is issued that the Company is legally required to pay after exhausting all appeals or the claim is settled on terms approved by the Contracting Authority in advance, and if the amount of the claim exceeds the original deductible amount, then the Contracting Authority will pay to the Company, in connection with such judgment or settlement, 100% of the excess deductible amount attributable to the Contracting Authority’s directed modification of the deductible. For purposes of this calculation, the “original” deductible amount will be the amount specified in Exhibit 7A of the P3 Agreement, provided that if Exhibit 7A of the P3 Agreement does not specify a deductible, the “original” deductible will be the actual deductible for the same policy during the immediately preceding insurance period.

The Contracting Authority’s obligation under the preceding paragraph will exist from the date of the Contracting Authority’s direction to the Company to modify any Insurance Policy until the earlier of (a) the end of the insurance period during which the modification is made and (b) the date on which it becomes possible to restore the policy limits and deductibles through payment of premiums that do not exceed the amount originally budgeted for the ensuring period’s Availability Payment. If after the Contracting Authority directs any such modification, the Company is able to restore the policy limits and/or deductibles through payment of budgeted premium amounts, the Company will make such payments and such other arrangements with applicable insurance companies to restore such policy limits and/or deductibles. For purposes of clarity, if at the end of the annual insurance period during which the modification is made with respect to an Insurance Policy and, at such date, the Insurance Policy is subject to Insurance Unavailability, then the Parties will proceed under the applicable provisions of the section above named “Unavailability of Required Coverages”.

Anticipated Material Change in Insurance Costs or Availability

If the Company has reason to believe, or has knowledge, that there will be (i) a material change in insurance availability, (ii) a material increase in premium for any Insurance Policy or (iii) Insurance Unavailability will exist for the succeeding full annual insurance period, then the Company will provide Notice to the Contracting Authority 150 days before expiration of the subject Insurance Policy/(ies), or promptly following the Company’s knowledge of any of the foregoing. In such case, the Company will allow, and will cause its insurers to allow, the Contracting Authority to participate in negotiations of such Insurance Policy/(ies) to be placed in the succeeding full annual insurance period. The Company will cause such negotiations to commence promptly following the date of Company’s earlier Notice.
The Company will use commercially reasonable efforts to ensure such negotiations conclude sufficiently in advance of expiration of such Insurance Policy/(ies) to ensure continuation, without gap, of insurance coverage under (the) renewed or replacement Insurance Policy/(ies). The Contracting Authority will cooperate with the Company in its discharge of this obligation.

If the Company delivers Notice to the Contracting Authority under this section, then a reasonable time before commencement of negotiations with the Company’s insurers, the Company will submit to the Contracting Authority:

(e) Firm quotes from three or more Eligible Insurers for the Insurance Policies for the upcoming annual insurance period, without any variation from such requirements (“Required Minimum Insurance Policies”). If the Company is unable to obtain at least three firm quotes, then the Company will provide documentation to the Contracting Authority of the Company’s good faith efforts to obtain at least three firm quotes from all relevant domestic and foreign markets, including a detailed declination report signed by the broker providing details of all markets approached. The quotes will represent the current and fair market cost of providing the Required Minimum Insurance Policies; if there are less than three firm quotes, the Contracting Authority may elect to consider two or one quotes as sufficient to establish the current and fair market cost of providing such Required Minimum Insurance Policies; and

(f) A comprehensive written analysis and explanation by the Company’s independent insurance broker or consultant setting forth (i) industry trends in premiums for the Required Minimum Insurance Policies, (ii) any claims (paid or reserved) since the last review period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles provided, (iii) the effect (if any) that factors (a) through (d) contributing to Excluded Premium Increases have had on the premiums for the Required Minimum Insurance Policies, and (iv) a confirmation that there is no Excluded Premium Increase or the dollar amount of any Excluded Premium Increase and an explanation of the reason there is Excluded Premium Increase.

Additional Excess Liability, Excess Liability Allowance

Exhibit 4A of the P3 Agreement identifies an amount (the “Excess Liability Allowance” amount) budgeted by the Contracting Authority to pay the cost of placing Excess Liability insurance required. These funds will be used by the Contracting Authority to reimburse the Company for such costs, without markup, or to pay such costs directly.

No Change Order is required for invoicing amounts within the Excess Liability Allowance amount.

The Company has no obligation to pay premiums for Excess Liability insurance that exceed the available Excess Liability Allowance amount. The Company will promptly notify the Contracting Authority if it becomes apparent that the Excess Liability Allowance amount will not be sufficient to pay actual premiums. Subject to the following paragraph, if at any time the actual cost of placing the Excess Liability Insurance Policy or Policies exceeds the remaining balance of the Excess Liability Allowance amount, the Parties will execute a Change Order to increase the Excess Liability Allowance amount to cover the additional costs.

If the Company fails to obtain the Additional Excess Liability insurance required, or if the Contracting Authority elects to obtain the Additional Excess Liability insurance because the Contracting Authority determines that its costs are lower than the Company’s, then the Contracting Authority may notify the Company that it will place such insurance itself, whereupon The Contracting Authority may use the Excess Liability Allowance amount to pay for costs that would otherwise have been payable to the Company from the Excess Liability Allowance. The Contracting Authority will have no liability or responsibility to the Company arising out of, relating to or resulting from the Contracting Authority’s
placement of the Additional Excess Liability Insurance Policy or Policies or draws against the Excess Liability Allowance, and such actions will not constitute a Relief Event or other basis for a Claim.

**Company Indemnity**

The Company will fully indemnify and hold harmless the Contracting Authority, the State, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees, and, to the extent required by any Utility Agreement or Third Party Agreement, the Utility Owner or Third Party that is a party to such agreement (the "**Indemnified Parties**"), from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from:

(a) any act, omission, neglect or misconduct of the Company or any Concessionaire-Related Entity in the manner or method of executing said Work satisfactorily or due to the failure to perform the Work,

(b) the failure or alleged failure by any Concessionaire-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws relating to the performance of the Work;

(c) any Concessionaire-Related Entity’s performance of, or failure to perform, the obligations under any Utility Agreement;

(d) any Concessionaire-Related Entity’s breach of or failure to perform an obligation that the Contracting Authority owes to a third party under Law or under any agreement between the Contracting Authority and a third party, where performance of the obligation is delegated to the Company, or the acts or omissions of any Concessionaire-Related Entity which render the Contracting Authority unable to perform or abide by an obligation that the Contracting Authority owes to a third party under any agreement between the Contracting Authority and a third party, provided the agreement was previously disclosed or known to the Company;

(e) any alleged infringement or other allegedly improper appropriation or use of Intellectual Property in performance of the Work, or arising out of, relating to or resulting from any use in connection with the Purple Line of methods, processes, designs, information or other items furnished or communicated to the Contracting Authority or another Indemnified Party under the Contract Documents; provided that this indemnity will not apply to any infringement resulting from the Contracting Authority’s failure to comply with specific written instructions regarding use provided to the Contracting Authority by the Company that are consistent with the Company’s obligations to convey and license Concessionaire Intellectual Property under the P3 Agreement;

(f) any Company Release of Hazardous Materials and any liabilities resulting therefrom;

(g) any fines or penalties imposed on the Contracting Authority by any Authority Having Jurisdiction arising out of, relating to or resulting from the Company’s breach of or failure to comply with applicable requirements of the Contract Documents;

(h) any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Concessionaire-Related Entity with respect to any payment for the Work made to or earned by such Concessionaire-Related Entity under the Contract Documents;
(i) inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Concessionaire-Related Entity to comply with Good Industry Practice, requirements of the Contract Documents, the Project Management Plan or O&M Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Work, (ii) the intentional misconduct or negligence of any Concessionaire-Related Entity in connection with the performance of the Work, or (iii) unauthorized physical entry onto or encroachment upon another’s property by any Concessionaire-Related Entity in connection with the performance of the Work.

The Company will indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys’ fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Contract Drawings or Reference Documents, except to the extent that an error, omission, inconsistency or other defect in the Design Documents is directly attributable to an error, omission, inconsistency or other defect in the Contract Drawings and the Company did not act negligently in finalizing the design of the Purple Line.

With respect to any loss or damage of the type covered by the insurance required to be provided under the P3 Agreement or otherwise obtained by Company for the Project, the Company’s indemnity obligation will not extend to any loss, damage or expense arising out of, relating to or resulting from the sole negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

Changes

Contracting Authority Changes

The Contracting Authority may, at any time and from time to time, without notice to any Lender or Surety, authorize and/or require, under a Change Order or other Modification, changes to the Work, changes to requirements of the Technical Provisions, changes in the Service Plan and changes relating to Betterments, except the Contracting Authority has no right to require any change that would give rise to a threat to health and safety or would be inconsistent with Law.

Changes in service directed by the Contracting Authority in accordance with the provisions described in “—Changes” do not require a Change Order except as specified. A negotiated Modification would be required in connection with establishment of a Service Level higher than Service Level 3 as well as for any equitable adjustments to the Availability Payments and for the reduction of Service Level by the Contracting Authority that would result in the number of LRVs available for service being greater than the number of LRVs required to deliver the reduced Service Level.

The Contracting Authority (a) may agree with one or more Third Parties or Utility Owners to modify the Third Party Agreements or Contracting Authority Utility Agreements (including modifying assumed terms and conditions of such agreements set forth in the Technical Provisions), and (b) may identify a new Third Party at any time. The Contracting Authority will promptly notify the Company of any changes in the terms and conditions of such agreements that affect the Work, and will promptly provide the Company with information regarding any new Third Parties. Any changes in the scope of the Work due to modifications to the terms and conditions (or assumed terms and conditions) of Third Party Agreements or Utility Agreements or identification of a new Third Party which delay the Critical Path or otherwise have a material impact on the Company’s obligations under the Contract Documents during the Design-Build Period will be implemented through a Contracting Authority Change.
**Contracting Authority Request for Change Proposal**

If the Contracting Authority desires to initiate or evaluate whether to initiate a Change Order, then the Contracting Authority may issue a Request for Change Proposal. The Request for Change Proposal will state the nature, extent and details of the proposed Contracting Authority Change. The Contracting Authority’s delivery of notification to the Company will be considered a Request for Change Proposal with respect to any material changes to the terms and conditions (or assumed terms and conditions) of the Third Party Agreement or Contracting Authority Utility Agreement identified in the notice, provided that if the Contracting Authority notified the Company regarding any such material changes before the Effective Date, the Request for Change Proposal will be deemed delivered as of the Effective Date.

Within five business days after the Company receives a Request for Change Proposal, or such longer period approved by the Contracting Authority, the Parties will consult to define the proposed scope of the change. Within five days after the initial consultation, or such longer period approved by the Contracting Authority, the Contracting Authority and the Company will consult concerning the estimated Incremental Cost and extensions of time, excuse from compliance with the Contract Documents, effect on the LRV Option and other impacts.

The Contracting Authority may at any time provide a written analysis to the Company regarding the Contracting Authority’s assessment of avoided costs and impacts on the Project Schedule and Contract Deadlines associated with a proposed Contracting Authority Change, as well as any other relevant information related to carrying out the proposed Contracting Authority Change.

**Response to Request for Change Proposal**

As soon as possible through the exercise of diligent efforts, and in any event within 30 days following the Contracting Authority’s delivery to the Company of a request for a change in the Service Plan or within 60 days following the Contracting Authority’s delivery to the Company of any other Request for Change Proposal, the Company will provide the Contracting Authority with a response as to whether, in the Company’s opinion, the proposed Contracting Authority Change results in entitlement to additional compensation, an extension of time, excuse from compliance or other relief in accordance with P3 Agreement, including the following:

(a) With respect to a request for change in the Service Plan, a Change to a Service Plan Report and with respect to any other Request for Change Proposal, the Company’s detailed estimate regarding how the proposed Contracting Authority Change will affect the Company’s costs of performing the D&C Work and O&M Work;

(b) If the Change Notice is issued before the Revenue Service Availability Date, the effect of the proposed Contracting Authority Change on the Project Schedule, including any impacts on Contract Deadlines, taking into consideration the Company’s duty to mitigate any delay, and including a time impact analysis if any extension of the Contract Deadlines will be requested in connection with the change;

(c) Where a request for an extension of time to any Contract Deadline is made, a time impact analysis to support such request, and an assessment regarding feasibility of accelerating the Work to meet the original deadline or to reduce the total delay period and, if acceleration is feasible, an estimate of the cost to accelerate;

(d) The Company’s planned actions to mitigate, the additional compensation, extension of time, excuse from compliance and other consequences of the Contracting Authority Change;

(e) The effect (if any) of the proposed Contracting Authority Change on Performance Requirements, the Activity Noncompliance Occurrence Table, Noncompliance Events, the Payment Mechanism, the Asset Management Plan and Handback Requirements; and
Any other relevant information related to the proposed Contracting Authority Change.

**Payments and Credits**

If a Change Order issued involves a net increase in the costs of Work to be performed during the Design-Build Period, the Change Order will provide for the Compensation Amount to be paid as specified in the P3 Agreement. If the Change Order involves a net increase in the costs of Work to be performed during the O&M Period, the Contracting Authority will pay the Compensation Amount through adjustments to the Availability Payments, calculated to result in a neutral monthly cash flow for the Company.

If a Change Order involves a net reduction in costs of Work, the Change Order will provide for the credit to be applied either to payments during the Design-Build Period or to Availability Payments, as applicable, as the savings accrue.

If a Change Order issued affects the Company’s cost of supplying Option LRVs, the Change Order will either provide for an increase in the LRV Option Price to pass through the additional costs to the Contracting Authority or a reduction in the LRV Option to pass through the reduction in costs to the Contracting Authority.

**Relief Events**

Relief Events are defined as (1) Contracting Authority Changes and (2) any of the following events to the extent that the event materially and adversely affects performance of the Company’s obligations under the Contract Documents, in each case subject to the requirements, limitations and deductibles in the P3 Agreement regarding entitlement to relief as well as the duty to prevent occurrences and to mitigate consequences of such events:

(a) Contracting Authority-Caused Delay;

(b) Subject to certain limitations, discovery of Differing Site Conditions;

(c) Subject to certain limitations, discovery on or under the Site (excluding Additional Properties and Project-Specific Locations) of any paleontological or cultural (including archaeological and historical) resources;

(d) Subject to certain limitations, discovery at, near or on the Project ROW of any Threatened or Endangered Species, to the extent that the Company is required to stop the Work or perform Extra Work as a result of the discovery;

(e) Subject to certain limitations, discovery that the Utility Information is Materially Inaccurate with respect to any underground utility facility (excluding Service Lines), except where the existence of a Utility in the correct location and/or size, as applicable, was known to the Company as of the Setting Date, or would have become known to the Company as of the Setting Date by undertaking reasonable inquiry, prior to the Setting Date, with Utility Owners, including by requesting and reviewing Utility plans provided by Utility Owners;

(f) Discovery of Hazardous Waste required by applicable Law to be recycled, treated, stored or disposed at a “Designated Facility” as defined in COMAR 26.13.01.03, discovered during or in connection with the demolition of buildings, fixtures or other improvements, in the categories for which unit prices are provided in the P3 Agreement;

(g) (i) discovery of Pre-Existing Hazardous Materials within the Site, excluding Known or Suspected Hazardous Materials and excluding Hazardous Materials within Additional
Properties and Project-Specific Locations, or (ii) any sudden spill of Hazardous Material by a Person other than a Concessionaire-Related Entity not covered by item (f) above which occurs during the Term and (A) renders use of the Transitway, roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation or (B)(1) is required by applicable Law to be recycled, treated or stored, or (2) is required by applicable Law to be disposed at a “Designated Facility” as defined in COMAR 26.13.01.03;

(h) With respect to D&C Work:

(1) Discriminatory Changes in Law, and

(2) any other Change in Law that (A) requires a material modification in the Purple Line design, (B) results in imposition of additional mitigation requirements on the Purple Line respecting (i) impacts on paleontological, biological or cultural (including archaeological and historical) resources or (ii) other environmental impacts, or (C) prevents renewal of any Governmental Approval;

(i) With respect to O&M Work:

(1) Changes in Law, excluding changes in federal Law other than (A) changes in federal Law to the extent specified as a non-discriminatory change, (B) changes in federal Law that materially modify tasks to be performed by operations and maintenance personnel and (C) any change in federal Law requiring execution of a Section 13(c) agreement for the Project;

(2) Discriminatory Changes in O&M Standards;

(3) Non-Discriminatory Changes in O&M Standards to the extent specified;

(4) Changes in Transitway traffic signal timing affecting Station-to-Station run times; and

(5) Changes in traffic signal Priority or Preemption in the Transitway affecting Station-to-Station run times;

(j) Permanent and planned power network change in voltage by the Utility Owner supplying electricity to the Purple Line System that has a material adverse effect on LRT operations;

(k) Any change in the Work or delay to or interference with the Work directly attributable to projects undertaken by Third Parties within the Project ROW during the Design-Build Period that are not identified in (i) the Contract Documents or (ii) any Third Party’s formal, approved budget document for capital projects as of the Setting Date;

(l) During the Design-Build Period, subject to certain limitations and obligations, damage to improvements or project assets at the Site (excluding Additional Properties and Project-Specific Locations) due to Force Majeure Events, to the extent that (i) the damage is due to an event that is not of a type required to be covered by insurance under the Contract Documents (including self-insurance if the Contracting Authority has agreed to self-insure as specified in the terms of the P3 Agreement where the Company is unable to obtain insurance as described in the P3 Agreement), or (ii) the costs of repair or replacement exceed the insurance limits;

(m) During the O&M Period, solely for the purposes of determining the Contracting Authority’s responsibility and, subject to certain limitations and obligations, damage to improvements or project assets due to Force Majeure Events or other events beyond the Company’s reasonable control;
(n) Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any portion of the Work;

(o) Subject to certain limitations, occurrence of a Utility Owner Delay; and

(p) Assessment of sales or use tax on LRV’s;

except to the extent that the event or consequences of the event (i) arose out of (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission by a Concessionaire-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Concessionaire-Related Entity, or (ii) could reasonably have been avoided by any Concessionaire-Related Entity.

**Time Extension**

The Company will be entitled to extension of applicable Contract Deadlines by the period that a Relief Event or Force Majeure Event results in a delay to the Critical Path required to achieve Revenue Service Availability or Final Completion, as applicable, beyond the original Contract Deadline, subject to certain limitations and satisfaction of relevant conditions or requirements set forth in the Contract Documents, including provision of a time impact analysis regarding responsibility for concurrent delays and undertaking appropriate measures to mitigate delays.

If the credit agreement for the TIFIA Loan fills in the blanks in clause (a)(ii) of the definition of “Development Default” in the TIFIA Term Sheet with a number greater than zero (i.e. if the TIFIA Loan provides that the Company will be in default for failure to achieve “Substantial Completion” earlier than 12 months after the RSA Deadline), then the Long Stop Date will be extended by the same number of months. For example, if the blank is filled in with the number 3, then the Long Stop Date will be extended by three months.

**Force Majeure Events**

Force Majeure Events mean the following events, in each case beyond the control of the Parties, to the extent that the event delays the Critical Path (with respect to the D&C Work) or materially and adversely impacts the Company’s ability to meet its obligations (with respect to the O&M Work):

(a) Act of war, invasion, armed conflict, violent act of foreign enemy, military or armed blockade regardless of location, or any military or armed takeover of the Purple Line or the Site;

(b) Any act of terrorism, riot, insurrection, civil commotion or sabotage that (i) causes direct physical damage to the Purple Line, the Work or the Site or (ii) otherwise directly causes substantial interruption to Construction Work, manufacturing or assembly of LRVs or O&M Work;

(c) Nuclear explosion that (i) causes direct physical damage to the Purple Line or the Site, or (ii) causes radioactive contamination of the Purple Line or the Site requiring Hazardous Materials Management, (iii) otherwise directly causes substantial interruption to Construction Work, manufacturing or assembly of LRVs or O&M Work;

(d) Fire or explosion directly impacting the physical improvements of the Purple Line or performance of Work at the Site;
(e) Flood, earthquake or landslide (i) resulting in material damage to (A) Purple Line improvements or (B) the primary LRV assembly facility identified in the Proposal, or (ii) otherwise causing an Unplanned Service Interruption during the O&M Period;

(f) Any national or regional strike not specific to the Company, acts or omissions of a port or transportation authority, unavailability or shortages of materials that directly causes interruption to construction or direct losses during operation of the Purple Line;

(g) Quarantine affecting Work to be performed by the Company;

(h) Unusually severe weather (including tornados and any storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration’s National Hurricane Center or similar body) resulting in material damage to (i) Purple Line improvements or (ii) the primary LRV assembly facility identified in the Proposal;

(i) Any other event within the Purple Line right-of-way limits that has a material adverse impact on the Work and that arises from a state of emergency declared by the Maryland Governor, but excluding Emergencies consisting of or arising out of traffic accidents;

(j) Changes in Law that do not qualify as Relief Events but nevertheless result in a delay to the Critical Path;

(k) Any delay by a Third Party in performance of its obligations under a Third Party Agreement that is excused due to occurrence of a force majeure event under the terms of the Third Party Agreement;

(l) Any delay in performance of Utility Work by a Utility Owner excused due to the occurrence of a force majeure event under the terms of the relevant Contracting Authority Utility Agreement;

(m) Any delay in approval of the NPS Special Use Permit beyond 180 days from the date that NPS acknowledges receipt of the Company’s complete and conforming application for such permit, meeting NPS quality requirements and including all supplemental information requested by NPS following receipt of the initial application package; and

(n) Any protest specifically against the Purple Line System during the Design-Build Period that directly causes substantial interruption to Construction Work;

except to the extent that the event or consequences of the event arose out of any act, omission, negligence, recklessness, willful misconduct, breach of contract or violation of applicable laws by any Concessionaire-Related Entity, or could reasonably have been avoided by the exercise of caution, due diligence, or reasonable efforts by any Concessionaire-Related Entity.

Non-Concessionaire Caused Disruption

Non-Concessionaire Caused Disruption means any of the following events occurring in the O&M Period:

(a) an order issued by the Contracting Authority or an agent of the Contracting Authority which affects service, including an order to slow down or stop train service on the System;

(b) any change in service required to accommodate performance of work (i) by a Utility Owner pursuant to a permit issued by an Authority Having Jurisdiction or (ii) by a Third Party, provided the Contracting Authority has agreed in writing to the service change;
(c) a derailment, grade crossing accident, collision or any other accident involving LRVs;
(d) obstruction of any grade crossing or the Transitway caused by third parties, excluding obstructions due to vehicular or pedestrian traffic;
(e) on-board Train passenger activity during Revenue Service Hours that causes interruption to System operations, including requests for an emergency stop of the Train or sick or injured passengers requiring medical attention;
(f) failure of any Non-Concessionaire Contractor to comply with the Company’s reasonable instructions regarding coordination, scheduling, or safety, or any unlawful or negligent act of a Non-Concessionaire Contractor;
(g) disruptions due to trespassers (including suicide attempts and blockages of the Transitway in connection with an unlawful demonstration) or other criminal action by third parties;
(h) (i) power network change in voltage or (ii) loss of electrical supply to two or more traction power substations concurrently due to a failure of the electricity supplier, that, in either case, has a material adverse effect on LRT operations;
(i) actions of governmental authorities or emergency response personnel who require access to the System, interrupting operation of the System;
(j) delay in or suspension of service required by police or other public official having jurisdiction, or reasonably occurring in anticipation of the response of police or such public official (for example, suspension due to suspicious luggage or package);
(k) to the extent that the event is not covered by insurance and relief from Deductions is not already provided in the P3 Agreement, disruptions due to (i) Relief Events or Force Majeure Events, or (ii) excluding facilities providing electrical power to the System (which are addressed in clause (h) above), any unexpected damage to a Utility (A) serving the Purple Line and located within the Purple Line right-of-way or (B) located within the Transitway or at a Station serving LRVs for the Purple Line System;
(l) the Contracting Authority’s failure to perform or observe any of its material covenants or obligations under the P3 Agreement or the Contract Documents or to comply with Law or Governmental Approvals; and
(m) reduction in service during an unusually severe weather event, to ensure compliance with Safety Standards; so long as the Company notifies the Contracting Authority, as soon as practicable before or during the event (or if earlier notification is impracticable, promptly after commencing the reduction in service);

except to the extent such event or consequences of the event (i) arose out of (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission by a Concessionaire-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Concessionaire-Related Entity, or (ii) could reasonably have been avoided by the Company.

**Excuse from Compliance**

Except as expressly provided in the P3 Agreement, where a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, the obligations of each Party which are affected by the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption will be suspended, but only
to the extent that, and for so long as the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption prevents that Party from meeting its obligations in accordance with the P3 Agreement.

A Party’s failure to perform its obligations in accordance with the P3 Agreement which are suspended in accordance with the P3 Agreement:

(a) Will not be a breach of the P3 Agreement, a Concessionaire Default, a Default Termination Event or give rise to a right to terminate other than either Party’s right to terminate the P3 Agreement for an Extended Delay;

(b) Will not result in the accrual of Noncompliance Points;

(c) Will not result in Deductions being applied or OTP Factors being allocated in the case of a suspension as a result of (i) a Relief Event; (ii) an event set out in clause (a), (i), (j) or (l) of the definition of Non-Concessionaire Caused Disruption; or (iii) the initial 48 hours of any Grace Period Event or combination of Grace Period Event(s) during a 30-day period (each a “Relevant Event”);

(d) During a 30-day period in which a suspension occurs due to a Grace Period Event, following expiration of the initial forty-eight (48) hour grace period (the “Grace Period”), Deductions may be applied or OTP Factors may be allocated.

The total of any Deductions applied under subsection (d) above and OTP Factors allocated under Section 15.5.6 of the P3 Agreement may not reduce the Availability Payment below the sum of (a) the Partial Service Payment and (b) the value of scheduled principal repayments and interest on the Company’s Project Debt obligations for the relevant period.

If any Activity Noncompliance Occurrence is directly attributable to a Relevant Event, the obligations of the Company will be suspended by extending the Response Time, Rectification Time or Application (Maximum Exposure) Time applicable to such Activity Noncompliance Occurrence. If no Response Time, Rectification Time or Application (Maximum Exposure) Time applies to the Activity Noncompliance Occurrence, the corresponding Activity Noncompliance Event will be deferred. The extension or deferral will be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of the relevant Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption on the Company’s ability to respond to or rectify (as applicable), availability of temporary remedial measures, and need for rapid action due to impact of the Activity Noncompliance Occurrence on safety or traffic movement.

If any Operations Availability Noncompliance Event is directly attributable to a Relevant Event, the Company will not be allocated OTP Factors.

If any Operations Availability Noncompliance Event is directly attributable to a Grace Period Event and continues after expiration of the Grace Period, then: (a) for the first 13 days following the expiration of the Grace Period only 10% of the applicable OTP Factors may be allocated to the Company; (b) for the next 15 days following the time period in clause (a) above, only 5% of the applicable OTP Factors may be allocated to the Company; and (c) if the Operations Availability Noncompliance Event continues beyond the time period under clause (b) above, a new Operations Availability Noncompliance Event will be deemed to start on the day after expiry of such time period and the Operations Availability Noncompliance Event will be subject to a new Grace Period and OTP Factor reductions in accordance with clause (a) and clause (b) above until the Operations Availability Noncompliance Event ceases to be directly attributable to the Grace Period Event.

The Company will not be entitled to a waiver or reduction of OTP Factors if the Company fails to take appropriate action to rectify the Operations Availability Noncompliance Event and restore Normal Service as quickly as possible and, if applicable, within the times and in the manner stipulated in the
approved Operating Plan, the approved Alternate Service Plan and the requirements of Part 3, Section 3.2 of the Technical Provisions.

With respect to events covered by business interruption insurance required under the P3 Agreement or otherwise obtained by the Company, the waiver or reduction of OTP Factors and the benefit of the 48-hour Grace Period will apply only during the waiting period under said insurance and during any period after the limits of such policy are exhausted.

Neither Party will be excused from timely payment of monetary obligations under the P3 Agreement based on the occurrence of a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption.

Concessionaire Default

Concessionaire Defaults include the following, among others:

(a) Subject to excused obligation provisions, the Company fails to achieve Financial Close by the Financial Close Deadline, as such definition is amended pursuant to the Amended and Restated Concessionaire FC Notice to June 18, 2016;

(b) The Company fails to commence Work promptly following Financial Close or to diligently prosecute the Work to completion in accordance with the Contract Documents;

(c) The Company abandons all or a material part of the Purple Line;

(d) The Company fails to achieve (i) Revenue Service Availability by the Long Stop Date, or (ii) Final Completion by the Final Completion Deadline;

(e) The Company (i) fails to make any payment owing to the Contracting Authority under the Contract Documents when due, (ii) fails to collect, deposit and account for fare revenues as required by the Contract Documents, or (iii) fails to deposit other funds into any custodial account, trust account or other reserve or account as required by the Contract Documents;

(f) Any representation or warranty in the Contract Documents, or the Company’s Statement of Qualification (which representations and warranties of the Company are incorporated into the Proposal explicitly or by reference) made by the Company is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or any certificate, schedule, report, instrument or other document delivered by or on behalf of the Company to the Contracting Authority under the Contract Documents is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(g) Subject to insurance unavailability provisions, the Company fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of relevant parties, or the Company fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;

(h) (i) The Company makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Contract Documents, the Project or the Company’s Interest in violation of the limitations on assignment or transfer under the P3 Agreement, (ii) there occurs an Equity Transfer or a Change of Ownership not permitted
under the P3 Agreement, or (iii) any other violation of the limitations on assignment or transfer under the P3 Agreement occurs;

(i) Unless excused due to occurrence of a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, the Company fails to timely observe or perform, or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the Company under the Contract Documents, including failure to pay for or perform the Design Work, Construction Work, O&M Work or any portion thereof in accordance with the Contract Documents, provided that any failure to provide Option LRVs by the applicable deadline and any failure that constitutes a Noncompliance Event or Activity Noncompliance Occurrence is not considered a default under this paragraph (i) although such failure may become an Event of Default;

(j) Unless continued performance of the P3 Agreement is permitted under the terms of a debarment agreement with the State, and after any rights of appeal have been exhausted, if the Company, any Equity Member, any Controlling Affiliate of the Company, any Prime Contractor or LRV Supplier (i) is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a State department or agency or (ii) has not dismissed any Subcontractor whose work is not substantially complete and who is determined disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal or a State department or agency;

(k) If a Remedial Plan is required, (i) the Company fails to timely deliver to the Contracting Authority a Remedial Plan meeting the requirements of said section or (ii) the Company fails to fully comply with the schedule or specific elements of, or actions required under, the approved Remedial Plan;

(l) The Company fails to comply with the Contracting Authority’s order to suspend Work within the time reasonably allowed in such order;

(m) The Company commences a voluntary case seeking liquidation, reorganization or other relief with respect to the Company or the Company’s debts under any U.S. or foreign bankruptcy, insolvency or other similar Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(n) An involuntary case is commenced against the Company seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to such the Company or the Company’s debts under any U.S. or foreign bankruptcy, insolvency or other similar Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case will not be contested by it in good faith or will remain undischested and unstayed for a period of 60 days;

(o) In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to the Company or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law, the P3 Agreement or any of the other Contract Documents, is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;
Any voluntary or involuntary case or other act or event described in clause (m) or (n) will occur (and in the case of an involuntary case will not be contested in good faith or will remain undismissed and unstayed for a period of 60 days) with respect to (i) any Equity Member, partner or joint venture member of the Company (unless said Person has fully met all financial obligations owing to the Company in the form of a Committed Investment and payments or transfers of money or property previously made to or for the benefit of the Company are not subject to Sections 544, 547, 548, or 550 of the Bankruptcy Code or any similar applicable state or federal law respecting the avoidance or recovery of preferences or fraudulent transfers, including any applicable enactment of the Uniform Fraudulent Transfer Act), (ii) any Equity Member, partner or joint venture member of the Company for whom transfer of ownership or management authority would constitute a Change of Ownership, or (iii) any Guarantor of material Company obligations to the Contracting Authority under the Contract Documents, unless another Guarantor of the same material Company obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty;

The Company draws against any custodial account, trust account, allowance or other reserve or account in violation of the Contract Documents or makes a false or materially misleading representation in connection with a draw against any such account, allowance or reserve;

The Company fails to comply with any applicable Governmental Approval or Law;

Any use of the Purple Line that violates requirements of applicable Governmental Approvals or Laws or otherwise is not permitted under the Contract Documents;

The Company receives a total of 14,640 or more Noncompliance Points over the course of three consecutive Payment Periods (determined on a rolling basis);

The Company receives a total of 24,240 or more Noncompliance Points over the course of six consecutive Payment Periods (determined on a rolling basis); or

The Company receives a total of 33,720 or more Noncompliance Points over the course of 12 consecutive Payment Periods (determined on a rolling basis).

Cure Period and Remedies

Section 17.1.2 of the P3 Agreement provides the Company with certain rights to receive notice and opportunity to cure before the Contracting Authority may exercise its right to terminate the P3 Agreement. The Contracting Authority remedies in the event of a Concessionaire Default include, among others: termination of the P3 Agreement, as described below; immediate Contracting Authority entry to cure wrongful use; step-in rights; any and all damages available at law; right to make demand upon, drawn on and enforce and collect performance security; and suspension of the Work. Certain of the Contracting Authority’s remedies with respect to Concessionaire Defaults are subject to the rights of the Collateral Agent under the P3 Direct Agreement.

Owner Step-In Rights

Subject to the terms of any Direct Agreement, if the Company has not fully and completely cured a Concessionaire Default by the expiration of any cure period, Owner may pay and perform all or any portion of the Company’s obligations (a) under the Contract Documents that are the subject of such Concessionaire Default and (b) under any other then-existing breaches or failures to perform for which Concessionaire received prior notice from Owner but has not commenced or does not continue diligent efforts to cure.
Owner may, to the extent reasonably required for or incident to curing Concessionaire Default or such other breaches or failures to perform: (a) perform or attempt to perform, or caused to be performed, such Work; (b) employ security guards and other safeguards to protect the Purple Line; (c) spend such sums as Owner deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such Work, without obligation or liability to the Company or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment; (d) in accordance with provisions regarding Performance Security, draw on and use proceeds from the Performance Security and any other available security or source of funds available to the Company for the purposes set forth in this paragraph including amounts held in an operating account, to the extent such instruments provide recourse to pay such sums, provided Owner’s right to access amounts held in an operating account will not include a security interest in such funds nor will the exercise of such right by Owner interfere with the right of the Lenders, if any, under the Security Documents and the Direct Agreement to access such funds; (e) execute all applications, certificates and other documents as may be required; (f) make decisions respecting, assume control over and continue Work as may be reasonably required; (g) modify or terminate any contractual arrangements in Concessionaire’s Contracts in Owner’s discretion, without liability for termination fees, costs or other charges in accordance with the terms of those Contracts, including certain requirements for each Contract; (h) meet with, coordinate with, direct and instruct Contractors and Suppliers, process invoices and applications for payment from Contractors and Suppliers, pay Contractors and Suppliers, and resolve claims of Contractors, Subcontractors and suppliers; (i) take any and all other actions it may consider necessary to effect cure and perform the Work; and (j) prosecute and defend any action or proceeding incident to the Work. The Company will reimburse Owner on demand for its Recoverable Costs incurred in connection with the performance of any act or Work authorized by this paragraph.

In addition to its continuing ownership of the Project ROW and rights to have access to the Site throughout the Term, including certain rights regarding coordination and cooperation with Owner, Third Parties and adjacent property owners, among others. Owner and its Authorized Representatives, contractors, subcontractors, vendors and employees will have the right to enter onto all Project-Specific Locations, exercisable at any time or times without notice, for the purpose of carrying out Owner's step-in rights under the preceding paragraph and this paragraph. The Company grants Owner a perpetual, non-rescindable right of entry onto the Project-Specific Locations for such purpose.

If Owner exercises any right to pay or perform under this section, it nevertheless will have no liability to the Company for the sufficiency, adequacy or quality of any such payment or performance, or for any effect of such payment or performance on the Work or the Project, unless caused by the gross negligence, recklessness or willful misconduct of Owner. Owner and its Authorized Representatives, contractors, subcontractors, vendors and employees will have no liability to the Company for any inconvenience or disturbance arising out of any entry onto the Site or Project-Specific Locations as contemplated by provisions of this section or for provisions regarding an immediate Owner entry to cure, provided that the foregoing will not absolve any Person of liability as a matter of law for its gross negligence, recklessness or willful misconduct.

Owner’s rights under this section are subject to the right of any Surety to assume performance and completion of all bonded work under a performance bond issued as Performance Security.

In the case of a Concessionaire Default which would either then or, following the applicable grace period or the giving of notice or both, constitute a Default Termination Event enabling Owner to terminate or suspend its obligations under the P3 Agreement, Owner’s rights under this section are subject to Lender rights to cure under any Direct Agreement between Owner and such Lender. Subject to the terms of the Direct Agreement, Owner may nevertheless continue exercise of its step-in rights until, under the terms of any such Direct Agreement then in effect, the Lender obtains possession and control and notifies Owner that it stands ready to commence good faith, diligent curative action. In the case of any other Concessionaire Default, Owner’s rights under this section are subject to the exercise of step-in rights or other cure rights (not involving step-in) by the Collateral Agent under the Direct Agreement (pursuant to senior Security Documents, which includes liens securing the TIFIA Loan), provided that the Collateral Agent (a) delivers to Owner notice of the Collateral Agent’s decision to exercise step-in rights, and
commences the good faith, diligent exercise of such step-in rights, within the applicable cure period, and (b) continues such good faith, diligent exercise of remedies until Concessionaire Default is fully and completely cured, in each case, subject to Collateral Agent’s decision to cure in lieu of stepping in with respect to certain Concessionaire Defaults, under the terms and subject to the conditions of the Direct Agreement.

If Owner takes action described in this section and it is later finally determined that Owner lacked the right to do so because there did not occur a Concessionaire Default or because the Company had previously fully cured the default in accordance with the P3 Agreement, then Owner’s action will be treated as an Owner Change.

This section also applies in the event that the Company is assessed (a) 3,600 Noncompliance Points for Operations Availability Noncompliance Events in any one Payment Period, or (b) 1920 Noncompliance Points for Activity Noncompliance Events in any one Payment Period, or (c) a combination of 7,200 Noncompliance Points for any Noncompliance Events over the course of three consecutive Payment Periods (determined on a rolling basis). In any such event, the term “cure” as used in this section will be construed to include “response” and “rectification” and the term “cure period” will be construed to include “Response Time” and “Rectification Time”.

**Termination of the P3 Agreement**

**Termination for Convenience**

The Contracting Authority may terminate the P3 Agreement in whole, but not in part, if the Contracting Authority determines, in its discretion, that termination is in the Contracting Authority’s best interest (a “Termination for Convenience”). Termination of the P3 Agreement will not relieve the Company or any Guarantor or Surety of its obligation for any claims arising before termination.

In the event of a Termination for Convenience, the Company will be entitled to compensation. The Contracting Authority will pay compensation to the Company (or to the Collateral Agent or the Company’s Lenders, as applicable), in an amount equal to (a) the Project Debt Termination Amount (as further described below under “—Termination Compensation for Termination for Extended Delay, Insurance Unavailability or Court Ruling”) plus the Termination for Convenience Amount plus Contract Termination Costs, less (b) available Credit Balances and Insurance Proceeds, to the extent not already taken account in calculating any of the amounts included in item (a).

The Termination for Convenience Amount will be calculated as the net present value of the anticipated future nominal Distributions (Post-Tax on the part of the Company but pre-tax on the part of the Equity Members) from drawn share capital and payments on any Subordinate Debt as of the Early Termination Date based on an appraisal by an independent third party expert appraiser that is nationally recognized for the conduct of valuation exercises. The appraisal will be provided within 90 days of the appointment by both Parties of such independent appraiser (provided that if the Parties fail to agree on the identity of such independent appraiser and fail to complete such appointment by the 15th business day following the Termination Date, either Party may request the financial DRB to select and appoint such independent appraiser within 15 business days of such request). For purposes of the calculation of such net present value, the Parties will instruct the independent appraiser to:

(a) utilize a discount rate that is based on both (i) the performance of the Purple Line and projects in the United States of America employing a similar approach to risk allocation (including credit risk) and a similar payment mechanism (including the absence of any transfer of usage risk to the Company) and (ii) the assumption that no event has occurred for which Termination Compensation is payable and the equity interests of the Equity Members of the Company are freely transferable and are being sold in the open market; and
(b) estimate the anticipated future nominal Distributions based on the performance of the Purple Line up to the Early Termination Date employing an approach that considers the most recent Financial Model Update and making any adjustments for positive or negative operating performance that is not yet reflected in the Financial Model Update.

The determination of the independent appraiser will, except in the case of manifest error or fraud, be final unless either Party challenges such determination within 30 days of the date of the determination by submission to the financial DRB. If such a challenge is filed, the amount will be determined in accordance with the Dispute Resolution Procedures.

The Project Debt Termination Amount included in the Termination Compensation will be due and payable by the Contracting Authority within 90 days after the Company (or Collateral Agent or the Company’s Lenders, as applicable) provides the Contracting Authority with a written statement as to the Project Debt Termination Amount and accounts held by the Company (or Collateral Agent or the Company’s Lenders, as applicable), with documentation reasonably required by and acceptable to the Contracting Authority supporting such statement.

The remaining amount owing will be due and payable by the Contracting Authority within 60 days after the Contracting Authority determines the amount payable. The Company will provide the Contracting Authority with a written settlement proposal identifying all amounts relevant to calculation of Termination Compensation not covered under the Termination for Convenience Amount, accompanied by (a) a certification signed by the Company’s Authorized Representative stating that such amounts are owing under the terms of the P3 Agreement and (b) a certification signed by the independent appraiser stating the net present value of the anticipated future nominal distributions and (c) back-up documentation, including the report of the independent appraiser that describes the basis for their recommendation, supporting the request as reasonably required by and acceptable to the Contracting Authority. The Contracting Authority will promptly review all such information and determine the amount owing.

**Termination for Extended Delay**

Either Party, following consultation with the other Party, may deliver to the other Party notice of its conditional election to terminate the P3 Agreement if an Extended Delay has occurred and is continuing.

If the Contracting Authority gives notice of conditional election to terminate for Extended Delay, then the Company will either accept such notice or give notice to the Contracting Authority to continue performing its obligations under the P3 Agreement and without limiting any of the Contracting Authority’s other rights under the P3 Agreement. The Company will deliver to the Contracting Authority notice of the Company’s choice within 30 days after its receipt of notice from the Contracting Authority. The Company may also dispute the Contracting Authority’s right to terminate, in which case the notice will state that the Company elects to continue to perform its obligations under the P3 Agreement pending resolution of the Dispute subject to the provisions described below. If the Company does not deliver such notice within such 30-day period, then the Company will be deemed to have accepted the Contracting Authority’s election to terminate the P3 Agreement.

If the Company delivers timely notice (1) choosing to continue performing its obligations under the P3 Agreement following receipt of a conditional election to terminate for an Extended Delay, without disputing the Contracting Authority’s right to terminate or (2) disputing the Contracting Authority’s right to terminate, then:

(a) The Contracting Authority will have no obligation to compensate the Company for any costs of restoration, repair or replacement arising out of, relating to or resulting from the Extended Delay;

(b) The Contracting Authority will have no obligation to compensate the Company for any loss of Availability Payments and/or, if applicable, for any other Incremental Costs or Delay Costs
arising out of, relating to or resulting from the continuation of the Extended Delay beyond the date of the Contracting Authority’s notice;

(c) If the Extended Delay commences before the Revenue Service Availability Date and results in a delay to the Critical Path, then the provisions of the P3 Agreement concerning time extensions and payment of Delay Interest for delays due to Force Majeure Events will apply; and

(d) The P3 Agreement will continue in full force and effect and the Contracting Authority’s election to terminate for an Extended Delay will not take effect.

If the Company gives notice of conditional election to terminate, then the Contracting Authority may either accept such notice or continue the P3 Agreement in effect by delivering to the Company notice of the Contracting Authority’s choice within 30 days after the Company delivers its notice. If the Contracting Authority wishes to dispute the Company’s right to terminate, then it will include in its notice both the Contracting Authority’s choice and a notice of dispute, in which case the Contracting Authority’s choice will be contingent upon resolution of the Dispute in favor of the Company. If the Contracting Authority does not deliver such notice within such 30-day period, then it will be deemed to have accepted the Company’s election to terminate the P3 Agreement.

If the Contracting Authority delivers timely notice choosing to continue the P3 Agreement in effect, then the following provisions will apply:

(a) For an Extended Delay for an Extended DB Force Majeure Event or Extended OM Force Majeure Event that has resulted in damage or loss to a material portion of the Purple Line that the Contracting Authority has determined is not in the public interest to repair or replace, the Contracting Authority will pay or reimburse the Company an amount equal to (without double counting):

(i) The Incremental Costs to repair, restore or replace any physical loss or damage to the Project and Delay Costs, if any, directly caused by the Extended Delay which are not excluded under the provisions for Compensation for Relief Events in General and are incurred after the date the Company delivers its notice of conditional election to terminate; plus

(ii) The sum of (A) the greater of (x) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried and provides coverage to pay, reimburse or provide for any of the foregoing costs and losses or (y) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring the Company under policies solely with respect to the Purple Line and the Work, regardless of whether required to be carried, and that provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, and (B) the foregoing costs and losses that the Company is deemed to have self-insured.

(b) The Company’s rights to an extension of time, compensation, excuse from compliance and other relief under Contracting Authority Changes and Relief Events will continue to apply with respect to the Extended Delay.

(c) The P3 Agreement will continue in full force and effect and the Company’s election to terminate for an Extended Delay will not take effect.

If any Extended Delay results in 365 or more days of Critical Path delay, either Party may deliver to the other Party a notice of its unconditional election to terminate the P3 Agreement, in which case neither Party will have any further option to continue the P3 Agreement in effect. If the Company previously provided a notice of conditional election to terminate for Extended Delay and the Contracting Authority opted to continue the P3 Agreement in effect, the Company’s right to issue a notice of
unconditional election to terminate will not accrue unless and until an additional 365 days of Extended Delays have accumulated after the date of the Company’s notice of conditional election to terminate.

If a Termination Due to Extended Delay occurs, the Company will be entitled to compensation as described below.

**Termination for Insurance Unavailability**

If it becomes apparent that insurance required under the Contract Documents is not available as described in the definition of “Insurance Unavailability”, the Contracting Authority may deliver to the Company notice of its conditional election to terminate the P3 Agreement for Insurance Unavailability.

If the Contracting Authority gives notice of conditional election to terminate for Insurance Unavailability, then the Company will either accept such notice or give notice to the Contracting Authority to continue performing its obligations under the P3 Agreement and without limiting any of the Contracting Authority’s other rights under P3 Agreement. The Company will deliver to the Contracting Authority notice of the Company’s choice within 30 days after its receipt of notice from the Contracting Authority. The Company may also dispute the Contracting Authority’s right to terminate, in which case the notice will state that the Company elects to continue to perform its obligations under the P3 Agreement pending resolution of the Dispute subject to the provisions described below. If the Company does not deliver such notice within such 30-day period, then the Company will be deemed to have accepted the Contracting Authority’s election to terminate the P3 Agreement.

If the Company delivers timely notice (1) choosing to continue performing its obligations under the P3 Agreement following receipt of a conditional election to terminate for Insurance Unavailability, without disputing the Contracting Authority’s right to terminate or (2) disputing the Contracting Authority’s right to terminate, then:

(a) The Contracting Authority will have no liability to any Concessionaire-Related Entity, Collateral Agent or Lender for harm or loss from the risks that are the subject of Insurance Unavailability;

(b) The Company may request that the Contracting Authority reimburse the Company up to the full amount of insurance coverage that the Company would have been obligated to carry had such coverage been commercially available, and on the terms, and subject to the conditions, of such insurance coverage except to the extent caused by the fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the Contract Documents of or by any Concessionaire-Related Entity, Collateral Agent or Lender;

(c) The Company will credit to the Contracting Authority, as part of the insurance adjustment to the Payment Mechanism, all insurance premiums reflected in the most recent Financial Model Update that are the subject of, and during the period of, Insurance Unavailability.

(d) The Company will promptly and diligently repair and restore all damage and destruction to the Purple Line arising out of, relating to or resulting from Losses born of risks that are not covered by insurance due to Insurance Unavailability, in order to put the Purple Line in a safe, good and sound condition in compliance with all applicable requirements of the Contract Documents; and

(e) The P3 Agreement will continue in full force and effect and the Contracting Authority’s election to terminate on the basis of Insurance Unavailability will not take effect.

If the Contracting Authority delivers to the Company notice of its conditional election to terminate P3 Agreement for Insurance Unavailability, and if the Company delivers timely notice choosing to continue to perform its obligations under the P3 Agreement, and if during the period of such Insurance
Unavailability (during which the Contracting Authority is the insurer of last resort), the Purple Line suffers a Loss for which the Insurance Policy that was the subject of the Insurance Unavailability would have been in place, but for the Insurance Unavailability, and such Loss (or a reasonable estimate of such Loss, determined by the Contracting Authority) exceeds $50,000,000, then the Contracting Authority will have the unconditional right to terminate the P3 Agreement for Insurance Unavailability by notice to the Company. Compensation for such termination will be in an amount equal to the Project Debt Termination Amount, described below.

**Termination Due to Court Ruling**

If grounds for Termination Due to Court Ruling exist, either Party has the right to terminate. Termination Due to Court Ruling means either:

(a) Inability of the Parties to reach agreement regarding modifications to the Contract Documents to return the Parties to the benefits of their original bargain following a court ruling holding that any material provision of the Contract Documents is unenforceable or invalid; or

(b) Issuance of a final, non-appealable order by a court of competent jurisdiction (i) permanently enjoining or prohibiting performance or completion of the Construction Work for a material portion of the Purple Line, except where such injunction or prohibition is attributable to the Company’s acts, omissions, negligence, willful misconduct, fraud, breach of an obligation under the Contract Documents or violation of Law or an applicable Governmental Approval, or (ii) requiring the Contracting Authority, on its own or in concert with FTA, to undertake additional or supplemental evaluations, studies or other work under Environmental Approvals that, in the Contracting Authority’s discretion, is impracticable in light of the purpose and intent of the P3 Agreement.

Any Party that wishes to terminate will consult with the other before delivering a termination notice. Any notice of Termination Due to Court Ruling will be effective 10 business days after delivery unless (a) a later date is specified in the notice, (b) the notice is withdrawn or (c) within said 10-day period the other Party delivers an objection to the first Party contesting the first Party’s right to terminate. Any disagreement regarding the right to terminate will be resolved under the Dispute Resolution Procedures.

If a Termination Due to Court Ruling occurs, the Company will be entitled to compensation as described below.

**Termination Compensation for Termination for Extended Delay, Insurance Unavailability or Court Ruling**

If either Party accepts the other Party’s conditional election to terminate, or if either Party delivers notice of its unconditional election to terminate, then the P3 Agreement will be deemed terminated on an Early Termination Date; and the Company will be entitled to compensation. If the P3 Agreement is terminated for Extended Delay, Insurance Unavailability or a Court Ruling, the Contracting Authority will pay compensation to the Company (or to Collateral Agent or the Company’s Lenders, as applicable) in an amount equal to (a) the Project Debt Termination Amount plus the Outstanding Committed Investment plus Contract Termination Costs, less (b) available Credit Balances and Insurance Proceeds, to the extent not already taken account in calculating any of the amounts included in item (a).

Project Debt Termination Amount means A plus B minus the sum of C, D and E, where:

A = All outstanding principal (including principal resulting from the capitalization of interest during the Design-Build Period) of the Project Debt other than Subordinate Debt and accrued but unpaid interest on Project Debt other than Subordinate Debt;
B = All Breakage Costs payable by the Company as a result of prepayment of the outstanding amounts of such Project Debt, subject to the obligation of the Company and each of the Lenders to take reasonable steps to mitigate damages included in the amounts payable;

C = Any amounts payable to or for the benefit of the Company resulting from prepayment of outstanding Project Debt (including credits payable to the Company under swap agreements), unless already accounted for in B;

D = The sum of any amounts included in A or B that did not accumulate as a result of a Contracting Authority Default and that are based on or include (i) accrued interest that the Company failed to pay when due, including any such interest that has been added to principal, or (ii) increased rates of interest based on a default, late charges and penalties, including any such items added to principal; and

E = Any portion of Availability Payments previously made by the Contracting Authority intended to be used to pay Project Debt but not yet applied for that purpose.

Termination for Concessionaire Default

Any Concessionaire Default except for failure to achieve Financial Close by the Financial Close Deadline would result in material and substantial harm to the Contracting Authority’s rights and interests under the P3 Agreement and therefore constitutes a material Concessionaire Default justifying termination of the P3 Agreement, unless fully and completely cured within the applicable cure period, any extended cure period available to a Lender under a Direct Agreement. A Concessionaire Default will be considered a “Default Termination Event” if not fully and completely cured prior to expiration of the relevant cure period (if any), or immediately if the Concessionaire Default is not subject to cure.

A Default Termination Event will, subject to the provisions of the Direct Agreement and provisions regarding the breach by the Company and the Contracting Authority of representation or warranties in Contract Documents or Contracting Authority Default, entitle the Contracting Authority, at its sole election, to terminate the P3 Agreement and the other Contract Documents by delivering notice of termination to (a) the Company and (b) if applicable, the Collateral Agent under the Direct Agreement.

If the Contracting Authority issues notice of termination of the P3 Agreement due to a Default Termination Event, or if the Company terminates the P3 Agreement on grounds or in circumstances beyond the Company’s termination rights under the P3 Agreement, the Company will be entitled to compensation as described below.

Termination Compensation for Concessionaire Default During Design-Build Period

If the P3 Agreement is terminated before the Revenue Service Availability Date, and no Lender has duly exercised and consummated an option to obtain New Agreements from the Contracting Authority under any Direct Agreement, then the Contracting Authority will pay compensation to the Company (or to Collateral Agent or the Company’s Lenders, as applicable). The Contracting Authority may determine the amount payable using the Market Re-Solicitation Method if a Liquid Market exists and otherwise will use the Desktop Method described below to make such determination.

If the Contracting Authority elects to remarket the P3 Agreement, it will follow the Resolicitation Process, determine the Adjusted Resolicited Agreement Price and notify the Company regarding the amount. If the Adjusted Resolicited Agreement Price is a positive amount, the Termination Compensation will be equal to the Adjusted Resolicited Agreement Price. In such event, the Contracting Authority will coordinate with the Company to determine compensation owing to the Company, with the goal of incorporating such compensation into the closing for the resolicited agreement. If the Parties are unable to reach agreement prior to such closing regarding any amounts payable at closing, closing will proceed and the disputed amount(s) will be subject to the Dispute Resolution Procedures and, upon closing, held in
escrow pending resolution of the Dispute. If the Adjusted Resolicited Agreement Price is zero or is a negative amount, then the Contracting Authority will have no obligation to make any payment to the Company. If the Adjusted Resolicited Agreement Price is a negative amount, then the Company will, within 30 days after receipt of an invoice from the Contracting Authority, pay to the Contracting Authority the dollar amount equal to the absolute value of the negative amount.

The amount payable to the Company will be determined using a desktop method if the Contracting Authority elects not to remarket the P3 Agreement or if, after seeking to remarket the P3 Agreement, the Contracting Authority (a) does not receive any Qualifying Proposals for the P3 Agreement or, even though the Contracting Authority has received at least one Qualifying Proposal, it cannot come to terms with a selected counterparty so as to enter into a Resolicited Agreement or (b) the selected counterparty otherwise fails or refuses to enter into a Resolicited Agreement. In such event the Contracting Authority will promptly notify the Company that Termination Compensation will be determined based on a Desktop Method and will proceed to determine the Estimated Fair Value of the P3 Agreement as described below. The Company is responsible for providing data to the Contracting Authority to enable the calculation to be made, including backup information and certifications from the Company (or from Collateral Agent or the Company’s Lenders, as applicable) and Collateral Agent stating that the data and information provided is complete and accurate. Within 60 days after receipt of all necessary data, the Contracting Authority will complete the calculation and will notify the Company in writing of the Adjusted Estimated Fair Value owing, with backup information regarding the calculation. If the transition plan developed requires the Company to perform Work during the period between the Termination Date and the Termination Compensation Date, the Contracting Authority will pay to the Company the Post-Termination Services Amount on a monthly basis in arrears until (i) the Contracting Authority directs the Company to stop Work or (ii) if no such direction is provided, completion of all remaining Work required to be performed by the Company under the transition plan. Within 90 days after the date of delivery of the notice the Contracting Authority will pay the Adjusted Estimated Fair Value.

The Adjusted Estimated Fair Value will be the least of the following:

(a) the Adjusted Estimated Fair Value calculated by using an Estimated Fair Value that is equal to the Project Adjusted Costs;

(b) the Adjusted Estimated Fair Value calculated by using an Estimated Fair Value that is equal to the costs shown in the Company’s Work Breakdown Structure, multiplied by the percentage of completion minus the sum of Progress Payments, the RSA Payment, the Final Completion Payment and any unscheduled payments (including those related to Relief Events and Change Orders) previously paid for Work made by the Contracting Authority to the Company; and

(c) 80% of the Project Debt Termination Amount.

Termination Compensation for Concessionaire Default During O&M Period

If a termination occurs for Concessionaire Default on or after the Revenue Service Availability Date, and no Lender has duly exercised and consummated an option to obtain New Agreements from the Contracting Authority pursuant to the Direct Agreement, then the Contracting Authority will pay compensation to the Company (or to Collateral Agent or the Company’s Lenders, as applicable). the Contracting Authority may determine the amount payable using the Market Re-Solicitation Method if a Liquid Market exists and otherwise will use the Desktop Method described below to make such determination.

If the Contracting Authority elects to use the Market Re-Solicitation Method, then Termination Compensation will be determined and will be due and payable as stated above for compensation during the Design-Build Period.
If the Contracting Authority elects to use the Desktop Method, then Termination Compensation will be determined and will be due and payable as stated above for compensation during the Design-Build Period, except that the Adjusted Estimated Fair Value will be the lesser of:

(a) Adjusted Estimated Fair Value calculated by using an Estimated Fair Value that is equal to the Project Adjusted Costs plus the sum of capitalized interest during the Design-Build Period minus (i) the total Project Debt principal repaid on the portion of Project Adjusted Costs funded with Project Debt (excluding principal repayments on the portion of the Project Debt that is repaid from the RSA Payment or the Final Completion Payment); minus (ii) the value of the Project Adjusted Costs funded with Committed Investment determined using a straight line amortization schedule over 30 years commencing on the RSA Date; and

(b) 80% of the Project Debt Termination Amount.

Notwithstanding anything to the contrary in the Contract Documents, termination of the P3 Agreement will not give rise to Termination Compensation if any Lender enters into New Agreements from the Contracting Authority pursuant to Section 13 of the Direct Agreement.

Termination Compensation for Terminations Due to Noncompliance with Sanctions, Sanctions Upon Proper Acts or Federal Disbarment

The Contracting Authority will pay compensation only if (a) the Contracting Authority terminates the P3 Agreement for noncompliance with sanctions or for sanctions upon improper acts, or, for unsecured Concessionaire Defaults relating solely to federal debarment, following expiration of applicable cure periods, (b) neither Collateral Agent nor any Lender participated in, or had knowledge of, the event giving rise to the termination, (c) Collateral Agent and each Lender certifies in writing to the Contracting Authority that it did not participate in or have knowledge of such event, (d) no Lender has duly exercised and consummated an option to obtain New Agreements from the Contracting Authority under the Direct Agreement, and (e) the Company has duly pledged the right to receive such compensation to Collateral Agent or the Company’s Lender(s), as applicable. Compensation will be payable directly to the Collateral Agent or Lender(s). The termination compensation payable will be in an amount equal to the Project Debt Termination Amount less available Credit Balances and Insurance Proceeds, to the extent not already taken account in calculating the Project Debt Termination Amount.

If the transition plan developed requires the Company to perform Work during the period between the Termination Date and the Termination Compensation Date, then, in addition, the Contracting Authority will pay to the Company the Post-Termination Services Amount on a monthly basis in arrears until (i) the Contracting Authority directs the Company to stop Work or (ii) if no such direction is provided, completion of all remaining Work required to be performed by the Company under the transition plan. Any payment of compensation owing will be made within 30 days after receipt of a proper invoice submitted to the Contracting Authority, with certification of the amount claimed in the invoice, and backup information regarding costs as reasonably requested by the Contracting Authority. Such invoice may not be submitted until one business day after termination occurs. If the Contracting Authority terminates the P3 Agreement for noncompliance with sanctions or sanctions upon improper acts, and either the Collateral Agent or any Lender fails to comply with the conditions in Section 13.1(c) of the Direct Agreement, then Termination Compensation will be determined under the methods for calculating termination compensation during the Design-Build Period and O&M Period, as applicable.

If the Contracting Authority issues notice of termination of the P3 Agreement due to a Default Termination Event, termination will be effective and final regardless of whether the Contracting Authority is correct in determining that it has the right to terminate for Concessionaire Default. If it is determined that the Contracting Authority lacked such right, then such termination will be treated as a Termination for Convenience for the purpose of determining the Termination Compensation due.
**Company Rights to Terminate**

The Company may terminate the P3 Agreement in the event of a Contracting Authority Default involving an undisputed payment of $1 million or more if the Contracting Authority has failed to cure such default following delivery of certain warning notices. The Company will provide a warning notice to the Contracting Authority at least 15 days before terminating, which notice may not be delivered until 30 days after delivery of the notice for Contracting Authority Default. The Company will provide a second warning notice to the Contracting Authority at least five days before terminating, which notice may not be delivered until 10 days after delivery of the first warning notice. If the Contracting Authority fails to effect cure within five days after the date of delivery of the second warning notice, the Company will have the right to terminate the P3 Agreement by delivery of notice to that effect to the Contracting Authority delivered at any time before the default is cured.

If any order to suspend all or a material portion of the Work is issued (or deemed issued) by the Contracting Authority for its convenience and continues for a period of 270 days or more, the Company may terminate the P3 Agreement, effective immediately upon delivery of notice of termination to the Contracting Authority delivered at any time before the suspension is lifted.

If the Company’s Financial Proposal includes a TIFIA Loan, and (a) USDOT requires execution of the “New Starts Full Funding Grant Agreement” as a requirement for draw on such TIFIA Loan, (b) the Contracting Authority fails to execute the “New Starts Full Funding Grant Agreement” prior to May 17, 2018, and (c) the Contracting Authority and the Company have not agreed, in writing, and subject to any approval rights of Lenders then holding Project Debt (other than the TIFIA Loan), upon alternative arrangements with respect to the “New Starts Grant Agreement” prior to April 2, 2018, then the Company may terminate the P3 Agreement, effective immediately upon the Contracting Authority’s receipt of the Company’s notice of termination delivered at any time on or after such date.

In the event of a Company termination, the Company will be entitled to compensation due and payable and determined in accordance with the calculation described above for Termination for Convenience. Any Dispute arising out of the determination of such compensation will be resolved under the Dispute Resolution Procedures.

The Company may not terminate the P3 Agreement for a Contracting Authority Default involving an undisputed payment of $1 million or more if, at the time the Company’s right to terminate would arise, circumstances exist entitling either Party to terminate for Extended Delay, Insurance Unavailability, Concessionaire Default, Court Ruling or if Financial Close fails to occur.

**Termination if Financial Close Fails to Occur**

The Company or the Contracting Authority may terminate the P3 Agreement without fault or penalty if Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable to any of the following contingencies:

(a) If the Company’s Financial Proposal includes PABs, the withdrawal, rescission or reduction by either USDOT or PABs Issuer of the principal amount of the PABs allocation obtained by the Contracting Authority before the Proposal Date below the principal amount of PABs as shown in the Company’s Financial Proposal and the Financial Model, due to no negligence, recklessness, willful misconduct, fault, breach of contract, fraud, or breach by any of Concessionaire-Related Entities of the requirements of the Contract Documents, or violation of Law or a Governmental Approval by any Concessionaire-Related Entity relating to such allocation;

(b) If the Company’s Financial Proposal includes PABs, the refusal or unreasonable delay of the PABs Issuer to comply with the PABs Issuer’s obligations set forth in Article 1 of the PABs Issuer MOU and to issue bonds in the amount identified by the Company’s underwriters in the
Initial Funding Agreements, provided that such refusal or delay is not due to any negligence, recklessness, willful misconduct, fault, breach of contract, fraud or breach by any of Concessionaire-Related Entities of the requirements of the Contract Documents, or violation of Law or a Governmental Approval by any Concessionaire-Related Entity, including the Company’s failure to comply with all obligations and requirements that it is obligated to comply with under Article 1 of the PABs Issuer MOU. Delay by the PABs Issuer will not be considered unreasonable if the Company’s financing schedule fails to provide normal and customary time periods for the PABs Issuer to carry out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds;

(c) If the Company’s Financial Proposal includes PABs:

(i) the refusal of counsel to the PABs Issuer to allow closing of the PABs if the bond counsel is ready to give an unqualified opinion regarding both the validity of the issuance of the PABs and the tax exempt status of interest paid on the PABs, unless the basis for such refusal is that it would be unreasonable for bond counsel to deliver the opinion; or

(ii) the delay of the PABs Issuer’s counsel in authorizing closing of the PABs beyond the date specified in the Concessionaire FC Notice (or the Contracting Authority FC Notice, if applicable), except to the extent that the financing schedule established by the Company does not provide the PABs Issuer’s counsel normal and customary time periods for carrying out the ordinary and necessary functions of such counsel to a conduit issuer of tax-exempt bonds;

(d) If the Company’s Financial Proposal includes PABs, the Contracting Authority fails to timely provide both (i) a certificate regarding PABs Official Statement and (ii) an executed Continuing Disclosure Agreement;

(e) If the Company’s Financial Proposal includes a TIFIA Loan, either (i) a TIFIA Event occurs, or (ii) in the opinion of the Contracting Authority following consultation with the Company a TIFIA Event is likely to occur;

(f) If the Company’s Financial Proposal includes a TIFIA Loan, the Contracting Authority fails to (i) execute the “New Starts Full Funding Grant Agreement” and USDOT requires execution of the “New Starts Full Funding Grant Agreement” as a requirement for Financial Close on such TIFIA Loan, (ii) provide evidence to USDOT of eligible project costs previously incurred by the Contracting Authority meeting the requirements of 23 USC §§ 134 & 135, et seq.; or (iii) include the Purple Line in State and metropolitan transportation improvement plans (all as required in the TIFIA Term Sheet);

(g) The Contracting Authority fails to timely deliver to the Company (i) a Contracting Authority bring-down certificate and (ii) a letter from the Maryland Office of the Attorney General addressed to the Company and the Lenders, and incorporating necessary modifications acceptable to the Contracting Authority;

(h) The occurrence of a Severe Market Disruption that directly causes a delay in the financing or that constitutes a basis for rescission by any Lender of its original, or as-modified, commitments in the Financial Proposal or otherwise excuses performance under, such commitments under their terms; provided that the Company has exercised good faith efforts to prevent a delay or any such rescission or excused performance by such Lenders; or

(i) By a Contracting Authority FC Notice, the Contracting Authority defers Financial Close to a date later than 173 days after the Proposal Date and as a result the Company is unable to close on or before the deferred date due to expiration of commitments in the Financial Proposal
under their terms, provided that the Company has undertaken commercially reasonable efforts
to extend or renew such commitments before expiration but has been unable to do so.

Termination will take effect at the date specified in the notification from the Company or the
Contracting Authority to the other party, unless the Parties otherwise agree. In the event of such a
termination:

(a) All the Contract Documents will be deemed terminated as of the Financial Close Deadline,
except those Contract Documents (or provisions within) that expressly survive termination of
the Contract Documents;

(b) The Contracting Authority and the Company will take all actions regarding Termination
procedures and duties required to occur on or about the Termination Date; and

(c) The Company will be entitled to compensation as described below. Payment will be due and
payable as and when provided. Any Dispute arising out of the determination of such
compensation will be resolved under the Dispute Resolution Procedures.

If the Company fails to achieve Financial Close by the Financial Close Deadline, such failure is
not directly attributable to any of the contingencies described above, and neither Party is then entitled
to terminate the P3 Agreement due to a Court Ruling, then the following terms apply.

(a) The Contracting Authority will have the right to terminate P3 Agreement upon five days’
prior notice to the Company, without need for any other notice and without any additional
cure period, unless the Company achieves Financial Close within such five-day period.

(b) In the event of such termination, the Company will be liable for and pay to the Contracting
Authority liquidated damages for such failure in the amount of the Financial Close Security.
Such liquidated damages will constitute the Contracting Authority’s sole right to damages on
account of such failure.

(c) Upon or after the effective date of termination, the Contracting Authority will be entitled to
collect the liquidated damages through a draw on or forfeiture of the Financial Close Security,
as applicable, without prior notice to or demand upon the Company.

If the P3 Agreement is terminated for failure to reach Financial Close, the Contracting Authority
will pay to the Company an amount equal to the lesser of $4,000,000 and the Company’s costs (without
profit) incurred in response to the RFP (including, only in the case of successful completion by the
Company of the debt competition, costs (without profit) incurred in conducting such debt competition). In
addition, if the Contracting Authority has issued any limited Notice to Proceed for Work before Financial
Close, the Company will wind down the Work, complete it, remove it or take other action as directed by
the Contracting Authority, and the Contracting Authority will make any payments owing, following receipt
of a proper invoice, with respect to Work authorized by the limited Notice to Proceed and subsequent the
Contracting Authority direction. Any payment of compensation will be made within 30 days after receipt
of a proper invoice submitted to the Contracting Authority, with certification of expenditures of the amount
claimed in the invoice, and backup information regarding costs as reasonably requested by the Contracting
Authority. Such invoice may not be submitted until one business day after termination occurs.

If the Contracting Authority has issued a limited NTP allowing specified Work to proceed before
Financial Close, and such NTP establishes terms for payment for such Work by the Contracting Authority,
the Company’s failure to reach Financial Close will not obviate the Contracting Authority’s obligation to
pay for Work authorized by the limited NTP. In all other respects, the Company bears the risk that
Financial Close may not occur and, as between the Contracting Authority and the Company, the Company
will be solely responsible for costs that it incurs relating to the Project before Financial Close.
Handback Requirements

No later than five calendar years before the end of the Term or within a reasonable period before any Early Termination Date, the Company and the Contracting Authority will jointly (a) identify the Renewal Work required for the Purple Line to be in the condition and meet all of the requirements for Residual Life at the conclusion of the Term specified in the Handback Requirements and (b) determine the schedule (and the Company’s estimated budget) for the performance, the Contracting Authority inspection and the Company completion of all such Renewal Work. Such information and schedule for Renewal Work during the five calendar years before the end of the Term or the remaining period before any Early Termination Date will become the Handback Renewal Work Plan and be a separate document from, but complementary to, the Asset Management Plan. No later than 90 days before the beginning of each subsequent calendar year, the Company will update the Handback Renewal Work Plan and provide the update to the Contracting Authority. Following delivery of the update the Parties will meet to discuss whether any changes should be made to the scope or schedule for performance of the Renewal Work.

Subject to the Handback Inspection provisions described below, all Handback Renewal Work will be completed no later than the earlier of the date of the expiration of the Term and the Early Termination Date.

The Handback Requirements and the Handback Renewal Work Plan will incorporate the following criteria:

(a) The main civil and structural works and other System elements will not exhibit any undue signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification and to support reliable service operations for a period of three years beyond the end of the Term;

(b) Limited life and "wear and tear" components of the System elements have been replaced by the Company during the O&M Period in accordance with Good Industry Practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities;

(c) Major electrical and mechanical components or other System elements (excluding the LRVs) have been repaired, refurbished, or replaced by the Company as appropriate if their then condition indicates that they are unlikely to support reliable service operations (without recourse to major repair) for a period of three years beyond the end of the Term; and

(d) Each LRV and its components, whether original or replacement equipment, have been, and continues to be, maintained in accordance with the original equipment manufacturers' recommendations, subject to reasonable modification of maintenance practices, up until the end of the Term.

Handback Inspections

The Parties will conduct inspections of the Purple Line at the times and according to the terms and procedures specified in the Handback Requirements, for the purposes of:

(a) Determining and verifying the condition of all elements and their Residual Lives;

(b) Adjusting, to the extent necessary based on inspection and analysis, element Useful Lives, Ages, Residual Lives, estimated costs of Renewal Work and timing of Renewal Work;

(c) Revising and updating the Asset Management Plan to incorporate such adjustments;
(d) Determining the Renewal Work required to be performed and completed before the Termination Date, based on the Handback Requirements for Residual Life at the conclusion of the Term, the foregoing adjustments and the foregoing changes to the Asset Management Plan; and

(c) Verifying that such Renewal Work has been properly performed and completed in accordance with the Handback Requirements.

**Renewal Work**

The Company will diligently perform and complete all Renewal Work required to be performed and completed before the Termination Date, based on the required adjustments and changes to the Asset Management Plan resulting from the inspections and analysis under the Handback Requirements.

In the event of an early termination of the P3 Agreement, these provisions regarding Renewal Work will apply to the extent of any Renewal Work required to be performed and completed before the Early Termination Date, based on the required adjustments and changes to the Asset Management Plan resulting from the inspections and analysis under the Handback Requirements.

**Handback Requirements; Contracting Authority Right to Self-Perform and Recover Costs**

On or before the date of Handback, and as a condition to acceptance of Handback by the Contracting Authority, the Company will, and will cause its Contractors to, deliver all specialized equipment used in operation and maintenance of the System, which, in each case, will be mechanically, electrically and structurally sound, as applicable, and ready for and capable of being operated, and otherwise used safely, in the normal course of business by the Contracting Authority after Handback.

If, before or at the end of the Term, the Contracting Authority determines that the Purple Line does not comply with any Handback Requirement, or Renewal Work is not timely or properly performed, then, in addition to the Contracting Authority’s rights under the Contract Documents, the Company will be liable for the Contracting Authority’s Recoverable Costs incurred in bringing the Purple Line into compliance with such Handback Requirement(s). In recovering such amounts, the Contracting Authority may (a) reduce any Availability Payment then due and owing from the Contracting Authority to the Company, (b) invoice the Company for such amount, as a lump sum payment, (c) set off such amount against any other amount then due and owing from the Contracting Authority to the Company, (d) draw against funds withheld under the Handback Requirements holdback provisions or against the letter of credit that the Company may provide to secure its obligation to perform Renewal Work, as described below, (e) require funds in the reserve account described below to be used to pay for required Renewal Work, or (f) any combination of (a) through (e).

**Handback Requirements Holdback**

When the schedule for Renewal Work to meet Handback Requirements is set, the Parties will determine whether the remaining budget for Renewal Work included in the Availability Payments is sufficient to cover the cost of such Renewal Work. If a shortfall exists, the Parties will then determine whether the shortfall is covered by amounts held in a Project handback reserve account that is subject to restrictions satisfactory to the Contracting Authority ensuring that funds from said account will be used only to pay for reasonable costs of performance of Renewal Work and any other uses that have previously been approved by the Contracting Authority.

If the shortfall is not covered by amounts held in the handback reserve account, the Contracting Authority may withhold sufficient funds from future Availability Payments to cover any remaining deficit after accounting for funds in the handback reserve account. The amount to be withheld from each Monthly Availability Payment will not exceed the greater of (a) the portion of the payment that would otherwise be available for Distributions to Equity Members or (b) the deficit amount divided by 60.
Each month following finalization of the schedule for Renewal Work, the Contracting Authority will assess whether to pay out amounts withheld from Availability Payments based on (a) a review of progress of the Renewal Work, (b) updated estimates regarding the cost of Renewal Work remaining to be performed, and (c) a determination as to whether the sum of the remaining budget for Renewal Work included in the Availability Payments and amounts in the handback reserve account is sufficient to cover the cost of such Renewal Work.

If the Contracting Authority is withholding excess funds, it will promptly pay the excess amount to the Company. If the Contracting Authority is not holding sufficient funds to cover the revised deficit amount, the Contracting Authority will continue to have the right to withhold additional funds from Availability Payments until it has withheld an amount sufficient to cover the entire deficit, provided that the monthly amount withheld may not exceed the greatest of (a) the portion of the payment that would otherwise be available for Distributions to Equity Members, (b) the amount determined under clause (b) above, or (c) the updated deficit amount divided by the number of months remaining to the end of the Term.

The Company will have the right to provide a letter of credit as described in this section to secure its obligation to perform Renewal Work, and thereby have the right to receive Monthly Availability Payments without any withholding based on the deficit. Any such letter of credit will be in form reasonably acceptable to the Contracting Authority and in an amount equal to 100% of the deficit. If the letter of credit is not renewed at least 30 days before expiration, the Contracting Authority will have the right to withhold payments until the total amount withheld by the Contracting Authority is at the same level that the Contracting Authority would otherwise have held as of such date, as though Company had not elected to provide security for its obligations to perform Renewal Work.

**Termination of Key Contracts**

The Company will not terminate or permit termination of any Key Contract or permit any substitution, replacement or assignment of any Key Contractor, except with Owner’s prior approval; provided, however, that Owner’s prior approval is not required in the event of (a) any termination of the P3 Agreement where Owner elects not to assume the Company’s future obligations under such Key Contract, (b) any suspension, debarment, disqualification or removal (distinguished from ineligibility due to lack of financial qualifications) of the Key Contractor, or (c) any agreement for voluntary exclusion of the Contractor, from bidding, proposing or contracting with any federal, State or local department or agency; and provided, further, that Owner will act reasonably with respect to approval of a replacement in the case of material uncured default by the Key Contractor under the Key Contract.

**Dispute Resolution**

The Parties will designate a Technical DRB to address technical issues, and a Financial DRB to address financial issues arising during the Term. A Dispute may be referred to either, both or a joint session of the DRBs, depending on the nature of the issues in dispute. In the case of an individual session of the Technical DRB or Financial DRB, the DRB will be composed of three independent members, one selected by the Company, one selected by the Contracting Authority, and the third selected by the first two members. In the case of a joint session of the Technical DRB and Financial DRB, the DRB will be composed of (a) three members selected as for an individual session above; or (b) where the Parties agree, five independent members, two selected by the Company, two selected by the Contracting Authority, and the fifth selected by the first four members.

The Parties will have the right to submit written evidence to the DRB regarding the Dispute, and will be given an opportunity to respond to the evidence presented by the other, including participating in a hearing to the extent the DRB calls one in relation to a particular Dispute. The DRB will have 60 days to provide notice of its decision and summary of reasons for the decision reached.

A limited category of Disputes will be outside of the jurisdiction of the DRBs and will be directly referred to the MDOT Secretary for resolution rather than a DRB. The following Disputes are outside of
the jurisdiction of the DRBs: (a) the interpretation or application of the Contracting Authority codes and standards over which the Contracting Authority has jurisdiction for enforcement in its capacity as a regulator, and (b) Disputes involving interpretation of federal or State Law or policies.

The decision of the DRB is not binding. Unless both Parties agree in writing to the contrary, the decision of the DRB will not be admissible in any judicial proceeding. Referral of a matter to the DRB is not mandatory and does not waive the requirements to file timely notice of Claim(s).

**Assignment and Transfer**

The Company will provide all information and complete all such actions required by the Contracting Authority to enable the Contracting Authority to comply with the statutory requirements of the Act and/or seek the Contracting Authority and Board of Public Works approval in connection with any Change of Ownership.

The Company will not voluntarily or involuntarily effect or allow any Change of Ownership unless (a) it has been approved by the Contracting Authority in writing and is otherwise in compliance with applicable restrictions on a Change of Ownership, including any restrictions that may be imposed by the Contracting Authority and/or the Board of Public Works, or (b) it is a pre-approved Change of Ownership identified below.

Any purported voluntary or involuntary assignment, sale, assignment, financing, grant of security interest, hypothecation, conveyance, transfer of interest, pledge, mortgage, encumbrance, grant of right of entry, or grant of other use, special use or right to, management or control of the Purple Line or the Company’s Interest or other change (“Equity Change(s)”) in violation of assignment provisions will be null and void ab initio, and the Contracting Authority, at its option, may declare any such attempted action to be a material Concessionaire Default.

The Company will provide a written request for approval, accompanied by all information the Contracting Authority may deem relevant to the request for approval. The Contracting Authority may evaluate and require qualification of any entity(ies) involved, including a determination of whether the Equity Change would increase or decrease project risk for the Contracting Authority, positively or negatively affect the ability of the Company or Purple Line to perform, and a review and approval of the identity, financial resources, qualifications, experience, technical capacity, potential conflicts of interest, and responsibility of any entity(ies) involved.

Certain remote Equity Changes are pre-approved and are subject to the conditions set forth below in “—Remote Equity Changes and Equity Changes Required for Financing.” In addition, the Contracting Authority may consider requests for an Equity Change prior to two years after the Revenue Service Availability Date when such Equity Change is in the best interest of the Contracting Authority and the Contracting Authority receives a 50% share in any positive net proceeds at the time of the Equity Change; provided, however, that any consideration of Company requests for Equity Changes prior to two years after the Revenue Service Availability Date remains subject to certain restrictions.

**Remote Equity Changes and Equity Changes Required for Financing**

Certain Equity Changes are pre-approved Changes of Ownership by the Board of Public Works, but remain subject to compliance with specified conditions. Such changes do not apply to any change that would result in any interest being gained in the Project by any suspended or debarred entity, including entities subject to an agreement for voluntary exclusion, or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or Maryland state department or agency.

The Company will provide written notice to the Contracting Authority, accompanied by sufficient documentation evidencing the change in form and substance acceptable to the Contracting Authority,
including (a) the names of the transferor and transferee, (b) evidence that the transfer or transaction satisfies the requirements below and (c) if applicable, documentation that the transferee, without condition, assumes all of the Company’s obligations, duties and liabilities under the P3 Agreement, the other Contract Documents and the Principal Project Documents then in effect and agrees to perform and observe all provisions of such documents applicable to the Company. However, no notice is required for such transfers described in clauses (c) or (f) below.

Any notice by the Company for transfers under clauses (d) or (e) below will be provided at least 30 days in advance of any proposed change.

Pre-approved Changes of Ownership are limited to the following:

(a) Execution and delivery of Funding Agreements and Security Documents, in strict compliance with applicable prescriptions in the P3 Agreement, and/or any other grant to a Lender for security as permitted by the P3 Agreement; provided that, in all cases, the Company retains responsibility for the performance of the Company’s obligations under the Contract Documents;

(b) (i) A transfer of custody and control of the Project to a Step-In Party in accordance with the Direct Agreement, until the earlier of delivery of a Step-out Notice and pending approval or explicit disapproval of a Substituted Entity under such Direct Agreement, (ii) a transfer to a Substituted Entity approved by the Contracting Authority in accordance with such Direct Agreement or (iii) any other exercise of Lender remedies under the Direct Agreement, including foreclosure;

(c) A bona fide open market transaction involving beneficial interests in the ultimate parent organization of an Equity Member (but not if the Equity Member is the ultimate parent organization);

(d) A bona fide upstream business reorganization, consolidation or other transfer in equity of a parent entity with an interest in the Company where the transferor and transferee are under the same ultimate parent organization with ultimate power to direct or control or cause the direction or control of the management of the Company and so long as there occurs no change in such entity as part of such reorganization, consolidation or other transfer in equity;

(e) A transfer of interests between managed funds that are under common ownership or control so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of the Company;

(f) A change due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including transactions involving an initial public offering; and

(g) The exercise of minority veto or minority voting rights (whether provided by applicable Law, by the Company’s organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of the Company; provided that if such minority veto or minority voting rights are provided by bona fide shareholder or similar agreements, and the Contracting Authority has received copies of such agreements.

Assignment by the Contracting Authority

The Contracting Authority may assign all or any portion of its right, title and interest in the Contract Documents, Payment Bonds and Performance Security, guarantees, letters of credit and other security for payment or performance, (a) with 10 days’ prior notice to the Company but without the Company’s consent, to any other Governmental Entity of the State that succeeds to the governmental
powers and authority of the Contracting Authority by operation of law and (b) to others with the prior written consent of the Company.

**Assumption**

Each transferee of the Company’s Interest, including any Person who acquires the Company’s Interest through foreclosure, transfer in lieu of foreclosure or similar proceeding, will execute and deliver to the Contracting Authority an assumption agreement in form acceptable to the Contracting Authority, providing that the transferee takes the Company’s Interest subject to, and will be bound by, the Project Management Plan, including the Company’s Design Quality Plan and Construction Quality Plan, the O&M Management Plan, the Key Contracts, the Utility Agreements, the Governmental Approvals, all agreements between the transferor and third parties, and all agreements between the transferor and Governmental Entities with jurisdiction over the Purple Line or the Work, except to the extent otherwise approved by the Contracting Authority.

**Governing Law and Jurisdiction**

The Company consents to jurisdiction in the courts of the State of Maryland or the U.S. District Court for the District of Maryland in, with respect to any claim that the Contracting Authority may have against the Company arising out of, relating to or resulting from any matter relating to the P3 Agreement. The Company waives any defense of forum non conveniens. The P3 Agreement will be construed and interpreted in accordance with the laws of the State of Maryland, except to the extent that United States federal law otherwise applies. Disputes arising out of, relating to or resulting from the P3 Agreement will be determined by a competent State court in the State of Maryland, unless a Maryland court lacks jurisdiction over the action, in which case the matter will be submitted to the U.S. District Court for the District of Maryland, assuming it has jurisdiction.
APPENDIX D

SUMMARY OF CERTAIN PROVISIONS OF THE DESIGN-BUILD CONTRACT

The following is a summary of selected provisions of the Design-Build Contract and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Company or the Trustee. Unless otherwise stated, any reference in this Official Statement to the Design-Build Contract shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.

Overview

Design and construction work for the Project will be undertaken by the Design-Build Contractor pursuant to the Design-Build Contract, dated as of April 7, 2016, between the Company and the Design-Build Contractor. The Design-Build Contract includes, on a fixed-price, lump-sum, date-certain, turn-key basis, substantially all work and services required or appropriate in connection with the design and construction of the Project (including performing the Company’s obligations with respect to design and construction under the P3 Agreement), except to the extent expressly excluded in the Design-Build Contract.

Scope of Work

Subject to limited exceptions specified in the Design-Build Contract, the scope of the work under the Design-Build Contract includes the performance of all DB Work necessary to complete the Project generally described in or reasonably inferable from the P3 Agreement and the Design-Build Contract.

The Design-Build Contractor is required to comply with, and cause the DB Work and all components thereof (including the design, engineering, construction, testing and start-up of the portions of the Project included in the DB Work, as well as all equipment included within the portions of the Project included in the DB Work) to comply with, all applicable laws, governmental approvals, good industry practice, the requirements of the P3 Agreement, the other requirements specified in the Design-Build Contract and the other Contract Documents and to act so as not to cause any insurance it is required to obtain to be cancelled for cause.

Without limiting the foregoing, the DB Work includes: (a) the supply, commissioning, testing and integration of LRVs included in the initial fleet, the O&M Spare LRV and those option LRVs ordered by the Contracting Authority under the P3 Agreement before the date that is thirty (30) months before the Guaranteed DB RSA Date (such date, as of the date of the Contracting Authority’s exercise of the first LRV option); (b) the procurement of the initial inventory of spare parts; (c) obtaining all governmental approvals required to perform the DB Work other than those approvals required to be procured by the Contracting Authority under the P3 Agreement; (d) coordinating with adjacent property and utility owners as required to perform the DB Work, to the extent not required to be performed by the Contracting Authority under the P3 Agreement; (e) fulfilling the Company’s obligations with respect to connecting the Project to the power grid and facilitating start-up of permanent power service to the Project; and (f) in addition to providing the project offices for the Contracting Authority, the design and construction of an office space for the Company at the operation and maintenance facilities.

The DB Work includes, without limitation, the following:
Supply of LRVs and Fare System Equipment

The Design-Build Contractor is required under the Design-Build Contract to (a) obtain LRVs from the LRV Supplier meeting the requirements specified in the Contract Documents, (b) ensure that LRVs are properly integrated with the system, (c) supply and install a fare collection system, including supply and installation of all fare system equipment and (d) ensure that the fare collection system meets the requirements specified in the Contract Documents and that the fare system equipment is integrated with the system, properly interfaces with the Contracting Authority’s accounting system and WMATA’s New Electronic Payment Program and enables the Company to meet the performance requirements relating to fare collection. In addition, the Design-Build Contractor is required to deliver the O&M Spare LRV to the Contracting Authority, on behalf of the Company, no earlier than the DB RSA Date and no later than 90 days after the DB RSA Date.

The Design-Build Contractor is required to take appropriate measures to identify fleet defects and, if any fleet defects are identified, require LRV Supplier to correct all fleet defects in the LRVs, option LRVs and all associated equipment and afford the Company right of approval of fleet defect corrective actions taken.

The Design-Build Contractor must also perform, or cause to be performed, the successful commissioning, testing and acceptance of all components of the DB Work, including operational readiness of the LRVs, subsystems and fare system equipment, in accordance with the requirements set forth in the Design-Build Contract, so that the DB Work may be opened for revenue service by the Guaranteed DB RSA Date.

Acquisition of Real Property

Under the P3 Agreement, the Contracting Authority has identified certain property to be used for the Project, and the Contracting Authority is required under the P3 Agreement to acquire, at its cost, the Project ROW and certain other property in the time periods identified in a property acquisition schedule. If the Design-Build Contractor considers that additional real property interests are required for the permanent system improvements or third-party work and were erroneously excluded from the property acquisition schedule, the Design-Build Contractor may request that the Company seek that the Contracting Authority, at its cost, acquire these additional real property interests, and the Contracting Authority has agreed under the P3 Agreement to add such real property interests to the property acquisition schedule if it determines that such real property interests are necessary.

Real property required for utility easements will be considered an additional property for which the Design-Build Contractor is required to pay 50% of the acquisition costs, other than if it is impracticable to design the Project to avoid the need for the additional utility easement (that is, if such a design is impossible, overly costly or otherwise not in the best interest of the Project) or if the utility easement is required as the result of an unreasonable refusal or delay by the utility owner to approve placement of utility adjustments within the boundaries of the properties identified in the property acquisition schedule, in which case the Contracting Authority agreed under the P3 Agreement to be responsible for the costs of acquiring such real property.

In addition, the Design-Build Contractor is solely responsible for the acquisition of any temporary interests in property that the Design-Build Contractor determines is necessary, desirable or advisable to obtain in connection with the DB Work, excluding acquisitions of temporary interests in property identified in the property acquisition schedule but including any property interests that the Design-Build Contractor wishes to obtain in advance of the acquisition date identified in the property acquisition schedule. The Design-Build Contractor is required to pay the purchase price for all temporary property interests directly and bears the risk of any delays and cost impacts related to acquisition of such property interests. The Contracting Authority, under the P3 Agreement, has no obligation to obtain additional temporary property interests but may agree to do so following receipt of a request from the Company.
Utilities

Utility Adjustments. The Design-Build Contractor is responsible for (a) ensuring that all utility adjustments necessary to accommodate the Project are completed in accordance with the Project schedule and the requirements of the Contract Documents; (b) conducting reasonable site investigation and exploration before commencement of the DB Work in any particular area to correctly identify all utilities in the area; (c) including in the design of the Project all utilities identified by the Design-Build Contractor to ensure that utility services are not mistakenly disrupted by the construction portion of the DB Work; (d) ensuring that all utility work performed by the Design-Build Contractor and its related entities complies with the Contract Documents; and (e) coordinating, monitoring and otherwise undertaking appropriate efforts to ensure timely performance of utility work by utility owners, in coordination with the DB Work, and in compliance with the standards and other applicable requirements specified in the Contract Documents and the Contracting Authority’s utility agreements.

Utility Agreements. Under the Design-Build Contract, the Design-Build Contractor has been delegated and has accepted, on behalf of the Company, certain responsibilities and obligations of the Contracting Authority under the utility agreements entered into by the Contracting Authority. If the Design-Build Contractor determines that a utility adjustment is required for a facility owned by a utility owner that has not entered into a utility agreement with the Contracting Authority, the Design-Build Contractor is required to promptly notify the Company regarding these circumstances, and the Company is required, in turn, to notify the Contracting Authority. Unless the Company directs otherwise, the Design-Build Contractor is required to prepare and negotiate a utility agreement with the utility owner meeting the requirements specified in the Design-Build Contract. Following the Company’s review and comment, the Design-Build Contractor may then execute the utility agreement enabling utility work to proceed and the Design-Build Contractor is responsible for all costs and expenses associated with such utility work. Subject to certain limitations in the Design-Build Contract, the Design-Build Contractor is responsible for proper completion of all utility work required for the Project, in accordance with the Contract Documents, regardless of the nature or provisions of the utility agreements and regardless of whether the Design-Build Contractor or its subcontractors, or the utility owner or its contractors, are performing the utility work. Under the Design-Build Contract, the Design-Build Contractor will not be permitted any extension of time for delays associated with utility work, and no additional compensation will be allowed relating to utility work, except to the extent specifically permitted by the Contract Documents.

Betterments. Under the P3 Agreement, any utility owner may request that the Contracting Authority permit the Company to perform work relating to Betterments at the utility owner’s expense. If the Contracting Authority approves this request under the P3 Agreement, the Design-Build Contractor is required, on behalf of the Company, to perform such work, with the right to receive additional payment by a scope change order under the Design-Build Contract based on the Contracting Authority’s corresponding change order under the P3 Agreement or by direct payment from the utility owner.

Utility Delays. Subject to the requirements and limitations contained in the Design-Build Contract, (a) the risk of additional costs directly attributable to a utility owner’s delays will be shared between the Contracting Authority and the Design-Build Contractor in accordance with the Design-Build Contract, (b) the Guaranteed DB RSA Date will be extended by one day for every two days of the utility owner’s delay until the $5,000,000 limit described in the Design-Build Contract is reached, and (c) once the $5,000,000 limit is reached, the Guaranteed DB RSA Date will thereafter be extended on a day-for-day basis. For a more detailed description, see “—Relief Event, Force Majeure Event and Non-Concessionaire Caused Disruption Claim Process—Utility Owner Delays.”
**Hazardous Materials**

Subject to certain exceptions set forth in the Design-Build Contract, the Design-Build Contractor is required to perform, or cause to be performed, all hazardous materials management required in connection with the DB Work in accordance with applicable law, governmental approvals, an approved comprehensive environmental protection program and all applicable provisions of the Contract Documents. If the Design-Build Contractor fails to undertake the hazardous materials management required under the Design-Build Contract within a reasonable time after discovery of hazardous materials, taking into consideration the nature and extent of the contamination and action required and the potential impact upon the Design-Build Contractor’s schedule for use of and operations on the Project right-of-way, the Company may notify the Design-Build Contractor that it will undertake the hazardous materials management itself. Under the P3 Agreement, the Contracting Authority may also undertake the hazardous materials management. If this occurs, the Company or the Contracting Authority, as applicable, may draw against the hazardous materials remediation allowance for costs that would have been payable to the Design-Build Contractor from the allowance. See “Contract Price and Payments—Contract Price.” For costs not eligible for payment from the allowance, the Design-Build Contractor is required to reimburse, on a current basis, the Company and/or the Contracting Authority for the reasonable costs that the Company and/or the Contracting Authority incurs in carrying out hazardous materials management actions, so long as the Company has performed in accordance with the Design-Build Contract and the Contracting Authority in accordance with the P3 Agreement. Neither the Contracting Authority nor the Company will have liability or responsibility to the Design-Build Contractor arising out of, relating to or resulting from the Contracting Authority’s hazardous materials management actions under the P3 Agreement, and these actions will not constitute a Relief Event or other basis for a claim.

Up until the DB RSA Date, the Design-Build Contractor is also responsible, on behalf of the Company, for the management of all pre-existing hazardous materials encountered in connection with the Project, in compliance with applicable law, subject to certain limitations set forth in the Design-Build Contract, including the Contracting Authority’s responsibility under the P3 Agreement for certain losses arising from the management of pre-existing hazardous materials. The Design-Build Contractor must also avoid exacerbating hazardous materials in, on, under or migrating from the site.

Subject to the Design-Build Contractor’s entitlement to claim relief as set forth in the Design-Build Contract, the Design-Build Contractor bears all risk of the Company under the P3 Agreement associated with the discovery of hazardous materials within the site commencing on the earlier to occur of (i) the effective date of the notice to proceed issued by the Company under the Design-Build Contract and (ii) the effective date of a limited notice to proceed (but limited to the Project right-of-way on which the DB Work is performed pursuant to the limited notice to proceed), and ending on the DB RSA Date. The Design-Build Contractor is entitled to compensation for hazardous materials management that is payable by the Contracting Authority under the P3 Agreement and, in turn, payable by the Company to the Design-Build Contractor under the Design-Build Contract, for losses arising from the management of pre-existing hazardous materials or from the hazardous materials allowance. In addition, the Design-Build Contractor shares the risk with the Contracting Authority of discovery of hazardous waste during or in connection with the demolition of buildings, fixtures, in-ground utilities or other improvements that is required by applicable law to be recycled, treated, stored or disposed, subject to the deductibles specified in the Design-Build Contract, while the Contracting Authority is fully responsible for the additional costs exceeding such deductibles. For a more detailed description, see “—Relief Event, Force Majeure Event and Non Company Caused Disruption Claim Process—Hazardous Materials Relief Events.”

**Site Conditions**

The Design-Build Contractor acknowledged in the Design-Build Contract that it has investigated and satisfied itself as to the conditions affecting the DB Work, including as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including the results of exploratory work and other information provided to the Design-Build Contractor. Except to the extent that the Contract Documents permit the Design-Build Contractor to rely on certain information provided by the Contracting Authority as
a baseline for determining whether a Relief Event has occurred, the Design-Build Contractor has no right to rely on surveys, data, reports or other information provided by the Contracting Authority or other persons concerning surface or subsurface conditions, including information relating to utilities, hazardous materials, contaminated groundwater, paleontological resources, cultural (including archaeological and historic) resources, flooding conditions and seismic conditions, affecting the DB Work, the site or surrounding locations.

The Design-Build Contractor has no right under the Design-Build Contract to claim that any condition constitutes a differing site condition or that discovery of any paleontological or cultural (including archaeological and historic) resources, or threatened or endangered species constitutes a Relief Event if, with respect to the DB Work, the Design-Build Contractor had actual knowledge regarding such conditions or resources as of the proposal date or such condition or resource would have become known to the Design-Build Contractor based on a reasonable investigation of the area before the Setting Date and review of other information available to the Design-Build Contractor, consistent with good industry practice, but the Design-Build Contractor may rely upon the determination of “no effect” on any endangered species by federal agencies as included in the Record of Decision. Notwithstanding the foregoing, the Contracting Authority acknowledged in the P3 Agreement that litigation has been filed in the U.S. District Court in the District of Columbia, captioned Friends of the Capital Crescent Trail v. FTA, Civil Case No. 14-01471 (RJL), and agreed that a determination by the court in such action, or by an authority having jurisdiction, that a threatened or endangered species exists at, near or on the Project right-of-way will constitute a Relief Event under the P3 Agreement to the extent that the Company is required to stop work or perform extra work under the P3 Agreement as a result. To the extent that the Design-Build Contractor is required to stop DB Work or perform extra DB Work as a result of such determination, the Design-Build Contractor is entitled to claim a Relief Event under the Design-Build Contract.

Except to the extent that the Design-Build Contractor is entitled to relief under the Design-Build Contract or to payment from an allowance, the Design-Build Contractor bears the risk of all conditions occurring on, under or at the site, including: (a) physical conditions (surface and/or subsurface) of an unusual nature, differing materially from those ordinarily encountered in the area; (b) changes in surface topography; (c) variations in subsurface moisture content and groundwater levels; (d) utility facilities; (e) contaminated groundwater; (f) the discovery at, under, near or on the Project right-of-way of any paleontological resources or cultural (including archaeological or historic) resources; (g) the discovery at, under, near or on the Project right-of-way of any threatened or endangered species; and (h) seismic conditions.

Governmental Approvals

The Design-Build Contractor is responsible for obtaining all governmental approvals required for the DB Work, other than approvals provided by the Contracting Authority, and bears the risk of any delay in obtaining approvals, as well as the risk of conditions imposed on performance of the DB Work by the approvals. The Design-Build Contractor is required to deliver to the Company true and complete copies of all new or amended governmental approvals other than the approvals obtained by the Contracting Authority.

Power Supply

The Design-Build Contractor is responsible for connecting the Project to the power grid and facilitating startup of permanent power service to the Project before the commencement of trial running in accordance with the P3 Agreement.

Security

The Design-Build Contractor is responsible, until the DB RSA Date, for the security of the DB Work and the site and for the safety and security of the workers and the public in connection with the DB Work. Following the DB RSA Date, the Design-Build Contractor is required to take measures consistent with good industry practice to prevent damage to or destruction of the Project in the performance
of any remaining DB Work. The Design-Build Contractor is obligated to comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable Maryland agencies pertaining to the DB Work, and coordinate and cooperate with all governmental entities providing security, first responder and other public emergency response services.

**Maintenance of Traffic**

Other than with respect to the Company’s contractors (excluding the O&M Contractor), the Design-Build Contractor is required, to the extent required by the P3 Agreement, up until the DB RSA Date, to maintain traffic so as to ensure the safe and efficient passage of all pedestrians, bicycles and vehicular traffic through and around work areas, while maintaining safety and accessibility for all workers on the Project and minimizing adverse impacts on residents, visitors, businesses and road users. The Design-Build Contractor must conduct the DB Work at all times in a manner and in a sequence as will assure the least obstruction to all forms of traffic and minimal interference with the public. To the extent assessed by the Contracting Authority, the Design-Build Contractor will be liable for and pay to the Company (who will in turn pay the same over to the Contracting Authority) liquidated damages in accordance with the P3 Agreement with respect to low traffic control ratings received by the Design-Build Contractor during the Design-Build Period and for any failure of the Design-Build Contractor to restore full traffic capacity as described in the P3 Agreement.

**Oversight and Inspection**

Under the P3 Agreement, the Contracting Authority has the right at all times to conduct certain oversight of the DB Work. Oversight may include assessments regarding compliance with the Contract Documents, the Project management plan and the requirements of federal agencies and applicable law. The Design-Build Contractor is obligated under the Design-Build Contract to fully cooperate with the Company and the Contracting Authority to facilitate the Contracting Authority’s oversight, including providing access to its books and records. Under the P3 Agreement, the Contracting Authority may change the type and/or increase the level of its oversight of the Project and the Company’s compliance with its obligations under the P3 Agreement’s contract documents, in a manner and to a level as the Contracting Authority reasonably sees fit, if at any time there exists a Company remedial plan default under the P3 Agreement or the Company receives one or more notices of a Company default under the P3 Agreement that may become a default termination event under the P3 Agreement. The Design-Build Contractor is required under the Design-Build Contract to fully cooperate with the Contracting Authority and the Company to facilitate this increased oversight.

If the Contracting Authority under the P3 Agreement changes the type or increases the level of its oversight, then the Company is required to pay and reimburse the Contracting Authority for all reasonable increased costs and fees incurred in connection with this action. To the extent the cause of the increased oversight is attributable to the Design-Build Contractor, the Design-Build Contractor is required to pay to the Contracting Authority, on behalf of the Company, all reasonable increased costs that the Contracting Authority has incurred.

**Interpretive Engineering Decisions**

The Design-Build Contractor may request that the Company seek a Contracting Authority decision regarding an interpretive engineering decision under the P3 Agreement concerning the meaning, scope, interpretation and application of the Technical Provisions. The Contracting Authority may, under the P3 Agreement, approve the proposed interpretive engineering decision, issue its own interpretive engineering decision or disapprove any proposed interpretive engineering decision (and include an explanation of any disapproval of the application or any differing interpretation). Interpretive engineering decisions accepted by the Contracting Authority will constitute provisions of the Technical Provisions and will not constitute a Company-caused delay, a Contracting Authority change, a scope change, a Relief Event or other basis for any claim. Subsequent Contracting Authority orders and directives that are contrary to the interpretive engineering decision will constitute a Contracting Authority change for the purposes of the P3 Agreement and the Design-Build Contract.
Independent Engineer

Pursuant to the P3 Agreement, the Contracting Authority and the Company are to select an independent engineer to provide services for the Project relating to the Contracting Authority’s obligation to make the RSA Payment to the Company under the P3 Agreement. The independent engineer’s role includes verifying whether the conditions to Revenue Service Availability specified in the P3 Agreement have been met. The Company has agreed under the Design-Build Contract to include the Design-Build Contractor in the selection of the independent engineer and may not agree to the selection and terms of retention of the independent engineer without approval of the Design-Build Contractor. The Design-Build Contractor will be responsible for the payment of the costs of the independent engineer under the terms of the independent engineer agreement as provided in the P3 Agreement (excluding any amounts attributable to changes to the independent engineer agreement made without the Design-Build Contractor’s consent (not to be unreasonably withheld), directives given by the Company without the Design-Build Contractor’s consent or other reasons attributable to the Company). The Contracting Authority is responsible, under the P3 Agreement, for reimbursing the Company for 50% of these costs (which amounts the Company is obligated under the Design-Build Contract to provide to the Design-Build Contractor).

Title

Title to each LRV included in the initial fleet (25 LRVs and, when delivered, the O&M Spare LRV) will, under the Design-Build Contract, pass to the Company, free and clear of all liens or other charges of any kind or nature, upon payment by the Company to the Design-Build Contractor under the Design-Build Contract, which final payment will be made following satisfactory completion of all acceptance testing for the LRV. Title to each of the option LRVs and the O&M Spare LRV will pass to the Contracting Authority, through the Company, upon delivery under the Design-Build Contract. Title to all other materials, equipment, tools and supplies furnished under the Contract Documents for incorporation into the Project or that are required for the operation or maintenance of the Project will pass to the Company, free and clear of all liens or other charges of any kind or nature, upon the earlier of (a) incorporation into the Project or, for items that will not be incorporated into the Project, delivery to the site and (b) the date of payment by the Company to the Design-Build Contractor for the item, including payments in the form of scheduled payments and payments for scope change orders.

The passage of title to the Contracting Authority does not affect the Design-Build Contractor’s care, custody and control responsibilities. The Design-Build Contractor is responsible for the care, custody and control of all components of the DB Work, including all materials, equipment, tools and supplies described in the Design-Build Contract, until the DB RSA Date and, with respect to the elements of the DB Work (including the third-party work) that will be owned by third parties, until acceptance of the elements by the relevant third-party.

Back-to-Back Relief Provisions

Under the Design-Build Contract, subject to certain exceptions (including with respect to Company-caused delays and any Company DB Work suspension), the Design-Build Contractor is only entitled to compensation or relief in the event and only to the extent that the Company actually receives the corresponding compensation or relief under the P3 Agreement. If the Company’s failure to receive payment or other relief to which it is otherwise entitled under the P3 Agreement (and to which the Design-Build Contractor is entitled under the Design-Build Contract) is solely a result of the Company’s failure to comply with its obligations under the Design-Build Contract and the P3 Agreement that is not attributable to the Design-Build Contractor, then the Design-Build Contractor is entitled to payment or other relief from the Company under the Design-Build Contract that the Design-Build Contractor would be otherwise entitled but for the Company’s failure to so comply.

Subject to the Company’s and the Design-Build Contractor’s fast-track adjudication process set forth in the Design-Build Contract, the Company agrees in the Design-Build Contract that it will diligently and in good-faith (a) seek any responses from the Contracting Authority under the P3 Agreement that correspond with any responses being requested by the Design-Build Contractor under the Design-Build
Contract, (b) seek any compensation and other relief from the Contracting Authority under the P3 Agreement that correspond with any compensation and other relief being requested by the Design-Build Contractor under the Design-Build Contract and (c) pass through to the Design-Build Contractor under the Design-Build Contract the benefit of any responses, compensation and other relief that it actually obtains from the Contracting Authority under the P3 Agreement.

Schedule of Performance

The Design-Build Contractor is required to complete the DB Work by the specified deadlines set forth in the Design-Build Contract, subject only to extensions of time arising from (a) a Company-caused delay, a Company DB Work suspension or a work order not resulting from the Contracting Authority directive letter, (b) any Relief Event or Force Majeure Event that entitles the Company to delay interest under the P3 Agreement (subject to limited exceptions set forth in the Design-Build Contract) or (c) any other circumstances expressly set forth in the Design-Build Contract that extend the DB Work deadlines, in each case in accordance with the Design-Build Contract.

The Design-Build Contractor guarantees that DB Revenue Service Availability will occur on or before the Guaranteed DB RSA Date. Failure to achieve DB Revenue Service Availability by the date that is nine months after the DB RSA Date, as may be adjusted pursuant to the Design-Build Contract (the “Guaranteed DB Long Stop Date”), is a Design-Build Contractor default under the Design-Build Contract. DB Revenue Service Availability under the Design-Build Contract is achieved when the Design-Build Contractor has satisfied the specified requirements set forth in the Design-Build Contract, and the Company has agreed that all such requirements have been met, which will be evidenced by the Company’s delivery to the Design-Build Contractor of the fully countersigned DB Revenue Service Availability certificate pursuant to the Design-Build Contract. DB Revenue Service Availability under the Design-Build Contract must occur no later than 2,092 days following Financial Close unless (a) the Contracting Authority issues an agreed limited notice to proceed under the P3 Agreement and the Company issues a corresponding limited notice to proceed under the Design-Build Contract and (b) Financial Close occurs prior to June 18, 2016, in which case the Guaranteed DB RSA Date is March 11, 2022, in each case as such date may be adjusted only as expressly permitted by the Design-Build Contract (the “Guaranteed DB RSA Date”). DB Final Completion under the Design-Build Contract must occur no later than 187 days after DB Revenue Service Availability occurs under the Design-Build Contract (the “Guaranteed DB RSA Date”).

The Design-Build Contractor is required to prepare and submit a Project recovery schedule for the Company to review and for the Contracting Authority to approve if the Project baseline schedule shows any scheduled completion date under the P3 Agreement having 90 days or more of negative float. In addition, if the baseline schedule shows that DB Revenue Service Availability will not be achieved until after the Guaranteed DB Long Stop Date, the Design-Build Contractor will (a) be required to obtain the Company’s approval of any Project recovery schedule, in addition to the approval of the Contracting Authority, (b) diligently comply with any Company-approved recovery schedule and (c) if not already contained in the Project recovery schedule, submit to the Company a reasonably detailed description of the steps that the Design-Build Contractor intends to take to achieve DB Revenue Service Availability by the Guaranteed DB Long Stop Date, update the information monthly and meet with the Company to discuss the same on a monthly basis, as requested by the Company.

Promptly after achieving DB Revenue Service Availability, the Design-Build Contractor will perform all remaining DB Work and achieve DB Final Completion by the Guaranteed DB Final Completion Date. If the Company reasonably determines six months prior to the DB Final Completion Deadline or thereafter that the Design-Build Contractor is likely to fail to achieve DB Final Completion on or before the DB Final Completion Deadline, then the Company may request that the Design-Build Contractor prepare and submit to the Company, within 30 days of the Company request, a remedial plan and schedule that shows in reasonable detail the steps the Design-Build Contractor intends to take to achieve DB Final Completion and demonstrates to the reasonable satisfaction of the Company that DB Final Completion will be achieved on or prior to the DB Final Completion Deadline. The Design-Build
Contractor must update the remedial plan monthly and submit the updates to the Company until DB Final Completion has been achieved.

If the Company reasonably determines that the Design-Build Contractor has failed to commence or otherwise comply with the DB Final Completion remedial plan with diligence and promptness, the Company may send to the Design-Build Contractor a written notice of this determination. If the Design-Build Contractor fails to comply with the remedial plan within 20 days of the date of the Company’s notice, the Company may, without prejudice to any other remedy the Company may have, perform the DB Work or cause it to be performed. Pursuant to an appropriate scope change order issued by the Company to the Design-Build Contractor, the Company may deduct from the payments then or thereafter due the Design-Build Contractor the reasonable, documented, out-of-pocket cost of performing the DB Work.

In addition, the Design-Build Contractor is obligated under the Design-Build Contract to fulfill, on behalf of the Company, the Company’s obligations that may arise in accordance with the P3 Agreement with respect to (a) the repayment of a portion of the RSA Payment to the Contracting Authority, as deemed appropriate by the Contracting Authority to cover the cost to complete the DB Work (with respect to which a dispute under the P3 Agreement was resolved in the Contracting Authority’s favor), to the extent attributable to the failure by the Design-Build Contractor to perform its obligations under the Design-Build Contract, or, alternatively, at the Design-Build Contractor’s option, and (b) the related letter of credit or bond.

**Contract Price and Payments**

**Contract Price**

The Design-Build Contract provides for a firm, fixed-price, lump sum contract price in the amount of $2,009,873,600. The contract price is not subject to adjustment for any reason other than pursuant to a scope change order authorized by the Company or that the Design-Build Contractor is entitled to claim as set forth in the Design-Build Contract, or as determined through the dispute resolution procedures under the Design-Build Contract.

*Allowances.* The contract price includes an allowance in the amount of $15,000,000 to reimburse the Design-Build Contractor for amounts paid by the Design-Build Contractor for certain DB Work activities related to the fare system, without markup. If, at any time, the estimated costs of performing the DB Work to be covered by the fare system allowance exceed the fare system allowance amount, the Company and the Design-Build Contractor are required to consult regarding measures to bring the cost within budget. If it becomes apparent that the DB Work to be covered by the fare system allowance cannot be performed within the fare system allowance and that the scope of DB Work cannot be modified to reduce the cost to the fare system allowance, the Company and the Design-Build Contractor are required to negotiate a scope change order to account for these excess costs. The Design-Build Contractor has no obligation to expend funds in excess of the fare system allowance amount for DB Work related to the fare system.

The contract price also includes an allowance in an initial amount of $70,000 for the cost of remediation of hazardous materials. The Design-Build Contractor must promptly notify the Company if it becomes apparent that the hazardous materials remediation allowance amount will be exceeded, in which event the Company and the Design-Build Contractor are required to negotiate a scope change order increasing the allowance amount and/or modifying the scope of the DB Work to avoid the need to increase the allowance.

The contract price also includes an allowance for the cost of art in transit in the amount of $6,070,000 to reimburse the Design-Build Contractor for the stipends payable to shortlisted artists and amounts paid to selected artists for their work product and the costs of transportation and installation of the art product, subject to certain limitations on reimbursement referred to in the Design-Build Contract, without markup. If at any time the estimated costs of developing and implementing the art concepts exceed
this allowance amount, the Company and the Design-Build Contractor are required to consult regarding measures to bring the cost within budget. The Design-Build Contractor has no obligation to expend funds in excess of the art in transit allowance amount.

**Payments**

Subject to certain conditions set forth in the Design-Build Contract, the contract price is payable in monthly installments based on the completion of performance elements of the DB Work as specified in the payment and values schedule, subject to the maximum cumulative payment curve, based on the following:

(a) With respect to LRVs (excluding the O&M Spare LRV), the amounts specified in an agreed payment and values schedule due for achievement of certain milestones;

(b) With respect to mobilization for the DB Work, (i) the amounts with respect to the DB Work included in the construction work under the P3 Agreement and (ii) any additional mobilization payments;

(c) With respect to all other DB Work, based on percentage completion of components of the DB Work having the values set forth in the payment and values schedule;

(d) With respect to the O&M Spare LRV, following delivery and commissioning, the amount specified in the payment and values schedule; and

(e) With respect to the other itemized costs and expenses of the Design-Build Contract (including for the performance security, its development fee and warranty), the amounts as set forth in the payment and values schedule.

Within five days after the end of the month for which payment is being requested, the Design-Build Contractor is required to submit to the Company its request for payment, consisting of, among other things:

(a) An invoice in the amount of the applicable scheduled payment;

(b) A certificate signed by the Design-Build Contractor certifying that the Design-Build Contractor has performed the applicable elements of the DB Work required for the scheduled payment in accordance with the payment and values schedule and attaching reasonable documentary evidence of the performance of the applicable elements of the DB Work sufficient for the Company (and the Lenders’ Technical Advisor, if required) to reasonably determine that performance has occurred;

(c) The interim lien and claim waivers and releases required by the Design-Build Contract or a bond or bonds meeting the requirements set forth in the Design-Build Contract with respect to any lien or claim not waived;

(d) Monthly progress report for the immediately preceding month;

(e) All cost details relating to the payment request as necessary for the Company to satisfy the requirements of the Lenders and the legal requirements of all governmental entities; and

(f) A certificate signed by the Design-Build Contractor certifying that the amounts requested are eligible for reimbursement from federal-aid funds pursuant to applicable law.

In addition to the above requirements, the Design-Build Contractor must provide to the Company certain items required to be submitted to the Contracting Authority with any invoice under the
P3 Agreement, including certified payrolls for all construction workers and a certification that amounts from prior payments have been made to subcontractors.

Subject to the terms of the Design-Build Contract, upon receipt of the Design-Build Contractor’s request for payment in accordance with the Design-Build Contract, the Company must make, or cause to be made, the undisputed portion of the corresponding scheduled payment to the Design-Build Contractor within 30 days after the Company receives the request for payment. The Company is required to pay the undisputed portion of the final scheduled payment within 30 days after the date of DB Final Completion, subject to the satisfaction of all conditions to a scheduled payment contained in the Design-Build Contract. In addition, as a condition to the final scheduled payment, the Design-Build Contractor must provide final lien and claim waivers and releases or a bond or bonds meeting the requirements of the Design-Build Contract with respect to any lien or claim not waived.

Withholdings

Subject to certain limitations set forth in the Design-Build Contract, the Company may withhold all or part of any scheduled payment if:

(a) The Design-Build Contractor’s request for payment does not meet the applicable requirements of the Design-Build Contract;

(b) The Contracting Authority has withheld pursuant to the P3 Agreement because, among other things, a lien has been placed on the Project or the Contracting Authority’s property;

(c) One or more third parties have filed a claim or have established a mechanics’ lien or similar claim against the Project or the Project right-of-way and the Design-Build Contractor has not furnished to the Company a bond or bonds in the amount(s) equal to these claims and liens meeting the requirements of the Design-Build Contract;

(d) The Design-Build Contractor has failed to make timely payments of undisputed amounts to subcontractors as required under applicable subcontracts and law (except as otherwise set forth in the Design-Build Contract);

(e) The Design-Build Contractor failed to pay any amounts owing to the Company under the Design-Build Contract;

(f) The Lenders’ Technical Advisor has not approved the request for payment (if approval is required);

(g) Any event that would permit a termination of the Design-Build Contract by the Company for a Design-Build Contractor default has occurred and is continuing beyond any applicable cure period; or

(h) The Design-Build Contract is terminated before the final payment is made (subject to limited exceptions in the Design-Build Contract).

In addition, subject to certain limitations set forth in the Design-Build Contract, to the extent the Contracting Authority withholds payments or other amounts owed by the Contracting Authority to the Company under the P3 Agreement for reasons attributable to the Design-Build Contractor, the Company may withhold any payment due to the Design-Build Contractor until the aggregate amount of the Company withholding equals the aggregate amount of the Contracting Authority withholding. However, to the extent the Contracting Authority withholds from or reduces the RSA Payment, the final completion payment or any monthly availability payment under the P3 Agreement for reasons attributable to the Design-Build Contractor, the Company may only withhold from or reduce any payment otherwise due to the Design-Build Contractor in an amount not to exceed $10,000,000 in the aggregate (except that this
limitation does not apply to the final scheduled payment due to the Design-Build Contractor). If the Company withholding or reduction is not sufficient to fully offset the amount not paid by the Contracting Authority, the Design-Build Contractor must pay to the Company the amount of the deficiency (or a portion thereof if applicable), up to an aggregate maximum amount of $5,000,000, as is necessary to cover certain costs to the Company under the Design-Build Contract, including, subject to limitations set forth in the Design-Build Contract, interest expenses for additional borrowings and other unavoidable increased costs that are incurred by the Company as a result of the withholding or reduction by the Contracting Authority. The foregoing limitation does not apply to the Company’s withholdings that are the result of the Contracting Authority’s withholdings for liquidated damages payable under the P3 Agreement for which the Design-Build Contractor is responsible under the Design-Build Contract.

Notwithstanding the foregoing withholding rights but without affecting Company’s rights to recover damages and other amounts from the Design-Build Contractor due to a termination for a Design-Build Contractor default, the Company’s right to withhold from or reduce any payment due to the Design-Build Contractor in connection with the Contracting Authority’s withholding from or reduction to any payment due from the Contracting Authority to the Company after the DB RSA Date (including the RSA Payment, the final completion payment and the monthly availability payments) applies only to amounts earned by the Design-Build Contractor after the DB RSA Date. In addition, the Design-Build Contractor is not responsible under the Design-Build Contract for the payment of any Deductions withheld by the Contracting Authority from the monthly availability payments due to the Company under the P3 Agreement.

Performance Security

Performance and Payment Bonds

Concurrently with Financial Close, and in no event later than the start of DB Work included in the construction work under the P3 Agreement, the Design-Build Contractor is required to obtain and deliver (a) one or more payment bonds with an aggregate value equal to 55% of the total value of D&C construction work specified in the P3 Agreement and (b) separate performance security in the form of a surety bond in the same aggregate amount, in each case in accordance with the Design-Build Contract and each with a multiple obligee rider(s) naming the Contracting Authority and the Collateral Agent as additional obligees. The performance security in the form of a surety bond must cover the Design-Build Contractor’s obligations under the Design-Build Contract and remain in force until those obligations have been fulfilled. The payment bond(s) and performance security in the form of a surety bond is required to be issued by a surety or insurance company, as applicable, meeting the requirements of applicable law, licensed or authorized to do business in the State and rated at least “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating.

Letters of Credit

In addition to providing the payment and performance bonds, the Design-Build Contractor is obligated to provide to the Company, on or before Financial Close, one or more letters of credit, in an initial aggregate amount equal to 50% of potential (a) DB Revenue Service Availability liquidated damages payable up to the Guaranteed DB Long Stop Date and (b) DB Final Completion delay liquidated damages payable up to the DB Final Completion Deadline, to secure performance of the Design-Build Contractor’s obligations to the Company under the Design-Build Contract. The Design-Build Contract requires that the letter(s) of credit be issued by a commercial bank or trust company that (a) has a combined capital and surplus of at least $5,000,000,000 U.S. Dollars, (b) is a national banking association, a state bank chartered in one of the states of the United States or the United States branch of a foreign bank, (c) has a senior unsecured long-term credit rating (unenhanced by third-party support) equivalent to “A” or better as determined by Standard and Poor’s Ratings Services or its successor, and “A2” or better as determined by Moody’s Investors Service Inc. or its successor and (d) is not an affiliate of the Design-Build Contractor or the Company.
The initial stated aggregate amount of the letter(s) of credit is required to be increased to an aggregate amount equal to 100% of potential (i) DB Revenue Service Availability liquidated damages payable up to the Guaranteed DB Long Stop Date and (ii) DB Final Completion delay liquidated damages payable up to the DB Final Completion Deadline, if at any time prior to the DB RSA Date (but no sooner than three years after commencement of the DB Work included in the construction work) a look forward analysis conducted by the Lenders’ Technical Advisor shows that DB Revenue Service Availability is likely to occur more than 60 days after the Guaranteed DB RSA Date. The stated aggregate amount of the letters of credit may be reduced by the Design-Build Contractor to $12,000,000 as of the DB RSA Date, whereupon the letter(s) of credit will be maintained until expiration of the warranty period, at which point each letter of credit will be returned to the Design-Build Contractor.

If, at any time that the Design-Build Contractor is obligated to maintain, or cause to be maintained, a letter of credit, and the Design-Build Contractor fails to renew or replace, or cause to be renewed or replaced, the letter of credit in the required amount by the date that is 30 days before its stated expiry date, the Company is entitled to draw on the full available amount of the outstanding letter of credit up to the required amount of the replacement security, which draw will be held by the Company as replacement security until one or more other replacement letters of credit are provided or are applied for any reason for which a letter of credit may be applied under the Design-Build Contract.

In addition, in the event (a) the issuer of a letter of credit fails to satisfy the criteria required by the Design-Build Contract set forth above, within 15 days after becoming aware, the Design-Build Contractor is required to provide one or more substitute letters of credit from an issuer other than the bank that has been downgraded or failed to meet other required criteria, or (b) the issuer of a letter of credit fails to honor the beneficiary’s proper request to draw on an outstanding letter of credit, then within five business days thereafter the Design-Build Contractor is required to provide one or more substitute letters of credit from an issuer other than the bank that has failed to honor the outstanding letter of credit. If the Company does not receive one or more replacement letters of credit from an issuer within the time required, the Company is entitled to draw on the full available amount of the applicable letter of credit, which draw will be held by the Company as replacement security until one or more other replacement letters of credit are provided or are applied for any reason for which a letter of credit may be applied under the Design-Build Contract.

Any time the Company is entitled under the Design-Build Contract to draw on a letter of credit, the Company is entitled, in its sole discretion, to draw on and use proceeds from one or more of the letters of credit in any order.

Guaranties

Each of Fluor Corporation, Salini Impregilo S.p.A. and Traylor Bros., Inc. has executed and delivered to the Company a guaranty as of the effective date of the Design-Build Contract, each guaranteeing all of the Design-Build Contractor’s obligations under the Design-Build Contract and such obligations owed to the Company under the Interface Agreement.

Any guaranty provided under the Design-Build Contract must meet the requirements set forth in the P3 Agreement and be enforceable by the Contracting Authority as a transferee beneficiary if, subject to the P3 Agreement and the P3 Direct Agreement, the Contracting Authority determines that (a) the Design-Build Contractor has breached or failed to perform any obligations under the Design-Build Contract, (b) the breach has caused, or with the passage of time reasonably may cause, a Company default under the P3 Agreement or, if the Company default has occurred, the applicable cure period has expired without full and complete cure and (c) the Company or the Collateral Agent has failed to call upon or otherwise enforce all of the guaranties (for the purpose of causing the performance of the obligations by or on behalf of the Design-Build Contractor) within 10 days after the Contracting Authority delivers notice of the breach or expected breach to the Company under the P3 Agreement and the Collateral Agent and the cure period under the P3 Direct Agreement has expired. So long as the Company or a Lender is diligently pursuing remedies under a guaranty, the Contracting Authority has agreed under the P3 Agreement to forbear from exercising its right to become a beneficiary under the P3 Agreement. However, if the Company default under the P3 Agreement that gives rise to the exercise of remedies under any guaranty
remains uncured at the end of the cure period, the Contracting Authority’s obligation to forbear from exercising remedies as a guaranteed party ceases.

Warranties

The Design-Build Contractor warrants and guarantees for the benefit of (a) the Company, (b) the Contracting Authority and (c) to the extent any portion of the DB Work is being performed for third parties, the third parties, that:

(a) the design and engineering of the DB Work will be performed in accordance with the standards of care, skill and diligence as would be provided by an engineering firm experienced in supplying similar services nationally in the United States of America for projects of technology, complexity and size similar to that of the DB Work, and otherwise in compliance with the requirements of the Design-Build Contract and the other Contract Documents;

(b) all DB Work will be of good quality, in conformance with the requirements of the Design-Build Contract and the other Contract Documents, and free of defects in material, equipment and workmanship; and

(c) the record documents and the final design documents must be accurate and complete, comply with the requirements of the Design-Build Contract and the other Contract Documents, and accurately reflect the condition of the Project as of the DB RSA Date.

Other than with respect to third-party warranties, the warranty will commence on the DB RSA Date and end on the later of (a) the first anniversary of the DB RSA Date and (b) the date of DB Final Completion, but in no event will the warranty extend later than the second anniversary of the DB RSA Date, with the following exceptions:

(a) with respect to any Project component included in the DB Work (regardless of number) that is altered, repaired or replaced, as applicable, pursuant to the warranty, the term of the warranty will run until the later of (i) the expiration of the base warranty period set forth above and (ii) the date that is one year after the alteration, repair, or replacement;

(b) the liability period for latent defects will be per the statutory limit; and

(c) the term of the warranty with respect to any LRV (or associated equipment, part, system or component) included in the DB Work that is replaced due to an identified fleet defect will commence on the date of completion of the replacement and continue for the duration of the original, unextended warranty, as provided in the P3 Agreement.

The term of the warranty with respect to all DB Work performed for third-parties will be for a minimum of one year after the date of acceptance of the DB Work by the third-party, or a longer term as may be required in accordance with the Design-Build Contract, for the third-party’s benefit (with rights of enforcement). The Contracting Authority is required to have, and will be identified as a third-party beneficiary of, the right to enforce all third-party warranties.

If the Company notifies the Design-Build Contractor in writing during the applicable warranty period, or no later than 30 days after the expiration of the applicable warranty period, that a warranty breach has occurred during the warranty period, the Design-Build Contractor must correct (or cause to be corrected) the defects and deficiencies promptly at no cost to the Company. The Design-Build Contractor’s obligation to correct defects and deficiencies includes repair and/or replacement of any applicable Project equipment or component, including, as necessary, labor, parts, transportation, factory repair and testing, dismantling, re-erecting, retesting and commissioning. In the event of any breach of the design component of the warranty, the Design-Build Contractor is required to promptly investigate and determine the source
of the fault, promptly correct any defective designs, promptly issue corrected design documentation, promptly replace all associated defective equipment and materials and re-perform all other DB Work necessary to cure fully the breach of the design component of the warranty and its effects on the Project. The warranty does not cover damage to the extent arising from the Company’s misuse or negligence, a Force Majeure Event, failure to operate in accordance with good industry practice or the operating manual provided by the Design-Build Contractor, failure of the Company to provide prompt notice and an opportunity for the Design-Build Contractor to investigate and repair (but solely to the extent of any incremental damage that would not have occurred had the notice and opportunity been provided promptly), or normal wear and tear. If the Design-Build Contractor does not commence a remedy following notice from the Company and continue diligently to pursue the remedy, the Company may perform or have performed by third parties the necessary remedy, and the Design-Build Contractor will be liable for all reasonable direct costs, charges and expenses incurred by the Company in connection with the remedy that would not have been incurred if the Design-Build Contractor had performed its obligations.

In addition, the Design-Build Contractor has full charge and care of the site and the DB Work (including bearing the risk of loss and damage to the DB Work and the site), except to the extent that the Company or third parties have accepted elements of the DB Work and assumed responsibility for the maintenance of those elements. The Design-Build Contractor must repair, restore and replace losses or damages to the DB Work occasioned by any of the elements, including rain, snow and wind, and bears the expense of those repairs, except to the extent that compensation is allowed under the Design-Build Contract.

Nonconforming Work

If the Design-Build Contractor has not performed the DB Work in conformity with the Contract Documents, then, in addition to any other remedies available to the Company, the Company may direct the Design-Build Contractor to remove and replace or otherwise remedy the nonconforming DB Work, without entitlement to make a claim for relief in connection with the nonconforming DB Work. The Design-Build Contractor must submit a proposed plan of correction to the Company for its approval describing the error or defect giving rise to the nonconforming DB Work and describing the Design-Build Contractor’s planned remedial action.

If the Contracting Authority, under the P3 Agreement, determines that a plan of correction proposed by the Company may infringe upon system integrity, operations or maintainability, then the Contracting Authority may elect to perform a technical assessment of the Company’s proposal. Under the P3 Agreement, the Contracting Authority is to notify the Company promptly upon determining that an assessment is required and take reasonable efforts to expedite the assessment. Should the Contracting Authority under the P3 Agreement elect to perform any technical assessment, (a) if so requested by the Contracting Authority, the Design-Build Contractor may not proceed with the plan of correction until the Contracting Authority has conducted its technical assessment and provided prior approval of the plan of correction and the Company has approved the plan and (b) the Design-Build Contractor will not be entitled to make any claim in connection with the technical assessment or reasonable delay in the plan of correction pending the Company’s approval.

The Company has the right and authority to cause nonconforming DB Work to be removed, replaced or otherwise remedied and to withhold or deduct the costs from any monies due or that become due to the Design-Build Contractor under the Contract Documents upon (a) any failure of the Design-Build Contractor to provide and obtain the Company’s approval of a remedial plan promptly following discovery of nonconforming work, or (b) any failure of the Design-Build Contractor to comply with the Company’s and/or the Contracting Authority’s direction under the Design-Build Contract relating to any safety issue.
Indemnities

Indemnities by the Design-Build Contractor

General Indemnity—State Indemnified Parties and Company Indemnified Parties. In addition to the Design-Build Contractor’s other indemnification obligations set forth in the Design-Build Contract, the Design-Build Contractor is required to indemnify, defend, and hold harmless the State Indemnified Parties and the Company Indemnified Parties from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys’ and expert witness fees and costs, arising out of, relating to or resulting from:

(a) Any act, omission, neglect or misconduct by any Design-Build Contractor-related entity in the manner or method of executing the DB Work satisfactorily or due to the failure to perform the DB Work, including (i) any neglect in safeguarding the DB Work, (ii) use of unacceptable materials in performance of the DB Work or other defect in the DB Work, (iii) faulty, inadequate or improper temporary drainage during construction, (iv) the use, misuse, storage or handling of explosives in performance of the DB Work, or (v) other breach, alleged breach or violation of the Design-Build Contractor’s obligations under the Contract Documents or any subcontract;

(b) The failure or alleged failure by any Design-Build Contractor-related entity to comply with the governmental approvals, any applicable environmental laws or other laws (including laws regarding hazardous materials management) relating to the performance of the DB Work;

(c) Any Design-Build Contractor-related entity’s performance of, or failure to perform, the obligations under any utility agreement;

(d) Any Design-Build Contractor-related entity’s breach of or failure to perform an obligation that the Contracting Authority or the Company owes to a third-party, including governmental entities, under law or under any agreement between the Contracting Authority or the Company and a third-party, where performance of the obligation is delegated to the Design-Build Contractor under the Design-Build Contract, or the acts or omissions of any Design-Build Contractor-related entity that render the Contracting Authority or the Company unable to perform or abide by an obligation that the Contracting Authority or the Company owes to a third-party, including governmental entities, under any agreement between the Contracting Authority or the Company and a third-party, provided the agreement was previously disclosed or known to the Design-Build Contractor;

(e) Any alleged infringement or other allegedly improper appropriation or use of intellectual property in performance of the DB Work, or arising out of, relating to or resulting from any use in connection with the DB Work of methods, processes, designs, information or other items furnished or communicated to the Contracting Authority or another State Indemnified Party or the Company or another Company Indemnified Party under the Design-Build Contract. This indemnity does not apply to any infringement resulting from the Contracting Authority’s or the Company’s failure to comply with specific written instructions regarding use provided to the Contracting Authority or the Company, as applicable, by the Design-Build Contractor that are consistent with the Design-Build Contractor’s obligations to convey and license the Design-Build Contractor’s intellectual property under the Design-Build Contract;

(f) Any Design-Build Contractor release of hazardous materials and any liabilities resulting therefrom;
(g) Any fines or penalties imposed on the Contracting Authority or the Company by any authority having jurisdiction arising out of, relating to or resulting from the Design-Build Contractor’s breach of or failure to comply with applicable requirements of the Contract Documents;

(h) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Design-Build Contractor-related entity with respect to any payment for the DB Work made to or earned by the Design-Build Contractor-related entity under the Contract Documents; or

(i) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Design-Build Contractor-related entity to comply with good industry practice, the requirements of the Contract Documents, the Project management plan or governmental approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the DB Work, (ii) the intentional misconduct or negligence of any Design-Build Contractor-related entity in connection with the performance of the DB Work, or (iii) unauthorized physical entry onto or encroachment upon another’s property by any Design-Build Contractor-related entity in connection with the performance of the DB Work.

**General Indemnity—Company Indemnified Parties.** In addition, the Design-Build Contractor is required to indemnify, defend and hold harmless the Company Indemnified Parties from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to:

(a) Claims by third parties for death, injury or destruction of or damage to property, in each case to the extent caused or contributed to by the negligence or other tortious act, fraud, strict liability or willful misconduct of any Design-Build Contractor-related entity;

(b) Failure by the Design-Build Contractor to comply with the Design-Build Contractor’s obligations under the Design-Build Contract in respect of hazardous materials;

(c) The violation of any law or governmental approval by any Design-Build Contractor-related entity;

(d) Failure of the Design-Build Contractor to pay any taxes for which it is responsible;

(e) Failure of the Design-Build Contractor to provide good title (to the extent required by the P3 Agreement) to any portion of the Project included within the DB Work, free and clear of any charge, lien, encumbrance or other security interest;

(f) Nonpayment of amounts due as a result of furnishing materials or services to the Design-Build Contractor or any of its subcontractors in connection with the DB Work to the extent that the Company has paid the Design-Build Contractor all undisputed amounts then due and payable from the Company to the Design-Build Contractor; or

(g) Failure by the Design-Build Contractor to possess (or have the right to use) and convey to the Company all intellectual property (or the right to use it), on a fully paid-up, irrevocable basis, necessary to complete the DB Work and allow the Project to be operated by the Company and the Contracting Authority for its intended purpose.

The above does not apply, however, to the extent proven to have been caused by the Company.

**Design Defects.** Subject to the limitations on the Company’s right to enforce indemnities against State Indemnified Parties below, the Design-Build Contractor is required to indemnify and hold harmless
the State Indemnified Parties and the Company Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys’ fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the design documents developed by the Design-Build Contractor, regardless of whether the errors, omissions, inconsistencies or other defects were also included in the contract drawings or reference documents provided in the P3 Agreement, except to the extent that an error, omission, inconsistency or other defect in the design documents is directly attributable to an error, omission, inconsistency or other defect in the contract drawings and the Design-Build Contractor did not act negligently in finalizing the design of the Project included in the DB Work. The Company has agreed under the Design-Build Contract not to enforce against the Design-Build Contractor any of the Company’s indemnities in favor of the State Indemnified Parties under the P3 Agreement that are passed through to the Design-Build Contractor, unless the State Indemnified Party is enforcing the indemnity against the Company under the P3 Agreement.

Property Damage, Railroads, Insurance Limitations and Claims by Employees and the University of Maryland. The Design-Build Contractor will also be held responsible for any accidents that may happen to any railroad company as a result of the Design-Build Contractor’s operations. In addition, subject to certain exceptions in the Design-Build Contract, the Design-Build Contractor’s obligations include responsibility for loss (including loss of use) of or damage to real or personal property of the Company, MTA, MDOT or any other person until the DB RSA Date.

With respect to any loss or damage of the type covered by the insurance required to be provided under the Design-Build Contract or otherwise obtained by the Design-Build Contractor for the Project, the Design-Build Contractor’s indemnity obligation will not extend to any loss, damage or expense arising out of, relating to or resulting from the sole negligence or willful misconduct of a State Indemnified Party or a Company Indemnified Party or their respective agents, servants or independent contractors who are directly responsible to the State Indemnified Party or the Company Indemnified Party.

With respect to any loss that is not of the type covered by the insurance required to be provided under the Design-Build Contract or otherwise obtained by the Design-Build Contractor for the Project, the Design-Build Contractor’s indemnity obligation will not extend to any loss, damage or cost to the extent that the loss, damage or cost was caused by (a) the breach by the Company of any of its obligations to the Design-Build Contractor under the Design-Build Contract or by the Contracting Authority of any of its obligations to the Company under the P3 Agreement or (b) the negligence or willful misconduct of a State Indemnified Party or a Company Indemnified Party or their respective agents, servants or independent contractors who are directly responsible to the State Indemnified Party or the Company Indemnified Party. Furthermore, the Design-Build Contractor’s indemnity obligations will not include payment of punitive damages except to the extent that punitive damages are assessed as the result of culpable conduct by the Design-Build Contractor.

In claims by an employee of the Design-Build Contractor or a subcontractor, anyone directly or indirectly employed by the Design-Build Contractor or a subcontractor, or anyone for whose acts the Design-Build Contractor or subcontractor may be liable, the Design-Build Contractor’s indemnification obligation under the Design-Build Contract will not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Build Contractor or a subcontractor under workmen’s compensation, disability benefit or other employee benefits laws. However, this limitation is not a waiver in favor of any employee by the Design-Build Contractor or any subcontractor of any limitation of liability afforded by law.

The Design-Build Contractor is responsible under the Design-Build Contract for certain claims filed by the University of Maryland relating to the system. These claims are capped as set forth in the Design-Build Contract.
Indemnities by the Company

The Company is required to indemnify, defend and hold harmless the Design-Build Contractor Indemnified Parties from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises that arise out of or relate to:

(a) Third-party claims associated with the performance by the Company of its obligations under the Design-Build Contract or, to the extent the Design-Build Contractor is not responsible therefor, the P3 Agreement, including any damage to or destruction of property of, or death of or bodily injury to, any person, in each case to the extent caused by or contributed to by the tortious act, negligence, fraud, strict liability or willful misconduct of the Company, any of the Company’s contractors or subcontractors of any tier, or any other person for whom the Company is legally responsible; or

(b) The violation of any law or governmental approval by the Company, any of the Company’s contractors or their subcontractors of any tier or any other person for whom the Company is legally responsible.

The above does not apply, however, to the extent proven to have been caused by the Design-Build Contractor.

Liquidated Damages

Subject to adjustments made in accordance with the Design-Build Contract, if the Design-Build Contractor does not achieve DB Revenue Service Availability on or before the Guaranteed DB RSA Date, the Design-Build Contractor must pay to the Company liquidated damages in the amount of $220,000 for each day (or part thereof) until DB Revenue Service Availability is achieved. If the Design-Build Contractor does not achieve DB Final Completion on or before the Guaranteed DB Final Completion Date, the Design-Build Contractor must pay to the Company liquidated damages in the amount of $3,158 (or such other amount agreed to by the Company and the Design-Build Contractor prior to Financial Close, which will be reflected in an amendment to the Design-Build Contract) for each day (or part thereof) until DB Final Completion is achieved. Both the DB Revenue Service Availability liquidated damages and the DB Final Completion liquidated damages will be updated for interest rate adjustment in the amended and restated Design-Build Contract. See “PRINCIPAL PROJECT DOCUMENTS—The Design-Build Contract—The Amended and Restated Design-Build Contract.” Design-Build Contractor’s obligation to pay DB Revenue Service Availability liquidated damages and DB Final Completion delay liquidated damages to the Company may not exceed, in the aggregate, an amount equal to the sum of (a) the product of the DB Revenue Service Availability liquidated damages multiplied by 275 days, plus (b) the product of the DB Final Completion delay liquidated damages multiplied by 543 days (subject to adjustment in accordance with the Design-Build Contract).

Early Completion Incentive

Subject to the terms and conditions of the Design-Build Contract, for each full day that DB Revenue Service Availability occurs before the Guaranteed DB RSA Date as set forth in the Project schedule effective as of the date of the early completion requested provided by the Design-Build Contractor (such Guaranteed DB RSA Date, the may be thereafter extended pursuant to the Design-Build Contract solely due to (i) a Company-caused delay, Company’s DB Work suspension or a work order not resulting from Contracting Authority’s directive letter and/or (ii) any Relief Event or Force Majeure Event that entitles the Company to delay interest under the P3 Agreement, which entitlement Contracting Authority has not disputed under the P3 Agreement, or if there is a dispute, it is subsequently resolved such that the Company has the entitlement), the Design-Build Contractor is entitled to an early completion incentive payment in the amount of $80,000 per day, up to a maximum of 90 days prior to such Guaranteed DB RSA Date. The Company’s obligation to pay the early completion incentive payment is subject to satisfaction of
each of the following conditions: (a) the Design-Build Contractor has requested early achievement of DB Revenue Service Availability at least 13 months before the date on which the Design-Build Contractor wishes to achieve DB Revenue Service Availability; (b) pursuant to the P3 Agreement, The Contracting Authority has approved achievement of early Revenue Service Availability; and (c) early DB Revenue Service Availability is actually achieved.

Subcontractors; Disadvantaged Business Enterprise Participation; Labor Standards

Subcontractors. Subject to the terms and conditions of the Design-Build Contract, the Design-Build Contractor may enter into one or more subcontracts with subcontractors to perform portions of the DB Work (but not the entire DB Work). The Design-Build Contractor may only retain subcontractors that are qualified, experienced and capable in the performance of the portion of the DB Work assigned. The Design-Build Contractor is required to ensure that each subcontractor has at the time of execution of the subcontract, and maintains at all times during performance of the assigned DB Work, all licenses, certifications, registrations, permits, approvals bonds and insurance required by applicable law. The Design-Build Contractor must manage, administer, control, coordinate and integrate the work of all of the subcontractors in the execution of the DB Work in accordance with the Design-Build Contract.

Each subcontract must include (a) terms sufficient to ensure both the acknowledgement of and compliance by the subcontractor with the applicable requirements of the Contract Documents and to ensure that the Company and the Contracting Authority have the ability to exercise their respective rights specified in the Contract Documents, (b) those terms that are specifically required by the Contract Documents to be included in the subcontract, and (c) all applicable federal requirements. The Design-Build Contractor must require each subcontractor to familiarize itself with the requirements of any and all applicable laws, including those laws applicable to the use of federal-aid funds, and the conditions of any required governmental approvals.

The Design-Build Contractor is required to ensure that all of its subcontractors and suppliers provide representations, warranties, guarantees and obligations in accordance with good industry practice for work of similar scope and scale with respect to design, materials, workmanship, equipment, tools and supplies furnished by all the subcontractors and suppliers, all of which must extend to the Company, the Contracting Authority and relevant third parties. The Design-Build Contractor is responsible, however, for enforcing the representations, warranties, guarantees and obligations. To the extent that any warranty or guarantee of any of the Design-Build Contractor’s subcontractors is voided after termination of the Design-Build Contract by reason of the Design-Build Contractor’s negligence or failure to comply with the requirements of the Design-Build Contract in incorporating materials or equipment into the DB Work, the Design-Build Contractor is required to correct any defect in the DB Work performed by the subcontractor that would otherwise have been covered by a warranty or guarantee.

Under the Design-Build Contract, the Design-Build Contractor is also required to include certain provisions in all subcontracts that are Key Contracts. These provisions include, among other things, the following:

(a) Not be assignable by the Key Contractor without the Company’s and Contracting Authority’s prior consent (but the Key Contractor may subcontract portions of the DB Work);

(b) Require the Key Contractor to participate, with the Design-Build Contractor, in meetings between the Company and the Contracting Authority concerning matters pertaining to the Key Contractor (but under the P3 Agreement the Contracting Authority has retained authority to give a direction or take an action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property);

(c) Without cost to the Company or Contracting Authority, and subject to the rights of the Collateral Agent under the Design-Build Direct Agreement and/or any P3 Direct Agreement, permit assignment to the Company, Contracting Authority, the Collateral Agent or either of their respective successors, assignees or designees of all the Design-Build Contractor’s rights
under the Key Contract, contingent only upon delivery of notice from the Contracting Authority following the P3 Agreement termination date, or from the Company following the termination date of the Design-Build Contract, allowing the Contracting Authority or the Company to proceed as set forth in the Design-Build Contract or P3 Agreement, as applicable; and

(d) Include a covenant acknowledging, subject to the rights of the Collateral Agent under the Design-Build Direct Agreement and/or any P3 Direct Agreement, certain step-in rights of the Company and Contracting Authority.

In addition, the Design-Build Contractor must ensure that each subcontract includes indemnity provisions appropriate to the scope of the DB Work to be performed by the subcontractor, naming the State Indemnified Parties and the Company Indemnified Parties as indemnitees. Further, neither the Design-Build Contractor nor any of its subcontractors may terminate or replace certain key personnel without the prior consent of the Company (as specified in the Design-Build Contract and the P3 Agreement).

**Disadvantaged Business Enterprise Participation.** The Design-Build Contractor is also required to meet certain disadvantaged business enterprise ("DBE") participation goals. The goals for the Design-Build Period of the Project (excluding supply of LRVs) are 26% DBE participation for DB Work included in D&C design services and 22% DBE participation for DB Work included in D&C construction services. The Design-Build Contractor must also make good-faith efforts to assure that, with respect to the DB Work (a) not less than 33% of all construction work hours are performed by nationally targeted workers, (b) not less than 10% of the construction work hours under clause (a) are performed by nationally targeted workers of social disadvantage and (c) not more than 50% of the aggregate construction work hours under clauses (a) and (b) are worked by “Helpers” or other “Unskilled Laborer” positions as defined in the Davis-Bacon Act. The Davis-Bacon Act also applies with respect to prevailing wages for construction under the Design-Build Contract.

**Labor Standards.** The Design-Build Contractor is obligated to comply with certain labor standards, ethical standards, nondiscrimination standards, disadvantaged business rules and federal laws during the performance of the DB Work. The Design-Build Contractor is responsible and liable for all labor relations matters of the Design-Build Contractor and subcontractor personnel relating to the DB Work and must at all times use commercially reasonable efforts to maintain harmony among the unions (if any) and other personnel employed in connection with the DB Work and act in a reasonable, professional and courteous manner with the Company’s contractors. The Design-Build Contractor must at all times use all commercially reasonable efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes.

**Insurance**

**General Obligations.** Under the Design-Build Contract, the Design-Build Contractor must procure or cause to be procured and keep in effect or cause to be kept in effect (a) the controlled insurance program, professional risk insurance, builder’s risk insurance and other insurance coverages required by the Design-Build Contract and (b) the subcontractors’ insurance coverages required by the Design-Build Contract. Each insurance policy must be procured from an insurance company meeting the requirements of applicable law, licensed or authorized to do business in the State and rated at least “A-” by Standard and Poor’s or “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating, both at policy inception and for the duration of its placement of insurance, unless the Design-Build Contractor has obtained the Company’s approval otherwise. Subject to limited exceptions in the Design-Build Contract, the Design-Build Contractor is responsible for insurance policy deductibles. Except as otherwise provided in the Design-Build Contract, all insurance policies must be purchased specifically and exclusively for the Project and extend to all aspects of the DB Work, with coverage limits devoted solely to the Project.
Each insurance policy required to be maintained by the Design-Build Contractor must be endorsed to state that coverage or limits of coverage cannot be canceled, voided, suspended or changed by endorsement or other change in policy language (including for non-payment of premium) except after 45 days’ prior written notice (or 10 days in the case of cancellation for nonpayment of deposit premium at the inception of the policy) has been given to the Company and the Contracting Authority and during which time no cure has been effected by any insured. No insurance policy may provide coverage on a “claims made” basis (with the exceptions of any professional liability, contractor’s pollution liability and operator’s pollution liability insurance policies) unless otherwise expressly stated in the Design-Build Contract. If the policy is permitted to be written on a “claims made” basis, coverage must be continued without interruption and for a period of 10 years after termination or expiration of the Design-Build Contract (except as otherwise provided in the Design-Build Contract with respect to professional liability insurance policies). If “claims made” coverage is terminated at any time, then an extended automatic and prepaid reporting period of not less than 10 years after termination or expiration must be included.

The Design-Build Contractor and all of the insurance carriers providing insurance policies must each waive all subrogation rights against all other Insured Parties for any claims to the extent covered and paid by insurance obtained under the Design-Build Contract. If the Design-Build Contractor is deemed to self-insure a claim or loss under the Design-Build Contract, then the Design-Build Contractor’s waiver will apply as if it carried the required insurance. The Design-Build Contractor must require all subcontractors and their respective insurance carriers to provide similar waivers in writing each in favor of all other Design-Build Contractor-related entities and Insured Parties. Each insurance policy, including workers’ compensation if permitted under the applicable worker’s compensation insurance laws, must be endorsed to include a waiver of any right of subrogation by the Design-Build Contractor and each insurance carrier against the Insured Parties or a consent to the insured’s waiver of recovery in advance of loss.

Except as otherwise provided in the Design-Build Contract, there is no recourse against the Company, the Contracting Authority or any of the other Insured Parties (other than the Design-Build Contractor) for payment of premiums or other amounts with respect to the insurance policies.

Subcontractors. The Design-Build Contractor’s subcontractors must be insured in accordance with the Design-Build Contract. If the Design-Build Contractor and/or any subcontractor fails to procure and keep in effect the insurance required of it under the Design-Build Contract and the Company provides a notice of the Design-Build Contractor default for the failure, the Company may, within the applicable cure period, cure the Design-Build Contractor default by (i) procuring or causing the subcontractor to obtain the requisite insurance, or (ii) terminating the subcontractor and removing its personnel from the worksite. In connection with this cure, the Design-Build Contractor is responsible for ensuring there is no gap or interruption in coverage. A consolidated insurance program, with the Company’s approval, is acceptable to satisfy all insurance requirements, so long as it otherwise meets all requirements described in the Design-Build Contract.

Indemnities. The commercial general liability insurance policy and any other liability insurance policy are required to provide coverage of the Design-Build Contractor’s indemnity liabilities under the principal Project documents, to the maximum extent commercially available, either specifically as a grant of coverage or as insured contracts under an exception to any contractual liability exclusion in the insurance policies. No insurance policy may preclude coverage of the Design-Build Contractor’s indemnity obligations, including specifically indemnification obligations to any of the Company Indemnified Parties, the State Indemnified Parties or the Design-Build Contractor Indemnified Parties under the principal Project documents arising out of, relating to or resulting from the DB Work (except customary exclusions).

Alternative Insurers. If an insurer providing any of the insurance policies (a) becomes the subject of any order of liquidation, (b) becomes insolvent, (c) is the subject of an order or directive limiting its business activities given by any governmental entity, including the Maryland Insurance Administration or the insurance regulators of any other state or jurisdiction, (d) becomes the subject of any proceeding in any state or jurisdiction for the liquidation or winding up of its affairs or in which a liquidator, conservator or custodian is appointed at the request of any governmental entity, or (e) if its rating is lowered below that
specified above, then the Design-Build Contractor is required to exercise best efforts to promptly secure alternative coverage in compliance with the insurance requirements contained in insurance provisions of the Design-Build Contract so as to avoid any lapse in insurance coverage.

**Property Damage.** All insurance proceeds received for physical property damage to the Project under any insurance policies, other than any business interruption or delay in start-up insurance maintained as part of the insurance policies, will be first applied to repair, restore or replace each part or parts of the Project or the DB Work with respect to which the proceeds were received.

**Insurance Unavailability.** If the Design-Build Contractor demonstrates to Contracting Authority’s reasonable satisfaction (with the Company’s participation) that it has used diligent efforts in the global insurance and reinsurance markets to procure the required insurance policy coverages, and if despite diligent efforts and through no fault of the Design-Build Contractor any insurance unavailability exists or occurs, the Contracting Authority may seek out, through review of the global insurance and reinsurance markets, coverage at commercially reasonable insurance rates. If coverage is found, the Design-Build Contractor is required to place the insurance at the premium negotiated by Contracting Authority, not to exceed commercially reasonable insurance rates, so long as the coverage complies with the applicable prescriptions under the Design-Build Contract. If the Contracting Authority is unsuccessful in identifying coverage, the Contracting Authority has agreed under the P3 Agreement to consider in good-faith approving alternative insurance packages and programs presented by or through the Design-Build Contractor. If the Contracting Authority approves alternative insurance requirements because of insurance unavailability, then (a) subject to the P3 Agreement, the Contracting Authority has agreed to be responsible for any loss to the extent that the unavailable insurance policy or portion thereof would have covered the loss, for the duration of the insurance unavailability (and the Design-Build Contractor is entitled to the benefit of Contracting Authority’s agreement to the extent related to the DB Work) and (b) the Contracting Authority is entitled under the P3 Agreement to a reduction in the scheduled payments totaling 100% of the insurance premiums that the Design-Build Contractor avoids as a result of the modification of the insurance requirements.

If the required insurance policies are available from insurers meeting the financial requirements in the Design-Build Contract but not at commercially reasonable insurance rates, then the Contracting Authority may, under the P3 Agreement, elect not to approve modification of insurance requirements and to pay 100% of the premiums that exceed the commercially reasonable insurance rates (and the Design-Build Contractor is entitled to the benefit of Contracting Authority’s election to pay to the extent related to the DB Work).

For a description of termination in the event of insurance unavailability, see “—Termination of the Design-Build Contract—Insurance Unavailability.”

**Excess Liability Allowance.** The P3 Agreement identifies an amount budgeted by the Contracting Authority to pay the cost of placing excess liability insurance. These funds are to be used by the Contracting Authority under the P3 Agreement to reimburse the Company for these costs, without markup, or to pay the costs directly, and the Company is to in turn, subject to the Design-Build Contract, reimburse or pay the costs to the Design-Build Contractor. If the Design-Build Contractor fails to obtain the required additional excess liability insurance or if the Contracting Authority elects under the P3 Agreement to obtain the additional excess liability insurance because the Contracting Authority determines that its costs are lower than the Design-Build Contractor’s, then the Contracting Authority may under the P3 Agreement notify the Company that it will place the insurance itself (and the Company is to provide the notice to the Design-Build Contractor), whereupon the Contracting Authority may use the excess liability allowance amount to pay for costs that would otherwise have been payable to the Design-Build Contractor from the excess liability allowance.

**LRV Options**

The Contracting Authority under the P3 Agreement has three separate options to require the Company to purchase and commission option LRVs under the P3 Agreement: LRV option A, LRV option
B and LRV option C, each as set forth in the P3 Agreement and the Design-Build Contract. The Design-Build Contractor is required, on behalf of the Company, to fulfill these obligations with respect to LRV options set forth in the P3 Agreement (as described in the Design-Build Contract) but only with respect to those option LRVs ordered by the Contracting Authority under the P3 Agreement before the date that is 30 months before the Guaranteed DB RSA Date (such date, as of the date of Contracting Authority’s exercise of the first LRV option). The option LRVs enable the Company to meet certain requirements and metrics in the P3 Agreement relating to increased service levels for the System as set forth in the Design-Build Contract. Under the P3 Agreement, the LRV options may be exercised independently of each other: LRV option A may be exercised at any time during the period starting at Financial Close and ending on the seventh anniversary of Commercial Close, and LRV options B and C may only be exercised during the period starting on the fifth anniversary of Commercial Close and ending on the seventh anniversary of Commercial Close. The number of LRVs and pricing information for each option is as set forth in the P3 Agreement.

In connection with exercise of LRV option A, whether the option A LRVs are provided by the Design-Build Contractor or the O&M Contractor, certain additional DB Work will be required, and Contracting Authority and the Company (with the Design-Build Contractor’s participation), under the P3 Agreement, are to negotiate an Contracting Authority’s change order in accordance with the P3 Agreement, and the Company and the Design-Build Contractor are to negotiate a corresponding scope change order in accordance with the Design-Build Contract specifying the price, delivery schedule and scope of the additional DB Work.

Following delivery by the Company to the Design-Build Contractor of an LRV option notice, the Design-Build Contractor is required to procure the option LRVs for delivery and commissioning and notify the Company regarding the scheduled date for delivery and commissioning. If the LRV option notice is delivered more than 36 months before the RSA Deadline, the scheduled date will be the RSA Deadline under the P3 Agreement. In all other cases, the scheduled date may be no later than 36 months after the date of the LRV option notice. Payments for option LRVs will be made based on milestones in accordance with the applicable schedule in the P3 Agreement. Under the Design-Build Contract, the Design-Build Contractor must ensure that each option LRV (a) is compatible and interchangeable with the other LRVs provided under the Design-Build Contract to the extent needed for the Company to meet the performance requirements under the P3 Agreement and provide safe and reliable operations, (b) incorporates all relevant upgrades available as of the date of manufacture that have been incorporated into the initial fleet (25 LRVs and, when delivered, the O&M Spare LRV) (subject to limited exceptions set forth in the Design-Build Contract), (c) was manufactured in accordance with the Technical Provisions and to the specifications applicable to the LRVs originally procured by the Design-Build Contractor for the Project, and (d) was tested as part of the manufacturing process and placement into service in accordance with the Technical Provisions.

The Design-Build Contractor is required to remove and replace, or repair, any defective LRVs (including LRVs with fleet defects) supplied by the Design-Build Contractor, at the Design-Build Contractor’s sole expense, to the extent required by the warranty in the Design-Build Contract.

In addition to the option LRVs, under the P3 Agreement additional LRVs may be required in order for the Company to meet the performance requirements concerning system availability for certain service levels not fully addressed by the option LRVs. Accordingly, if the Contracting Authority under the P3 Agreement wishes to require implementation of additional service levels, but has not exercised one or more LRV options that will increase the LRV fleet size to the number of LRVs required for the relevant service level, the Contracting Authority is responsible under the P3 Agreement for providing additional LRVs for the Project that meet the requirements applicable to option LRVs stated in the P3 Agreement and the Design-Build Contract. In addition, this change will require performance of certain additional DB Work as described in the P3 Agreement. Accordingly, in connection with direction by the Contracting Authority to the Company under the P3 Agreement to change service levels as contemplated by the Design-Build Contract, the Company must so direct the Design-Build Contractor, and the Company (with the Design-Build Contractor’s participation) and the Contracting Authority are, under the P3 Agreement, to negotiate a Contracting Authority change order specifying the price, delivery schedule and scope of the
additional DB Work, and the Design-Build Contractor and the Company will negotiate a corresponding scope change order under the Design-Build Contract. The Contracting Authority may also, under the P3 Agreement, purchase LRVs from a source other than the Design-Build Contractor so long as certain conditions are met, including that warranties are obtained from the vendor consistent with good industry practice.

If Contracting Authority, under the P3 Agreement, exercises LRV option A, the Design-Build Contractor has the option to make LRV deferral payments to Contracting Authority, in accordance with the Design-Build Contract, and defer the start date for moving service levels by up to 24 months. The aggregate total of LRV deferral payments for an LRV option may not exceed 15% of the total value of the relevant LRV option order.

Changes

**Contracting Authority Change Order**

Pursuant to the process set forth in the P3 Agreement, the Contracting Authority may authorize and/or require a Contracting Authority change order modifying, among other things, the work under the P3 Agreement, the requirements of the Technical Provisions and the scope of the DB Work due to modifications to the terms and conditions (or assumed terms and conditions) of third-party agreements or utility agreements. Under the P3 Agreement, if the Contracting Authority desires to initiate or evaluate whether to initiate a Contracting Authority change order, then the Contracting Authority may issue a request for the Contracting Authority change order proposal stating the nature, extent and details of the proposed Contracting Authority change. If the proposed Contracting Authority change relates to the DB Work, the Company is required to provide the request for a Contracting Authority change order proposal to the Design-Build Contractor, and the Design-Build Contractor must fulfill the Company’s obligations under the P3 Agreement with respect to the DB Work portion of the Contracting Authority change in accordance with the Design-Build Contract. Within 55 days following the Company’s delivery to the Design-Build Contractor of any request for a Contracting Authority change order proposal that the Company received from Contracting Authority, the Design-Build Contractor is required to provide the Company with a response as to whether, in the Design-Build Contractor’s opinion, the proposed Contracting Authority change results in entitlement to additional compensation, an extension of time, excuse from compliance or other relief in accordance with the Design-Build Contract.

Following the Company’s receipt of the Design-Build Contractor’s response and the Company’s and Contracting Authority’s further assessment of the cost, schedule and other impacts of the proposed Contracting Authority change under the P3 Agreement, the Company (with the Design-Build Contractor’s participation) and Contracting Authority, giving due consideration to the assessments, are, under the P3 Agreement, to engage in good-faith negotiations to reach agreement on the terms of a Contracting Authority change order under the P3 Agreement, and the Company and the Design-Build Contractor are to, in turn, agree on a corresponding scope change order under the Design-Build Contract (including (a) adjustment of the contract deadlines as appropriate and/or (b) either (i) the compensation amount to which the Design-Build Contractor is entitled or (ii) any net cost savings and schedule savings to which the Company is entitled). The final issuance of the scope change order is subject to the issuance by the Contracting Authority under the P3 Agreement of a corresponding Contracting Authority change order making changes to the P3 Agreement that are needed to reflect the terms of the scope change order agreed between the Company and the Design-Build Contractor. The scope change order must specify, as applicable, the timing and method for payment of any compensation amount or for realizing any net savings in the cost of the DB Work.

Under the P3 Agreement, if the Contracting Authority and the Company are unable to reach agreement on a Contracting Authority change order, the Contracting Authority may seek to resolve the dispute under the P3 Agreement dispute resolution procedures without issuing a directive letter, or it may issue a directive letter under the P3 Agreement directing the Company to proceed with the performance of some or all of the proposed Contracting Authority change.
Upon receipt of the directive letter, the Company must issue a corresponding work order to the Design-Build Contractor pursuant to the Design-Build Contract, and the Design-Build Contractor is required to proceed immediately with the DB Work as directed, pending execution of a formal Contracting Authority change order under the P3 Agreement (if the Design-Build Contractor disagrees with the directive letter, the Design-Build Contractor must proceed as directed, but may assert a claim and, subject to the fast-track adjudication process in the Design-Build Contract, direct the Company to assert a claim under the P3 Agreement that a Contracting Authority change has occurred with respect to the DB Work).

**Scope Changes Generally**

A scope change under the Design-Build Contract means a material addition to, deletion from, suspension of or other modification to the quality, function or intent of the Project or to the DB Work as delineated in the Design-Build Contract or the other Contract Documents, or a material change to the requirements of, or the Design-Build Contractor’s and the Company’s rights and/or obligations set forth in, the Design-Build Contract, but do not include correction or detailing of the DB Work by the Company and the Design-Build Contractor from time to time. Subject to the specific provisions set forth in the Design-Build Contract with respect to the following matters: (a) scope changes may include (without limitation), and the Design-Build Contractor is entitled to claim a scope change order for (i) Relief Events, (ii) Force Majeure Events, (iii) Non-Concessionaire-Caused Disruptions, (iv) the costs of allowance work that exceeds the allowance amount under the P3 Agreement, (v) Company-caused delays, (vi) Company DB Work suspensions, (vii) Company-initiated scope changes, (viii) work orders and (ix) as otherwise expressly set forth in the Design-Build Contract; and (b) scope change orders include one or more of, as appropriate, equitable adjustment of the contract price, the scheduled payments, the payment and values schedule, the maximum cumulative payment curve, the Project schedule, the contract deadlines and/or any other milestones, deadlines or time limits with which the Design-Build Contractor must comply and other affected rights and obligations of the Design-Build Contractor.

**Scope Changes Initiated by the Company**

The Company may initiate a scope change under the Design-Build Contract, including as a result of a Company-caused delay or a Company DB Work suspension, by providing the Design-Build Contractor a written request setting forth in detail the nature of the requested change. Upon receipt of the request, the Design-Build Contractor must provide to the Company a proposal for a scope change order setting forth in detail the information required by the Design-Build Contract.

If the Company approves the Design-Build Contractor’s proposal, the Company and the Design-Build Contractor are required to execute a written scope change order, and one or more of the contract price, the payment and values schedule, the Project schedule and/or the contract deadlines will be adjusted, along with other necessary changes to the Contract Documents set forth in the scope change order. If the Company does not approve the Design-Build Contractor’s proposal for a scope change order, the Company (a) may, at its option, execute and deliver to the Design-Build Contractor a work order and (b) must compensate the Design-Build Contractor for the reasonable increased cost incurred by the Design-Build Contractor in responding to the Company’s proposal.

**Scope Change Initiated by the Design-Build Contractor**

The Design-Build Contractor may initiate a scope change, including as a result of a Company-caused delay or a Company DB Work suspension, by providing a notice to the Company that includes all information required by the Design-Build Contract. If the Design-Build Contractor provides the notice to the Company later than the time period specified in the Design-Build Contract, the Design-Build Contractor has no right to make any claim irrespective of whether the Company was prejudiced or not by the late notice. After delivery of a notice to the Company, the Design-Build Contractor is required to deliver to the Company a proposal for a scope change order setting forth in detail the information required by the Design-Build Contract.
The Design-Build Contract provides for fast-track adjudication of any disagreement between the Company and the Design-Build Contractor regarding the terms of a scope change order requested by the Design-Build Contractor.

**Scope Change Due to Company-Caused Delays and Company DB Work Suspension**

Except to the extent another consequence is expressly provided in the Design-Build Contract, the Design-Build Contractor is entitled to claim a scope change order to the extent the Design-Build Contractor’s performance of the DB Work is adversely affected by (a) a Company-caused delay or (b) a Company DB Work suspension, and the effects of which the Design-Build Contractor cannot, in the absence of incurring acceleration costs for impacts to the critical path or other costs impacting the critical path, overcome. If the Contracting Authority’s approval of the scope change order is required under the P3 Agreement and the Company is unable, despite using its reasonable efforts, to secure the approval, then the Company is not obligated to issue a scope change order. However, the Design-Build Contractor maintains the right to seek monetary compensation and other relief to which it may be entitled from the Company, pursuant to the dispute resolutions procedures in the Design-Build Contract, to compensate it for any losses incurred as a result of the Company’s inability to issue a scope change order.

With respect to any scope change proposed by the Company or the Design-Build Contractor or required under the Design-Build Contract, the Design-Build Contractor is required, at the Company’s request, to provide the Company with the option, to the extent reasonably possible, to cause the Design-Build Contractor to perform the scope change without an adjustment in the contract deadlines or the Project schedule, unless the contract price is adjusted to compensate the Design-Build Contractor for any reasonable additional costs incurred in performing the scope change in accordance with the time limitation.

Subject to certain limitations set forth in the Design-Build Contract, the Company is required to approve a proposal for a scope change order evidencing the Design-Build Contractor’s entitlement to claim a scope change order in respect of a Company-caused delay or a Company DB Work suspension unless the Company has a reasonable basis for objecting to any proposal for a scope change order.

**Work Orders**

If, subject to certain limitations in the Design-Build Contract: (a) a proposal for a scope change order delivered by the Design-Build Contractor following Company’s request is not accepted by the Company; (b) the Contracting Authority issues a directive letter pursuant to the P3 Agreement as expressly contemplated in the Design-Build Contract; (c) the Company wishes to direct the Design-Build Contractor to proceed immediately in connection with any dispute regarding the scope of the DB Work or the Design-Build Contractor’s compliance with the requirements of the Contract Documents; or (d) the Company otherwise wishes to direct the Design-Build Contractor to perform additional work or services or other actions not included in the DB Work, then the Company may, at its option, execute and deliver to the Design-Build Contractor a work order in lieu of the scope change order set forth in the Design-Build Contract. With respect to work orders not resulting from the Contracting Authority’s directive letter, the Company has no right to issue a work order that: (i) is not in compliance with law or the P3 Agreement; (ii) is not in compliance with a governmental approval or good industry practice; or (iii) would cause an insured risk to become uninsured.

**Relief Event, Force Majeure Event and Non-Concessionaire Caused Disruption Claim Process**

Under the Design-Build Contract, the Design-Build Contractor may submit a claim for relief in connection with a Relief Event, a Force Majeure Event or a Non-Concessionaire Caused Disruption.
**Relief Event or Force Majeure Event**

In order to claim a scope change order for a Relief Event or Force Majeure Event under the Design-Build Contract, the Design-Build Contractor is required to deliver to the Company timely notice in the form and substance required by the Design-Build Contract stating the event or situation that the Design-Build Contractor believes justifies issuance of a scope change order. The Company is required to submit a corresponding notice to the Contracting Authority under the P3 Agreement based on the notice submitted by the Design-Build Contractor. Thereafter, the Design-Build Contractor is to submit to the Company a request for a scope change order that provides the Design-Build Contractor's complete reasoning for relief relating to the Relief Event or Force Majeure Event, consisting of the information required by the Design-Build Contract, including full details of the Relief Event or Force Majeure Event and items of DB Work affected. Subject to the fast-track adjudication process set forth in the Design-Build Contract, the Company must then submit a request for a Contracting Authority change order to the Contracting Authority under the P3 Agreement based on the request for scope change order submitted by the Design-Build Contractor. Under the P3 Agreement, the Contracting Authority is to evaluate the information presented in the P3 Agreement request for a Contracting Authority change order and provide a response to the Company within 45 days, either notifying the Company that the Contracting Authority change order will be issued as requested or advising the Company regarding issues that remain to be resolved. Any dispute regarding the request for a Contracting Authority change order is to be resolved in accordance with the P3 Agreement, with the Design-Build Contractor’s participation. Under the Design-Build Contract, the Company is required to submit the Design-Build Contractor’s claim in respect of a Relief Event or Force Majeure Event to the Contracting Authority under the P3 Agreement unless the Company reasonably believes that the claim is frivolous or fraudulent. If the Company does not intend to submit the claim to the Contracting Authority due to its reasonable belief that the claim is frivolous or fraudulent and the Design-Build Contractor disagrees with the determination, the Company and the Design-Build Contractor must proceed as outlined in the fast-track adjudication process in the Design-Build Contract. The Company’s obligation to provide relief to the Design-Build Contractor is conditioned upon the Company’s receipt of corresponding relief under the P3 Agreement.

**Non-Concessionaire Caused Disruption**

The Design-Build Contractor may also be excused from compliance with the Design-Build Contract for a Non-Concessionaire Caused Disruption by providing timely notice to the Company in the form and substance required by the Design-Build Contract. Subject to the fast-track adjudication process set forth in the Design-Build Contract, the Company is required to provide the notice to the Contracting Authority under the P3 Agreement and thereafter, with the involvement of the Design-Build Contractor, assert its rights under the P3 Agreement with respect to the Non-Concessionaire Caused Disruption claimed by the Design-Build Contractor. The Company is required to submit the Design-Build Contractor’s claim in respect of a Non-Concessionaire Caused Disruption to the Contracting Authority unless the Company reasonably believes that the claim is frivolous or fraudulent. If the Company does not intend to submit the claim to the Contracting Authority due to its reasonable belief that the claim is frivolous or fraudulent and the Design-Build Contractor disagrees with the determination, the Design-Build Contractor and the Company must proceed as outlined in the fast-track adjudication process in the Design-Build Contract. The Company’s obligation to provide relief to the Design-Build Contractor is conditioned upon the Company’s receipt of corresponding relief under the P3 Agreement.

**Waiver**

If the Design-Build Contractor does not submit timely notice to the Company in the time periods specified in the Design-Build Contract, its rights with respect to a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption may be waived, in whole or in part, as set forth in the Design-Build Contract.
Differing Site Conditions

The Company is required to compensate the Design-Build Contractor for Relief Events concerning differing site conditions, subject to the Contracting Authority providing corresponding relief under the P3 Agreement, as set forth in the Design-Build Contract, as follows:

(a) The Design-Build Contractor bears the first $7,500,000 of aggregate incremental costs;

(b) The Design-Build Contractor and the Contracting Authority share equally in the next $7,500,000 of aggregate incremental costs; and

(c) The Contracting Authority has agreed under the P3 Agreement to be responsible for all aggregate incremental costs exceeding $15,000,000 (to the extent that costs are not fully addressed by clauses (a) and (b) above).

Utility-Related Relief Events

The Company is required to compensate the Design-Build Contractor for Relief Events relating to materially inaccurate utility information, subject to the Contracting Authority providing corresponding relief under the P3 Agreement, as set forth in the Design-Build Contract, as follows:

(a) The Design-Build Contractor bears the first $2,750,000 of aggregate incremental costs that would not have been required had the information provided been accurate;

(b) The Design-Build Contractor and the Contracting Authority share equally in the next $2,750,000 of aggregate incremental costs;

(c) The Contracting Authority has agreed under the P3 Agreement to be responsible for all aggregate incremental costs exceeding $5,500,000 (to the extent that costs are not fully addressed by clauses (a) and (b) above); and

(d) The Contracting Authority has agreed under the P3 Agreement to be responsible for the delay costs described in the Design-Build Contract.

In the event that any utility owner agrees to be responsible for costs incurred due to materially inaccurate utility information, the Company and the Design-Build Contractor under the Design-Build Contract must take appropriate steps to seek recovery from the utility owner. If the Contracting Authority under the P3 Agreement or the Company under the Design-Build Contract receives payment from the utility owner on account of costs incurred by the Design-Build Contractor, the amounts will be paid to the Design-Build Contractor by the Company to the extent received from the Contracting Authority or the utility owner.

Utility Owner Delays

The Company is required to compensate the Design-Build Contractor for Relief Events relating to delays by a utility owner, subject to the Contracting Authority providing corresponding relief under the P3 Agreement as set forth in the Design-Build Contract, as follows:

(a) The Design-Build Contractor bears the first $750,000 of aggregate incremental costs directly attributable to the utility owner delays;

(b) The Design-Build Contractor and the Contracting Authority share equally in aggregate incremental costs in excess of $750,000 until the total incremental costs plus interest on Project debt directly attributable to utility owner delays reach $5,000,000; and
(c) Once the $5,000,000 limit identified in clause (b) above has been reached, the Contracting Authority has agreed under the P3 Agreement to be responsible for all aggregate incremental costs incurred directly attributable to the utility owner delays (to the extent that the costs are not fully addressed by clauses (a) and (b) above).

**Hazardous Materials Relief Events**

The Design-Build Contractor and the Contracting Authority under the P3 Agreement share the risk for Relief Events relating to certain hazardous waste required to be stored or discovered during or in connection with the demolition of buildings, fixtures, in-ground utilities or other improvements, as set forth in the Design-Build Contract, as follows:

(a) The Design-Build Contractor bears the first $595,000 of aggregate costs of the hazardous materials management relating to demolition, determined based on actual quantities and applicable unit prices;

(b) The Design-Build Contractor and the Contracting Authority share equally in the next $198,333.33 of aggregate costs of the hazardous materials management relating to demolition, determined based on actual quantities and applicable unit prices; and

(c) The Contracting Authority has agreed under the P3 Agreement to be responsible for costs of the hazardous materials management relating to demolition that are not fully addressed by clauses (a) and (b) above, determined based on actual quantities and applicable unit prices.

No time extension will be allowed with respect to hazardous waste that is subject to the limits set forth above.

**Unanticipated Hazardous Materials**

The Contracting Authority has agreed under the P3 Agreement to be responsible for certain costs of hazardous materials management with respect to Relief Events related to the discovery of certain unanticipated pre-existing hazardous materials or sudden spills as follows:

(a) If the hazardous materials Relief Event concerns a type of hazardous material for which a unit price is provided under the P3 Agreement but the conditions associated with the hazardous material differ materially from those forming the basis for the original unit pricing, compensation will be determined based on actual quantities and the specified unit prices, as equitably adjusted to account for the differences in conditions; and

(b) If the hazardous materials Relief Event concerns hazardous materials for which unit prices are not provided, compensation is limited to reasonable incremental costs of hazardous materials management directly attributable to the discovery, as documented and justified by the Design-Build Contractor in accordance with the P3 Agreement.

**Relief Event Damage or Destruction to Project Improvements**

For Relief Events concerning damage or destruction to Project improvements or assets due to Force Majeure Events, if the event in question is required to be covered by builder’s risk insurance under the Design-Build Contract, the Design-Build Contractor bears all costs of repair, restoration or replacement of damage or destruction to the improvements, subject to the right to receive insurance proceeds and the right to receive reimbursement from the Contracting Authority for reasonable costs of repair, restoration or replacement of the improvements exceeding the required insurance limits (or actual insurance limits, if higher). If the event in question is not required to be covered by builder’s risk insurance under the Design-Build Contract, the Contracting Authority has agreed under the P3 Agreement to reimburse the Company for reasonable costs of repair, restoration or replacement of the improvements except to the
extent that proceeds of other insurance (required under the P3 Agreement or otherwise held or placed by any Company-related entity for the Project) are available to pay the costs, and the Company must seek from the Contracting Authority and, subject to the Contracting Authority providing corresponding relief under the P3 Agreement, pay over to the Design-Build Contractor any amount received from Contracting Authority.

Sales Tax on LRVs

The Company must compensate the Design-Build Contractor for a Relief Event concerning assessment of sales or use tax on LRVs delivered to the Design-Build Contractor, subject to the Contracting Authority providing corresponding relief under the P3 Agreement, but only for the dollar amount of the sales or use tax, without mark-up. This amount may be invoiced no earlier than when payment is made to the taxing governmental authority by or on behalf of the Design-Build Contractor.

Excavation and Landfills

The total value of D&C construction work under the P3 Agreement is based, in part, upon the assumption that excavation required for the Project will produce at least 496,000 tons of select backfill material for backfill uses during performance of the DB Work. If Project excavation fails to produce select backfill material in at least the estimated quantity available for backfill uses or adverse weather conditions unreasonably inhibit the use of the backfill material, the Design-Build Contractor will be entitled to a backfill change order, not to exceed $14,000,000.

In addition, the total value of D&C construction work under the P3 Agreement is based, in part, upon the assumption that certain landfills will accept soil and construction or demolition debris without assessing a fee. If the landfills do not accept the soil and debris without assessing a fee, the Design-Build Contractor will be entitled to a landfill change order, not to exceed $2,932,000.

Time Extension

The Design-Build Contractor is entitled to an extension of applicable contract deadlines by the period that a Relief Event or Force Majeure Event results in a delay to the critical path required to achieve DB Revenue Service Availability or DB Final Completion, as applicable, beyond the original contract deadlines, subject to certain limitations set forth in the Design-Build Contract, including provision of a time impact analysis regarding responsibility for concurrent delays and undertaking appropriate measures to mitigate delays.

Limitations

The Company will not be liable to the Design-Build Contractor for the payment of any costs for which the Contracting Authority is responsible under the P3 Agreement except to the extent the same are actually received by the Company from Contracting Authority. If the Contracting Authority fails to pay these amounts, the Company and the Design-Build Contractor are to proceed in accordance with the fast-track adjudication process set forth in the Design-Build Contract. Further, the Design-Build Contractor is not entitled to submit a claim for incremental costs, delay costs, an extension or other relief that (a) could have been reasonably avoided through proper sequencing, scheduling and coordination of the DB Work in accordance with the Contract Documents or (b) arises out of or relates to the Design-Build Contractor’s oversight and coordination of the DB Work between or among subcontractors or others in the Project area.

Compensation; Insurance; Claims Against Third Parties

Subject to certain limitations in the Design-Build Contract, upon the occurrence of a Relief Event, the Design-Build Contractor is allowed compensation for incremental costs incurred, and, if the Guaranteed DB RSA Date is extended due to certain Relief Events, delay costs in accordance with the P3 Agreement and the Design-Build Contract. In coordination with the Company and without prejudice to the Company’s
and Contracting Authority’s right to pursue claims, the Design-Build Contractor is also entitled to exercise all rights and remedies available at law to claim for and recover casualty and other damages to the Project from third parties, including the amount of any deductibles under casualty or property insurance policies.

Except for certain circumstances set forth in the Design-Build Contract, if (a) a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs that gives rise to a loss of the type required to be covered by any insurance policy and (b) the insurance policy is not in full force and effect (with premiums paid) at the time that the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, then the Company will owe no compensation to the Design-Build Contractor. If Insurance Policies that cover the losses are in full force and effect (with premiums paid) at the time that the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, and the proceeds of the insurance policies are less than the amount of compensation that would have been paid under the Design-Build Contract, then after applicable deductibles under the Design-Build Contract have been applied, if any, the Design-Build Contractor may make a request under the Design-Build Contract for the difference (i.e., the value of the loss net of the insurance amount paid to the Design-Build Contractor and other applicable deductions under the Design-Build Contract). In no event will the Company compensate the Design-Build Contractor for amounts relating to a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption that, when combined with insurance, would exceed the total amount of compensation that would be paid under any part of the Design-Build Contract.

Neither the Design-Build Contractor nor the Company is excused from timely payment of monetary obligations under the Design-Build Contract based on the occurrence of a Relief Event, a Force Majeure Event or a Non-Concessionaire Caused Disruption.

**Design-Build Contractor’s Requests for Deviations**

The Design-Build Contractor may request that the Company apply under the P3 Agreement for approval of a change, deviation, modification, alteration or exception from the Technical Provisions or Technical Documents. Any change, deviation, modification, alteration or exception from the Technical Provisions or Technical Documents may be made by submitting an application containing the details required by the Design-Build Contract. The Company may approve the application and submit the proposal for Contracting Authority’s consideration pursuant to the P3 Agreement. No Technical Provisions or Technical Documents deviations will exist or be effective for the purposes of the Project and the Contract Documents unless and until a written notice of Contracting Authority’s approval is provided to the Design-Build Contractor by the Company.

**Mitigation**

The Design-Build Contractor is required under the Design-Build Contract to take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, including all steps that would generally be taken in accordance with good industry practice. The Design-Build Contractor is not entitled to make any request for compensation or a time extension for incremental costs or critical path delays that could have been reasonably avoided through re-sequencing and re-scheduling of the DB Work and/or other work-around measures (but the workaround measures are allowable if justified by equal or greater savings in amounts otherwise payable by the Company for incremental costs and delay costs).

**Termination of the Design-Build Contract**

**Design-Build Contractor Default**

Subject to certain limitations set forth in the Design-Build Contract (including applicable cure periods), the Design-Build Contractor will be in breach of the Design-Build Contract upon the occurrence of any one or more of the following events or conditions:
(a) the Design-Build Contractor fails to (i) commence DB Work promptly following issuance of a notice to proceed or an agreed-upon limited notice to proceed, or (ii) diligently prosecute the DB Work to completion in accordance with the Contract Documents;

(b) the Design-Build Contractor abandons all or a material part of the Project as specified in the Design-Build Contract;

(c) the Design-Build Contractor fails to achieve (i) DB Revenue Service Availability by the Guaranteed DB Long Stop Date, or (ii) DB Final Completion by the DB Final Completion Deadline;

(d) the Design-Build Contractor fails to make any payment owing to the Company under the Contract Documents when due;

(e) Subject to limited exceptions in the Design-Build Contract, (i) any representation or warranty in the Contract Documents, or Statement of Qualification (which representations and warranties of the Design-Build Contractor were incorporated into the proposal explicitly or by reference), made by the Design-Build Contractor is false in any material respect, materially misleading or inaccurate in any material respect when made, or omits material information when made, or (ii) any certificate, schedule, report, instrument or other document delivered by or on behalf of the Design-Build Contractor to the Company under the Contract Documents is false in any material respect, materially misleading or inaccurate in any material respect when made, or omits material information when made;

(f) Subject to the insurance provisions in the Design-Build Contract, the Design-Build Contractor fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of the Company, the Contracting Authority or other relevant parties, or the Design-Build Contractor fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, self-insured retentions, co-insurance or any other amounts as and when due;

(g) (i) The Design-Build Contractor makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Contract Documents in violation of the limitations on assignment or transfer under the Design-Build Contract, (ii) there occurs a transfer by the Design-Build Contractor not permitted under the Design-Build Contract, or (iii) any other violation by the Design-Build Contractor of the limitations on assignment or transfer under the Design-Build Contract occurs;

(h) Unless excused due under the Design-Build Contract, the Design-Build Contractor fails to timely observe or perform, or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the Design-Build Contractor under the Contract Documents;

(i) Unless the Design-Build Contract is otherwise continued, the Design-Build Contractor or LRV Supplier (i) is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a state department or agency or (ii) has not dismissed any subcontractor (other than LRV Supplier) whose work is not substantially complete and who is determined disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal or a state department or agency;

(j) The Design-Build Contractor fails to timely deliver or comply with a remedial plan meeting the applicable requirements described in the Design-Build Contract;
(k) The Design-Build Contractor fails to comply with the Company’s order to suspend DB Work issued in accordance with the Design-Build Contract within the time reasonably allowed in the order;

(l) The Design-Build Contractor or Fluor Corporation commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(m) An involuntary case is commenced against the Design-Build Contractor or Fluor Corporation seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to the Design-Build Contractor or Fluor Corporation, as applicable, or their respective debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution or similar process; or seeking like relief, and the involuntary case is not contested by it in good-faith or remains undismissed and unstayed for a period of 60 days;

(n) In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to the Design-Build Contractor or its debts or Fluor Corporation or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law, the Design-Build Contract or any of the other Contract Documents is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;

(o) The Design-Build Contractor draws against any custodial account, trust account, allowance or other reserve or account in violation of the Contract Documents or makes a false or materially misleading representation in connection with a draw against any account, allowance or reserve;

(p) The Design-Build Contractor fails to comply with any applicable governmental approval or law;

(q) Any use of the Project by the Design-Build Contractor that violates requirements of applicable governmental approvals or laws or otherwise is not permitted under the Contract Documents;

(r) Failure by the Design-Build Contractor to diligently comply with any Company-approved recovery schedule when the Project recovery schedule is subject to the approval of the Company;

(s) Any material breach by the Design-Build Contractor of its obligations to the Company under the Interface Agreement;

(t) The Design-Build Contractor’s payment of amounts due the Company or any other person under the Design-Build Contract or the Interface Agreement to which the limitation of the Design-Build Contractor’s aggregate liability applies in accordance with the Design-Build Contract equals or exceeds the limitation of liability;

(u) The Design-Build Contractor’s payment of Delay Liquidated Damages due the Company under the Design-Build Contract equals or exceeds the limitation of the Design-Build Contractor’s liability for Delay Liquidated Damages set forth in the Design-Build Contract; or
(v) The Contracting Authority terminates the P3 Agreement as a result of the Design-Build Contractor’s breach of its obligations under the Design-Build Contract (including its obligations to fulfill the Company’s obligations under the P3 Agreement to the extent required under the Design-Build Contract).

**Company Remedies for a Design-Build Contractor Default**

*Immediate Contracting Authority and Company Entry and Cure of Wrongful Use.* Without notice and without awaiting a lapse of the period to cure, in the event of a Design-Build Contractor default under (q) above, the Company under the Design-Build Contract (and the Contracting Authority pursuant to the P3 Agreement) may enter and take control of the relevant portion of the Project to restore the permitted uses and reopen and continue traffic operations for the benefit of the public until the breach is cured or the Company terminates the Design-Build Contract. The Design-Build Contractor is required to pay to the Company on demand the Company’s recoverable costs (and Contracting Authority’s recoverable costs, if applicable) in connection with this action, which payment, subject to certain limitations in the Design-Build Contract, will be reimbursed by the Company if a determination is ultimately made that no Design-Build Contractor default occurred.

*Remedies for Failure to Meet Safety Standards or Perform Safety Compliance.* If at any time the Design-Build Contractor or its surety fails to meet certain safety standards (including if an emergency has occurred) or if the Contracting Authority and the Company (with participation by the Design-Build Contractor) cannot reach an agreement regarding the interpretation or application of a safety standard within a period of time acceptable to Contracting Authority, the Contracting Authority may, in accordance with the P3 Agreement, undertake or direct the Company to undertake any work required to ensure implementation of and compliance with safety standards as interpreted or applied by the Contracting Authority or with the safety compliance order or to rectify the emergency. In addition, if the Project violates certain health and safety laws, the Contracting Authority may, in accordance with the P3 Agreement, take any immediate corrective actions required. The Design-Build Contractor is required to pay to the Company, or Contracting Authority, as applicable, on demand the costs of any of this work.

**Termination and Compensation.** In the event of a Design-Build Contractor default that is not cured within the applicable cure period, the Company may terminate the Design-Build Contract upon 10 days’ written notice to the Design-Build Contractor. Except as limited by the Company’s agreement to liquidate certain damages as specified in the Contract Documents, and subject to certain other limitations in the Design-Build Contract, the Company is entitled to recover any and all damages available at law on account of the occurrence of a Design-Build Contractor default.

In addition, if the P3 Agreement has not been terminated, subject to certain limitations and adjustments contained in the Design-Build Contract, in the event of termination of the Design-Build Contract prior to DB Final Completion due to a Design-Build Contractor default, the Company may cause the DB Work to be completed by other contractors. If this occurs, the Design-Build Contractor will be liable to the Company, subject to any limitations of the Design-Build Contractor’s liability in the Design-Build Contract, for the reasonable costs incurred by the Company in replacing the Design-Build Contractor to complete the DB Work, as follows: if at any time the sum of (A) the cost incurred by the Company to complete the DB Work and not recoverable from Contracting Authority, (B) all other direct damages suffered by the Company as a result of a default or breach by the Design-Build Contractor of its obligations under the Design-Build Contract, and (C) all amounts previously paid to the Design-Build Contractor by the Company pursuant to the Design-Build Contract, exceeds the contract price (subject to any adjustments to which the Design-Build Contractor became entitled prior to termination), the Design-Build Contractor is required to pay to the Company on demand the amount of the difference.

If the P3 Agreement has been terminated by the Contracting Authority due to a Design-Build Contractor default that was not caused by the Company’s failure to perform its obligations under the Design-Build Contract, in the event of a termination of the Design-Build Contract due to a Design-Build Contractor default, the Design-Build Contractor will be liable to the Company, subject to limitations on the Design-Build Contractor’s liability in the Design-Build Contract, for all direct damages, costs and expenses
suffered or incurred by the Company that are caused by the termination and any acts or omissions of the Design-Build Contractor leading to the termination of the Design-Build Contract, including any direct damages, costs and expenses suffered, incurred or payable by the Company under the P3 Agreement that are caused by the termination, but without duplication.

**Contracting Authority and Company Step-in Rights.** In accordance with the Design-Build Contract, but subject to the terms of the Design-Build Direct Agreement, if the Design-Build Contractor has not fully and completely cured a Design-Build Contractor default by the expiration of any cure period, the Company may pay and perform all or any portion of the Design-Build Contractor’s obligations (a) under the Contract Documents that are the subject of the Design-Build Contractor default and (b) under any other then-existing breaches or failures to perform for which the Design-Build Contractor received prior notice from the Company but has not commenced or does not continue diligent efforts to cure. The Design-Build Contractor is then required to reimburse the Company on demand for its recoverable costs under the Design-Build Contract. In addition, the Contracting Authority has corresponding step-in rights under the P3 Agreement.

The Company’s and Contracting Authority’s rights under the Design-Build Contract and the P3 Agreement (but not the Company’s and Contracting Authority’s rights regarding immediate right of entry and right to cure wrongful use of the Project) are subject to the right of any surety to assume performance and completion of all bonded work under a performance bond issued as performance security. In addition, in the case of a Design-Build Contractor default that constitutes or, following the applicable grace period or the giving of notice or both, would constitute a Design-Build Contractor default enabling the Company to terminate or suspend its obligations under the Design-Build Contract, the Company’s rights under the Design-Build Contract are subject to Lender rights under the Design-Build Direct Agreement and the P3 Direct Agreement.

In addition, without cost to the Company or Contracting Authority, and subject to the rights of the Collateral Agent under any P3 Direct Agreement, the Design-Build Contractor must assign to the Contracting Authority or its successors, assignees or designees all of its rights under the Design-Build Contract upon delivery of notice from the Contracting Authority following the termination of the P3 Agreement.

Subject to the rights of the Collateral Agent under any P3 Direct Agreement, upon receipt of written notice from Contracting Authority, the Contracting Authority is entitled to exercise its step-in rights with respect to the Design-Build Contract (where the Contracting Authority is also exercising its step-in rights under the P3 Agreement), without any necessity for a consent or approval from the Design-Build Contractor or the making of a determination whether the Contracting Authority validly exercised its step-in rights, or any waiver and release by the Company of any claim or cause of action against the Design-Build Contractor arising out of, relating to or resulting from its recognition of Contracting Authority’s step-in rights in reliance on any written notice from Contracting Authority.

The Design-Build Contractor must promptly execute and deliver to the Contracting Authority or its successors, assigns or designees a new contract between the Design-Build Contractor and Contracting Authority, or its respective successors, assigns or designees on the same terms as the Design-Build Contract, if (a) the Design-Build Contract is rejected by the Company in bankruptcy or is wrongfully terminated by the Company and (b) the Contracting Authority delivers a request for such new contract within 60 days following termination or expiration of the Design-Build Contract, as applicable. This covenant survive termination of the Design-Build Contract.

**Performance Security.** Subject to the terms and conditions of the Design-Build Contract, upon the occurrence of a Design-Build Contractor default and expiration, without full and complete cure, of the applicable cure period, if any, without waiving or releasing the Design-Build Contractor from any obligations or limiting other remedies that may be available to the Company, the Company may make demand upon, draw on and enforce and collect any of the Company’s letters of credit, guaranties and performance security in any order. The Company will apply the proceeds of any action to the satisfaction
of the Design-Build Contractor’s obligations under the Design-Build Contract, including payment of amounts due to the Company.

Suspension

Contracting Authority Suspension of DB Work. In the event the Contracting Authority suspends work under the P3 Agreement, the Company may suspend all or a portion of the DB Work in response to and to the same extent as a suspension order from the Contracting Authority pursuant to the P3 Agreement, and the Design-Build Contractor is liable to the Company for the consequences thereof to the extent Contracting Authority’s suspension is for a reason attributable to the Design-Build Contractor as set forth in the Design-Build Contract. The Contracting Authority may, under the P3 Agreement, suspend, in whole or in part, the DB Work by notice to the Company, in accordance with the criteria set forth in the P3 Agreement, including failure by the Company (a) to perform the work in accordance with the P3 Agreement contract documents, (b) to comply with any law or governmental approval or (c) to maintain performance bonds or payment security. In addition, the Contracting Authority may suspend DB Work and/or close or cause to be closed any and all portions of the Project affected by an emergency or danger. Contracting Authority’s suspension of DB Work under the P3 Agreement for reasons not attributable to the Design-Build Contractor’s failure to comply with its obligations under the Design-Build Contract, but attributable to Company’s failure to comply with its obligations under the Design-Build Contract. This constitutes a Company DB Work suspension and entitles the Design-Build Contractor to make a claim to the Company for a scope change order due to a Company DB Work suspension pursuant to the Design-Build Contract.

The Contracting Authority under the P3 Agreement has the right and authority to order suspension of DB Work, in whole or in part, for reasons other than those attributable to the Company under the P3 Agreement or the Design-Build Contractor under the Design-Build Contract. If the Contracting Authority does so or purports to order suspension of DB Work for reasons attributable to the Company or the Design-Build Contractor but it is finally determined under the P3 Agreement dispute resolution procedures that there exist no grounds under the P3 Agreement for that suspension, then the suspension is an Contracting Authority-caused delay under the P3 Agreement. The Design-Build Contractor will then be entitled to submit a claim for incremental costs, delay costs, contract deadline extensions and performance relief to the extent permitted under the Design-Build Contract.

The Design-Build Contractor is required to promptly comply with any the Contracting Authority suspension order, even if the Design-Build Contractor disputes the grounds for suspension. The Design-Build Contractor must promptly recommence the DB Work upon receipt of notice from the Company, following the Company’s receipt of a notice from the Contracting Authority under the P3 Agreement, directing the Design-Build Contractor to resume work. Contracting Authority, under the P3 Agreement, will lift the suspension order promptly after the Design-Build Contractor fully cures and corrects the applicable breach or failure to perform or any other reason under the P3 Agreement for which the suspension order ceases to apply. The Design-Build Contractor is required to cure and correct the applicable breach or failure to perform or any other reason causing the suspension order, to the extent the breach, failure to perform or other reason is attributable to the Design-Build Contractor.

Company Suspension of DB Work. The Company may elect to suspend completion of all or any part of the DB Work for reasons not attributable to the Design-Build Contractor’s failure to comply with its obligations under the Design-Build Contract (including as a result of an the Contracting Authority suspension under the P3 Agreement or in the event the Lenders fail to provide funding when and as requested in accordance with the financing documents, in each case for reasons not attributable to the Design-Build Contractor) upon 10 days’ prior written notice to the Design-Build Contractor indicating: (a) the portion of the DB Work the completion of which the Company has elected to defer; (b) the Company’s estimate of the duration of the suspension; and (c) the effective date of the suspension of the DB Work. Upon receipt of and consistent with the effective date of the notice, the Design-Build Contractor is required, to the extent reasonably practical, to stop performance of the portion of the DB Work that the Company has elected to defer and continue to complete performance of the balance of the DB Work, if applicable. In the event of a suspension of DB Work pursuant to the preceding sentence, the suspension
will entitle the Design-Build Contractor to make a claim for a scope change order due to a Company DB Work suspension. Design-Build Contractor is required to mitigate, to the fullest extent reasonably possible, any additional expenses to be borne by the Company as a result of the suspension of the DB Work.

The Company may not suspend the entire DB Work for a period exceeding 180 consecutive days or 360 days in the aggregate without the Design-Build Contractor’s consent. In the event the entire DB Work is suspended by the Company for a period exceeding 180 consecutive days or 360 days in the aggregate without the Design-Build Contractor’s consent, the Design-Build Contractor may terminate the Design-Build Contract upon written notice to the Company and the Company is required to pay the Termination Payment to the Design-Build Contractor set forth below in “—Termination of the Design-Build Contract—Default by the Company and Design-Build Contractor Remedies.”

Default by the Company and Design-Build Contractor Remedies

The Company will be in breach under the Design-Build Contract upon the occurrence of any one or more of the following events or conditions:

(a) Failure by the Company to pay the Design-Build Contractor the undisputed portion of any payment due to the Design-Build Contractor and the failure continues for 30 days after written notice of the non-payment;

(b) The Company commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due or admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(c) An involuntary case is commenced against the Company seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to its debts under any U.S. or foreign bankruptcy, insolvency or other similar law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any substantial part of the Company’s assets; seeking the issuance of a writ of attachment, execution or similar process; or seeking like relief, and the involuntary case is not contested by the Company in good-faith or remains undischissed and unstayed for a period of 60 days;

(d) Subject to limited exceptions in the Design-Build Contract, any representation or warranty made by the Company under the Design-Build Contract is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made and the Company fails to cure the same within 20 days after the Design-Build Contractor delivers to the Company a notice of the Company default with respect thereto, except (i) if the Company default is such that the cure cannot with diligence be completed within the 20-day’ time period and the Company has commenced meaningful steps to cure immediately after receiving the default notice, the Company will have an additional period of time, up to a maximum cure period of 120 days, as is reasonably necessary to diligently effect cure, and (ii) cure will be regarded as complete when the adverse effects of the breach are cured; and

(e) Only if relief cannot be provided by issuance of a scope change order, the Company otherwise is in default or has failed to perform any of its other material obligations under the Design-Build Contract or its material obligations to the Design-Build Contractor under the Interface Agreement, and the failure continues for 30 days after written notice from the Design-Build Contractor, or, if the failure (other than a failure to pay) is not capable of being cured within the 30-day period, the Company has not commenced the cure within this period.
and thereafter diligently pursued the same until a cure is effected, not to exceed an additional 90 days.

Subject to the provisions of the Design-Build Direct Agreement and to the rights of the Contracting Authority under the P3 Agreement, at any time after the occurrence of a Company default under the Design-Build Contract, which is not cured within the applicable cure period, the Design-Build Contractor is entitled to terminate the Design-Build Contract with 10 days’ prior written notice. If the Design-Build Contract is terminated for this reason, the Design-Build Contractor is entitled to receive the Termination Payment in accordance with the invoice requirements set forth in the Design-Build Contract. Subject to the terms and conditions of the Design-Build Contract, the “Termination Payment” will be equal to the sum of (i) that portion of the contract price that is applicable to the DB Work completed up to the date of termination and that has not previously been paid to the Design-Build Contractor, (ii) the direct, out-of-pocket costs reasonably incurred by the Design-Build Contractor in withdrawing its equipment and personnel from the Project right-of-way and in otherwise demobilizing, and (iii) the direct, out-of-pocket costs reasonably incurred by the Design-Build Contractor in terminating contracts with subcontractors.

The Design-Build Contractor may also suspend performance of the DB Work as permitted by the Design-Build Contract if the Company fails to pay to the Design-Build Contractor any undisputed amount owing to the Design-Build Contractor and the failure continues for 30 days after written notice of the non-payment.

If the Contracting Authority terminates the P3 Agreement due to a “Company default” and the “Company default” is not attributable to a failure of the Design-Build Contractor to perform its obligations under the Design-Build Contract, then subject to the Design-Build Direct Agreement and to the rights of the Contracting Authority under the P3 Agreement, the Design-Build Contract will, subject to the terms and conditions of the Design-Build Contract, automatically terminate effective as of the termination date of the P3 Agreement. Subject to certain adjustments and limitations provided for in the Design-Build Contract, the Design-Build Contractor will then be entitled to receive a Termination Payment.

*Contracting Authority’s P3 Agreement Termination for Convenience; the Company’s P3 Agreement Termination for the Contracting Authority Default or with Respect to “New Starts Full Funding Grant Agreement”*

The Contracting Authority may terminate the P3 Agreement in whole, but not in part, if the Contracting Authority determines, in its discretion, that termination is in Contracting Authority’s best interest. In addition, the Company may terminate the P3 Agreement for a Contracting Authority default or in connection with the TIFIA “New Starts Full Funding Agreement,” each as set forth in the P3 Agreement. If the P3 Agreement is terminated for any of the foregoing, then the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement, and the Company will be required to pay the Termination Payment to the Design-Build Contractor as calculated in accordance with and pursuant to the procedures set forth in the Design-Build Contract as the Design-Build Contractor’s sole and exclusive remedy. The amount of the Termination Payment payable by the Company will be limited to that portion of the termination amount actually received by the Company from the Contracting Authority under the P3 Agreement (excluding any set-offs and reductions not attributable to the Design-Build Contractor) that is attributable to the DB Work.

*Termination Due to DB Extended Delay or the P3 Agreement Termination for Extended Delay*

Under the P3 Agreement, (a) in the event of an Extended Delay, either the Contracting Authority or the Company may deliver to the other a notice of conditional election to terminate the P3 Agreement, following the receipt of which the receiving party has the option to either accept or reject the election to terminate the P3 Agreement, in addition to the Company and the Contracting Authority having the right to dispute the other party’s right to terminate the P3 Agreement for Extended Delay and (b) in the event of an Extended Delay that results in 365 or more days of critical path delay, both the Contracting Authority and the Company have a right to issue an unconditional notice to terminate the P3 Agreement, in which case the other party has no further option to continue the P3 Agreement.
DB Extended Delay – 180 Days of Delay

If the Design-Build Contractor has been incurring unavoidable costs due to the occurrence of an event that the Design-Build Contractor anticipates will become a DB Extended Delay, which costs the Design-Build Contractor is not entitled to claim under the Design-Build Contract and are not compensable based on the terms of the insurance coverage that the Design-Build Contractor is required to obtain and maintain under the Design-Build Contract (collectively, the “Extended Delay Unavoidable Costs”), the Design-Build Contractor may provide written notice to the Company thereof, no earlier than 50 days prior to the Design-Build Contractor’s anticipated start of any DB Extended Delay, meeting the requirements set forth in the Design-Build Contract (the “DB Extended Delay Notice”).

If (a) the Design-Build Contractor has provided the DB Extended Delay Notice to the Company, (b) the anticipated DB Extended Delay relates to single Force Majeure Event or Relief Event (other than Contracting Authority’s scope changes, Contracting Authority-caused delays and Relief Events for which the Company is entitled to claim incremental costs and Delay Costs under the P3 Agreement and the Design-Build Contractor is entitled to claim the same under the Design-Build Contract) that has materially prevented or delayed the Design-Build Contractor from performing a substantial portion of its obligations under the Design-Build Contract during the Design-Build Period for a period of 180 days or more in the aggregate within a period of 365 consecutive days and (c) the anticipated DB Extended Delay has actually become a DB Extended Delay, then the Company and the Design-Build Contractor are required to commence good faith negotiations. The negotiations will result, within 45 days from the commencement, in (i) the Company’s and the Design-Build Contractor’s agreement on the terms and conditions under which the Design-Build Contract will continue in effect irrespective of the occurrence of the DB Extended Delay; (ii) the Company’s election to replace the Design-Build Contractor with another design-build contractor, or provide a notice of conditional election to the Contracting Authority under the P3 Agreement to terminate the P3 Agreement for Extended Delay; or (iii) the Design-Build Contractor’s written withdrawal of the DB Extended Delay Notice. The Design-Build Contractor and the Company agreed to equally share the Extended Delay Unavoidable Costs reasonably incurred by Design-Build Contractor as a result of such DB Extended Delay during the 45-day period of negotiations, subject to Design-Build Contractor’s obligation to take all steps reasonably necessary to mitigate the consequences of the delay, including all steps that would generally be taken in accordance with good industry practice (the “Extended Delay Shared Costs”).

If the Company, following the process set forth above, elects to replace the Design-Build Contractor, the Design-Build Contractor is entitled to (1) the reimbursement from the Company of the Company’s portion of the Extended Delay Shared Costs incurred by Design-Build Contractor up until the date of termination of the Design-Build Contract; (2) an Extended Delay Termination Payment (and the transition costs, if applicable), calculated based on the estimated compensation the Design-Build Contractor would have been entitled to be paid from the Company at the time of such termination had the Contracting Authority terminated, or accepted the Company’s conditional election to terminate, the P3 Agreement for Extended Delay, subject to the receipt of such payment by the Company from Contracting Authority. If the Company, following the process set forth above, elects to provide to the Contracting Authority a notice of conditional election to terminate the P3 Agreement for Extended Delay, subject to the receipt of such payment by the Company from Contracting Authority. If the Company, following the process set forth above, elects to provide to the Contracting Authority a notice of conditional election to terminate the P3 Agreement for Extended Delay, under the P3 Agreement, the Contracting Authority may either accept the Company’s notice of conditional election to terminate the P3 Agreement or continue the P3 Agreement in effect by delivering to the Company notice of Contracting Authority’s choice. If Contracting Authority, under the P3 Agreement, elects to continue the P3 Agreement in effect, the Design-Build Contract will continue in full force and effect, and the Design-Build Contractor is entitled to claim relief that the Company is entitled to claim from the Contracting Authority under the P3 Agreement with respect to the DB Work. If Contracting Authority, under the P3 Agreement, accepts the Company’s notice of conditional election to terminate the P3 Agreement, the provisions of the Design-Build Contract apply with respect to the Extended Delay Termination Payment and termination of the Design-Build Contract.

If at the end of the negotiation period, none of the above described events have occurred, the Design-Build Contractor is entitled, upon five (5) days’ written notice to the Company, to terminate the
Design-Build Contract. The Company may avoid termination by providing notice to the Contracting Authority of the Company’s election to terminate the P3 Agreement within the 5-day period.

**DB Extended Delay – Damage to Project**

If the Design-Build Contractor provides the DB Extended Delay Notice to the Company and the anticipated DB Extended Delay relates to a single Force Majeure Event or Relief Event (other than Contracting Authority’s scope changes, Contracting Authority-caused delays and Relief Events for which the Company is entitled to claim incremental costs and Delay Costs under the P3 Agreement and the Design-Build Contractor is entitled to claim the same under the Design-Build Contract) that has resulted in damage or loss to a material portion of the Project during the Design-Build Period that the Contracting Authority has determined is not in the public interest to repair or replace, and 180 days have passed since the occurrence thereof, the Design-Build Contractor and the Company are required to commence good faith negotiations. The negotiations will result, within 45 days from the commencement, in (i) the Company’s and the Design-Build Contractor’s agreement on the terms and conditions under which the Design-Build Contractor will continue in effect irrespective of the occurrence of the DB Extended Delay; (ii) the Company’s election to replace the Design-Build Contractor with another design-build contractor or provide a notice of conditional election to the Contracting Authority under the P3 Agreement to terminate the P3 Agreement for Extended Delay; or (iii) the Design-Build Contractor’s written withdrawal of the DB Extended Delay Notice.

If the Company elects to replace the Design-Build Contractor, the Design-Build Contract will terminate upon the Design-Build Contractor’s receipt of such notice. If this Agreement is so terminated, the Design-Build Contractor shall be entitled to an Extended Delay Termination Payment, calculated based on the estimated compensation the Design-Build Contractor would have been entitled to be paid at the time of such termination from the Company had the Contracting Authority terminated, or accepted the Company’s conditional election to terminate, the P3 Agreement for Extended Delay (and the transition costs, if applicable) in accordance with Design-Build Contract. If the Company elects to provide to the Contracting Authority a notice of conditional election to terminate the P3 Agreement, the Contracting Authority may either accept the Company notice of conditional election to terminate the P3 Agreement or continue the P3 Agreement in effect by delivering to the Company notice of Contracting Authority’s choice within thirty (30) days after the Company delivers its notice to Contracting Authority. If Contracting Authority, under the P3 Agreement, elects to continue the P3 Agreement in effect, the Design-Build Contract will continue in full force and effect, and the Design-Build Contractor will be entitled to claim solely such relief that the Company is entitled to claim from the Contracting Authority under the P3 Agreement with respect to the DB Work.

If at the end of the negotiation period referred, none of the above options have been selected, the Design-Build Contractor will be entitled, upon five (5) days’ written notice to the Company, to terminate the Design-Build Contract. The Company may avoid termination by providing notice to the Contracting Authority of the Company’s election to terminate the P3 Agreement within the 5-day period.

**Parties’ Options – Contracting Authority’s Notice to Terminate the P3 Agreement for Extended Delay**

If, under the P3 Agreement, an Extended Delay has occurred and is continuing during the Design-Build Period and Contracting Authority, under the P3 Agreement, delivers to the Company a notice of its conditional election to terminate the P3 Agreement for Extended Delay, the Company is obligated under the Design-Build Contract to promptly provide such notice to the Design-Build Contractor. Following such notice, the parties are to consult but if the Company elects to accept Contracting Authority’s election to terminate the P3 Agreement, the Company may do so, within the time required by the P3 Agreement, in its sole discretion and without the Design-Build Contractor’s consent. If the P3 Agreement is terminated as a result of such election by the Company, then the Design-Build Contractor will automatically terminate effective as of the termination date of the P3 Agreement and the Design-Build Contractor will be entitled to the Extended delay Termination Payment.
If, following Contracting Authority’s delivery to the Company of a notice of its conditional election to terminate the P3 Agreement for Extended Delay under the P3 Agreement, the Company wishes to either provide notice to the Contracting Authority to continue performing its obligations thereunder or to dispute Contracting Authority’s right to terminate the P3 Agreement, the Company is obligated to promptly, but in any event within five days, provide written notice thereof to the Design-Build Contractor. Following receipt of such notice, the Design-Build Contractor may, within five days of receipt by the Design-Build Contractor of the notice, agree to (i) continue the Design-Build Contract or (ii) the Company disputing Contracting Authority’s right to terminate the P3 Agreement, as applicable, by notifying the Company in writing or will seek to initiate good faith negotiations by written notification to the Company, which will result, within 25 days, in one of the following: (a) the Company and the Design-Build Contractor’s agreement on the terms and conditions under which the Design-Build Contract will continue in effect; or (b) the Company’s election to replace the Design-Build Contractor with another design-build contractor or accept Contracting Authority’s notice of conditional election to terminate the P3 Agreement for Extended Delay.

If the parties have agreed in writing to continue the Design-Build Contract in effect, the Company will not have any obligation to compensate the Design-Build Contractor for any costs of restoration, repair or replacement arising out of, relating to or resulting from Extended Delay and/or, if applicable, any other incremental costs or Delay Costs arising out of, relating to or resulting from the continuation of the Extended Delay beyond the date of the Contracting Authority notice under the P3 Agreement. If the Company elects to replace the Design-Build Contractor, the Design-Build Contract will terminate and the Design-Build Contractor will be entitled to an Extended Delay Termination Payment, calculated based on the estimated compensation the Design-Build Contractor would have been entitled to be paid at the time of such termination from the Company had the Contracting Authority terminated, or accepted the Company’s conditional election to terminate, the P3 Agreement for Extended Delay. If the Company has not replaced the Design-Build Contractor but the Company delivers notice to the Contracting Authority of its intent to continue performing its obligations under the P3 Agreement without a written agreement in place to continue the Design-Build Contract in effect, the Design-Build Contractor will be entitled, upon 10 days’ notice, to terminate the Design-Build Contract.

**Parties’ Options – the Company’s Notice to Terminate the P3 Agreement for Extended Delay**

If Contracting Authority, under the P3 Agreement, has not sent to the Company its notice of election to terminate the P3 Agreement and the Design-Build Contractor has not sent to the Company the DB Extended Delay Notice, but the Company wishes, during the Design-Build Period, to provide to the Contracting Authority a notice of conditional election to terminate the P3 Agreement due to an Extended Delay, the Company may do so without the Design-Build Contractor’s consent. If Contracting Authority, under the P3 Agreement, following the Company’s notice of conditional election to terminate the P3 Agreement, accepts such notice, then the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement.

If Contracting Authority, under the P3 Agreement, following the Company’s notice of conditional election to terminate the P3 Agreement, delivers timely notice choosing to continue the P3 Agreement in effect, then the Design-Build Contract will continue in full force and effect and the Design-Build Contractor will be entitled to claim hereunder such relief that the Company is entitled to claim from the Contracting Authority under the P3 Agreement with respect to the DB Work.

**Unconditional Right to Terminate Due to P3 Agreement Termination for Extended Delay**

If any Extended Delay under the P3 Agreement results in 365 or more days of critical path delay, either the Contracting Authority or the Company may under the P3 Agreement deliver to the other a notice of its unconditional election to terminate the P3 Agreement, in which case neither has further option to continue the P3 Agreement in effect. If the Company previously provided to the Contracting Authority a notice of conditional election to terminate under the P3 Agreement and the Contracting Authority opted to continue the P3 Agreement in effect, the Company’s right under the P3 Agreement to issue a notice of unconditional election to terminate the P3 Agreement may not accrue unless and until an additional 365
days of Extended Delays have accumulated after the date of the Company’s notice of conditional election to terminate.

If the Company wishes to exercise its unconditional election to terminate the P3 Agreement during the Design-Build Period in accordance with the P3 Agreement, it may do so in its sole discretion and without the Design-Build Contractor’s consent. If the P3 Agreement is so terminated, then the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement. If the Contracting Authority exercises its unconditional election to terminate the P3 Agreement during the Design-Build Period in accordance with the P3 Agreement, then the Design-Build Contract will also automatically terminate effective as of the termination date of the P3 Agreement.

If an event has occurred which the Design-Build Contractor anticipates will become an Extended Delay under the P3 Agreement that results in 365 or more days of critical path delay, but neither the Contracting Authority nor the Company has, under the P3 Agreement, delivered to the other a notice of unconditional election to terminate the P3 Agreement, the Design-Build Contractor may provide written notice thereof to the Company, no earlier than fifty (50) days prior to the Design-Build Contractor’s anticipated start of such Extended Delay, requesting that the Company deliver such notice to the Contracting Authority under the P3 Agreement. Within five days following receipt of such notice by the Design-Build Contractor, the Company is required to initiate the following process, which will result in one of the following, within 45 days from such the Company’s initiation: (i) the parties’ agreement on the terms and conditions under which the Design-Build Contract will continue in effect irrespective of the occurrence of such Extended Delay; (ii) the Company’s election to replace the Design-Build Contractor with another design-build contractor or provide a notice of unconditional election to the Contracting Authority under the P3 Agreement to terminate the P3 Agreement for Extended Delay; or (iii) the Design-Build Contractor’s written withdrawal of its notice; subject to, in each case, the event that the Design-Build Contractor anticipated would become an Extended Delay that results in 365 or more days of critical path delay has actually resulted in such critical path delay.

If the Company elects to replace the Design-Build Contractor, the Company is required to notify the Design-Build Contractor within the 45-day period described above and the Design-Build Contract will terminate upon the Design-Build Contractor’s receipt of such notice (or on such other date as may be agreed between the parties). If the Design-Build Contract is so terminated, the Design-Build Contractor will be entitled to an Extended Delay Termination Payment, calculated based on the estimated compensation the Design-Build Contractor would have been entitled to be paid at the time of such termination from the Company had the Contracting Authority terminated, or accepted the Company’s conditional election to terminate, the P3 Agreement for Extended Delay, but the payment is not conditioned upon the payment by the Contracting Authority to the Company under the P3 Agreement and the Company. If, at the end of the 45-day period: (i) the parties have not reached an agreement in writing to continue the Design-Build Contract in effect; (ii) the Design-Build Contractor has not withdrawn its notice; or (iii) the Company has not replaced the Design-Build Contractor with another design-build contractor, then the Company is obligated to provide a notice of unconditional election to the Contracting Authority to terminate the P3 Agreement for Extended Delay following the 45-day period, but in any event within two business days after the Company under the P3 Agreement has the right to provide such notice to Contracting Authority, and the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement.

If the Company does not provide such notice of unconditional election to terminate the P3 Agreement within the time required by the Design-Build Contract, the Design-Build Contractor will be entitled, upon five days’ written notice to the Company, to terminate the Design-Build Contract.

**Termination Due to the P3 Agreement Termination for Insurance Unavailability**

Under the P3 Agreement, if it becomes apparent during the Design-Build Period that insurance required under the P3 Agreement is not available to the extent specified in the P3 Agreement, the Contracting Authority may deliver to the Company notice of its conditional election to terminate the P3 Agreement for insurance unavailability, and the Company is required to promptly provide to the Design-
Build Contractor such notice. Following such notice, the parties are to consult but if the Company determines to accept such the Contracting Authority election to terminate the P3 Agreement, the Company may do so, within the time required by the P3 Agreement, without the Design-Build Contractor’s consent.

If the Company, following Contracting Authority’s notice under the P3 Agreement of its conditional election to terminate the P3 Agreement for insurance unavailability, wishes to give notice to the Contracting Authority under the P3 Agreement to continue performing its obligations under the P3 Agreement, the Company may do so only with the Design-Build Contractor’s consent (which consent is required to be provided or withheld by the Design-Build Contractor in accordance with the good industry practice). If the Company under the P3 Agreement does not deliver any notice to the Contracting Authority within 30 days from the Company’s receipt of Contracting Authority’s notice, then under the P3 Agreement the Company is deemed to have accepted Contracting Authority’s election to terminate the P3 Agreement. If the Company, with the Design-Build Contractor’s consent, elects to continue to performing its obligations under the P3 Agreement, then neither the Company nor the Contracting Authority will have any liability to the Design-Build Contractor for harm or loss from the risks that are the subject of insurance unavailability, other than the Design-Build Contractor may seek that the Company requests under the P3 Agreement that the Contracting Authority reimburse the Design-Build Contractor (through the Company) up to the full amount of insurance coverage that the Design-Build Contractor would have been obligated to carry had such coverage been commercially available, and on the terms, and subject to the conditions, of such insurance coverage as set out in the Design-Build Contract (except to the extent caused by the fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the Contract Documents or by any the Design-Build Contractor-related entity). The Design-Build Contractor is obligated to credit to the Contracting Authority (through the Company) all insurance premiums reflected in the most recent financial model update that are the subject of, and during the period of, insurance unavailability, and the Design-Build Contractor is to promptly and diligently repair and restore all damage and destruction to the Project arising out of, relating to or resulting from losses born of risks that are not covered by insurance due to insurance unavailability, in order to put the Project in a safe, good and sound condition in compliance with all applicable requirements of the Contract Documents.

If the Contracting Authority elects under the P3 Agreement to terminate the P3 Agreement for insurance unavailability pursuant to the P3 Agreement and the Company accepts or is deemed to have accepted such Contracting Authority election, then the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement.

If the Design-Build Contract is so terminated prior to DB Final Completion (and the Company’s payment therefor) and such termination is not due to the Design-Build Contractor’s default, except as otherwise provided in the Design-Build Contract, the Design-Build Contractor will be entitled to receive a termination payment equal to that portion of the contract price applicable to the DB Work completed up to the date of termination and which has not previously been paid to the Design-Build Contractor, together with reasonable demobilization costs (including subcontracts’ termination costs). The amount payable by the Company is limited to that portion of the termination amount actually received by the Company under the P3 Agreement for insurance unavailability attributable to the DB Work.

If, during the Design-Build Period, Contracting Authority, during the period of insurance unavailability (during which the Contracting Authority is under the P3 Agreement the insurer of last resort) provides notice to the Company under the P3 Agreement exercising Contracting Authority’s unconditional right to terminate the P3 Agreement, then the Company is required to promptly provide such notice to the Design-Build Contractor and the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement and the Company is obligated to pay over to the Design-Build Contractor such amounts (if any) actually paid by the Contracting Authority to the Company under the P3 Agreement that are attributable to the DB Work or the Design-Build Contractor.
Termination Based on P3 Agreement Termination Due to Court Ruling

If the P3 Agreement is terminated for Termination Due to Court Ruling, then the Design-Build Contract will automatically terminate effective as of the termination date of the P3 Agreement. If the Design-Build Contract is terminated prior to DB Final Completion (and the Company’s payment therefor) and the termination is not due to a Design-Build Contractor default, the Design-Build Contractor is entitled to receive a court ruling termination payment equal to that portion of the contract price applicable to the DB Work completed up to the date of termination and that has not previously been paid to the Design-Build Contractor, together with reasonable demobilization costs (including subcontracts’ termination costs), determined by the Company and the Design-Build Contractor in accordance with the Design-Build Contract.

Termination if Financial Close Fails to Occur

If the Company fails to achieve Financial Close by the Financial Close deadline for any reason not attributable to the Design-Build Contractor’s failure to perform its obligations under the Design-Build Contract, the Design-Build Contractor may, at its sole discretion, elect to terminate the Design-Build Contract. If the Design-Build Contractor elects to terminate the Design-Build Contract, it will provide written notice of termination to the Company and the termination will be effective immediately upon delivery of the notice. In the event of this termination, neither the Company nor the Design-Build Contractor will have any liability or obligation to the other (other than for payments due under a limited notice to proceed, as required by the Design-Build Contract).

Limitation on Liability

The Design-Build Contractor’s total aggregate liability under the Design-Build Contract may not exceed 35% of the contract price, subject to the following exclusions (except to the extent proven to have been caused by the Company):

(a) The proceeds of insurance, not to exceed amounts required to be maintained by the Design-Build Contractor in accordance with the terms of the Design-Build Contract;

(b) Costs, liabilities or obligations that arise from the gross negligence, willful misconduct, criminal conduct, intentional disregard of laws or actual fraud of the Design-Build Contractor;

(c) Costs, liabilities or obligations that arise from the Design-Build Contractor’s abandonment of the DB Work or from the Design-Build Contractor’s or any guarantor’s bankruptcy or insolvency;

(d) Costs, liabilities or obligations that arise from any liens, encumbrances or other security interests on the Project arising from or in connection with the performance of the DB Work, except where caused by the Company’s failure to pay undisputed amounts due the Design-Build Contractor under the Design-Build Contract;

(e) Costs, liabilities or obligations that arise from the failure of the Design-Build Contractor to provide good title to any portion of the Project included within the DB Work free and clear of any charge, lien, encumbrance or other security interest (except to the extent due to the Company’s unexcused failure to pay amounts owing to the Design-Build Contractor under the Design-Build Contract);

(f) The Design-Build Contractor’s indemnity obligations in respect of claims by third parties;

(g) Costs, liabilities and obligations arising from the Design-Build Contractor’s failure to comply with environmental laws and other obligations under the Design-Build Contract in respect of hazardous materials and environmental matters;
(h) Amounts paid by the Design-Build Contractor to the Company that are subsequently recovered from the O&M Contractor under the Interface Agreement;

(i) The following payments or reimbursements by the Design-Build Contractor to the O&M Contractor under the Interface Agreement with respect to:

   (i) Increased costs incurred by the O&M Contractor and indemnity obligations by the Design-Build Contractor in favor of the O&M Contractor, in each case due to inconsistencies with the base design, to the extent set forth in the Interface Agreement, but only if the Company does not reduce payments to, or otherwise recover amounts from, the O&M Contractor in connection therewith;

   (ii) Costs incurred or paid by the O&M Contractor for rectifying any failures or deficiencies in the DB Work arising during the commissioning, verification, start-up and testing of the Project and its component systems in accordance with the organization of testing and commissioning works agreed in the Interface Agreement;

   (iii) Costs incurred or paid by the O&M Contractor for replacement of spares used by the Design-Build Contractor for achieving DB Revenue Service Availability or DB Final Completion or for fulfilling warranty obligations under the Design-Build Contract; and

   (iv) Indemnity obligations by the Design-Build Contractor in favor of the O&M Contractor for (A) losses attributable to the Design-Build Contractor covered by the proceeds of insurance required to be maintained by the Design-Build Contractor under the Design-Build Contract or (B) losses arising out of fraud, criminal conduct, intentional misconduct, gross negligence, recklessness, bad faith, strict liability or violations of law on the part of the Design-Build Contractor without regard for insurance coverage; and

   (j) Costs incurred by the Design-Build Contractor in completing the DB Work and achieving DB Revenue Service Availability.

Remedial Plans

With respect to certain Design-Build Contractor defaults, the Company will defer exercise of its termination remedy and allow the Design-Build Contractor to take action. If the Design-Build Contractor fails to cure this category of Design-Build Contractor default within the initial cure period for the default specified in the Design-Build Contract, then the Company may require the Design-Build Contractor to prepare and submit for the Company’s approval a remedial plan meeting the requirements of the Design-Build Contract. The Contracting Authority under the P3 Agreement may also request that a remedial plan be provided by the Company (which the Design-Build Contractor will be responsible for preparing in accordance with the Design-Build Contract) in the event of a remedial plan default under the P3 Agreement. If the Design-Build Contractor does not provide or comply with a remedial plan in accordance with the Design-Build Contract, the Company may terminate the Design-Build Contract without allowing any additional cure period.

Dispute Resolution Procedures

Any claim or controversy between the Company and the Design-Build Contractor will be submitted to binding arbitration upon written notice of either party delivered to the other of the party’s intention to arbitrate, the nature of the dispute, the amount claimed and the decision sought, except that a dispute relating to a scope change order or claims against the Contracting Authority will be resolved pursuant to the fast-track adjudication process specified in the Design-Build Contract. Despite the foregoing, equitable remedies, including injunction and specific performance, will be available to the Design-Build Contractor and the Company by judicial proceedings and, for this purpose and for the
purpose of enforcing any arbitral award or decision, the parties have submitted to the exclusive jurisdiction and venue of the federal and state courts in the State.

If any issue in dispute between the Design-Build Contractor and the Company is also the subject of a concurrent dispute under the P3 Agreement, the Design-Build Contractor and the Company are required to seek to cause the dispute under the Design-Build Contract to be consolidated with the dispute resolution process occurring under the P3 Agreement. If this consolidation does not occur, then any ongoing proceeding regarding the dispute under the Design-Build Contract will be stayed pending final resolution of the dispute under the P3 Agreement, which resolution will be binding on the Design-Build Contractor and the Company for all purposes of the Design-Build Contract.

The Design-Build Contractor is permitted to participate in the dispute resolution process established under the P3 Agreement with respect to disputes regarding the DB Work or relief available to the Design-Build Contractor under the Design-Build Contract that is subject to the Company’s receipt of corresponding relief under the P3 Agreement.

The Design-Build Contractor is required to continue its performance of the DB Work on a timely basis in accordance with the Project schedule during any dispute, subject to the Design-Build Contractor’s suspension rights.

**Governing Law**

The Design-Build Contract will be construed and interpreted in accordance with the laws of the State, except to the extent that United States federal law otherwise applies.

**Design-Build Contractor’s Representations and Warranties**

The Design-Build Contractor has made certain representations and warranties for the benefit of the Company and those that are required to be made by the Company in the P3 Agreement to the extent they relate to the Design-Build Contractor and the DB Work.

**Assignment**

Neither the Design-Build Contractor nor the Company has the right, power or authority to assign or otherwise sell, convey, sublease, mortgage, encumber, transfer or otherwise dispose of the Design-Build Contract or any portion thereof, either voluntarily or involuntarily, without the prior written consent of the other party, which consent may be granted or withheld in the sole discretion of the other party, except that (a) the Company may assign all of its rights and interests in and under the Design-Build Contract to the Lenders as collateral security for its obligations, and the Lenders may further assign these rights without the Design-Build Contractor’s consent thereto as provided in the Design-Build Direct Agreement and (b) the Company may assign to the Contracting Authority any or all of its rights under the Design-Build Contract without the Design-Build Contractor’s consent.
APPENDIX E

SUMMARY OF CERTAIN PROVISIONS OF THE OPERATIONS AND MAINTENANCE CONTRACT

The following is a summary of selected provisions of the O&M Contract and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Company or the Trustee. Unless otherwise stated, any reference in this Official Statement to the O&M Contract shall mean such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof.

Overview

Operations and maintenance work for the Project will be undertaken by the O&M Contractor pursuant to the O&M Contract, dated as of April 7, 2016, between the Company and the O&M Contractor. The term of the O&M Contract ends 30 years after the earlier of the RSA Deadline under the P3 Agreement and the date of issuance of the certificate of Revenue Service Availability under the P3 Agreement by the independent engineer, subject to (a) the right of the Company and the O&M Contractor to terminate the O&M Contract early in accordance with the O&M Contract or otherwise at law and (b) the effect of Extended Delays on the term of the O&M Contract concerning the Extended Delay Payment Date under the P3 Agreement, as described in the O&M Contract (the “O&M Term”).

Scope of Services

Subject to limited exceptions specified in the O&M Contract, the scope of the services under the O&M Contract includes the performance of all Services necessary to operate and maintain the Project generally described in or reasonably inferable from the P3 Agreement and the O&M Contract.

Without limiting the foregoing, the Services include: (a) the supply, commissioning, testing, and integration of option LRVs ordered by the Contracting Authority under the P3 Agreement after the date that is 30 months before the Guaranteed DB RSA Date under the Design-Build Contract (this date, as of the date of the Contracting Authority’s exercise of the first LRV option), as described in the O&M Contract; (b) the operation and maintenance of the LRVs (which consist of the initial fleet, option LRVs required to be supplied by O&M Contractor and option LRVs required to be supplied by the Design-Build Contractor under the Design-Build Contract); (c) obtaining and maintaining all governmental approvals required to perform the Services other than Contracting Authority-provided approvals; (d) satisfying, on behalf of the Company, the conditions precedent to P3 Agreement final completion specified in the O&M Contract as the O&M Contractor’s responsibility; and (e) operating and maintaining the Company’s office space at the operations and maintenance facilities constructed by the Design-Build Contractor.

The O&M Contractor is required to ensure that (i) all Services are performed in accordance with requirements of the P3 Agreement, all applicable laws, governmental approvals and good industry practice, as it may evolve over time, (ii) the system remains fit for use for the intended functions of meeting the performance requirements and free of defects and meets the minimum performance standards for operations as specified in the O&M Contract, (iii) all materials and equipment furnished by the O&M Contractor are of good quality and new, and all option LRV(s) and all of their respective components and related consumables are of good quality and new and fit for its intended purpose, (iv) all Services are performed in accordance with Company-approved or reviewed and/or Contracting Authority-approved or reviewed plans, as applicable, required in the O&M Contract and (v) the Services meet all other requirements of the O&M Contract and the other Contract Documents (including acting so as not to cause any insurance it is required to obtain to be cancelled for cause).
Fare Collection and Fare System

Under the O&M Contract, the O&M Contractor is responsible for: (a) operations, maintenance and renewal of the fare system equipment; (b) stocking ticket vending machines, collecting cash from the machines, depositing cash receipts and arranging for proceeds of credit and other electronic transactions to be deposited into a designated Contracting Authority account; (c) maintaining generally accepted fiscal controls and procedures in accordance with the Contracting Authority and the State of Maryland requirements; (d) providing accounting reports regarding all transactions and deposits; and monitoring the fare system equipment; and (e) providing reports regarding any intrusion or tampering with said equipment. The Services do not include the obligation to pay credit card transaction costs associated with fares purchased from the fare system equipment, or to pay WMATA fees for the New Electronic Payment Program (NEPP) server maintenance. Under the P3 Agreement, the Contracting Authority is to directly pay WMATA and/or credit card companies for these costs. The O&M Monthly Availability Payment formula is not dependent on the value of revenues collected but Noncompliance Points may be assessed for any Noncompliance Event and failure to collect properly, deposit and account for fare revenues deposits constitutes an O&M Contractor default under the O&M Contract.

The O&M Lifecycle Payments do not include replacement of the entire fare system during the O&M Term or any replacement of fare system equipment components after contract year 15. Before contract year 15 (or before the end of the expected useful life of the initial fare system, if earlier than contract year 15), the Company and the Contracting Authority, under the P3 Agreement, are to consult regarding the scope of these replacements and associated changes to the O&M Work and thereafter proceed to negotiate a Contracting Authority change order under the P3 Agreement, and the Company and the O&M Contractor will negotiate a corresponding scope change order under the O&M Contract, subject to the respective limitations in the P3 Agreement and the O&M Contract.

O&M Renewal Work

The O&M Contractor is required to diligently perform renewal work as and when necessary to comply with the performance requirements and the Contract Documents, to achieve full design life for each asset, supporting reliable and quality service operations and availability and to restore the useful life of each element at the end of its residual life.

The O&M Contractor is required to use the asset management plan as the principal guide for scheduling and performing the renewal work (including the handback renewal work). As part of the asset management plan, the O&M Contractor is required to prepare, for the Company’s review and comment, a budget setting forth the projected costs of performing the renewal work and a schedule therefor, in each case satisfying the requirements of the P3 Agreement and the O&M Contract. The O&M Contractor is responsible for funding all renewal work costs to the extent the O&M Lifecycle Payments are not sufficient to pay the costs incurred or paid by the O&M Contractor or a component of the renewal work is performed by the O&M Contractor earlier than scheduled, but the O&M Contractor is entitled to the full O&M Lifecycle Payments at the scheduled time (or, if earlier, when any of these amounts are paid to the Company by the Contracting Authority), subject to the payment provisions in the O&M Contract. The schedule for performance of the renewal work may be affected if any assets are repaired or replaced due to damage that is covered by insurance or paid for by the Contracting Authority or another governmental entity, as described in the O&M Contract.

The O&M Contractor, on behalf of the Company under the P3 Agreement, is required to repair, restore and replace all losses or damages to the system or other improvements and assets during the O&M Period due to the action of the elements (e.g., rain, snow, wind, etc.), users or any other cause, at the O&M Contractor’s cost and expense, except to the extent that compensation is allowed under the O&M Contract. The Contracting Authority has agreed, under the P3 Agreement, to pay for incremental costs incurred by the Company in performance of this work under the P3 Agreement to the extent that (a) any of the reasonable costs of repair, restoring or replacing are the Contracting Authority’s responsibility because it has agreed to act as a self-insurer for the relevant coverage (or has agreed to pay the difference between an adjusted and unadjustable deductible in connection with any claim made under an insurance policy arising
out of a covered loss) under the applicable insurance provisions of the P3 Agreement or (b) the damage is covered by federal grant funds provided to the Contracting Authority to compensate it for the costs of the work. The Company will pay over to the O&M Contractor amounts paid by the Contracting Authority in respect of any costs that the O&M Contractor claimed from the Company under the O&M Contract.

The Contracting Authority has also agreed under the P3 Agreement to pay for certain eligible incremental costs incurred by the Company in performance of this work under the P3 Agreement that are not covered by insurance or payable by the Contracting Authority, as described in the O&M Contract, including for damage from vandalism exceeding $1,000 in a 24-hour period, damage from vandalism exceeding $100,000 in a contract year and total damage from vandalism exceeding $10,000,000. In addition, if, under the P3 Agreement, with respect to losses or damages not caused by vandalism, the total costs during the O&M Period exceeds, in the aggregate, $10,000,000, the Contracting Authority is to reimburse the Company for the excess amount. The O&M Contractor is required, at its cost and expense, to fulfill the Company’s obligations of the P3 Agreement with respect to vandalism and losses or damages not caused by vandalism, and is entitled to the reimbursement the Company receives from the Contracting Authority. In addition, the O&M Contractor is also entitled to claim a scope change order to compensate it for the cost of any repair, restoration or replacement of Project damage that is the Company’s responsibility under the O&M Contract. The Company is responsible for these costs to the extent Project damage is attributable to the Company. Moreover, with respect to Project damage not caused by vandalism, the O&M Contractor bears the first $4,000,000 of aggregate incremental costs incurred but not funded by the Contracting Authority under the P3 Agreement, and the O&M Contractor and the Company bear subsequent costs between $4,000,000 and $10,000,000 in a proportion of 1(the O&M Contractor):5(the Company). The foregoing rights of the O&M Contractor are subject to the same limitations and obligations applicable to the Company in the P3 Agreement.

Handback

The O&M Contractor will perform all work required to be performed by the Company under the P3 Agreement in connection with the handback requirements, including conducting handback inspections and performing all renewal work required to be performed during the final five calendar years of the O&M Term. No later than 120 days prior to the date that is five calendar years before the end of the O&M Term or within a reasonable period before any early termination date of the O&M Contract, the O&M Contractor is required to prepare and submit, for the Company’s review and subsequent submittal to the Contracting Authority as required by the P3 Agreement and the O&M Contract, the initial work plan for the performance of the handback renewal work, meeting the requirements of the P3 Agreement and the O&M Contract. Subject to and in compliance with the terms and conditions of the O&M Contract, the O&M Contractor’s handback renewal work plan is required to be updated annually thereafter. Subject to an event of termination under the O&M Contract as set forth below, all handback renewal work must be completed no later than the earlier of (a) three months before the expiration of the O&M Term and (b) the early termination date of the O&M Contract.

If, before or at the end of the O&M Term, the Contracting Authority under the P3 Agreement determines that the Project does not comply with any handback requirement, or the renewal work is not timely or properly performed, then, in addition to the Company’s rights under the Contract Documents and the Contracting Authority’s rights under the P3 Agreement contract documents, the Company (or the Contracting Authority under the P3 Agreement) has the right to perform the handback renewal work itself, and the O&M Contractor will be liable for the Company’s recoverable costs (in addition to the Contracting Authority’s recoverable costs, as applicable).

After the schedule for renewal work to meet handback requirements is approved by the Contracting Authority under the P3 Agreement, if the Contracting Authority determines in accordance with the P3 Agreement that the budgeted costs for the renewal work included in the availability payments under the P3 Agreement are not sufficient to cover the cost of the renewal work and the shortfall is not covered by amounts held in a Project handback reserve account, the Contracting Authority has the right under the P3 Agreement to withhold sufficient funds from future availability payments to cover any remaining deficit after accounting for funds in the reserve account, and the Company is entitled to make the corresponding
withholdings from the O&M Monthly Availability Payments due to the O&M Contractor. The Company and the O&M Contractor have clarified in the draft amended and restated O&M Contract that the Rehabilitation Reserve Account established and funded by the Company pursuant to the TIFIA Loan Agreement is the same reserve account initially referred to as the Project handback reserve account for the purposes of the O&M Contract. See “PROJECT PARTICIPANTS—The O&M Contract—The Amended and Restated O&M Contract.” In lieu of the Company’s withholding of the O&M Monthly Availability Payments as described above, the O&M Contractor is entitled to provide a letter of credit as described in the P3 Agreement to secure its obligation to perform the handback renewal work, to the extent permitted by the Contracting Authority.

**Acquisition of Real Property**

Under the P3 Agreement, the Contracting Authority has identified certain property to be used for the Project, and the Contracting Authority is required under the P3 Agreement to acquire, at its cost, the Project right-of-way and certain other property in the time periods identified in a property acquisition schedule. The Company is required to make any acquired Project right-of-way available to the O&M Contractor to the extent required for the performance of the Services.

The O&M Contractor is solely responsible for the acquisition of any temporary interests in property that the O&M Contractor determines is necessary, desirable or advisable to obtain in connection with the Services, excluding acquisitions of temporary interests in property identified in the property acquisition schedule but including any property interests that the O&M Contractor wishes to obtain in advance of the acquisition date identified in the property acquisition schedule. The O&M Contractor is required to pay the purchase price for all temporary property interests directly and bears the risk of any delays and cost impacts related to acquisition of these property interests. The Contracting Authority, under the P3 Agreement, has no obligation to obtain additional temporary property interests but may agree to do so following receipt of a request from the Company.

**Utilities**

*Utility Accommodation.* It is anticipated that, from time to time during the course of the O&M Period, utility owners will apply for additional utility permits to install new utilities that would cross or longitudinally occupy the Project right-of-way, or to modify, repair, upgrade, relocate or expand existing utilities within the Project right-of-way. In these circumstances, the O&M Contractor is required to: (a) assist the Contracting Authority in providing comments regarding the permit applications to the extent related to the Services; (b) make available upon request the most recent Project design information and/or record documents in the O&M Contractor’s possession, as applicable, to the applicants; (c) assist each applicant with information regarding the location of other proposed and existing utilities; and (d) use commercially reasonable efforts to coordinate work schedules with the applicants as appropriate to avoid interference, if possible, with the Services by applicants’ activities.

The O&M Contractor is also required to monitor utilities and utility owners within the Project right-of-way for compliance with applicable utility permits, utility agreements, easements, and applicable law and use diligent efforts to obtain the cooperation of each utility owner having utilities within the Project right-of-way. The O&M Contractor is required to promptly notify the Company if (a) the O&M Contractor believes that any utility owner is not complying with the terms of a utility permit, utility agreement, easement, or applicable law affecting a utility within the Project right-of-way, or (b) any other dispute arises between the O&M Contractor and a utility owner with respect to a utility within the Project right-of-way, despite the O&M Contractor having exercised its diligent efforts to obtain the utility owner’s cooperation. If the O&M Contractor, despite diligent efforts, is unable to resolve any dispute with a utility owner, the O&M Contractor may request that the Company seek the Contracting Authority to provide reasonable assistance. Following delivery of the request, the Company and the Contracting Authority, under the P3 Agreement, are to consult regarding measures to be undertaken, and the Company will consult with the O&M Contractor regarding these measures.
Utility Adjustments. The O&M Contractor is responsible for (a) ensuring that all utility adjustments (if any) pertaining to the Services are completed in accordance with the requirements of the Contract Documents; (b) conducting reasonable site investigation and exploration before commencement of construction work included in the Services in any particular area to correctly identify all utilities in the area; (c) including in the design of the Project all utilities identified by the O&M Contractor to ensure that utility services are not mistakenly disrupted by the construction portion of the Services; (d) ensuring that all utility work performed by the O&M Contractor and its related entities (if any) complies with the Contract Documents; and (e) coordinating, monitoring and otherwise undertaking appropriate efforts to ensure timely performance of utility work by utility owners, in coordination with the Services, and in compliance with the standards and other applicable requirements specified in the Contract Documents and the Contracting Authority’s utility agreements.

Utility Agreements. Under the O&M Contract, the O&M Contractor has been delegated and has accepted, any responsibilities and obligations required to be complied with during the O&M Period of the Contracting Authority (as delegated to the Company under the P3 Agreement) under the utility agreements entered or to be entered into by the Contracting Authority. If, during the O&M Period, the O&M Contractor determines that a utility adjustment is required for a facility owned by a utility owner that has not entered into a utility agreement with the Contracting Authority, the O&M Contractor is required to promptly notify the Company regarding these circumstances. In such an event, unless the Contracting Authority, through the Company, directs otherwise, the O&M Contractor is required to prepare and negotiate a utility agreement with the utility owner meeting the requirements specified in the O&M Contract. Following the Company’s review and comment, the O&M Contractor may then execute the utility agreement enabling utility work to proceed and the O&M Contractor is responsible for all costs and expenses associated with the utility work. Subject to certain limitations in the O&M Contract, the O&M Contractor is responsible for proper completion of all utility work that is required during the O&M Period (if any), in accordance with the Contract Documents, regardless of the nature or provisions of the utility agreements and regardless of whether the O&M Contractor or its subcontractors, or the utility owner or its contractors, are performing the utility work. Under the O&M Contract, the O&M Contractor will not be permitted any extension of time for delays associated with utility work, and no additional compensation will be allowed relating to utility work, except to the extent specifically permitted by the Contract Documents.

Betterments. Under the P3 Agreement, any utility owner may request that the Contracting Authority permit the Company to perform work relating to Betterments at the utility owner’s expense. If the Contracting Authority approves this request under the P3 Agreement, following the O&M Commencement Date, the O&M Contractor is required, on behalf of the Company, to perform the work, with the right to receive additional payment by a scope change order under the O&M Contract based on the corresponding Contracting Authority change order under the P3 Agreement or by direct payment from the utility owner.

Hazardous Materials

Subject to certain exceptions set forth in the O&M Contract, the O&M Contractor is required to perform, or cause to be performed, all hazardous materials management during the O&M Period in accordance with applicable law, governmental approvals, an approved comprehensive environmental protection program and all applicable provisions of the Contract Documents. If the O&M Contractor fails to undertake the hazardous materials management required under the O&M Contract within a reasonable time after discovery of hazardous materials, taking into consideration the nature and extent of the contamination and action required and the potential impact upon the O&M Contractor’s schedule for use of and operations on the Project right-of-way, the Company may notify the O&M Contractor that it will undertake the hazardous materials management itself. The Contracting Authority under the P3 Agreement may also undertake the hazardous materials management. The O&M Contractor is required to reimburse, on a current basis, the Company and/or the Contracting Authority for the reasonable costs that the Company and/or the Contracting Authority incurs in carrying out hazardous materials management actions, so long as the Company has performed in accordance with the O&M Contract and the Contracting Authority in accordance with the P3 Agreement. Neither the Contracting Authority nor the Company will
have liability or responsibility to the O&M Contractor arising out of, relating to or resulting from the Contracting Authority's hazardous materials management actions under the P3 Agreement, and these actions will not constitute a Relief Event or other basis for a claim.

Except as expressly set forth in the O&M Contract, the O&M Contractor bears all risk of the Company under the P3 Agreement associated with the discovery of hazardous materials within the site during the O&M Period. The O&M Contractor is also responsible, on behalf of the Company, for the management of all pre-existing hazardous materials encountered during the O&M Period, in compliance with applicable law, subject to certain limitations set forth in the O&M Contract, including the Contracting Authority's responsibility under the P3 Agreement for certain losses arising from the management of pre-existing hazardous materials. The O&M Contractor is also obligated to avoid exacerbating hazardous materials in, on, under or migrating from the site.

**Site Conditions**

The O&M Contractor acknowledged in the O&M Contract that its knowledge of the site conditions is equal to that of the Company. The O&M Contractor has no right under the O&M Contract to claim that any condition constitutes a differing site condition or that discovery of any paleontological or cultural (including archaeological and historic) resources, or threatened or endangered species constitutes a Relief Event if, with respect to the Services under any major construction contracts awarded during the O&M Period, the O&M Contractor had actual knowledge regarding the conditions or resources prior to the award of the contract or the condition or resource would have become known to the O&M Contractor based on a reasonable investigation of the area in connection with the establishment of the scope of work for the contract. Notwithstanding the foregoing, the Contracting Authority acknowledged in the P3 Agreement that litigation has been filed in the U.S. District Court in the District of Columbia, captioned *Friends of the Capital Crescent Trail v. FTA*, Civil Case No. 14-01471 (RJL), and agreed that a determination by the court in such action, or by an authority having jurisdiction, that a threatened or endangered species exists at, near or on the Project right-of-way will constitute a Relief Event under the P3 Agreement to the extent that the Company is required to stop work or perform extra work under the P3 Agreement as a result. To the extent that the O&M Contractor is required to stop Services or perform extra Services as a result of such determination, the O&M Contractor is entitled to claim a Relief Event under the O&M Contract.

During the O&M Period, except to the extent that the O&M Contractor is entitled to relief under the O&M Contract, the O&M Contractor bears the risk of all conditions occurring on, under or at the site, including: (a) physical conditions (surface and/or subsurface) of an unusual nature, differing materially from those ordinarily encountered in the area; (b) changes in surface topography; (c) variations in subsurface moisture content and groundwater levels; (d) utility facilities; (e) contaminated groundwater; (f) the discovery at, under, near or on the Project right-of-way of any paleontological resources or cultural (including archaeological or historic) resources; (g) the discovery at, under, near or on the Project right-of-way of any threatened or endangered species; and (h) seismic conditions.

**Power Supply**

Under the O&M Contract, from and after start-up of permanent power service, the O&M Contractor is obligated to take appropriate steps to ensure efficient energy usage and otherwise conform to the approved energy management plan, and provide monthly electrical power usage reports to the Company (who will provide the same to the Contracting Authority) regarding electricity usage during the prior month and year to date, using the form described in the P3 Agreement, together with other related information as the Contracting Authority may reasonably request. Energy usage during the O&M Period is subject to a pain-share/gain-share approach under the P3 Agreement. The O&M Contractor is entitled to the annual energy bonus payment received by the Company under the P3 Agreement, and the payments to the O&M Contractor by the Company are subject to the corresponding annual energy efficiency deduction made under the P3 Agreement, as described in the O&M Contract.
O&M Contractor Inspection, Testing and Reporting

The O&M Contractor is required to carry out inspections and tests in accordance with the O&M Contract to the extent relating to the Services, the O&M management plan and the O&M Contract. The O&M Contractor is required to use the results of these inspections and tests to develop and update the asset management plan, to maintain asset condition and service levels, and to develop programs of maintenance and renewal work to minimize the effect of Services on users and other members of the public. The O&M Contractor is required to submit all reports relating to the Services, including the O&M annual reports, in the form, with the content and within the time required under the Contract Documents.

Security and Incident Response

The O&M Contractor is responsible for the security of the Project and the safety and security of the workers and public throughout the O&M Period. The O&M Contractor is required to perform or otherwise take all measures identified in the safety and security plan required by the O&M Contract, following the Company’s review and the Contracting Authority’s approval of the safety and security plan. Prior to the O&M Commencement Date, the O&M Contractor is required to ensure that its performance of the pre-O&M commencement Services does not result in the Company’s breach of its obligations under the P3 Agreement and, where this performance results in damage, additional maintenance or costs or any other additional obligation beyond the usual wear and tear, the O&M Contractor is responsible for repairing any damage, performing any additional maintenance and paying any of the additional costs. As between the O&M Contractor and the Company, the O&M Contractor is responsible, during the O&M Period, for site security and is required to take measures, consistent with good industry practice, to prevent damage to or destruction of Project improvements by any third party or by any Force Majeure Event. The O&M Contractor is also required to comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State of Maryland agencies pertaining to the Services and to coordinate and cooperate with all governmental entities providing security, first responder and other public emergency response services.

Budget; Support for Annual Reporting by the Contracting Authority

The O&M Contractor is required to prepare and deliver to the Company any budget for the Services required by any of the Company’s Lenders. The Contracting Authority may be required under the P3 Agreement to provide this budget and other documents pertaining to the availability payment as part of its annual reporting obligations. The O&M Contractor is required to provide this assistance as the Contracting Authority, through the Company, may reasonably request in connection with preparing and delivering all documentation, as set forth in the O&M Contract.

Governmental Approvals

The O&M Contractor is responsible for obtaining all governmental approvals required for the Services, other than approvals provided by the Contracting Authority, and bears the risk of any delay in obtaining approvals, as well as the risk of conditions imposed on performance of the Services by the approvals. The O&M Contractor is required to deliver to the Company true and complete copies of all new or amended governmental approvals other than the approvals obtained by the Contracting Authority.

Oversight and Inspection

Under the P3 Agreement, the Contracting Authority has the right at all times to conduct certain oversight of the Services. Oversight may include assessments regarding compliance with the Contract Documents, the Project management plan and the requirements of federal agencies and applicable law. The O&M Contractor is obligated under the O&M Contract to fully cooperate with the Company and the Contracting Authority to facilitate the Contracting Authority’s oversight, including providing access to its books and records. Under the P3 Agreement, the Contracting Authority may change the type and/or increase the level of its oversight of the Project and the Company’s compliance with its obligations under
the P3 Agreement’s contract documents, in a manner and to a level as the Contracting Authority reasonably sees fit, if at any time there exists a Company’s remedial plan default under the P3 Agreement, over the course of three consecutive payment periods (determined on a rolling basis), the Company has accumulated a certain number of Noncompliance Points specified in the O&M Contract or the Company receives one or more notices of a Company default under the P3 Agreement that may become a default termination event under the P3 Agreement. The O&M Contractor is required under the O&M Contract to fully cooperate with the Contracting Authority and the Company to facilitate this increased oversight.

If the Contracting Authority under the P3 Agreement changes the type or increases the level of its oversight, then the Company is required to pay and reimburse the Contracting Authority for all reasonable increased costs and fees incurred in connection with this action. To the extent the cause of the increased oversight is attributable to the O&M Contractor, the O&M Contractor is required to pay the Contracting Authority, on behalf of the Company, all reasonable increased costs that the Contracting Authority has incurred.

In addition, the Company itself may, at its own cost, by written notice to the O&M Contractor, commence or increase its own oversight of the Services, if at any time (a) over the course of four consecutive payment periods (determined on a rolling basis), the O&M Contractor has accumulated a certain number of Noncompliance Points specified in the O&M Contract, there exists a remedial plan default under the O&M Contract or the O&M Contractor receives one or more notices of O&M Contractor default with respect to O&M Contractor defaults passed down to the O&M Contractor from the P3 Agreement that correspond to a notice of Company default under the P3 Agreement attributable to the O&M Contractor that may become a default termination event under the P3 Agreement. This oversight will remain in effect (unless the Company notifies the O&M Contractor in writing that it wishes to cease such oversight prior to such time) until the cause of the increased oversight is cured as described in the O&M Contract. In addition, upon the occurrence of certain triggering events specified in the O&M Contract, such as certain O&M Contractor defaults or the accumulation of specified Noncompliance Points, the Company is entitled to approval rights of certain O&M Contractor submittals that are subject to the Company’s review and comment prior to the occurrence of the triggering events.

**Interpretive Engineering Decisions**

The O&M Contractor may request the Company to seek a Contracting Authority decision regarding an interpretive engineering decision under the P3 Agreement concerning the meaning, scope, interpretation and application of the Technical Provisions. The Contracting Authority may, under the P3 Agreement, approve the proposed interpretive engineering decision, issue its own interpretive engineering decision or disapprove any proposed interpretive engineering decision (and include an explanation of any disapproval of the application or any differing interpretation). Interpretive engineering decisions accepted by the Contracting Authority will constitute provisions of the Technical Provisions and will not constitute a Company-caused delay, a Contracting Authority change, a scope change, a Relief Event or other basis for any claim. Subsequent Contracting Authority orders and directives that are contrary to the interpretive engineering decision will constitute a Contracting Authority change for the purposes of the P3 Agreement and the O&M Contract.

**Title**

Title to the option LRVs will pass to the Contracting Authority, through the Company, upon delivery under the O&M Contract. Title to all other materials, equipment, tools and supplies furnished by or through the O&M Contractor under the Contract Documents for incorporation into the Project or that are required for the operation or maintenance of the Project will pass to the Company, free and clear of all liens or other charges of any kind or nature, upon the earlier of (a) incorporation into the Project or, for items that will not be incorporated into the Project, delivery to the site and (b) the date of payment by the Company to the O&M Contractor for the item, including payments in the form of O&M Monthly Availability Payments and payments for scope change orders.
The passage of title to the Contracting Authority does not affect the O&M Contractor’s care, custody and control responsibilities. The O&M Contractor is responsible for the care, custody and control of all components of the Project during the O&M Period, including all materials, equipment, tools and supplies described in the O&M Contract, until the O&M termination date (and thereafter, but only to the extent expressly set forth in the O&M Contract) and, with respect to the elements of third-party work, from the O&M Commencement Date until acceptance of the elements by the relevant third-party. Under the O&M Contract, during the O&M Period, the O&M Contractor will also be responsible, on behalf of the Company, for maintenance of certain improvements owned by third parties within the area for which the O&M Contractor has responsibility to operate and maintain during the O&M Period.

**Back-to-Back Relief Provisions**

Under the O&M Contract, subject to certain exceptions (including with respect to Company-caused delays and any Company suspension of Services), the O&M Contractor is only entitled to compensation or relief in the event and only to the extent that the Company actually receives the corresponding compensation or relief under the P3 Agreement. If the Company’s failure to receive payment or other relief to which it is otherwise entitled under the P3 Agreement (and to which the O&M Contractor is entitled under the O&M Contract) is solely a result of the Company’s failure to comply with its obligations under the O&M Contract and the P3 Agreement that is not attributable to the O&M Contractor, then the O&M Contractor is entitled to payment or other relief from the Company under the O&M Contract that the O&M Contractor would be otherwise entitled but for the Company’s failure to so comply.

Subject to the Company’s and the O&M Contractor’s fast-track adjudication process set forth in the O&M Contract, the Company agrees in the O&M Contract that it will diligently and in good-faith (a) seek any responses from the Contracting Authority under the P3 Agreement that correspond with any responses being requested by the O&M Contractor under the O&M Contract, (b) seek any compensation and other relief from the Contracting Authority under the P3 Agreement that correspond with any compensation and other relief being requested by the O&M Contractor under the O&M Contract and (c) pass through to the O&M Contractor under the O&M Contract the benefit of any responses, compensation and other relief that it actually obtains from the Contracting Authority under the P3 Agreement.

**Payments to the O&M Contractor; Contracting Authority’s Costs**

The Company’s payments to the O&M Contractor under the O&M Contract consist of the pre-O&M commencement Services fee and the O&M Monthly Availability Payments, inclusive of all applicable taxes (including sales taxes, use taxes and other transfer taxes), duties, excises, all state and local sales and use taxes payable by the Company to the O&M Contractor and all governmental fees payable by the O&M Contractor in connection with the Services, but the O&M Contractor is entitled to claim a Relief Event with respect to sales or use tax on option LRVs.

**Pre-O&M Commencement Services Fee**

Compensation for the O&M Contractor’s performance of the pre-O&M commencement Services will be paid to the O&M Contractor by the Company monthly, based on agreed payment dates as set forth in the O&M Contract.
O&M Monthly Availability Payments

O&M Monthly Availability Payments - General

Commencing from the O&M Commencement Date and continuing throughout the O&M Term, the Company is required to make monthly payments to the O&M Contractor for the Services in arrears for the prior contract month as set forth in the O&M Contract, (the “O&M Monthly Availability Payments”), consisting of operating payments, maintenance payments, insurance payments and lifecycle payments, each as set forth in the O&M Contract and corresponding to the applicable component of the monthly availability payments under the P3 Agreement for the relevant contract month. The foregoing payments are subject to corresponding adjustments based on (a) escalation adjustments and adjustments based on changes in the service level made to the monthly availability payment under the P3 Agreement and (b) withholdings and deductions from, and adjustments to, the monthly availability payments under the P3 Agreement.

The Company has the right, under the P3 Agreement, to review and discuss certain aspects of the payment mechanism for availability payments under the P3 Agreement with the Contracting Authority. If the O&M Contractor requests and the Company agrees with the request, or if the Company wishes to do so and the O&M Contractor agrees, the O&M Contractor will participate in the reviews and/or discussions as permitted by the Contracting Authority under the P3 Agreement.

Payment of O&M Lifecycle Payments; O&M Renewal Work Deficit

Subject to the provisions of the O&M Contract regarding the O&M Monthly Availability Payments, all O&M Lifecycle Payments will be paid by the Company to the O&M Contractor no later than 30 days after the Company’s receipt of a corresponding Lifecycle Payment from the Contracting Authority. The Company is required to establish and fund a reserve account with Lifecycle Payments received from the Contracting Authority under the P3 Agreement until the balance of the reserve account equals the deficit amount reflecting the difference between (i) the sum of the scheduled O&M Lifecycle Payments and the amount already in the reserve account, and (ii) the projected remaining cost of the renewal work, including handback renewal work, as determined by the Lenders’ Technical Advisor based on a look-forward analysis to be conducted commencing on the 10th anniversary of the RSA Date under the P3 Agreement and annually thereafter until the end of the O&M Term). The O&M Contractor is responsible for funding any additional amounts into the reserve account to cover the deficit, or alternatively the O&M Contractor may provide a letter of credit in lieu of the deficit funding. The Company is obligated to withdraw funds from the reserve account to make the O&M Lifecycle Payments to the O&M Contractor, subject to the other payment provisions of the O&M Contract. For a description of agreed changes to the mechanics with respect to O&M Lifecycle Payments and the reserve account in the amended and restated O&M Contract, see “PRINCIPAL PROJECT DOCUMENTS—The O&M Contract—The Amended and Restated O&M Contract.”

Withholdings under the O&M Contract

The Company may withhold all or a portion of any O&M Monthly Availability Payment (to the extent reasonably necessary to protect the Company) upon the occurrence of any of the following events:

(a) The O&M Contractor’s invoice does not meet the applicable requirements of the O&M Contract;

(b) The O&M Contractor has failed to make timely payments of undisputed amounts to subcontractors as required under applicable subcontracts and law (but the foregoing does not apply if the Company has failed to pay to the O&M Contractor any undisputed amounts due pursuant to the O&M Contract);
(c) The O&M Contractor has failed to pay any amounts owing to the Company under the O&M Contract;

(d) If subject to the Lenders’ Technical Advisor’s approval, the Lenders’ Technical Advisor has not approved the O&M Contractor’s invoice;

(e) The amount invoiced is inconsistent with the Contract Documents or the O&M Contractor has failed to otherwise comply with the provisions of the O&M Contract with respect to the Services for which payment is requested; or

(f) The Company otherwise has the right to withhold payment under the terms of the O&M Contract.

The O&M Contractor is required to continue to perform the Services, notwithstanding a withholding by the Company permitted under the O&M Contract.

In addition, the Company will only make each component payment of the O&M Monthly Availability Payments to the O&M Contractor when the Company first receives from the Contracting Authority under the P3 Agreement the corresponding component of the monthly availability payment, except to the extent that the Contracting Authority’s failure to pay is due to the Company’s delay or failure to comply with its obligations under the O&M Contract or the P3 Agreement that is not attributable to the O&M Contractor, or other reasons attributable to the Company that allow the Contracting Authority to withhold monthly availability payments or portions thereof under the P3 Agreement (including, subject to the fast track adjudication process set forth in the O&M Contract, failure by the Company to pursue diligently and in good faith compensation under the P3 Agreement).

Withholdings, Deductions and Adjustments to Payments to the O&M Contractor Based on the P3 Agreement

Without duplication of any other amounts withheld by the Company, paid by the O&M Contractor or recovered from the proceeds of the business interruption insurance, or other remedies of the Company under the O&M Contract, and subject to limitations as provided below, to the extent the Contracting Authority withholds or make a deduction from, or a downward adjustment to, the monthly availability payments or other amounts owed by the Contracting Authority to the Company under the P3 Agreement (a) as deductions, as energy deductions arising pursuant to the energy painshare/gainshare, as downward quarterly volume adjustments or for increased oversight during the O&M Period (in each case, other than those attributable to the Company); or (b) otherwise for reasons attributable to the O&M Contractor or any of its subcontractors, then the Company is entitled to withhold or make a deduction from, or make a downward adjustment to, any payment otherwise due to the O&M Contractor under the O&M Contract until the aggregate amount of the withholding, deduction or downward adjustment equals the aggregate amount of the Contracting Authority withholding, deduction or downward adjustment at the time it would have been paid by the Contracting Authority had the withholding, deduction or downward adjustment not been made. However, in no event may any withholdings, deductions or downward adjustments made by the Company to payments to the O&M Contractor that are due to the occurrence of any grace period event and, subject to certain limitations in the P3 Agreement, correspond to Deductions and OTP Factors applied by the Contracting Authority made under the P3 Agreement following the expiration of a grace period as set forth in the P3 Agreement, reduce the O&M Monthly Availability Payment due to the O&M Contractor below such portion thereof corresponding to the partial service payment under the P3 Agreement (and the foregoing the O&M Contractor’s rights may be subject to the same limitations and relief as applicable to the Company under the P3 Agreement).

To the extent the Contracting Authority makes certain additions or an upward adjustments to the monthly availability payments as set forth in the P3 Agreement, then the Company is required to make the corresponding addition or upward adjustment to the O&M Monthly Availability Payment due to the O&M Contractor equal to the amount of the Contracting Authority addition or upward adjustment pertaining to the Services.
Performance Security

Performance and Payment Bonds

In connection with each major construction contract during the O&M Period, before allowing the Services to commence under the major construction contract, the O&M Contractor is required to obtain and deliver (a) a payment bond with an aggregate value equal to 100% of the total value of construction work included in the Services to be performed under the major construction contract and (b) separate performance security in the form of surety bond(s) covering the subcontractor’s obligations under its major construction contract, in each case in accordance with the O&M Contract; each with a multiple obligee rider(s) naming the Contracting Authority and the Collateral Agent as additional obligees. The performance security in the form of a surety bond will cover the O&M Contractor’s obligations under the O&M Contract and remain in force until those obligations have been fulfilled. The payment bond(s) and performance security in the form of a surety bond is required to be issued by a surety or insurance company, as applicable, meeting the requirements of applicable law, licensed or authorized to do business in the State of Maryland and rated at least “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating.

Letters of Credit

In addition to providing the payment and performance bonds, the O&M Contractor is obligated to provide to the Company, no later than 60 days before the scheduled P3 Agreement RSA Date (and 30 days prior to each contract year thereafter), one or more letters of credit, in an initial aggregate amount equal to 50% of the sum of (i) the O&M Contractor operating annual turnover, calculated as the then-current (indexed) O&M Monthly Availability Payments payable to the O&M Contractor for the relevant contract year, but excluding the O&M Lifecycle Payments and certain Company costs set forth in the O&M Contract, and (ii) the average annual O&M Lifecycle Payments; in each case disregarding any deductions, withholdings or downward adjustments permitted under the O&M Contract. The O&M Contract requires that the letters of credit be issued by a commercial bank or trust company that (a) has a combined capital and surplus of at least $5,000,000,000 U.S. Dollars, (b) is a national banking association, a state bank chartered in one of the states of the United States or the United States branch of a foreign bank, (c) has a senior unsecured long-term credit rating (unenhanced by third-party support) equivalent to “A” or better as determined by Standard and Poor’s Ratings Services or its successor, and “A2” or better as determined by Moody’s Investors Service Inc. or its successor and (d) is not an affiliate of the O&M Contractor or the Company. In addition, the Contracting Authority is required to be a transferee beneficiary under the letters of credit, and the letters of credit will be transferrable to the Contracting Authority in certain circumstances specified in the P3 Agreement.

If, at any time that the O&M Contractor is obligated to maintain, or cause to be maintained, a letter of credit, and the O&M Contractor fails to renew or replace, or cause to be renewed or replaced, the letter of credit in the required amount by the date that is 30 days before its stated expiry date, the Company is entitled to draw on the full available amount of the outstanding letter of credit up to the required amount of the replacement security, which draw will be held by the Company as replacement security until one or more other replacement letters of credit are provided or are applied for any reason for which a letter of credit may be applied under the O&M Contract.

In addition, in the event (a) the issuer of a letter of credit fails to satisfy the criteria required by the O&M Contract set forth above, within 15 days after becoming aware, the O&M Contractor is required to provide one or more substitute letters of credit from an issuer other than the bank that has been downgraded or failed to meet other required criteria, or (b) the issuer of a letter of credit fails to honor the beneficiary’s proper request to draw on an outstanding letter of credit, then within five business days thereafter the O&M Contractor is required to provide one or more substitute letters of credit from an issuer other than the bank that has failed to honor the outstanding letter of credit. If the Company does not receive one or more replacement letters of credit from an issuer within the time required, the Company is entitled to draw on the full available amount of the applicable letter of credit, which draw will be held by the Company as
replacement security until one or more other replacement letters of credit are provided or are applied for any reason for which a letter of credit may be applied under the O&M Contract.

Any time the Company is entitled under the O&M Contract to draw on a letter of credit, the Company is entitled, in its sole discretion, to draw on and use proceeds from one or more of the letters of credit in any order.

**Guaranties**

Each of Fluor Corporation, ACI and CAF is required, on or prior Financial Close, to execute and deliver to the Company a guaranty, each guarantying all of the O&M Contractor’s obligations under the O&M Contract and such obligations to the Company under the Interface Agreement.

Any guaranty provided under the O&M Contract must meet the requirements set forth in the P3 Agreement and be enforceable by the Contracting Authority as a transferee beneficiary if, subject to the P3 Agreement and the P3 Direct Agreement, the Contracting Authority determines that (a) the O&M Contractor has breached or failed to perform any obligations under the O&M Contract, (b) the breach has caused, or with the passage of time reasonably may cause, a Company default under the P3 Agreement or, if a Company default has occurred, the applicable cure period has expired without full and complete cure and (c) the Company or the Collateral Agent has failed to call upon or otherwise enforce all of the guaranties (for the purpose of causing the performance of the obligations by or on behalf of the O&M Contractor) within 10 days after the Contracting Authority delivers notice of the breach or expected breach to the Company under the P3 Agreement and the Collateral Agent and the cure period under the P3 Direct Agreement has expired. So long as the Company or a Lender is diligently pursuing remedies under a guaranty, the Contracting Authority has agreed under the P3 Agreement to forbear from exercising its right to become a beneficiary under the P3 Agreement. However, if the Company default under the P3 Agreement that gives rise to the exercise of remedies under any guaranty remains uncured at the end of the cure period, the Contracting Authority’s obligation to forbear from exercising remedies as a guaranteed party ceases.

**Warranties**

The O&M Contractor warrants and guarantees for the benefit of (a) the Company, (b) the Contracting Authority and (c) to the extent any portion of the Services is being performed for third parties, the third parties, that:

(a) The Services will be performed by qualified personnel in a good and workmanlike manner and satisfy the performance standards that apply to the Services, as described in the O&M Contract, reflecting good industry practice, and any parts or components repaired or replaced as part of the Services will also meet the foregoing standard;

(b) All design and engineering included in the Services will be performed in accordance with the standards of care, skill and diligence as would be provided by an engineering firm experienced in supplying similar services nationally in the United States of America for projects of technology, complexity and size similar to that of the Project, and otherwise in compliance with the requirements of the O&M Contract and the other Contract Documents;

(c) All option LRVs and all construction included in the Services will be of good quality, in conformance with the requirements of the O&M Contract and the other Contract Documents, and free of defects in material, equipment and workmanship; and

(d) The record documents and the final design documents prepared by the O&M Contractor in connection with any design and construction included in the Services must be accurate and complete, comply with the requirements of the O&M Contract and the other Contract Documents.
Documents, and accurately reflect the condition of the Project as of the completion of the Services.

The term of the warranty is one year following the performance of any Services (or, with respect to each option LRV, following delivery thereof) but in no event extends after the end of the O&M Term, with the following exceptions:

(a) The term of the warranty with respect to all Services performed for third parties is for a minimum of one year after the date of acceptance of the Services by the third party or a longer term as may be expressly required in the O&M Contract, for such third party’s benefit (with rights of enforcement). In addition, the Contracting Authority is required to be identified as a third-party beneficiary of all third party warranties;

(b) The warranty with respect to renewal work performed during the last two years of the O&M Term and any O&M Contractor’s warranties that extend beyond the scheduled end of the O&M Term are required to be extended by the O&M Contractor for the joint benefit of the Contracting Authority and the Company;

(c) The term of the warranty with respect to any option LRV or associated equipment, part, system or component that is replaced due to an identified fleet defect will commence on the date of completion of the replacement and continue for the duration of the original, unextended warranty, as provided in the P3 Agreement; and

(d) The liability period for latent defects will be per the statutory limit.

If the Company notifies the O&M Contractor in writing during or no later than 30 days after the expiration of the applicable warranty period that a warranty breach has occurred during the warranty period, the O&M Contractor is required to correct (or cause to be corrected) the defects and deficiencies promptly at no cost to the Company. The O&M Contractor’s obligation to correct defects and deficiencies includes repair and/or replacement of any applicable Project equipment or component, including, as necessary, labor, parts, transportation, factory repair and testing, dismantling, re-erecting, retesting and commissioning. The warranty does not cover damage to the extent arising from the Company’s misuse or negligence, a Force Majeure Event, failure of the Company to provide prompt notice and an opportunity for the O&M Contractor to investigate and repair (but solely to the extent of any incremental damage that would not have occurred had the notice and opportunity been provided promptly), or normal wear and tear. If the O&M Contractor does not commence a remedy following notice from the Company and continue diligently to pursue the remedy, the Company may perform or have performed by third parties the necessary remedy, and the O&M Contractor will be liable for all reasonable direct costs, charges and expenses incurred by the Company in connection with the remedy that would not have been incurred if the O&M Contractor had performed its obligations.

Nonconforming Work

If the O&M Contractor has not performed all Services in conformity with the Contract Documents, then, in addition to any other remedies available to the Company, the Company may direct the O&M Contractor to remove and replace or otherwise remedy the nonconforming work, without entitlement to make a claim for relief in connection with the nonconforming work. The O&M Contractor is required to submit a proposed plan of correction to the Contracting Authority, through the Company, for its approval, describing the error or defect giving rise to the nonconforming work and describing the O&M Contractor’s planned remedial action. However, for any nonconforming work with respect to O&M renewal work, any plan of correction will be subject to the Company’s review.

If the Contracting Authority, under the P3 Agreement, determines that a plan of correction proposed by the Company may infringe upon system integrity, operations or maintainability, then the Contracting Authority may elect to perform a technical assessment of the Company’s proposal. Under the
P3 Agreement, the Contracting Authority is to notify the Company promptly upon determining that an assessment is required and take reasonable efforts to expedite the assessment. Should the Contracting Authority under the P3 Agreement elect to perform any technical assessment, (a) if so requested by the Contracting Authority, the O&M Contractor may not proceed with the plan of correction until the Contracting Authority has conducted its technical assessment and provided prior approval, through the Company, of the plan of correction and (b) the O&M Contractor will not be entitled to make any claim in connection with the technical assessment or reasonable delay in the plan of correction pending the approval of the Contracting Authority or the Company’s review, as applicable.

The Company has the right and authority to cause nonconforming work to be removed, replaced or otherwise remedied and to withhold or deduct the costs from any monies due or that become due to the O&M Contractor under the Contract Documents upon (i) any failure of the O&M Contractor to provide and obtain the Contracting Authority’s approval of a remedial plan or submit the remedial plan to the Company for its review promptly following discovery of nonconforming work, or (ii) any failure of the O&M Contractor to comply with the Contracting Authority’s direction under the O&M Contract relating to any safety issue.

**Indemnities**

**Indemnities by the O&M Contractor**

**General Indemnity—State Indemnified Parties and Company Indemnified Parties.** In addition to the O&M Contractor’s other indemnification obligations set forth in the O&M Contract, the O&M Contractor is required to indemnify, defend, and hold harmless the State Indemnified Parties and the Company Indemnified Parties from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys’ and expert witness fees and costs, arising out of, relating to or resulting from:

(a) Any act, omission, neglect or misconduct by any O&M Contractor-related entity in the manner or method of executing the Services satisfactorily or due to the failure to perform the Services, including (i) any neglect in safeguarding the Services, (ii) use of unacceptable materials in performance of the Services or other defect in the Services, (iii) faulty, inadequate or improper temporary drainage during construction (which is part of the Services), (iv) the use, misuse, storage or handling of explosives in performance of the Services, or (v) other breach, alleged breach or violation of the O&M Contractor’s obligations under the Contract Documents or any subcontract;

(b) The failure or alleged failure by any O&M Contractor-related entity to comply with the governmental approvals, any applicable environmental laws or other laws (including laws regarding hazardous materials management) relating to the performance of the Services;

(c) Any O&M Contractor-related entity’s performance of, or failure to perform, the obligations under any utility agreement;

(d) Any O&M Contractor-related entity’s breach of or failure to perform an obligation that the Contracting Authority or the Company owes to a third-party, including governmental entities, under law or under any agreement between the Contracting Authority or the Company and a third-party, where performance of the obligation is delegated to the O&M Contractor under the O&M Contract, or the acts or omissions of any O&M Contractor-related entity that render the Contracting Authority or the Company unable to perform or abide by an obligation that the Contracting Authority or the Company owes to a third-party, including governmental entities, under any agreement between the Contracting Authority or the Company and a third-party, provided the agreement was previously disclosed or known to the O&M Contractor;
(e) Any alleged infringement or other allegedly improper appropriation or use of intellectual property in performance of the Services, or arising out of, relating to or resulting from any use in connection with the performance of the Services of methods, processes, designs, information or other items furnished or communicated to the Contracting Authority or another State Indemnified Party or the Company or another Company Indemnified Party. This indemnity does not apply to any infringement resulting from the Contracting Authority’s or the Company’s failure to comply with specific written instructions regarding use provided to the Contracting Authority or the Company, as applicable, by the O&M Contractor that are consistent with the O&M Contractor’s obligations to convey and license the O&M Contractor’s intellectual property under the O&M Contract;

(f) Any O&M Contractor release of hazardous materials and any liabilities resulting therefrom:

(g) Any fines or penalties imposed on the Contracting Authority or the Company by any authority having jurisdiction arising out of, relating to or resulting from the O&M Contractor’s breach of or failure to comply with applicable requirements of the Contract Documents;

(h) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any O&M Contractor-related entity with respect to any payment for the Services made to or earned by the O&M Contractor-related entity under the Contract Documents; or

(i) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any O&M Contractor-related entity to comply with good industry practice, the requirements of the Contract Documents, the O&M management plan or governmental approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Services, (ii) the intentional misconduct or negligence of any O&M Contractor-related entity in connection with the performance of the Services, or (iii) unauthorized physical entry onto or encroachment upon another’s property by any O&M Contractor-related entity in connection with the performance of the Services.

**General Indemnity—Company Indemnified Parties.** In addition, the O&M Contractor is required to indemnify, defend and hold harmless the Company Indemnified Parties from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to:

(a) Claims by third parties for death, injury or destruction of or damage to property, in each case to the extent caused or contributed to by the negligence or other tortious act, fraud, strict liability or willful misconduct of any O&M Contractor-related entity;

(b) Failure by the O&M Contractor to comply with the O&M Contractor’s obligations under the O&M Contract in respect of hazardous materials;

(c) The violation of any law or governmental approval by any O&M Contractor-related entity;

(d) Failure of the O&M Contractor to pay any taxes for which it is responsible;

(e) Failure of the O&M Contractor to provide good title (to the extent required by the P3 Agreement) to any portion of the Project included within the Services, free and clear of any charge, lien, encumbrance or other security interest;

(f) Nonpayment of amounts due as a result of furnishing materials or services to the O&M Contractor or any of its subcontractors in connection with the Services to the extent that the
Company has paid the O&M Contractor all undisputed amounts then due and payable from the Company to the O&M Contractor; or

(g) Failure by the O&M Contractor to possess (or have the right to use) and convey to the Company all intellectual property (or the right to use it), on a fully paid-up, irrevocable basis, necessary to complete the Services and allow the Project to be operated by the Company and the Contracting Authority for its intended purpose.

The above does not apply, however, to the extent proven to have been caused by the Company.

Design Defects. Subject to the limitations on the Company’s right to enforce indemnities against State Indemnified Parties below, the O&M Contractor is required to indemnify and hold harmless the State Indemnified Parties and the Company Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys’ fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the design documents developed by the O&M Contractor with respect to the design work included in the Services (including in connection with any major construction contracts), regardless of whether the errors, omissions, inconsistencies or other defects were also included in the contract drawings or reference documents provided in the P3 Agreement, except to the extent that an error, omission, inconsistency or other defect in the design documents is directly attributable to an error, omission, inconsistency or other defect in the contract drawings and the O&M Contractor did not act negligently in the design of the Project included in the Services. The Company has agreed under the O&M Contract not to enforce against the O&M Contractor any of the Company’s indemnities in favor of the State Indemnified Parties under the P3 Agreement that are passed through to the O&M Contractor, unless the State Indemnified Party is enforcing the indemnity against the Company under the P3 Agreement.

Property Damage, Railroads, Insurance Limitations and Claims by Employees and the University of Maryland. The O&M Contractor will also be held responsible for any accidents that may happen to any railroad company as a result of the O&M Contractor’s operations. In addition, subject to certain exceptions in the O&M Contract, the O&M Contractor’s obligations include responsibility for loss (including loss of use) of or damage to real or personal property of the Company, MTA, MDOT or any other person until the end of the O&M Term. The O&M Contractor’s obligations with respect to repairing, restoring and replacement of loss or damage to the Project during the O&M Period are subject to the Company’s obligations under the O&M Contract to pay for certain costs of the repair, restoring, and replacement, including with respect to vandalism or when the damage is attributable to the Company.

With respect to any loss or damage of the type covered by the insurance required to be provided under the O&M Contract or otherwise obtained by the O&M Contractor for the Project, the O&M Contractor’s indemnity obligation will not extend to any loss, damage or expense arising out of, relating to or resulting from the sole negligence or willful misconduct of a State Indemnified Party or a Company Indemnified Party or their respective agents, servants or independent contractors who are directly responsible to the State Indemnified Party or the Company Indemnified Party.

With respect to any loss that is not of the type covered by the insurance required to be provided under the O&M Contract or otherwise obtained by the O&M Contractor for the Project, the O&M Contractor’s indemnity obligation will not extend to any loss, damage or cost to the extent that the loss, damage or cost was caused by (a) the breach by the Company of any of its obligations to the O&M Contractor under the O&M Contract or by the Contracting Authority of any of its obligations to the Company under the P3 Agreement or (b) the negligence or willful misconduct of a State Indemnified Party or a Company Indemnified Party or their respective agents, servants or independent contractors who are directly responsible to the State Indemnified Party or the Company Indemnified Party. Furthermore, the O&M Contractor’s indemnity obligations will not include payment of punitive damages except to the extent that punitive damages are assessed as the result of culpable conduct by the O&M Contractor.

In claims by an employee of the O&M Contractor or a subcontractor, anyone directly or indirectly employed by the O&M Contractor or a subcontractor, or anyone for whose acts the O&M Contractor or
subcontractor may be liable, the O&M Contractor’s indemnification obligation under the O&M Contract will not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the O&M Contractor or a subcontractor under workmen’s compensation, disability benefit or other employee benefits laws. However, this limitation is not a waiver in favor of any employee by the O&M Contractor or any subcontractor of any limitation of liability afforded by law.

The O&M Contractor is responsible under the O&M Contract for certain claims filed by the University of Maryland relating to the system. These claims are capped as set forth in the O&M Contract.

**Indemnities by the Company**

The Company is required to indemnify, defend and hold harmless the O&M Contractor Indemnified Parties from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises that arise out of or relate to:

(a) Third-party claims associated with the performance by the Company of its obligations under the O&M Contract or, to the extent the O&M Contractor is not responsible therefor, the P3 Agreement, including any damage to or destruction of property of, or death of or bodily injury to, any person, in each case to the extent caused by or contributed to by the tortious act, negligence, fraud, strict liability or willful misconduct of the Company, any of the Company’s contractors or subcontractors of any tier, or any other person for whom the Company is legally responsible; or

(b) The violation of any law or governmental approval by the Company, any of the Company’s contractors or their subcontractors of any tier or any other person for whom the Company is legally responsible.

The above will not apply, however, to the extent proven to have been caused by the O&M Contractor.

**Subcontractors; Disadvantaged Business Enterprise Participation; Labor Standards**

**Subcontractors.** Subject to the terms and conditions of the O&M Contract, the O&M Contractor may enter into one or more subcontracts with subcontractors to perform portions of the Services (but not the entire Services). The O&M Contractor may only retain subcontractors that are qualified, experienced and capable in the performance of the portion of the Services assigned. The O&M Contractor is required to ensure that each subcontractor has at the time of execution of the subcontract, and maintains at all times during performance of the assigned Services, all licenses, certifications, registrations, permits, approvals, bonds and insurance required by applicable law. The O&M Contractor is obligated manage, administer, control, coordinate and integrate the work of all of the subcontractors in the execution of the Services in accordance with the O&M Contract.

Each subcontract is required to include (a) terms sufficient to ensure both the acknowledgement of and compliance by the subcontractor with the applicable requirements of the Contract Documents and to ensure that the Company and the Contracting Authority have the ability to exercise their respective rights specified in the Contract Documents, (b) those terms that are specifically required by the Contract Documents to be included in the subcontract, and (c) all applicable federal requirements. The O&M Contractor must require each subcontractor to familiarize itself with the requirements of any and all applicable laws, including those laws applicable to the use of federal-aid funds, and the conditions of any required governmental approvals.

The O&M Contractor is required to ensure that all of its subcontractors and suppliers provide representations, warranties, guarantees and obligations in accordance with good industry practice for work of similar scope and scale with respect to the Services provided by all the subcontractors and suppliers, all
of which will extend to the Company, the Contracting Authority and relevant third parties. The O&M Contractor is responsible, however, for enforcing the representations, warranties, guarantees and obligations. In addition, the O&M Contractor is required to ensure that all of its subcontractors performing O&M renewal work during the last two years of the O&M Term, and all of its subcontractors, suppliers and manufacturers providing warranties or guaranties that extend beyond the scheduled end of the P3 Agreement term, provide all warranties and guaranties for the joint benefit of the Contracting Authority and the Company. Under the O&M Contract, the O&M Contractor has assigned all of these warranties and guaranties, as well as the O&M Contractor’s rights under the relevant subcontracts, to the Company and the Contracting Authority, effective as of the end of the O&M Term. To the extent that any warranty or guarantee of any of the O&M Contractor’s subcontractors is voided after termination of the O&M Contract by reason of the O&M Contractor’s negligence or failure to comply with the requirements of the O&M Contract in incorporating materials or equipment into the Project as part of the Services, the O&M Contractor is required to correct any defect in the Services performed by the subcontractor that would otherwise have been covered by a warranty or guarantee.

Under the O&M Contract, the O&M Contractor is also required to include certain provisions in all subcontracts that are Key Contracts. These provisions include, among other things, the following:

(a) Not be assignable by the Key Contractor without the Company’s and the Contracting Authority’s prior consent (but the Key Contractor may subcontract portions of the Services);

(b) Require the Key Contractor to participate, with the O&M Contractor, in meetings between the Company and the Contracting Authority concerning matters pertaining to the Key Contractor (but under the P3 Agreement the Contracting Authority has retained authority to give a direction or take an action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property);

(c) Without cost to the Company or the Contracting Authority, and subject to the rights of the Collateral Agent under the O&M Direct Agreement and/or any P3 Direct Agreement, permit assignment to the Company, the Contracting Authority, the Collateral Agent or either of their respective successors, assignees or designees of all the O&M Contractor’s rights under the Key Contract, contingent only upon delivery of notice from the Contracting Authority following the P3 Agreement termination date, or from the Company following the termination date of the O&M Contract, allowing the Contracting Authority or the Company to proceed as set forth in the O&M Contract or P3 Agreement, as applicable; and

(d) Include a covenant acknowledging, subject to the rights of the Collateral Agent under the O&M Direct Agreement and/or any P3 Direct Agreement, certain step-in rights of the Company and the Contracting Authority.

In addition, the O&M Contractor is required to ensure that each subcontract includes indemnity provisions appropriate to the scope of the Services to be performed by the subcontractor, naming the State Indemnified Parties and the Company Indemnified Parties as indemnitees. Further, neither the O&M Contractor nor any of its subcontractors may terminate or replace certain key personnel without the prior consent of the Company (during the time periods and as specified in the O&M Contract and the P3 Agreement).

Disadvantaged Business/Minority Business Enterprise Participation; Work Force and Prevailing Wages. The O&M Contractor is also required to meet certain disadvantaged business enterprise and minority business enterprise participation goals if established by the Contracting Authority for the Services during the O&M Period. In addition, the O&M Contractor is required to, solely to the extent applicable and solely with respect to the construction work included in the Services during the O&M Period, make good-faith efforts to assure that, with respect to the Services (a) not less than 33% of all construction work hours are performed by nationally targeted workers, (b) not less than 10% of the construction work hours under clause (a) are performed by nationally targeted workers of social disadvantage and (c) not more than 50% of the aggregate construction work hours under clauses (a) and (b) are worked by “ Helpers” or other
“Unskilled Laborer” positions as defined in the Davis-Bacon Act. The Davis-Bacon Act or the applicable provisions of Maryland law also apply with respect to prevailing wages for construction included in the Services under the O&M Contract.

**Labor Standards.** The O&M Contractor is obligated to comply with certain labor standards, ethical standards, nondiscrimination standards, disadvantaged business rules and federal laws during the performance of the Services. The O&M Contractor is responsible and liable for all labor relations matters of the O&M Contractor and subcontractor personnel relating to the Services and must at all times use commercially reasonable efforts to maintain harmony among the unions (if any) and other personnel employed in connection with the Services and act in a reasonable, professional and courteous manner with the Company’s contractors. The O&M Contractor must at all times use all commercially reasonable efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes. The O&M Contractor is also obligated to cause its subcontractors to execute and deliver to the Contracting Authority a labor peace agreement.

**Insurance**

**General Obligations.** Under the O&M Contract, the O&M Contractor is required to procure and maintain, and caused its subcontractors performing the Services to procure and maintain, the insurance coverage described in the O&M Contract. Each insurance policy must be procured from an insurance company meeting the requirements of applicable law, licensed or authorized to do business in the State of Maryland and rated at least “A-” by Standard and Poor’s or “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating, both at policy inception and for the duration of its placement of insurance, unless the O&M Contractor has obtained the Company’s approval otherwise. Subject to limited exceptions in the O&M Contract, the O&M Contractor is responsible for insurance policy deductibles. Except as otherwise provided in the O&M Contract, all insurance policies must be purchased specifically and exclusively for the Project and extend to all aspects of the Services, with coverage limits devoted solely to the Project.

Each insurance policy required to be maintained by the O&M Contractor must be endorsed to state that coverage or limits of coverage cannot be canceled, voided, suspended or changed by endorsement or other change in policy language (including for non-payment of premium) except after 45 days’ prior written notice (or 10 days in the case of cancellation for nonpayment of deposit premium at the inception of the policy) has been given to the Company and the Contracting Authority and during which time no cure has been effected by any insured. No insurance policy may provide coverage on a “claims made” basis (with the exceptions of any professional liability, contractor’s pollution liability and operator’s pollution liability insurance policies) unless otherwise expressly stated in the O&M Contract. If the policy is permitted to be written on a “claims made” basis, coverage will be continued without interruption throughout the O&M Period and for a period of 10 years after termination or expiration of the O&M Contract (except as otherwise provided in the O&M Contract with respect to professional liability insurance policies). If “claims made” coverage is terminated at any time, then an extended automatic and prepaid reporting period of not less than 10 years after termination or expiration must be included.

The O&M Contractor and all of the insurance carriers providing insurance policies must each waive all subrogation rights against all other Insured Parties for any claims to the extent covered and paid by insurance obtained under the O&M Contract. If the O&M Contractor is deemed to self-insure a claim or loss under the O&M Contract, then the O&M Contractor’s waiver will apply as if it carried the required insurance. The O&M Contractor is required to require all subcontractors and their respective insurance carriers to provide similar waivers in writing each in favor of all other O&M Contractor-related entities and Insured Parties. Each insurance policy, including workers’ compensation if permitted under the applicable worker’s compensation insurance laws, must be endorsed to include a waiver of any right of subrogation by the O&M Contractor and each insurance carrier against the Insured Parties or a consent to the insured’s waiver of recovery in advance of loss.
Except as otherwise provided in the O&M Contract, there is no recourse against the Company, the Contracting Authority or any of the other Insured Parties (other than the O&M Contractor) for payment of premiums or other amounts with respect to the insurance policies.

Subcontractors. The O&M Contractor’s subcontractors are required to be insured in accordance with the O&M Contract. If the O&M Contractor and/or any subcontractor fails to procure and keep in effect the insurance required of it under the O&M Contract and the Company provides a notice of the O&M Contractor default for the failure, the Company may, within the applicable cure period, cure the O&M Contractor default by (a) procuring or causing the subcontractor to obtain the requisite insurance, or (b) terminating the subcontractor and removing its personnel from the worksite. In connection with this cure, the O&M Contractor is responsible for ensuring there is no gap or interruption in coverage. A consolidated insurance program, with the Company's approval, is acceptable to satisfy all insurance requirements, so long as it otherwise meets all requirements described in the O&M Contract.

Indemnities. The commercial general liability insurance policy and any other liability insurance policy are required to provide coverage of the O&M Contractor’s indemnity liabilities under the principal Project documents, to the maximum extent commercially available, either specifically as a grant of coverage or as insured contracts under an exception to any contractual liability exclusion in the insurance policies. No insurance policy may preclude coverage of the O&M Contractor’s indemnity obligations, including specifically indemnification obligations to any of the Company Indemnified Parties, the State Indemnified Parties or the O&M Contractor Indemnified Parties under the principal Project documents arising out of, relating to or resulting from the Services (except customary exclusions).

Adjustments in Coverage Amounts.

At least once every five years during the O&M Period, the O&M Contractor is required to, at its cost, retain an independent insurance broker or advisor not involved in the Project and meeting the requirements of the O&M Contract to prepare a report analyzing the policy limits and deductibles currently in place and recommending any adjustments to the limits and deductibles. If the report shows an increase or decrease in premiums by more than 30% from the premiums charged for the corresponding insurance policy during the preceding period, the O&M Contractor and the Company will consider changes in the policy limits or deductibles to reduce the premiums in accordance with the O&M Contract. If the Company and the Design-Build Contractor fail to agree upon any adjustment, the Contracting Authority under the P3 Agreement is to determine the adjustment, subject to the dispute resolution procedures in the P3 Agreement.

The O&M Contractor is solely responsible for any premium amounts arising from increased limits and/or increased deductible payments pursuant to the above process that are made as a result of the loss experience of the O&M Contractor, any O&M Contractor-related entity or any of its affiliates. Under the P3 Agreement, the Contracting Authority has agreed, however, that these adjustments will not increase the aggregate limits required by more than 100% from the requirements specified in the P3 Agreement, and this limitation applies under the O&M Contract as well.

If, on a policy-by-policy basis, the insurance premiums for the insurance policies adjusted pursuant to the above process exceed the premiums under the preceding policy, the Company will increase the O&M Monthly Availability Payment by an amount equal to 100% of the increase in the premiums until the next adjustment date. If, on a policy-by-policy basis, the insurance premiums for the adjusted insurance policies are less than the preceding policy’s premiums, the Company will decrease the O&M Monthly Availability Payment in an amount equal to 100% of the decrease in these premiums until the next adjustment date (to the extent of the corresponding decrease by the Contracting Authority under the P3 Agreement).

If, under the P3 Agreement, the Contracting Authority directs a decrease of aggregate limits for an insurance policy below the policy limits identified in the O&M Contract, and a loss arises during the same insurance period that is not insured to the unadjusted insurance policy limit, then the Contracting Authority is to be responsible under the P3 Agreement for any amount not fully insured solely as a result of this
adjustment up to the unadjusted insurance policy limit. If, under the P3 Agreement, the Contracting Authority directs an increase in the deductible for an insurance policy, and a loss arises during the same insurance period that is covered by the insurance policy, then the Contracting Authority is to be responsible under the P3 Agreement for the difference between the adjusted and unadjusted deductible amount, and the Company will provide to the O&M Contractor the benefit of any this compensation pertaining to the Services and insurance policies obtained and maintained by the O&M Contractor.

**Alternative Insurers.** If an insurer providing any of the insurance policies (a) becomes the subject of any order of liquidation, (b) becomes insolvent, (c) is the subject of an order or directive limiting its business activities given by any governmental entity, including the Maryland Insurance Administration or the insurance regulators of any other state or jurisdiction, (d) becomes the subject of any proceeding in any state or jurisdiction for the liquidation or winding up of its affairs or in which a liquidator, conservator or custodian is appointed at the request of any governmental entity, or (e) if its rating is lowered below that specified above, then the O&M Contractor is required to exercise best efforts to promptly secure alternative coverage in compliance with the insurance requirements contained in insurance provisions of the O&M Contract so as to avoid any lapse in insurance coverage.

**Property Damage.** All insurance proceeds received for physical property damage to the Project under any insurance policies, other than any business interruption or delay in start-up insurance maintained as part of the insurance policies, will be first applied to repair, restore or replace each part or parts of the Project or the Services with respect to which the proceeds were received.

**Insurance Unavailability.** If the O&M Contractor demonstrates to the Contracting Authority’s reasonable satisfaction (with the Company’s participation) that it has used diligent efforts in the global insurance and reinsurance markets to procure the required insurance policy coverages, and if despite diligent efforts and through no fault of the O&M Contractor any insurance unavailability exists or occurs, the Contracting Authority may seek out, through review of the global insurance and reinsurance markets, coverage at commercially reasonable insurance rates. If coverage is found, the O&M Contractor is required to place the insurance at the premium negotiated by the Contracting Authority, not to exceed commercially reasonable insurance rates, so long as the coverage complies with the applicable prescriptions under the O&M Contract. If the Contracting Authority is unsuccessful in identifying coverage, the Contracting Authority has agreed under the P3 Agreement to consider in good-faith approving alternative insurance packages and programs presented by or through the O&M Contractor. If the Contracting Authority approves alternative insurance requirements because of insurance unavailability, then (a) subject to the P3 Agreement, the Contracting Authority has agreed to be responsible for any loss to the extent that the unavailable insurance policy or portion thereof would have covered the loss, for the duration of the insurance unavailability (and the O&M Contractor is entitled to the benefit of the Contracting Authority’s agreement to the extent related to the Services) and (b) the Contracting Authority is entitled under the P3 Agreement to a reduction in the O&M Monthly Availability Payments totaling 100% of the insurance premiums that the O&M Contractor avoids as a result of the modification of the insurance requirements.

If the required insurance policies are available from insurers meeting the financial requirements in the O&M Contract but not at commercially reasonable insurance rates, then the Contracting Authority may, under the P3 Agreement, elect not to approve modification of insurance requirements and to pay 100% of the premiums that exceed the commercially reasonable insurance rates (and the O&M Contractor is entitled to the benefit of the Contracting Authority’s election to pay to the extent related to the Services). For a description of termination in the event of insurance unavailability, see “APPENDIX C—SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Termination of the O&M Contract—Termination Due to the P3 Agreement Termination for Insurance Unavailability.”

**Insurance Premium Benchmarking.** Under the O&M Contract, the O&M Contractor is responsible for fulfilling the Company’s obligations under the P3 Agreement with respect to insurance premium benchmarking, which allocates certain significant increases in insurance premiums for insurance policies between the Contracting Authority and the O&M Contractor. For a more detailed description of
this process, see “APPENDIX C—SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Insurance—Insurance Premium Benchmarking.”

**LRV Options**

The Contracting Authority under the P3 Agreement has three separate options to require the Company to purchase and commission option LRVs under the P3 Agreement: LRV option A, LRV option B and LRV option C, each as set forth in the P3 Agreement and the O&M Contract. The O&M Contractor is required, on behalf of the Company, to fulfill these obligations with respect to LRV options set forth in the P3 Agreement (as described in the O&M Contract) but only with respect to those option LRVs ordered by the Contracting Authority under the P3 Agreement after the date that is 30 months before the Guaranteed DB RSA Date under the Design-Build Contract (this date, as of the date of the Contracting Authority’s exercise of the first LRV option). The option LRVs enable the Company to meet certain requirements and metrics in the P3 Agreement relating to increased service levels for the system as set forth in the O&M Contract. Under the P3 Agreement, the LRV options may be exercised independently of each other: LRV option A may be exercised at any time during the period starting at Financial Close and ending on the seventh anniversary of Commercial Close, and LRV options B and C may only be exercised during the period starting on the fifth anniversary of Commercial Close and ending on the seventh anniversary of Commercial Close. The number of LRVs and pricing information for each option are as set forth in the P3 Agreement.

Following delivery by the Company to the O&M Contractor of an LRV option notice, the O&M Contractor is required to procure the option LRVs for delivery and commissioning and notify the Company regarding the scheduled date for delivery and commissioning. If the LRV option notice is delivered more than 36 months before the RSA Deadline, the scheduled date will be the RSA Deadline under the P3 Agreement. In all other cases, the scheduled date may be no later than 36 months after the date of the LRV option notice. Payments for option LRVs will be made based on milestones in accordance with the applicable schedule in the P3 Agreement. Under the O&M Contract, the O&M Contractor must ensure that each option LRV (a) is compatible and interchangeable with the other LRVs provided under the O&M Contract and the Design-Build Contract to the extent needed for the O&M Contractor to meet the performance requirements and provide safe and reliable operations, (b) incorporates all relevant upgrades available as of the date of manufacture that have been incorporated into the initial fleet (25 LRVs and, when delivered, the O&M Spare LRV) (subject to limited exceptions set forth in the O&M Contract), (c) was manufactured in accordance with the O&M Contract and to the specifications applicable to the LRVs originally procured by the Design-Build Contractor for the Project, and (d) was tested as part of the manufacturing process and placement into service in accordance with the O&M Contract.

Subject to limited exceptions in the O&M Contract, the O&M Contractor is responsible for achieving the performance requirements to be met at each service level described in the Contract Documents, without any right to rely on provision of additional LRVs through exercise of the LRV option or otherwise. The O&M Contractor is required to remove and replace, or repair, any defective LRVs (including LRVs with fleet defects) operated and maintained by the O&M Contractor, at the O&M Contractor’s sole expense, except to the extent the Design-Build Contractor is responsible for the LRVs under the Design-Build Contract.

If the Contracting Authority, under the P3 Agreement, exercises LRV option A, the O&M Contractor has the option to make LRV deferral payments to the Contracting Authority, in accordance with the O&M Contract, and defer the start date for moving service levels by up to 24 months. The aggregate total of LRV deferral payments for an LRV option may not exceed 15% of the total value of the relevant LRV option order. In connection with exercise of LRV option A, whether the option A LRVs are provided by the O&M Contractor or the Design-Build Contractor, certain additional Services will be required, and the Contracting Authority and the Company (with the O&M Contractor’s participation), under the P3 Agreement, are to negotiate a Contracting Authority change order in accordance with the P3 Agreement, and the Company and the O&M Contractor are to negotiate a corresponding scope change order in accordance with the O&M Contract specifying the price, delivery schedule and scope of the additional Services.
Provision of Additional LRVs for Service Level 2 or 3

In addition to the option LRVs, under the P3 Agreement additional LRVs may be required in order for the Company to meet the performance requirements concerning system availability for certain service levels not fully addressed by the option LRVs. Accordingly, if the Contracting Authority under the P3 Agreement wishes to require implementation of additional service levels, but has not exercised one or more LRV options that will increase the LRV fleet size to the number of LRVs required for the relevant service level, the Contracting Authority is responsible under the P3 Agreement for providing additional LRVs for the Project that meet the requirements applicable to option LRVs stated in the P3 Agreement and the O&M Contract. In addition, this change will require performance of certain additional Services as described in the P3 Agreement. Accordingly, in connection with direction by the Contracting Authority to the Company under the P3 Agreement to change service levels as contemplated by the O&M Contract, the Company must so direct the O&M Contractor, and the Company (with the O&M Contractor’s participation) and the Contracting Authority are, under the P3 Agreement, to negotiate a Contracting Authority change order specifying the price, delivery schedule and scope of the additional Services, and the O&M Contractor and the Company will negotiate a corresponding scope change order under the O&M Contract. The Contracting Authority may also, under the P3 Agreement, purchase LRVs from a source other than the O&M Contractor so long as certain conditions are met, including that warranties are obtained from the vendor consistent with good industry practice.

Provision of Additional LRVs if Actual Combined Tsc Is Higher than Bid Combined Tsc in a Peak Period

The Contracting Authority acknowledged, under the P3 Agreement, that additional LRVs may be required in order for the Company to maintain peak period headways in a peak period if the Actual Combined Tsc for the period is at least one minute higher than the Bid Combined Tsc for the period. Until the seventh anniversary of Commercial Close, the Contracting Authority has the right under the P3 Agreement to provide LRVs by exercising an LRV option under the P3 Agreement, but after this date any additional LRVs would either be provided pursuant to a Contracting Authority change order or purchased separately from the P3 Agreement. The Contracting Authority is not obligated under the P3 Agreement, and the Company is not obligated under the O&M Contract, to provide additional LRVs or direct a minor service change as contemplated by the P3 Agreement, in connection with changes between the Bid Combined Tsc and Actual Combined Tsc, for a peak period unless the O&M Contractor demonstrates that the need for the additional LRVs is directly attributable to the fact that the Actual Combined Tsc for a peak period is at least one minute higher than Bid Combined Tsc for that period.

Changes

Contracting Authority Change Order

Pursuant to the process set forth in the P3 Agreement, the Contracting Authority may authorize and/or require a Contracting Authority change order modifying, among other things, the work under the P3 Agreement, the requirements of the O&M Contract and the scope of the Services due to modifications to the terms and conditions (or assumed terms and conditions) of third-party agreements or utility agreements. Under the P3 Agreement, if the Contracting Authority desires to initiate or evaluate whether to initiate a Contracting Authority change order, then the Contracting Authority may issue a request for a Contracting Authority change order proposal stating the nature, extent and details of the proposed Contracting Authority change. If the proposed Contracting Authority change relates to the Services, the Company is required to provide the request for a Contracting Authority change order proposal to the O&M Contractor, and the O&M Contractor is required to fulfill the Company’s obligations under the P3 Agreement with respect to the Services portion of the Contracting Authority change in accordance with the O&M Contract. Following the Company’s delivery to the O&M Contractor of any request for a Contracting Authority change order proposal that the Company received from the Contracting Authority, the O&M Contractor is required to provide the Company with a response as to whether, in the O&M Contractor’s opinion, the proposed Contracting Authority change results in entitlement to additional
compensation, an extension of time, excuse from compliance or other relief in accordance with the O&M Contract.

Following the Company’s receipt of the O&M Contractor’s response and the Company’s and the Contracting Authority’s further assessment of the cost, schedule and other impacts of the proposed Contracting Authority change under the P3 Agreement, the Company (with the O&M Contractor’s participation) and the Contracting Authority, giving due consideration to the assessments, are, under the P3 Agreement, to engage in good-faith negotiations to reach agreement on the terms of a Contracting Authority change order under the P3 Agreement, and the Company and the O&M Contractor are to, in turn, agree on a corresponding scope change order under the O&M Contract (including either (a) the compensation amount to which the O&M Contractor is entitled or (b) any net cost savings and schedule savings to which the Company is entitled). The final issuance of the scope change order is subject to the issuance by the Contracting Authority under the P3 Agreement of a corresponding Contracting Authority change order making changes to the P3 Agreement that are needed to reflect the terms of the scope change order agreed between the Company and the O&M Contractor. The scope change order must specify, as applicable, the timing and method for payment of any compensation amount or for realizing any net savings in the cost of the Services.

Under the P3 Agreement, if the Contracting Authority and the Company are unable to reach agreement on a Contracting Authority change order, the Contracting Authority may seek to resolve the dispute under the P3 Agreement dispute resolution procedures without issuing a directive letter, or it may issue a directive letter under the P3 Agreement directing the Company to proceed with the performance of some or all of the proposed Contracting Authority change.

Upon receipt of the directive letter, the Company must issue a corresponding work order to the O&M Contractor pursuant to the O&M Contract, and the O&M Contractor is required to proceed immediately with the Services as directed, pending execution of a formal Contracting Authority change order under the P3 Agreement (if the O&M Contractor disagrees with the description of the original scope of Services in the directive letter, the O&M Contractor must proceed as directed, but may assert a claim and, subject to the fast-track adjudication process in the O&M Contract, direct the Company to assert a claim under the P3 Agreement that a Contracting Authority change has occurred with respect to the Services).

Scope Changes Generally

A scope change under the O&M Contract means a material addition to, deletion from, suspension of or other modification to the quality, function or intent of the Project or to the Services as delineated in the O&M Contract or the other Contract Documents, or a material change to the requirements of, or the O&M Contractor’s and the Company’s rights and/or obligations set forth in, the O&M Contract, but do not include correction or detailing of the Services by the Company and the O&M Contractor from time to time. Subject to the specific provisions set forth in the O&M Contract with respect to the following matters: (a) scope changes may include (without limitation), and the O&M Contractor is entitled to claim a scope change order for (i) Relief Events, (ii) Force Majeure Events, (iii) Non-Concessionaire Caused Disruptions, (iv) Company-caused delays, (v) Company Services suspensions, (vi) Company-initiated scope changes, (vii) work orders and (viii) as otherwise expressly set forth in the O&M Contract; and (b) scope change orders include one or more of, as appropriate, equitable adjustment of the O&M Monthly Availability Payment or the appropriate components thereof, the asset management plan, the scope, schedule or price of the O&M renewal work or the O&M handback renewal work, the O&M renewal work budget, the O&M handback renewal work budget, the O&M renewal work plan, the O&M renewal work schedule, the O&M handback renewal work plan, the O&M handback renewal work schedule, the reserve account, deadlines or time limits with which the O&M Contractor must comply and other affected rights and obligations of the O&M Contractor.
**Scope Changes Initiated by the Company**

The Company may initiate a scope change under the O&M Contract by providing the O&M Contractor a written request setting forth in detail the nature of the requested change. Upon receipt of the request, the O&M Contractor must provide to the Company a proposal for a scope change order setting forth in detail the information required by the O&M Contract.

If the Company approves the O&M Contractor’s proposal, the Company and the O&M Contractor are required to execute a written scope change order, and one or more of the O&M Monthly Availability Payment or the appropriate component thereof, the asset management plan, the scope, schedule or price of the O&M renewal work or the O&M handback renewal work, the O&M renewal work budget, the O&M handback renewal work budget, the O&M renewal work plan, the O&M renewal work schedule, the reserve account, deadlines or time limits with which the O&M Contractor is required to comply or other affected rights and obligations of O&M Contractor will be adjusted. If the Company does not approve the O&M Contractor’s proposal for a scope change order, the Company (a) may, at its option, execute and deliver to the O&M Contractor a work order and (b) must compensate the O&M Contractor for the reasonable increased cost incurred by the O&M Contractor in responding to the Company’s proposal.

**Scope Change Initiated by the O&M Contractor**

The O&M Contractor may initiate a scope change, including as a result of a Company-caused delay or a Company Services suspension, by providing a notice to the Company that includes all information required by the O&M Contract. If the O&M Contractor provides the notice to the Company later than the time period specified in the O&M Contract, the O&M Contractor has no right to make any claim irrespective of whether the Company was prejudiced or not by the late notice. After delivery of a notice to the Company, the O&M Contractor is required to deliver to the Company a proposal for a scope change order setting forth in detail the information required by the O&M Contract.

The O&M Contract provides for fast-track adjudication of any disagreement between the Company and the O&M Contractor regarding the terms of a scope change order requested by the O&M Contractor.

**Scope Change Due to Company-Caused Delays and Company Services Suspension**

Except to the extent another consequence is expressly provided in the O&M Contract, the O&M Contractor is entitled to claim a scope change order to the extent the O&M Contractor’s performance of the Services is adversely affected by (a) a Company-caused delay or (b) a Company Services suspension, and the effects of which the O&M Contractor cannot overcome. If the Contracting Authority’s approval of the scope change order is required under the P3 Agreement and the Company is unable, despite using its reasonable efforts, to secure the approval, then the Company is not obligated to issue a scope change order. However, the O&M Contractor maintains the right to seek monetary compensation and other relief to which it may be entitled from the Company, pursuant to the dispute resolutions procedures in the O&M Contract, to compensate it for any losses incurred as a result of the Company’s inability to issue a scope change order.

With respect to any scope change proposed by the Company or the O&M Contractor or required under the O&M Contract, the O&M Contractor is required, at the Company’s request, to provide the Company with the option, to the extent reasonably possible, to cause the O&M Contractor to perform the scope change without an adjustment in the deadlines or time limits with which the O&M Contractor is required to comply under the O&M Contract, unless the O&M Monthly Availability Payments are adjusted to compensate the O&M Contractor for any reasonable additional costs incurred in performing the scope change in accordance with the time limitation.
Subject to certain limitations set forth in the O&M Contract, the Company is required to approve a proposal for a scope change order evidencing the O&M Contractor’s entitlement to claim a scope change order in respect of a Company-caused delay or a Company Services suspension unless the Company has a reasonable basis for objecting to any proposal for a scope change order.

**Work Orders**

If, subject to certain limitations in the O&M Contract: (a) a proposal for a scope change order delivered by the O&M Contractor following Company’s request is not accepted by the Company; (b) the Contracting Authority issues a directive letter pursuant to the P3 Agreement as expressly contemplated in the O&M Contract; (c) the Company wishes to direct the O&M Contractor to proceed immediately in connection with any dispute regarding the scope of the Services or the O&M Contractor’s compliance with the requirements of the Contract Documents; or (d) the Company otherwise wishes to direct the O&M Contractor to perform additional work or services or other actions not included in the Services, then the Company may, at its option, execute and deliver to the O&M Contractor a work order in lieu of the scope change order set forth in the O&M Contract. With respect to work orders not resulting from the Contracting Authority’s directive letter, the Company has no right to issue a work order that: (i) is not in compliance with law or the P3 Agreement; (ii) is not in compliance with a governmental approval or good industry practice; or (iii) would cause an insured risk to become uninsured.

**Service Changes**

Under the P3 Agreement, the Contracting Authority may direct a major service change or a minor service change, each as contemplated by, and subject to certain limitations in, the O&M Contract and the P3 Agreement. The Company is to make a corresponding direction under the O&M Contract, which the O&M Contractor is obligated to comply with. The O&M Contractor is also obligated to fulfill the Company’s obligations under the P3 Agreement with respect to special events and special event service as contemplated in the O&M Contract. No Contracting Authority change order under the P3 Agreement or scope change order under the O&M Contract is required for any major service change or, subject to the limits of the volume adjustment in the P3 Agreement, any minor service change or special event services. However, if the Contracting Authority directs the Company under the P3 Agreement to decommission LRVs, re-commission LRVs that the Contracting Authority previously directed the Company to decommission or store decommissioned LRVs off-site, the Contracting Authority has agreed under the P3 Agreement to pay the reasonable costs associated with these activities and the Company is required to pass through to the O&M Contractor any corresponding compensation actually received from the Contracting Authority.

In addition, the O&M Contractor is required to notify the Company when sustained passenger loading on the Purple Line system has reached that certain peak passenger loads condition described in the O&M Contract and describe its impact on the O&M Contractor’s ability to meet the performance requirements. When the Purple Line system has sustained this peak passenger loads condition for at least three consecutive months, the O&M Contractor is entitled to a scope change order, corresponding to a modification delivered by the Contracting Authority to the Company under the P3 Agreement, for prospective relief from deductions from the O&M Monthly Availability Payments due to Operations Availability Deductions, subject to certain conditions in the O&M Contract concerning these deductions.

Further, if it becomes apparent that demand warrants implementation of service providing greater peak period capacity than is required for the service levels contemplated in the O&M Contract, the Company and the O&M Contractor (and the Contracting Authority under the P3 Agreement) are to consult regarding changes that are required to meet the demand and negotiate a change order to implement these changes and provide additional compensation to the O&M Contractor.

**Calculation of Total Trip Run Time and Tsc**

Under the O&M Contract, the O&M Contractor, on behalf of the Company, is required to conduct certain activities so as to enable Actual Combined Tsc and Total Trip Run Time to be determined before
the start of revenue service demonstration. After completion of these activities, the Company (with O&M Contractor’s participation) and the Contracting Authority under the P3 Agreement are to consult regarding differences between actual Total Trip Run Time and commitments regarding Total Trip Run Time in the P3 Agreement, differences between the Bid Combined Tsc and the Actual Combined Tsc values and the extent to which these differences may impact the O&M Contractor’s costs and ability to meet the performance requirements. The Contracting Authority under the P3 Agreement may direct a resulting minor service change and revise certain other metrics in the O&M Contract, which will be effective at the start of revenue service demonstration. The Company will in turn direct a minor service change and make the corresponding revisions under the O&M Contract.

The O&M Contractor, the Company and the Contracting Authority (under the P3 Agreement) are to repeat these activities to obtain a new determination not more than once during each five-year period starting from the date of the most recent determination of Actual Combined Tsc values (subject to certain exceptions and conditions in the O&M Contract). If the Company and the Contracting Authority fail to reach an agreement with respect to the service change under the P3 Agreement, the Contracting Authority may issue a unilateral Contracting Authority change order or a direction to the Company and the Company will issue to the O&M Contractor a corresponding scope change order or a work order under the O&M Contract.

Relief Event, Force Majeure Event and Non-Concessionaire Caused Disruption Claim Process

Under the O&M Contract, the O&M Contractor may submit a claim for relief in connection with a Relief Event, a Force Majeure Event or a Non-Concessionaire Caused Disruption.

Relief Event or Force Majeure Event

In order to claim a scope change order for a Relief Event or Force Majeure Event under the O&M Contract, the O&M Contractor is required to deliver to the Company timely notice in the form and substance required by the O&M Contract stating the event or situation that the O&M Contractor believes justifies issuance of a scope change order. The Company is required to submit a corresponding notice to the Contracting Authority under the P3 Agreement based on the notice submitted by the O&M Contractor. Thereafter, the O&M Contractor is to submit to the Company a request for a scope change order that provides the O&M Contractor’s complete reasoning for relief relating to the Relief Event or Force Majeure Event, consisting of the information required by the O&M Contract, including full details of the Relief Event or Force Majeure Event and items of the Services affected. Subject to the fast-track adjudication process set forth in the O&M Contract, the Company must then submit a request for a Contracting Authority change order to the Contracting Authority under the P3 Agreement based on the request for scope change order submitted by the O&M Contractor. Under the P3 Agreement, the Contracting Authority is to evaluate the information presented in the P3 Agreement request for a Contracting Authority change order and provide a response to the Company within 45 days, either notifying the Company that the Contracting Authority change order will be issued as requested or advising the Company regarding issues that remain to be resolved. Any dispute regarding the request for a Contracting Authority change order is to be resolved in accordance with the P3 Agreement, with the O&M Contractor’s participation. Under the O&M Contract, the Company is required to submit the O&M Contractor’s claim in respect of a Relief Event or Force Majeure Event to the Contracting Authority under the P3 Agreement unless the Company reasonably believes that the claim is frivolous or fraudulent. If the Company does not intend to submit the claim to the Contracting Authority due to its reasonable belief that the claim is frivolous or fraudulent and the O&M Contractor disagrees with the determination, the Company and the O&M Contractor must proceed as set forth in the fast-track adjudication process in the O&M Contract. The Company’s obligation to provide relief to the O&M Contractor is conditioned upon the Company’s receipt of corresponding relief under the P3 Agreement.

Non-Concessionaire Caused Disruption

The O&M Contractor may also be excused from compliance with the O&M Contract for a Non-Concessionaire Caused Disruption by providing timely notice to the Company in the form and substance
required by the O&M Contract. Subject to the fast-track adjudication process set forth in the O&M Contract, the Company is required to provide the notice to the Contracting Authority under the P3 Agreement and thereafter, with the involvement of the O&M Contractor, assert its rights under the P3 Agreement with respect to the Non-Concessionaire Caused Disruption claimed by the O&M Contractor. The Company is required to submit the O&M Contractor’s claim in respect of a Non-Concessionaire Caused Disruption to the Contracting Authority unless the Company reasonably believes that the claim is frivolous or fraudulent. If the Company does not intend to submit the claim to the Contracting Authority due to its reasonable belief that the claim is frivolous or fraudulent and the O&M Contractor disagrees with the determination, the O&M Contractor and the Company must proceed as outlined in the fast-track adjudication process in the O&M Contract. The Company’s obligation to provide relief to the O&M Contractor is conditioned upon the Company’s receipt of corresponding relief under the P3 Agreement.

Waiver

If the O&M Contractor does not submit timely notice to the Company in the time periods specified in the O&M Contract, its rights with respect to a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption may be waived, in whole or in part, as set forth in the O&M Contract.

Differing Site Conditions

The Company is required to compensate the O&M Contractor for Relief Events concerning differing site conditions, subject to the Contracting Authority providing corresponding relief under the P3 Agreement, as set forth in the O&M Contract, as follows:

(a) The O&M Contractor bears the first $7,500,000 of aggregate incremental costs;

(b) The O&M Contractor and the Contracting Authority share equally in the next $7,500,000 of aggregate incremental costs; and

(c) The Contracting Authority has agreed under the P3 Agreement to be responsible for all aggregate incremental costs exceeding $15,000,000 (to the extent that costs are not fully addressed by clauses (a) and (b) above).

Unanticipated Hazardous Materials

The Contracting Authority has agreed under the P3 Agreement to be responsible for certain costs of hazardous materials management with respect to Relief Events related to the discovery of certain unanticipated pre-existing hazardous materials or sudden spills if the hazardous materials Relief Event concerns hazardous materials for which unit prices are not provided, compensation is limited to reasonable incremental costs of hazardous materials management directly attributable to the discovery, as documented and justified by the O&M Contractor in accordance with the P3 Agreement.

Capital Asset Work

The Company will compensate the O&M Contractor for incremental costs (calculated in accordance with the O&M Contract) of Services to obtain or modify capital assets required as a direct result of certain changes in standards or changes in federal law affecting the Services and which are either (a) not contemplated by the operating plan, maintenance plan or asset management plan; or (b) directed by the Contracting Authority or the Company to be undertaken earlier than contemplated by the operating plan, maintenance plan or asset management plan. However, the O&M Contractor is not entitled to compensation for costs incurred if the O&M Contractor would be unable to meet the performance requirements without this work.

In addition, if the total incremental costs or savings during a contract year directly attributable to certain changes in standards affecting the Services exceed $100,000, the Company will be entitled to 50%
of the excess savings as a credit against the O&M Monthly Availability Payments or the Company will compensate the O&M Contractor up to 50% of the excess costs, as applicable, in each case in an amount not to exceed $200,000.

**Sales Tax on LRVs**

The Company must compensate the O&M Contractor for a Relief Event concerning assessment of sales or use tax on option LRVs, subject to the Contracting Authority providing corresponding relief under the P3 Agreement, but only for the dollar amount of the sales or use tax, without mark-up. This amount may be invoiced no earlier than when payment is made to the taxing governmental authority by or on behalf of the O&M Contractor.

**Excuse from Compliance**

Except as expressly provided in the O&M Contract, where a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, the obligations of each party which are affected by the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption will be suspended, but only to the extent that, and for so long as the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption prevents that party from meeting its obligations in accordance with the O&M Contract.

A party’s failure to perform its obligations in accordance with the O&M Contract which are suspended in accordance with the above:

(a) Will not be a breach of the O&M Contract, an O&M Contractor default, a Company default, or give rise to a right to terminate the O&M Contract, other than in connection with a termination due to an O&M Extended Delay or Extended Delay under the P3 Agreement;

(b) Subject to certain exceptions in the O&M Contract, will not result in the accrual of Noncompliance Points; and

(c) Subject to certain exceptions in the O&M Contract, will not result in deductions to the O&M Monthly Availability Payments being applied or OTP Factors being allocated.

The O&M Contract also limits the accumulation of Noncompliance Points and OTP Factors and provides certain grace periods for the deferral of Noncompliance Events upon the occurrence of a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, to the same extent as set forth in the P3 Agreement. See “APPENDIX C—SUMMARY OF CERTAIN PROVISIONS OF THE P3 AGREEMENT—Excuse from Compliance.”

**Limitations**

The Company will not be liable to the O&M Contractor for the payment of any costs for which the Contracting Authority is responsible under the P3 Agreement in connection with a Relief Event, a Force Majeure Event or a Non-Concessionaire Caused Disruption except to the extent the same are actually received by the Company from the Contracting Authority. If the Contracting Authority fails to pay these amounts, the Company and the O&M Contractor are to proceed in accordance with the fast-track adjudication process set forth in the O&M Contract. Further, the O&M Contractor is not entitled to submit a claim for incremental costs, an extension or other relief that (a) could have been reasonably avoided through proper sequencing, scheduling and coordination of the Services in accordance with the Contract Documents or (b) arises out of or relates to the O&M Contractor’s oversight and coordination of the Services between or among subcontractors or others in the Project area.
Compensation; Insurance; Claims Against Third Parties

Subject to certain limitations in the O&M Contract, upon the occurrence of a Relief Event, the O&M Contractor is allowed compensation for incremental costs incurred. In coordination with the Company and without prejudice to the Company’s and the Contracting Authority’s right to pursue claims, the O&M Contractor is also entitled to exercise all rights and remedies available at law to claim for and recover casualty and other damages to the Project from third parties, including the amount of any deductibles under casualty or property insurance policies.

Except for certain circumstances set forth in the O&M Contract, if (a) a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs that gives rise to a loss of the type required to be covered by any insurance policy and (b) the insurance policy is not in full force and effect (with premiums paid) at the time that the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, then the Company will owe no compensation to the O&M Contractor. If insurance policies that cover the losses are in full force and effect (with premiums paid) at the time that the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, and the proceeds of the insurance policies are less than the amount of compensation that would have been paid under the O&M Contract, then after applicable deductibles under the O&M Contract have been applied, if any, the O&M Contractor may make a request under the O&M Contract for the difference (i.e., the value of the loss net of the insurance amount paid to the O&M Contractor and other applicable deductions under the O&M Contract). In no event will the Company compensate the O&M Contractor for amounts relating to a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption that, when combined with insurance, would exceed the total amount of compensation that would be paid under any part of the O&M Contract.

Neither the O&M Contractor nor the Company is excused from timely payment of monetary obligations under the O&M Contract based on the occurrence of a Relief Event, a Force Majeure Event or a Non-Concessionaire Caused Disruption.

O&M Contractor’s Requests for Deviations

The O&M Contractor may request that the Company apply under the P3 Agreement for approval of a change, deviation, modification, alteration or exception from the Technical Provisions or Technical Documents. Any change, deviation, modification, alteration or exception from the Technical Provisions or Technical Documents may be made by submitting an application containing the details required by the O&M Contract. The Company will review the application and submit the proposal for the Contracting Authority’s consideration pursuant to the P3 Agreement. No Technical Provisions or Technical Documents deviations will exist or be effective for the purposes of the Project and the Contract Documents unless and until a written notice of the Contracting Authority’s approval is provided to the O&M Contractor by the Company.

Extended Delays During Design-Build Period

If the Company, under the P3 Agreement, issues a conditional election to terminate the P3 Agreement due to an Extended Delay, and if the Contracting Authority elects to continue the P3 Agreement in accordance with the P3 Agreement, then during the period starting on the Extended Delay Payment Date, the Contracting Authority has agreed under the P3 Agreement to make certain availability payments under the P3 Agreement for principal payments on the Project debt, consistent with the procedures and timing under the P3 Agreement Contract Documents, as if the Company were performing the work during the O&M Period, reduced by an amount equal to the Company’s avoided costs (including avoided operations, maintenance and financing costs, if any). If the O&M Contractor determines that it would be entitled to any portions of these payments, it is required to submit an invoice to the Company consistent with the procedures and timing set forth in the O&M Contract and the Company will pay over to the O&M Contractor any of these amounts to the extent received from the Contracting Authority under the P3 Agreement.
If the Company, under the P3 Agreement, issues a conditional election to terminate the P3 Agreement due to an Extended Delay and if the Contracting Authority elects to continue the P3 Agreement, under the P3 Agreement the P3 Agreement term will end 30 years after the Extended Delay Payment Date, and the O&M Term will be adjusted accordingly.

Mitigation

The O&M Contractor is required under the O&M Contract to take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, including all steps that would generally be taken in accordance with good industry practice. The O&M Contractor is not entitled to make any request for compensation or a time extension or incremental costs that could have been reasonably avoided through re-sequencing and re-scheduling of the Services and/or other work-around measures (but the workaround measures are allowable if justified by equal or greater savings in amounts otherwise payable by the Company for incremental costs.

Noncompliance Points System

A Noncompliance Point system will be used to measure the O&M Contractor’s performance levels and trigger certain remedies in parallel with the payment mechanism specified in the P3 Agreement. The O&M Contractor will establish and maintain an electronic database of Activity Noncompliance Occurrences, Activity Noncompliance Events and Operations Availability Noncompliance Events, and will enter each Activity Noncompliance Occurrence, Activity Noncompliance Event and Operations Availability Noncompliance Event into the database in real time upon discovery. The format and design of the database is subject to the Contracting Authority’s approval and the Company’s review.

The O&M Contractor will prepare monthly Performance Monitoring Reports and submit them to the Company, which will provide the same to the Contracting Authority. Within a reasonable time after receiving the monthly Performance Monitoring Report, the Contracting Authority, under the P3 Agreement, is to deliver to the Company a notice (which the Company will provide to the O&M Contractor) setting forth: (a) for each Activity Noncompliance Occurrence the applicable Response Time, Rectification Time and Application (Maximum Exposure) Time (if any), the Contracting Authority’s determination whether the Activity Noncompliance Occurrence was responded to or rectified, and the Noncompliance Points to be assessed with respect to this event; and (b) for each Operations Availability Noncompliance Event, the resulting OTP Factors and the calculation of the Daily Operations Performance Factor for each day and Monthly Operations Performance Factor for the month and the Noncompliance Points to be assessed with respect to this calculation.

Under the P3 Agreement, the Contracting Authority may assess Noncompliance Points if a Noncompliance Event has occurred and (i) the electronic database or monthly Performance Monitoring Report indicates a Noncompliance Event has occurred, (ii) the Contracting Authority is notified or otherwise becomes aware of a Noncompliance Event, or (iii) the Contracting Authority serves its notice of determination. In addition to Noncompliance Points, Noncompliance Events under the P3 Agreement may result in Deductions and also deductions from Monthly O&M Availability Payments. Subject to limited exceptions in the O&M Contract, the O&M Contractor is liable for all Noncompliance Points and Deductions unless attributable to the Company under the O&M Contract. The Company will reimburse the O&M Contractor for responding or rectifying any Activity Noncompliance Occurrence that is attributable to the Company.

During periods in which the Contracting Authority or the Company has suspended the Services or exercised its step-in rights under the O&M Contract or the P3 Agreement, neither the condition of the affected portion of the Project nor the performance of or failure to perform the Services respecting the affected Project portion will result in new Noncompliance Events or new Noncompliance Points (subject to limited exceptions in the O&M Contract).
Termination of the O&M Contract

O&M Contractor Default

Subject to certain limitations set forth in the O&M Contract (including applicable cure periods), the O&M Contractor will be in breach of the O&M Contract upon the occurrence of any one or more of the following events or conditions:

(a) the O&M Contractor fails to (i) commence the Services promptly following the O&M Commencement Date, or (ii) diligently prosecute the Services to completion in accordance with the Contract Documents;

(b) the O&M Contractor abandons all or a material part of the Project as specified in the O&M Contract;

(c) the O&M Contractor (i) fails to make any payment owing to the Company under the Contract Documents when due or (ii) fails to deposit other funds into any custodial account, trust account or other reserve or account as required by the Contract Documents;

(d) Subject to limited exceptions in the O&M Contract, (i) any representation or warranty in the Contract Documents, or the statement of qualification (which representations and warranties of the O&M Contractor were incorporated into the proposal explicitly or by reference), made by the O&M Contractor is false in any material respect, materially misleading or inaccurate in any material respect when made, or omits material information when made, or (ii) any certificate, schedule, report, instrument or other document delivered by or on behalf of the O&M Contractor to the Company under the Contract Documents is false in any material respect, materially misleading or inaccurate in any material respect when made, or omits material information when made;

(e) Subject to the insurance provisions in the O&M Contract, the O&M Contractor fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of the Company, the Contracting Authority or other relevant parties, or the O&M Contractor fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, self-insured retentions, co-insurance or any other amounts as and when due;

(f) (i) The O&M Contractor makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Contract Documents in violation of the limitations on assignment or transfer under the O&M Contract, (ii) there occurs a transfer by the O&M Contractor not permitted under the O&M Contract, or (iii) any other violation by the O&M Contractor of the limitations on assignment or transfer under the O&M Contract occurs;

(g) Unless excused due under the O&M Contract, the O&M Contractor fails to timely observe or perform, or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by the O&M Contractor under the Contract Documents;

(h) Unless the O&M Contract is otherwise continued, the O&M Contractor or LRV Supplier (i) is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a state department or agency or (ii) has not dismissed any subcontractor (other than the LRV Supplier) whose work is not substantially complete and who is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a state department or agency;
(i) The O&M Contractor fails to timely deliver or comply with a remedial plan meeting the applicable requirements described in the O&M Contract;

(j) The O&M Contractor fails to comply with the Company’s order to suspend the Services issued in accordance with the O&M Contract within the time reasonably allowed in the order;

(k) The O&M Contractor or Fluor Corporation commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(l) An involuntary case is commenced against the O&M Contractor or Fluor Corporation seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to the O&M Contractor or Fluor Corporation, as applicable, or their respective debts under any U.S. or foreign bankruptcy, insolvency or other similar law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution or similar process; or seeking like relief, and the involuntary case is not contested by it in good-faith or remains undismissed and unstayed for a period of 60 days;

(m) In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to the O&M Contractor or its debts or Fluor Corporation or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law, the O&M Contract or any of the other Contract Documents is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;

(n) The O&M Contractor draws against any custodial account, trust account, allowance or other reserve or account in violation of the Contract Documents or makes a false or materially misleading representation in connection with a draw against any account, allowance or reserve;

(o) The O&M Contractor fails to comply with any applicable governmental approval or law;

(p) Any use of the Project by the O&M Contractor that violates requirements of applicable governmental approvals or laws or otherwise is not permitted under the Contract Documents;

(q) The O&M Contractor accumulates certain Noncompliance Points over periods of time specified in the O&M Contract in violation of the O&M Contract;

(r) Any material breach by the O&M Contractor of its obligations to the Company under the Interface Agreement;

(s) The O&M Contractor’s payment of amounts due the Company or any other person under the O&M Contract or the Interface Agreement to which the limitation of the O&M Contractor’s aggregate liability applies in accordance with the O&M Contract equals or exceeds the limitation of liability;

(t) The bankruptcy or insolvency of ACI or CAF USA during the time periods and otherwise as set forth in the O&M Contract;
(u) The exercise by the Contracting Authority of its rights under the P3 Agreement requesting that the Company replace the O&M Contractor; or

(v) The Contracting Authority terminates the P3 Agreement as a result of the O&M Contractor’s breach of its obligations under the O&M Contract (including its obligations to fulfill the Company’s obligations under the P3 Agreement to the extent required under the O&M Contract).

Subject to certain exceptions, if a Noncompliance Event occurs for which the Company is entitled to make deductions from O&M Monthly Availability Payments based on Deductions made under the P3 Agreement, the Company will not declare an O&M Contractor default with respect to the Noncompliance Event.

**Company Remedies for an O&M Contractor Default**

*Immediate Contracting Authority and Company Entry and Cure of Wrongful Use.* Without notice and without awaiting a lapse of the period to cure, in the event of an O&M Contractor default under (q) above, the Company under the O&M Contract (and the Contracting Authority pursuant to the P3 Agreement) may enter and take control of the relevant portion of the Project to restore the permitted uses and reopen and continue traffic operations for the benefit of the public until the breach is cured or the Company terminates the O&M Contract. The O&M Contractor is required to pay to the Company on demand the Company’s recoverable costs (and the Contracting Authority’s recoverable costs, if applicable) in connection with this action, which payment, subject to certain limitations in the O&M Contract, will be reimbursed by the Company if a determination is ultimately made that no O&M Contractor default occurred.

*Remedies for Failure to Meet Safety Standards or Perform Safety Compliance.* If at any time the O&M Contractor or its surety fails to meet certain safety standards (including if an emergency has occurred) or if the Contracting Authority and the Company (with participation by the O&M Contractor) cannot reach an agreement regarding the interpretation or application of a safety standard within a period of time acceptable to the Contracting Authority, the Contracting Authority may, in accordance with the P3 Agreement, undertake or direct the Company to undertake any work required to ensure implementation of and compliance with safety standards as interpreted or applied by the Contracting Authority or with the safety compliance order or to rectify the emergency. In addition, if the Project violates certain health and safety laws, the Contracting Authority may, in accordance with the P3 Agreement, take any immediate corrective actions required. The O&M Contractor is required to pay to the Company, or the Contracting Authority, as applicable, on demand the costs of any of this work.

*Termination and Compensation.* In the event of an O&M Contractor default that is not cured within the applicable cure period, the Company may terminate the O&M Contract upon 10 days’ written notice to the O&M Contractor. Subject to certain other limitations in the O&M Contract, the Company is entitled to recover any and all damages available at law on account of the occurrence of an O&M Contractor default.

In addition, if the P3 Agreement has not been terminated, subject to certain limitations and adjustments contained in the O&M Contract, in the event of termination of the O&M Contract due to an O&M Contractor default, the Company may cause the Services to be completed by other contractors. If this occurs, the O&M Contractor will be liable to the Company, subject to any limitations of the O&M Contractor’s liability in the O&M Contract, for the aggregate of, without duplication: (a) the costs reasonably incurred by the Company in replacing the O&M Contractor to perform the Services; (b) all direct damages suffered or incurred by the Company due to such termination and/or the acts or omissions of the O&M Contractor leading to the termination of the O&M Contract; and (c) the additional costs and expenses reasonably attributable to the employment of a different contractor to fulfill the obligations and services to have been performed by the O&M Contractor under the O&M Contract.
If the P3 Agreement has been terminated by the Contracting Authority due to an O&M Contractor default that was not caused by the Company’s failure to perform its obligations under the O&M Contract, in the event of a termination of the O&M Contract due to an O&M Contractor default, the O&M Contractor, subject to limitations on the O&M Contractor’s liability in the O&M Contract, will be liable to the Company for all direct damages, costs and expenses suffered or incurred by the Company due to the termination and any acts or omissions of the O&M Contractor leading to the termination of the O&M Contract, including any direct damages, costs and expenses suffered, incurred or payable by the Company under the P3 Agreement due to the termination.

*The Contracting Authority and the Company Step-in Rights.* In accordance with the O&M Contract, but subject to the terms of the O&M Direct Agreement, if the O&M Contractor has not fully and completely cured an O&M Contractor default by the expiration of any cure period, the Company may pay and perform all or any portion of the O&M Contractor’s obligations (a) under the Contract Documents that are the subject of the O&M Contractor default and (b) under any other then-existing breaches or failures to perform for which the O&M Contractor received prior notice from the Company but has not commenced or does not continue diligent efforts to cure. The O&M Contractor is then required to reimburse the Company on demand for its recoverable costs under the O&M Contract. In addition, the Contracting Authority has corresponding step-in rights under the P3 Agreement and step in rights if the O&M Contractor is assessed Noncompliance Points above certain limits during the time periods set forth in the O&M Contract.

The Company’s and the Contracting Authority’s rights under the O&M Contract and the P3 Agreement (but not the Company’s and the Contracting Authority’s rights regarding immediate right of entry and right to cure wrongful use of the Project) are subject to the right of any surety to assume performance and completion of all bonded work under a performance bond issued as performance security. In addition, in the case of an O&M Contractor default that constitutes or, following the applicable grace period or the giving of notice or both, would constitute an O&M Contractor default enabling the Company to terminate or suspend its obligations under the O&M Contract, the Company’s rights under the O&M Contract are subject to Lender rights under the O&M Direct Agreement and the P3 Direct Agreement.

In addition, without cost to the Company or the Contracting Authority, and subject to the rights of the Collateral Agent under any P3 Direct Agreement, the O&M Contractor is required to assign to the Contracting Authority or its successors, assignees or designees all of its rights under the O&M Contract upon delivery of notice from the Contracting Authority following the termination of the P3 Agreement.

Subject to the rights of the Collateral Agent under any P3 Direct Agreement, upon receipt of written notice from the Contracting Authority, the Contracting Authority is entitled to exercise its step-in rights with respect to the O&M Contract (where the Contracting Authority is also exercising its step-in rights under the P3 Agreement), without any necessity for a consent or approval from the O&M Contractor or the making of a determination whether the Contracting Authority validly exercised its step-in rights, or any waiver and release by the Company of any claim or cause of action against the O&M Contractor arising out of, relating to or resulting from its recognition of the Contracting Authority’s step-in rights in reliance on any written notice from the Contracting Authority.

The O&M Contractor is required to promptly execute and deliver to the Contracting Authority or its successors, assigns or designees a new contract between the O&M Contractor and the Contracting Authority, or its respective successors, assigns or designees on the same terms as the O&M Contract, if (a) the O&M Contract is rejected by the Company in bankruptcy or is wrongfully terminated by the Company and (b) the Contracting Authority delivers a request for the new contract within 60 days following termination or expiration of the O&M Contract, as applicable. This covenant survives termination of the O&M Contract.

*Performance Security.* Subject to the terms and conditions of the O&M Contract, upon the occurrence of an O&M Contractor default and expiration, without full and complete cure, of the applicable cure period, if any, without waiving or releasing the O&M Contractor from any obligations or limiting other remedies that may be available to the Company, the Company may make demand upon, draw on and enforce and collect any of the Company’s letters of credit, guaranties and performance security in any
order. The Company will apply the proceeds of any action to the satisfaction of the O&M Contractor’s obligations under the O&M Contract, including payment of amounts due to the Company.

**Suspension**

**Contracting Authority Suspension of Services.** In the event the Contracting Authority suspends work under the P3 Agreement, the Company may suspend all or a portion of the Services in response to and to the same extent as a suspension order from the Contracting Authority pursuant to the P3 Agreement, and the O&M Contractor is liable to the Company for the consequences thereof to the extent the Contracting Authority’s suspension is for a reason attributable to the O&M Contractor as set forth in the O&M Contract. The Contracting Authority may, under the P3 Agreement, suspend, in whole or in part, the Services by notice to the Company, in accordance with the criteria set forth in the P3 Agreement, including failure by the Company (a) to perform the work in accordance with the P3 Agreement contract documents (subject to certain limitations on the Contracting Authority’s right to suspend for an Activity Noncompliance Occurrence or Noncompliance Event when a remedial plan has been delivered), (b) to comply with any law or governmental approval or (c) to maintain performance bonds or payment security. In addition, the Contracting Authority may suspend Services and/or close or cause to be closed any and all portions of the Project affected by an emergency or danger. The Contracting Authority’s suspension of Services under the P3 Agreement for reasons not attributable to the O&M Contractor’s failure to comply with its obligations under the O&M Contract, but attributable to Company’s failure to comply with its obligations under the O&M Contract. This constitutes a Company Services suspension and entitles the O&M Contractor to make a claim to the Company for a scope change order due to a Company Services suspension pursuant to the O&M Contract.

The Contracting Authority under the P3 Agreement has the right and authority to order suspension of Services, in whole or in part, for reasons other than those attributable to the Company under the P3 Agreement or the O&M Contractor under the O&M Contract. If the Contracting Authority does so or purports to order suspension of Services for reasons attributable to the Company or the O&M Contractor but it is finally determined under the P3 Agreement dispute resolution procedures that there exist no grounds under the P3 Agreement for that suspension, then the suspension is a Contracting Authority-caused delay under the P3 Agreement. The O&M Contractor will then be entitled to submit a claim for incremental costs, time extensions and performance relief to the extent permitted under the O&M Contract.

The O&M Contractor is required to promptly comply with any Contracting Authority suspension order, even if the O&M Contractor disputes the grounds for suspension. The O&M Contractor will promptly recommence the Services upon receipt of notice from the Company, following the Company’s receipt of a notice from the Contracting Authority under the P3 Agreement, directing the O&M Contractor to resume work. The Contracting Authority, under the P3 Agreement, will lift the suspension order promptly after the O&M Contractor fully cures and corrects the applicable breach or failure to perform or any other reason under the P3 Agreement for which the suspension order ceases to apply. The O&M Contractor is required to cure and correct the applicable breach or failure to perform or any other reason causing the suspension order, to the extent the breach, failure to perform or other reason is attributable to the O&M Contractor.

**Company Suspension of Services.** The Company may elect to suspend all or any part of the Services for reasons not attributable to the O&M Contractor’s failure to comply with its obligations under the O&M Contract (including as a result of a Contracting Authority suspension under the P3 Agreement for reasons not attributable to the O&M Contractor’s failure to comply with its obligations under the O&M Contract) upon 10 days’ prior written notice to the O&M Contractor indicating: (a) the portion of the Services that the Company has elected to defer; (b) the Company’s estimate of the duration of the suspension; and (c) the effective date of the suspension of the Services. Upon receipt of and consistent with the effective date of the notice, the O&M Contractor is required, to the extent reasonably practical, to stop performance of the portion of the Services that the Company has elected to defer and continue to perform the balance of the Services, if applicable. In the event of a suspension of Services pursuant to the preceding sentence, the suspension will entitle the O&M Contractor to make a claim for a scope change order due to a Company Services suspension. The O&M Contractor is required to mitigate, to the fullest
extent reasonably possible, any additional expenses to be borne by the Company as a result of the suspension of the Services.

**Default by the Company and O&M Contractor Remedies**

The Company will be in breach under the O&M Contract upon the occurrence of any one or more of the following events or conditions:

(a) Failure by the Company to pay the O&M Contractor the undisputed portion of any O&M Monthly Availability Payment due to the O&M Contractor and the failure continues for 30 days after written notice of the non-payment;

(b) Failure by the Company to pay the O&M Contractor the undisputed amounts (other than the O&M Monthly Availability Payments) in excess of $1,000,000 (individually or in the aggregate) due to the O&M Contractor and the failure continues for 30 days after written notice of the non-payment;

(c) The Company commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due or admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(d) An involuntary case is commenced against the Company seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to its debts under any U.S. or foreign bankruptcy, insolvency or other similar law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any substantial part of the Company’s assets; seeking the issuance of a writ of attachment, execution or similar process; or seeking like relief, and the involuntary case is not contested by the Company in good-faith or remains undismissed and unstayed for a period of 60 days;

(e) Subject to limited exceptions in the O&M Contract, any representation or warranty made by the Company under the O&M Contract is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made and the Company fails to cure the same within 20 days after the O&M Contractor delivers to the Company a notice of the Company default with respect thereto, except (i) if the Company default is such that the cure cannot with diligence be completed within the 20-day’ time period and the Company has commenced meaningful steps to cure immediately after receiving the default notice, the Company will have an additional period of time, up to a maximum cure period of 120 days, as is reasonably necessary to diligently effect cure, and (ii) cure will be regarded as complete when the adverse effects of the breach are cured; and

(f) Only if relief cannot be provided by issuance of a scope change order, the Company otherwise is in default or has failed to perform any of its other material obligations under the O&M Contract or its material obligations to the O&M Contractor under the Interface Agreement, and the failure continues for 30 days after written notice from the O&M Contractor, or, if the failure (other than a failure to pay) is not capable of being cured within the 30-day period, the Company has not commenced the cure within this period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional 90 days.

Subject to the provisions of the O&M Direct Agreement and to the rights of the Contracting Authority under the P3 Agreement, at any time after the occurrence of a Company default under the O&M
Contract, which is not cured within the applicable cure period, the O&M Contractor is entitled to terminate the O&M Contract with 10 days’ prior written notice. If the O&M Contract is terminated for this reason, the O&M Contractor is entitled to receive the Termination Payment, as its exclusive remedy, in accordance with the invoice requirements set forth in the O&M Contract. Subject to the terms and conditions of the O&M Contract, the “Termination Payment” will be equal to the sum of (i) that portion of any O&M Monthly Availability Payments that is applicable to the Services completed up to the date of termination and that has not previously been paid to the O&M Contractor (including a proportionate amount for any partial month or partially completed O&M renewal work), (ii) the direct, out-of-pocket costs reasonably incurred by the O&M Contractor in withdrawing its equipment and personnel from the Project right-of-way and in otherwise demobilizing, and (iii) the direct, out-of-pocket costs reasonably incurred by the O&M Contractor in terminating contracts with subcontractors.

The O&M Contractor may also suspend performance of the Services as permitted by the O&M Contract if the Company fails to pay to the O&M Contractor (a) any undisputed portion of the O&M Monthly Availability Payment owing to the O&M Contractor, and this failure continues for 30 days after written notice of the non-payment and (b) any undisputed amount owing to the O&M Contractor that is not payable from the monthly availability payment under the P3 Agreement and the failure continues for 90 days after written notice of the non-payment.

If the Contracting Authority terminates the P3 Agreement due to a “Company default” and the “Company default” is not attributable to a failure of the O&M Contractor to perform its obligations under the O&M Contract, then subject to the O&M Direct Agreement and to the rights of the Contracting Authority under the P3 Agreement, the O&M Contract will, subject to the terms and conditions of the O&M Contract, automatically terminate effective as of the termination date of the P3 Agreement. Subject to certain adjustments and limitations provided for in the O&M Contract, the O&M Contractor will then be entitled to receive a Termination Payment.

The Contracting Authority’s P3 Agreement Termination for Convenience; the Company’s P3 Agreement Termination for Contracting Authority Default

The Contracting Authority may terminate the P3 Agreement in whole, but not in part, if the Contracting Authority determines, in its discretion, that termination is in the Contracting Authority’s best interest. In addition, the Company may terminate the P3 Agreement for a Contracting Authority default. If the P3 Agreement is terminated for any of the foregoing, then the O&M Contract will automatically terminate effective as of the termination date of the P3 Agreement, and the Company will be required to pay the Termination Payment to the O&M Contractor as calculated in accordance with and pursuant to the procedures set forth in the O&M Contract as the O&M Contractor’s sole and exclusive remedy. The amount of the Termination Payment payable by the Company will be limited to that portion of the termination amount actually received by the Company from the Contracting Authority under the P3 Agreement (excluding any set-offs and reductions not attributable to the O&M Contractor) that is attributable to the Services.

Termination Due to O&M Extended Delay or the P3 Agreement Termination for Extended Delay

Under the P3 Agreement, in the event of an Extended Delay, either the Contracting Authority or the Company may deliver to the other a notice of conditional election to terminate the P3 Agreement, following the receipt of which the receiving party has the option to either accept or reject the election to terminate the P3 Agreement. In addition, under the P3 Agreement, the Company and the Contracting Authority may dispute the other party’s right to terminate the P3 Agreement for Extended Delay.

If the O&M Contractor (a) has been incurring unavoidable costs due to the occurrence of an event that has, or the O&M Contractor anticipates will, become, an O&M Extended Delay (as applicable) as described in the O&M Contract, which costs the O&M Contractor is not entitled to claim under the O&M Contract and are not compensable based on the terms of the insurance coverage that the O&M Contractor is required to obtain and maintain under the O&M Contract, and/or, without duplication, (b) has not been paid
costs, that are otherwise not recoverable under the O&M Contract or the terms of the insurance coverage that O&M Contractor is required to obtain and maintain under the O&M Contract, as a result of the deductions made by the Company to the O&M Monthly Availability Payments due to the Deductions made by the Contracting Authority under the P3 Agreement attributable to such event (collectively, the “Extended Delay Unavoidable Costs”), the O&M Contractor may provide written notice to the Company thereof meeting the requirements set forth in the O&M Contract (the “O&M Extended Delay Notice”).

O&M Extended Delay – 220 Days of Contracting Authority-Caused Delay and 180 Days of Other Delay

If (a) the O&M Contractor has provided the O&M Extended Delay Notice to the Company, (b) the anticipated O&M Extended Delay relates to (i) with respect to any rolling 12-month period, a single Force Majeure Event or Relief Event (other than the Contracting Authority’s scope changes or Contracting Authority-caused delays) that has materially prevented or delayed the O&M Contractor from performing a substantial portion of its obligations under the O&M Contract for a period of 180 days or (ii) any Contracting Authority-caused delay that has materially prevented or delayed the O&M Contractor from performing a substantial portion of its obligations under the O&M Contract for a period of 220 days or more in the aggregate within a period of 365 consecutive days and (c) the anticipated O&M Extended Delay has actually become an O&M Extended Delay, then the Company and the O&M Contractor are required to commence good faith negotiations. The negotiations will result, within 45 days from the commencement, in (i) the Company’s and the O&M Contractor’s agreement on the terms and conditions under which the O&M Contract will continue in effect irrespective of the occurrence of the O&M Extended Delay; (ii) the Company’s election to replace the O&M Contractor with another operations and maintenance contractor, or provide a notice of conditional election to the Contracting Authority under the P3 Agreement to terminate the P3 Agreement for Extended Delay; or (iii) the O&M Contractor’s written withdrawal of the O&M Extended Delay Notice. The O&M Contractor and the Company agreed to equally share the Extended Delay Unavoidable Costs reasonably incurred by the O&M Contractor as a result of such O&M Extended Delay during the 45-day period of negotiations, subject to the O&M Contractor’s obligation to take all steps reasonably necessary to mitigate the consequences of the delay, including all steps that would generally be taken in accordance with good industry practice (the “Extended Delay Shared Costs”).

If the Company, following the process set forth above, elects to replace the O&M Contractor, the O&M Contractor is entitled to (1) the reimbursement from the Company of the Company’s portion of the Extended Delay Shared Costs incurred by the O&M Contractor up until the date of termination of the O&M Contract; (2) an Extended Delay Termination Payment (and the transition costs, if applicable), calculated based on the estimated compensation the O&M Contractor would have been entitled to be paid from the Company at the time of such termination had the Contracting Authority terminated, or accepted the Company’s conditional election to terminate, the P3 Agreement for Extended Delay, subject to the receipt of such payment by the Company from the Contracting Authority. If the Company, following the process set forth above, elects to provide to the Contracting Authority a notice of conditional election to terminate the P3 Agreement for Extended Delay, under the P3 Agreement, the Contracting Authority may either accept the Company’s notice of conditional election to terminate the P3 Agreement or continue the P3 Agreement in effect by delivering to the Company notice of the Contracting Authority’s choice. If the Contracting Authority, under the P3 Agreement, elects to continue the P3 Agreement in effect, the O&M Contract will continue in full force and effect, and the O&M Contractor is entitled to claim relief that the Company is entitled to claim from the Contracting Authority under the P3 Agreement with respect to the Services. If the Contracting Authority, under the P3 Agreement, accepts the Company’s notice of conditional election to terminate the P3 Agreement, the provisions of the O&M Contract apply with respect to the Extended Delay Termination Payment and termination of the O&M Contract.

If at the end of the negotiation period, none of the above described events have occurred, the O&M Contractor is entitled, upon five days’ written notice to the Company, to terminate the O&M Contract. The Company may avoid termination by providing notice to the Contracting Authority of the Company’s election to terminate the P3 Agreement within the five-day period.
O&M Extended Delay- Damage to Project

If the O&M Contractor provides the O&M Extended Delay Notice to the Company and the O&M Extended Delay relates to, with respect to any rolling 12-month period, a single Force Majeure Event or Relief Event (other than the Contracting Authority’s scope changes or Contracting Authority-caused delays) that has resulted in damage or loss to a material portion of the Project during the O&M Period that the Contracting Authority has determined is not in the public interest to repair or replace, the O&M Contractor and the Company are required to initiate discussions with the Contracting Authority regarding a modification request and then commence good faith negotiations. The negotiations will result, within 45 days from the commencement (or, if earlier, the required date for commencement), in (i) the Company’s and the O&M Contractor’s agreement on the terms and conditions under which the O&M Contractor will continue in effect irrespective of the occurrence of the O&M Extended Delay; (ii) the Company’s election to replace the O&M Contractor with another operations and maintenance contractor or provide a notice of conditional election to the Contracting Authority under the P3 Agreement to terminate the P3 Agreement for Extended Delay; or (iii) the O&M Contractor’s written withdrawal of the O&M Extended Delay Notice. The Company and the O&M Contractor will equally share the Extended Delay Shared Costs during such 45-day period, subject to the right by the Company to set off against its portion of such costs it paid to the O&M Contractor if the Contracting Authority compensates the Company (who in turn compensates the O&M Contractor) for such costs at a later time.

If the Company elects to replace the O&M Contractor, the O&M Contract will terminate upon the O&M Contractor’s receipt of such notice. If the O&M Contract is so terminated, the O&M Contractor is entitled to reimbursement from the Company of the Company’s portion of the Extended Delay Shared Costs incurred by the O&M Contractor up until the date of termination of the O&M Contract and an Extended Delay Termination Payment (and the transition costs, if applicable), calculated based on the estimated compensation the O&M Contractor would have been entitled to be paid at the time of such termination from the Company had the Contracting Authority terminated, or accepted the Company’s conditional election to terminate, the P3 Agreement for Extended Delay in accordance with O&M Contract. If the Company elects to provide to the Contracting Authority a notice of conditional election to terminate the P3 Agreement, the Contracting Authority may either accept the Company notice of conditional election to terminate the P3 Agreement or continue the P3 Agreement in effect by delivering to the Company notice of the Contracting Authority’s choice within 30 days after the Company delivers its notice to the Contracting Authority. If the Contracting Authority, under the P3 Agreement, elects to continue the P3 Agreement in effect, the O&M Contract will continue in full force and effect, and the O&M Contractor will be entitled to claim solely such relief that the Company is entitled to claim from the Contracting Authority under the P3 Agreement with respect to the Services.

If the Company elects to replace the O&M Contractor, the O&M Contract will terminate upon the O&M Contractor’s receipt of such notice. If the O&M Contract is so terminated, the O&M Contractor is entitled to reimbursement from the Company of the Company’s portion of the Extended Delay Shared Costs incurred by the O&M Contractor up until the date of termination of the O&M Contract and an Extended Delay Termination Payment (and the transition costs, if applicable), calculated based on the estimated compensation the O&M Contractor would have been entitled to be paid at the time of such termination from the Company had the Contracting Authority terminated, or accepted the Company’s conditional election to terminate, the P3 Agreement for Extended Delay in accordance with O&M Contract. If the Company elects to provide to the Contracting Authority a notice of conditional election to terminate the P3 Agreement, the Contracting Authority may either accept the Company notice of conditional election to terminate the P3 Agreement or continue the P3 Agreement in effect by delivering to the Company notice of the Contracting Authority’s choice within 30 days after the Company delivers its notice to the Contracting Authority. If the Contracting Authority, under the P3 Agreement, elects to continue the P3 Agreement in effect, the O&M Contract will continue in full force and effect, and the O&M Contractor will be entitled to claim solely such relief that the Company is entitled to claim from the Contracting Authority under the P3 Agreement with respect to the Services.

If at the end of the negotiation period referred, none of the above options have been selected, the O&M Contractor will be entitled, upon five days’ written notice to the Company, to terminate the O&M Contract. The Company may avoid termination by providing notice to the Contracting Authority of the Company’s election to terminate the P3 Agreement within the five-day period.

Parties’ Options – the Contracting Authority’s Notice to Terminate the P3 Agreement for Extended Delay

If, under the P3 Agreement, an Extended Delay has occurred and is continuing during the O&M Period and the Contracting Authority, under the P3 Agreement, delivers to the Company a notice of its conditional election to terminate the P3 Agreement for Extended Delay, the Company is obligated under the O&M Contract to promptly provide such notice to the O&M Contractor. Following such notice, the parties are to consult but if the Company elects to accept the Contracting Authority’s election to terminate the P3 Agreement, the Company may do so, within the time required by the P3 Agreement, in its sole discretion and without the O&M Contractor’s consent. If the P3 Agreement is terminated as a result of such election by the Company, then the O&M Contractor will automatically terminate effective as of the termination date of the P3 Agreement and the O&M Contractor will be entitled to the Extended Delay Termination Payment.
If, following the Contracting Authority’s delivery to the Company of a notice of its conditional election to terminate the P3 Agreement for Extended Delay under the P3 Agreement, the Company wishes to either provide notice to the Contracting Authority to continue performing its obligations thereunder or to dispute the Contracting Authority’s right to terminate the P3 Agreement, the Company is obligated to promptly, but in any event within five days, provide written notice thereof to the O&M Contractor. Following receipt of such notice, the O&M Contractor may, within five days of receipt by the O&M Contractor of the notice, agree to (a) continue the O&M Contract or (b) the Company disputing the Contracting Authority’s right to terminate the P3 Agreement, as applicable, by notifying the Company in writing or will seek to initiate good faith negotiations by written notification to the Company, which will result, within 25 days, in one of the following: (i) the Company and the O&M Contractor’s agreement on the terms and conditions under which the O&M Contract will continue in effect; (ii) the Company’s election to replace the O&M Contractor with another operations and maintenance contractor or accept the Contracting Authority’s notice of conditional election to terminate the P3 Agreement for Extended Delay.

If the parties have agreed in writing to continue the O&M Contract in effect, the Company will not have any obligation to compensate the O&M Contractor for any costs of restoration, repair or replacement arising out of, relating to or resulting from Extended Delay or for any loss of the O&M Monthly Availability Payments and/or, if applicable, any other incremental costs or Delay Costs arising out of, relating to or resulting from the continuation of the Extended Delay beyond the date of the Contracting Authority notice under the P3 Agreement. If the Company elects to replace the O&M Contractor, the O&M Contract will terminate and the O&M Contractor will be entitled to an Extended Delay Termination Payment, calculated based on the estimated compensation the O&M Contractor would have been entitled to be paid at the time of such termination from the Company had the Contracting Authority terminated, or accepted the Company’s conditional election to terminate, the P3 Agreement for Extended Delay. If the Company has not replaced the O&M Contractor but the Company delivers notice to the Contracting Authority of its intent to continue performing its obligations under the P3 Agreement without a written agreement in place to continue the O&M Contract in effect, the O&M Contractor will be entitled, upon 10 days’ notice, to terminate the O&M Contract.

**Parties’ Options – the Company’s Notice to Terminate the P3 Agreement for Extended Delay**

If the Contracting Authority, under the P3 Agreement, has not sent to the Company its notice of election to terminate the P3 Agreement and the O&M Contractor has not sent to the Company the O&M Extended Delay Notice, but the Company wishes, during the O&M Period, to provide to the Contracting Authority a notice of conditional election to terminate the P3 Agreement due to an Extended Delay, the Company may do so without the O&M Contractor’s consent. If the Contracting Authority, under the P3 Agreement, following the Company’s notice of conditional election to terminate the P3 Agreement, accepts such notice, then the O&M Contract will automatically terminate effective as of the termination date of the P3 Agreement.

If the Contracting Authority, under the P3 Agreement, following the Company’s notice of conditional election to terminate the P3 Agreement, delivers timely notice choosing to continue the P3 Agreement in effect, then the O&M Contract will continue in full force and effect and the O&M Contractor will be entitled to claim such relief that the Company is entitled to claim from the Contracting Authority under the P3 Agreement with respect to the Services.

**Termination Due to the P3 Agreement Termination for Insurance Unavailability**

Under the P3 Agreement, if it becomes apparent that insurance required under the P3 Agreement is not available to the extent specified in the P3 Agreement, the Contracting Authority may deliver to the Company notice of its conditional election to terminate the P3 Agreement for insurance unavailability, and the Company is required to promptly provide to the O&M Contractor such notice, if received during the O&M Period. Following such notice, the parties are to consult.

If the Company determines to accept such Contracting Authority election to terminate the P3 Agreement, the Company may do so, within the time permitted by the P3 Agreement, without the O&M
Contractor’s consent, and the O&M Contract will automatically terminate effective as of the termination date of the P3 Agreement. If the O&M Contract is so terminated, except as otherwise provided in the O&M Contract, the O&M Contractor will be entitled to receive a termination payment equal to that portion of the O&M Monthly Availability Payments applicable to the Services completed up to the date of termination and which has not previously been paid to the O&M Contractor, together with reasonable demobilization costs (including subcontracts’ termination costs). The amount payable by the Company is limited to that portion of the termination amount actually received by the Company under the P3 Agreement for insurance unavailability attributable to the Services.

If the Company, following the Contracting Authority’s notice under the P3 Agreement of the Contracting Authority’s conditional election to terminate the P3 Agreement for insurance unavailability, wishes to give notice to the Contracting Authority under the P3 Agreement to continue performing its obligations under the P3 Agreement, the Company may do so, within the time permitted by the P3 Agreement, without O&M Contractor’s consent so long as the Company establishes and funds the escrow account as described below. The Company will request that the O&M Contractor, within 10 days from the receipt of such request, provide to the Company a reasonable estimate of the demobilization costs it would incur (including, without limitation, reasonable subcontracts’ termination costs) and any transition costs and expenses if the O&M Contract were to terminate, together with the reasonable supporting documentation. Following the Company’s receipt of such estimate, the Company may (i) use the estimate provided by the O&M Contractor as a determination of the amount to be put in escrow, or (ii) hire an independent third party technical advisor to review such estimate and supporting documentation, which party will make its own estimate of such demobilization costs and such determination will be binding on the O&M Contractor and the Company (the amount determined pursuant to either clause (i) or (ii) will be the “Estimated Demobilization Amount”). The Company is required, prior to sending to the Contracting Authority the Company’s notice to continue performing its obligations under the P3 Agreement, to establish an escrow account with an escrow agent, both of which will be reasonably agreeable to the O&M Contractor, and deposit therein an amount equal to the sum of (A) the maximum amount of one (1) O&M Monthly Availability Payment that is set forth on the then-current O&M Monthly Availability Payment Schedule, plus (B) the Estimated Demobilization Amount (the “Contingent O&M Payment”), which will be increased by the Company annually consistent with the annual escalation of the O&M Monthly Availability Payment, and provide to the O&M Contractor reasonable evidence of such deposit. The Company is required to maintain the escrow account funded with the Contingent O&M Payment until the first to occur of (x) the Company has paid to the O&M Contractor the applicable portion of the Contingent O&M Payment; (y) the end of the O&M Term or an early termination of the O&M Contract for reasons other than insurance unavailability; or (z) insurance required under the P3 Agreement contract documents has become available and the Contracting Authority is no longer acting as the insurer of last resort (in which case the Company’s obligation to establish and fund such account will revert to being an obligation conditioned upon the Contracting Authority’s new conditional election to terminate the P3 Agreement for insurance unavailability and the Company’s determination following such the Contracting Authority’s election to continue performing its obligations under the P3 Agreement).

If the Company elects to continue to performing its obligations under the P3 Agreement, then neither the Company nor the Contracting Authority will have any liability to the O&M Contractor for harm or loss from the risks that are the subject of insurance unavailability, other than the Company’s obligation to pay the Contingent O&M Payment and the O&M Contractor may seek that the Company requests under the P3 Agreement that the Contracting Authority reimburse the O&M Contractor (through the Company) up to the full amount of insurance coverage that the O&M Contractor would have been obligated to carry had such coverage been commercially available, and on the terms, and subject to the conditions, of such insurance coverage as set out in the O&M Contract (except to the extent caused by the fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the Contract Documents of or by any O&M Contractor-related entity). The O&M Contractor is obligated to credit to the Contracting Authority (through the Company), as part of insurance adjustments to O&M Monthly Availability Payments, all insurance premiums reflected in the most recent financial model update that are the subject of, and during the period of, insurance unavailability, and the O&M Contractor is to promptly and diligently repair and restore all damage and destruction to the Project arising out of, relating to or resulting from losses born of risks that are not covered by insurance due to insurance unavailability (subject to certain limited exceptions...
in the O&M Contract), in order to put the Project in a safe, good and sound condition in compliance with all applicable requirements of the Contract Documents.

If, during the O&M Period, the Contracting Authority, during the period of insurance unavailability (during which the Contracting Authority is under the P3 Agreement the insurer of last resort) provides notice to the Company under the P3 Agreement exercising the Contracting Authority’s unconditional right to terminate the P3 Agreement, then the Company is required to promptly provide such notice to the O&M Contractor and the O&M Contract will automatically terminate effective as of the termination date of the P3 Agreement and the Company is obligated to pay over to the O&M Contractor the Contingent O&M Payment (calculated in accordance with the O&M Contract) and such amounts (if any) actually paid by the Contracting Authority to the Company under the P3 Agreement that are attributable to the Services or the O&M Contractor.

**Termination Based on P3 Agreement Termination Due to Court Ruling**

If the P3 Agreement is terminated for Termination Due to Court Ruling, then the O&M Contract will automatically terminate effective as of the termination date of the P3 Agreement. If the O&M Contract is so terminated, the O&M Contractor is entitled to receive a court ruling termination payment equal to that portion of the O&M Monthly Availability Payments applicable to the Services performed up to the date of termination and that has not previously been paid to the O&M Contractor, together with reasonable demobilization costs (including subcontracts’ termination costs), determined by the Company and the O&M Contractor in accordance with the O&M Contract.

**Termination if Financial Close Fails to Occur**

If the Company fails to achieve Financial Close by the Financial Close deadline for any reason not attributable to the O&M Contractor’s failure to perform its obligations under the O&M Contract, the O&M Contractor may, at its sole discretion, elect to terminate the O&M Contract. If the O&M Contractor elects to terminate the O&M Contract, it will provide written notice of termination to the Company and the termination will be effective immediately upon delivery of the notice. In the event of this termination, neither the Company nor the O&M Contractor will have any liability or obligation to the other (other than for payments due under a limited notice to proceed, as required by the O&M Contract).

**Limitation on Liability**

The O&M Contractor’s total aggregate liability under the O&M Contract is limited as follows:

(a) without a termination of the O&M Contract, the O&M Contractor’s total aggregate liability may not, in any contract year, exceed an amount equal to 75% of the O&M Contractor Operating Annual Turnover, but no more than 150% of the O&M Contractor Operating Annual Turnover in the aggregate in any three consecutive contract years, in each case excluding certain Company costs;

(b) on termination of the O&M Contract, the O&M Contractor’s total aggregate liability may not exceed an amount equal to 200% of the sum of (i) the O&M Contractor Operating Annual Turnover and (ii) the average annual O&M Lifecycle Payments, as adjusted to reflect any changes in the O&M Monthly Availability Payments resulting from changes in the scope of the Services effected in accordance with the terms of the O&M Contract and excluding certain Company costs.

However, the following exceptions apply:

(i) The proceeds of insurance, not to exceed amounts required to be maintained by the O&M Contractor in accordance with the terms of the O&M Contract;
(ii) Costs, liabilities or obligations that arise from the gross negligence, willful misconduct, criminal conduct, intentional disregard of laws, or actual fraud of the O&M Contractor, any of its Subcontractors or any other person for whom the O&M Contractor is legally responsible;

(iii) Costs, liabilities or obligations that arise from the O&M Contractor’s abandonment of the Services or from the O&M Contractor’s or the O&M guarantor’s bankruptcy or insolvency;

(iv) Costs, liabilities or obligations that arise from any liens, encumbrances or other security interests on the Project arising from or in connection with the performance of the Services, except to the extent due to the Company unexcused failure to pay amounts owing to the O&M Contractor under the O&M Contract;

(v) Costs, liabilities or obligations that arise from the failure of the O&M Contractor to pass to the Contracting Authority good title to any component of the work provided by the O&M Contractor as part of the Services free and clear of any charge, lien, encumbrance or other security interest, except to the extent due to the Company unexcused failure to pay amounts owing to the O&M Contractor under the O&M Contract;

(vi) The O&M Contractor’s indemnity obligations in respect of claims by third parties;

(vii) Costs, liabilities and obligations arising from the O&M Contractor’s failure to comply with environmental laws and other obligations under the O&M Contract in respect of hazardous materials and environmental matters;

(viii) If the Company steps into any subcontract entered into by the O&M Contractor and assumes rights and obligations of the O&M Contractor thereunder, any amounts due and owing under subcontract for work or services rendered prior to the assignment of the subcontract to the Company, and other costs arising from the O&M Contractor’s liability for its obligations accruing under the subcontract prior to the date of assignment;

(ix) Amounts paid by the O&M Contractor to the Company that are subsequently recovered from the Design-Build Contractor under the Interface Agreement;

(x) O&M Contractor’s indemnity obligations to the Design-Build Contractor under the Interface Agreement for: (a) all damages arising out of losses attributable to the O&M Contractor to the extent covered by the proceeds of insurance required to be maintained by the O&M Contractor under the O&M Contract; and (b) all losses arising out of fraud, criminal conduct, intentional misconduct, gross negligence, recklessness, bad faith, strict liability or violations of law on the part of the O&M Contractor without regard for insurance coverage; and

(xi) Amounts paid or reimbursed by the O&M Contractor to the Design-Build Contractor under the Interface Agreement for costs incurred or paid by the Design-Build Contractor to perform the Pre-Commencement O&M Services as a result of a breach by the O&M Contractor of its obligation to perform the pre-O&M commencement Services.

The above exceptions do not apply to the extent proven to have been caused by the Company.

Remedial Plans

With respect to certain O&M Contractor defaults, the Company will defer exercise of its termination remedy and allow the O&M Contractor to take action. If the O&M Contractor fails to cure this category of O&M Contractor default within the initial cure period for the default specified in the O&M
Contract, then the Company may require the O&M Contractor to prepare and submit for the Company’s approval a remedial plan meeting the requirements of the O&M Contract. The Contracting Authority under the P3 Agreement may also request that a remedial plan be provided by the Company (which the O&M Contractor will be responsible for preparing in accordance with the O&M Contract) in the event of a remedial plan default under the P3 Agreement that is attributable to the O&M Contractor’s default under the O&M Contract and if the O&M Contractor accumulates certain number of Noncompliance Points specified in the O&M Contract. If the O&M Contractor does not provide or comply with a remedial plan in accordance with the O&M Contract, the Company may terminate the O&M Contract without allowing any additional cure period.

**Dispute Resolution Procedures**

Any claim or controversy between the Company and the O&M Contractor will be submitted to binding arbitration upon written notice of either party delivered to the other of the party’s intention to arbitrate, the nature of the dispute, the amount claimed and the decision sought, except that a dispute relating to a scope change order or claims against the Contracting Authority will be resolved pursuant to the fast-track adjudication process specified in the O&M Contract. Despite the foregoing, equitable remedies, including injunction and specific performance, will be available to the O&M Contractor and the Company by judicial proceedings and, for this purpose and for the purpose of enforcing any arbitral award or decision, the parties have submitted to the exclusive jurisdiction and venue of the federal and state courts in the State of Maryland.

If any issue in dispute between the O&M Contractor and the Company is also the subject of a concurrent dispute under the P3 Agreement, the O&M Contractor and the Company are required to seek to cause the dispute under the O&M Contract to be consolidated with the dispute resolution process occurring under the P3 Agreement. If this consolidation does not occur, then any ongoing proceeding regarding the dispute under the O&M Contract will be stayed pending final resolution of the dispute under the P3 Agreement, which resolution will be binding on the O&M Contractor and the Company for all purposes of the O&M Contract.

The O&M Contractor is permitted to participate in the dispute resolution process established under the P3 Agreement with respect to disputes regarding the Services or relief available to the O&M Contractor under the O&M Contract that is subject to the Company’s receipt of corresponding relief under the P3 Agreement.

The O&M Contractor is required to continue its performance of the Services on a timely basis in accordance with the Project schedule during any dispute, subject to the O&M Contractor’s suspension rights.

**Governing Law**

The O&M Contract will be construed and interpreted in accordance with the laws of the State of Maryland, except to the extent that United States federal law otherwise applies.

**O&M Contractor’s Representations and Warranties**

The O&M Contractor has made certain representations and warranties for the benefit of the Company and those that are required to be made by the Company in the P3 Agreement to the extent they relate to the O&M Contractor and the Services.

**Assignment**

Neither the O&M Contractor nor the Company has the right, power or authority to assign or otherwise sell, convey, sublease, mortgage, encumber, transfer or otherwise dispose of the O&M Contract or any portion thereof, either voluntarily or involuntarily, without the prior written consent of the other
party, which consent may be granted or withheld in the sole discretion of the other party, except that (a) the Company may assign all of its rights and interests in and under the O&M Contract to the Lenders as collateral security for its obligations, and the Lenders may further assign these rights without the O&M Contractor’s consent thereto as provided in the O&M Direct Agreement and (b) the Company may assign to the Contracting Authority any or all of its rights under the O&M Contract without the O&M Contractor’s consent.
APPENDIX F

SUMMARY OF CERTAIN PROVISIONS OF THE COLLATERAL AGENCY AGREEMENT

Summary of the Collateral Agency and Account Agreement by and among Purple Line Transit Partners LLC, United States Department of Transportation, an agency of the United States of America acting by and through the Federal Highway Administrator, and U.S. Bank National Association, as the Collateral Agent, the Securities Intermediary and the Trustee.

The following is a summary of selected provisions of the Collateral Agency Agreement relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Company or the Trustee. Unless otherwise stated, any reference herein to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Capitalized terms used but not defined in this summary have the meanings set forth in APPENDIX B—“DEFINITIONS OF TERMS.”

The Collateral Agent

Duties and Responsibilities

The Collateral Agent agrees, for the benefit of the Secured Parties, to administer and enforce the Collateral Agency Agreement and the other Security Documents to which it is a party as Collateral Agent, and, among other remedies, to foreclose upon, collect and dispose of the Collateral and to apply the Proceeds therefrom, for the benefit of the Secured Parties, as provided in the Collateral Agency Agreement and in the Intercreditor Agreement, and otherwise to perform its duties and obligations as the Collateral Agent under the Collateral Agency Agreement and thereunder in accordance with the terms of the Collateral Agency Agreement and thereof; provided, however, that the Collateral Agent has no duties or responsibilities except those expressly set forth in the Collateral Agency Agreement or in the other Security Documents to which it is a party, and no implied covenants or obligations, fiduciary or otherwise, will be read into the Collateral Agency Agreement or any such other Security Documents against the Collateral Agent.

The Collateral Agent will not be required to exercise any discretion or take any discretionary action but is only be required to act or refrain from acting (and is fully protected in so acting or refraining from acting) upon the written instructions of the Intercreditor Agent, in each case, as specified in the Collateral Agency Agreement or in the Intercreditor Agreement, and such instructions will be binding upon the Collateral Agent and each of the Secured Parties; provided, that the Collateral Agent will not be required to take any action which is contrary to any provision of the Collateral Agency Agreement or of the other Finance Documents to which the Collateral Agent is a party or applicable law.
Authorization

The Collateral Agent is authorized to execute, deliver, and perform in such capacity under the Collateral Agency Agreement and each other Finance Document to which the Collateral Agent is or is intended to be a party, exercise and enforce any and all rights, powers and remedies provided to the Collateral Agent under the Collateral Agency Agreement, any other Finance Document to which the Collateral Agent is a party, any applicable Law, or any other document, instrument, or agreement to which the Collateral Agent is a party, in each case in accordance with the terms thereof, and take any other action under and in accordance with the Collateral Agency Agreement and any other Finance Document to which the Collateral Agent is a party reasonably incidental to the foregoing or in order to facilitate the issuance of new Secured Obligations permitted under, and in accordance with, each of the Finance Documents, including executing Additional Finance Documents or other documents to which it is intended to be a party, and amendments, modifications and supplements to the Finance Documents to which it is a party, in each case, that do not adversely affect the rights of the existing Secured Creditors or the Security Interests on the Collateral held for the benefit of the existing Secured Creditors.

Administrative Actions

The Collateral Agent may, but will not be obligated to, take such action as it deems necessary or advisable to perfect or continue the perfection of the Security Interests on the Collateral held for the benefit of the Secured Parties subject to the limitations set forth in the Collateral Agency Agreement. The Collateral Agent will not release any of the Collateral held by the Collateral Agent for the benefit of such Secured Parties, except: (a) upon the written direction of the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement); (b) upon payment in full in cash of the Secured Obligations, as certified to the Collateral Agent by the Intercreditor Agent; (c) for Collateral consisting of a debt instrument if the related indebtedness evidenced thereby has been paid in full in cash, as certified to the Collateral Agent by the Intercreditor Agent; or (d) in connection with the disposition of any assets of the Company or the Pledgors made in accordance with the terms of the Finance Documents or where such release is expressly permitted under the Security Documents.

Reliance of Collateral Agent

In connection with the performance of its duties under the Collateral Agency Agreement, the Collateral Agent will be entitled to rely conclusively upon, and will be fully protected in acting or refraining from acting in accordance with, any written certification, notice, instrument, opinion, request, consent, order, approval, direction or other written communication of or from the Intercreditor Agent or of or from any other Secured Party that is a party (to the extent not in violation of the terms hereof, of the Indenture, of the Intercreditor Agreement or of the other Finance Documents) to the Collateral Agency Agreement, which the Collateral Agent in good faith reasonably believes to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and it will be entitled to rely conclusively upon the due execution, validity and effectiveness, and the truth, correctness and acceptability of, any provisions contained therein. The Collateral Agent will not have any responsibility hereunder to make any investigation into the facts or matters stated in any notice, certificate, instrument, demand, request, direction, instruction, or other communication furnished to it. Whenever the Collateral
Agency Agreement (or any other Finance Document) specifies that any instruction, direction or consent by the Intercreditor Agent is to be given in accordance with the terms of the Intercreditor Agreement, the Collateral Agent will be entitled to rely upon any such instruction, direction or consent by the Intercreditor Agent (which instruction, direction or consent need not state that it is given in accordance with the terms of the Intercreditor Agreement), and the Collateral Agent may presume without investigation that any such instruction, direction or consent by the Intercreditor Agent has been given in accordance with the terms of the Intercreditor Agreement. The Intercreditor Agent will agree to give any instruction, direction or consent required to be given by it to the Collateral Agent in accordance with the terms of the Intercreditor Agreement.

Resignation and Removal; Successor Collateral Agent; Individual Collateral Agent

Subject to the appointment and acceptance of a successor Collateral Agent as provided below, the Collateral Agent may resign at any time by giving at least 30 days’ prior written notice thereof to the other Secured Parties that are parties to the Collateral Agency Agreement and the Company, and the Collateral Agent may be removed at any time with or without cause by the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) upon 30 days’ written notice thereof to the Collateral Agent, the other Secured Parties that are parties to the Collateral Agency Agreement and the Company unless a shorter period of notice is required by the Intercreditor Agent. Upon any such resignation or removal, the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) will have the right to appoint a successor Collateral Agent that, so long as no Event of Default has occurred and is continuing, will be reasonably acceptable to the Company.

If no successor Collateral Agent will have been so appointed by the Intercreditor Agent within 30 days after the retiring Collateral Agent’s giving of notice of resignation or the removal of the retiring Collateral Agent by the Intercreditor Agent, then the retiring Collateral Agent may, on behalf of the Secured Parties, apply, at the reasonable expense of the Company to a court of competent jurisdiction for the appointment of a successor Collateral Agent. In all such cases, the successor Collateral Agent will (i) be a bank organized under the laws of the United States of America or any state thereof that has an office in the State of New York and which agrees to administer the Collateral in accordance with the terms of the Intercreditor Agreement and of the other Security Documents and the unsecured long-term debt of which will be rated “A” or better by S&P or “A2” or better by Moody’s, (ii) have a total capital stock and unimpaired surplus of not less than $500,000,000, (iii) be an “Institutional Lender” as set forth in the definition in the P3 Agreement and (iv) so long as no Event of Default has occurred and is continuing, be reasonably acceptable to the Company.

Books and Records; Reports

The Collateral Agent, and, if appointed, a Co-Collateral Agent, will at all times keep, or cause to be kept, proper books of record and accounts in which complete and accurate entries will be made of all transactions relating to the Secured Obligations, Project Revenues and all Project Accounts (other than the Operating Account, any Other Operating Accounts and any Material Project Contract Accounts in each case if not maintained by the Collateral Agent) established pursuant to the Collateral Agency Agreement. Such books of record and accounts will be available for inspection by the Secured Parties that are parties to the Collateral Agency
Agreement, or their respective agents or representatives duly authorized in writing, at reasonable hours and under reasonable circumstances and upon reasonable prior written request.

Within 15 days after the end of each month, the Collateral Agent will furnish to the Intercreditor Agent (and the Intercreditor Agent will deliver to the other Secured Parties that are parties to the Collateral Agency Agreement or relevant representatives thereof) and the Company (and the Company will deliver to the Contracting Authority solely the portion thereof relating to the Rehabilitation Reserve Account on and after the 10th year anniversary of the RSA Date), a report (which may be in the form of the customary account statements of the Collateral Agent) that will set forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts (other than the Operating Account, any Other Operating Accounts and any Material Project Contract Accounts, in each case, if not maintained with the Collateral Agent) during such month. If available from the Collateral Agent, the Collateral Agent will provide electronic statements upon request of the Company.

Within 60 days after the end of each year, the Collateral Agent will furnish to the Intercreditor Agent (and the Intercreditor Agent will deliver to the other Secured Parties that are parties to the Collateral Agency Agreement or relevant representatives thereof) and the Company (and the Company will deliver to the Contracting Authority solely the portion thereof relating to the Rehabilitation Reserve Account on and after the 10th year anniversary of the RSA Date), a report setting forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Project Accounts (other than the Operating Account, any Other Operating Accounts and any Material Project Contract Accounts, in each case, if not maintained with the Collateral Agent) during the preceding year. The Collateral Agent will provide electronic statements upon request of the Company.

The Collateral Agent will maintain records of all receipts, disbursements, and investments of funds with respect to the Project Accounts (other than the Operating Account, any Other Operating Accounts and any Material Project Contract Accounts, in each case, if not maintained with the Collateral Agent) until the 5th anniversary of the date on which all of the Secured Obligations will have been paid in full.

On or prior to the date that is 6 months prior to the expiration date of any UCC financing statement that has been filed with respect to the Collateral for which Collateral Agent is secured party and is known to the Collateral Agent, the Collateral Agent will provide the Intercreditor Agent and the Company notice of the impending expiration date. The Company will provide the Collateral Agent and the Intercreditor Agent evidence that the required continuation statement has been properly and timely filed promptly following such filing. This clause is not intended to modify the responsibility of, the liability of, or provide a defense to, the Company under any Finance Document with respect to the filing of continuation statements or the maintenance of the Collateral Agent’s perfected security interest in the Collateral with the priority contemplated by the Finance Documents.
Authorization of Collateral Agent to Recover Compensation, Fees and Expenses

To the extent that the Company fails to pay any amount required to be paid by it to the Collateral Agent pursuant to the Collateral Agency Agreement and after the delivery of written notice of such failure to the Company, the Collateral Agent is authorized to transfer funds to reimburse itself for such amounts out of the following accounts in the following order of priority: (i) from the Equity Lock-Up Account and (ii) (x) prior to the RSA Date, from the Construction Account (to the extent permitted by the Finance Documents and applicable Law), and (y) upon and following the RSA Date, from the Revenue Account. The provisions of this section will survive the termination of the Finance Documents and the resignation or removal of the Collateral Agent until the amounts required to be paid to the applicable Collateral Agent pursuant to the Collateral Agency Agreement are paid in full.

The Project Accounts

Establishment of Project Accounts

The following Project Accounts will be established and created or, to the extent any such accounts are not required to be opened on the date of the Collateral Agency Agreement, will be established and created at the written direction of the Company to the Collateral Agent at such times as required by the Collateral Agency Agreement, and will be maintained by the Collateral Agent in the name of the Company (collectively, each such account and any Additional Parity Bonds Proceeds Account, including, in each case, any sub-accounts established and created from time to time pursuant to the terms of the Collateral Agency Agreement therein, the “Securities Accounts”):

- the Construction Account, and within the Construction Account, the following sub-accounts, which will be established as of the date of the Collateral Agency Agreement:
  - the 2016A Proceeds Sub-Account;
  - the 2016B Proceeds Sub-Account;
  - the 2016C Proceeds Sub-Account;
  - the 2016D Proceeds Sub-Account;
  - the TIFIA Loan Proceeds Sub-Account;
  - the Contracting Authority Funding Sub-Account; and
  - the Equity Funding Sub-Account;
- the Revenue Account, which will be established no later than the RSA Date;
- the Senior Debt Service Account, and within the Senior Debt Service Account, the following sub-accounts, which will be established no later than the RSA Date:
the Senior Interest Payment Sub-Account; and
the Senior Principal Payment Sub-Account;

- the TIFIA Debt Service Account, and within the TIFIA Debt Service Account, the following sub-accounts, which will be established no later than the RSA Date:
  - the TIFIA Interest Payment Sub-Account; and
  - the TIFIA Principal Payment Sub-Account;

- the Debt Service Reserve Account, and within the Debt Service Reserve Account, the following sub-accounts, which will be established no later than the RSA Date:
  - the 2016D Bonds Debt Service Reserve Sub-Account; and
  - the TIFIA Debt Service Reserve Sub-Account;

- the Termination Compensation Account, which will be established as of the date of the Collateral Agency Agreement;

- the Revenue Service Availability Payment Account, which will be established no later than the RSA Date;

- the Final Completion Payment Account, which will be established no later than the RSA Date;

- the Special Lifecycle Payment Account, which will be established no later than the RSA Date;

- the Availability Payment Start-Up Reserve Account, which will be established no later than the RSA Date;

- the Rehabilitation Reserve Account, which will be established no later than the RSA Date;

- the Tax Reserve Account, which will be established as of the date of the Collateral Agency Agreement;

- the Voluntary Prepayment Account, which will be established no later than the RSA Date;

- the Equity Lock-Up Account, which will be established no later than the RSA Date;

- the Loss Proceeds Account, which will be established as of the date of the Collateral Agency Agreement;
the Mandatory Prepayment Account, and within the Mandatory Prepayment Account, the following sub-accounts, which will be established as of the date of the Collateral Agency Agreement:

- PABs Mandatory Prepayment Sub-Account; and
- TIFIA Mandatory Prepayment Sub-Account; and

the Sponsor Cash Collateral Account, and within the Sponsor Cash Collateral Account, the following sub-accounts, which will be established as of the date of the Collateral Agency Agreement:

- the Meridiam Sponsor Cash Collateral Sub-Account;
- the Star America Sponsor Cash Collateral Sub-Account; and
- the Fluor Sponsor Cash Collateral Sub-Account.

Notwithstanding anything in the Collateral Agency Agreement to the contrary, upon the written instruction of the Company, the Collateral Agent may from time to time establish and maintain additional sub-accounts within the Project Accounts. Each such sub-account will be a separately identified account with a separate and distinct name and account number, and upon establishment, will be deemed a Project Account. Each such sub-account will be for the purposes and the term specified in such instruction and deposits and withdrawals will be permitted in those circumstances expressly provided for in any such instruction, which instructions will in each case conform to the requirements and limitations applicable to the Project Account with respect to which any such sub-account has been established. The Collateral Agent will promptly, and in any event prior to establishing any such sub-account, provide written notice of any such request or instruction from the Company pursuant to the Intercreditor Agent (and the Intercreditor Agent will promptly deliver such written notice to the Secured Parties that are parties to the Collateral Agency Agreement or relevant representatives thereof). Upon creation of any such sub-account, the Collateral Agent will, by written notice, inform the Contracting Authority of each such sub-account’s purposes, terms and instructions.

**Operating Account; Other Operating Accounts; Material Project Contract Accounts; Distribution Account**

An operating account (the “Operating Account”) will be established as of the date of the Collateral Agency Agreement with the Deposit Account Bank subject to a Control Agreement, and such account will be maintained in the name of the Company. The Operating Account will also constitute a Project Account and will be subject to the Security Interest of the Collateral Agent, for the benefit of the Secured Parties. Amounts will be deposited in the Operating Account only as, when and to the extent provided in the Collateral Agency Agreement, or from the proceeds of Voluntary Equity Contributions. The Company may cause to be established in the Company’s name certain accounts if, in its reasonable judgment, the creation of such accounts will enable the Company to facilitate the construction and operations and maintenance of the Project, as permitted in and subject to the Series 2016 Loan Agreement, the TIFIA Loan Agreement and any Additional Finance Documents, in connection with the construction and
operations of the Project (collectively referred to as the “Other Operating Accounts”). Upon the
written instruction of the Company, the Company may from time to time establish and maintain
such Other Operating Accounts with the Collateral Agent (or the Deposit Account Bank, so long
as each such Other Operating Account is subject to a Control Agreement) and each such account
will constitute a Project Account. Each Other Operating Account will be established for the
purposes and the term specified in any such instruction and deposits and withdrawals will be
permitted in those circumstances expressly provided for in any such instruction, which deposits
and withdrawals will in each case, comply with the requirements and limitations applicable to
the Operating Account as set forth in the Collateral Agency Agreement. Amounts will be
deposited in any Other Operating Account only as, when and to the extent provided in the
Collateral Agency Agreement, or from the proceeds of Voluntary Equity Contributions.

The Company may cause to be established from time to time in the Company’s name
certain accounts required or permitted to be established pursuant to the Material Project
Contracts, subject, in each case, to the consent rights of any Secured Party pursuant to the terms
of its respective Finance Documents (each a “Material Project Contract Account” and
collectively, the “Material Project Contract Accounts”). Each Material Project Contract Account
will constitute a Project Account but will not be subject to the Security Interest of the Collateral
Agent for the benefit of the Secured Parties. Amounts will be deposited in the Material Project
Contract Accounts only from (a) the proceeds of Voluntary Equity Contributions or (b) in an
aggregate amount not to exceed $5,000,000 at any time outstanding, moneys received from any
counterparty to a Material Project Contract that are received by the Company for deposit into
such Material Project Contract Account (and are not amounts required to be deposited in other
Project Accounts pursuant to the Collateral Agency Agreement) and which must, pursuant to the
terms of such Material Project Contract, be segregated from the Company’s other funds and
potentially refunded to such counterparty upon the happening of a contingency. The Company
will have the exclusive right (subject to the rights of the Contracting Authority under the P3
Agreement, the Design-Build Contractor under the Design-Build Contract or the O&M
Contractor under the O&M Contract, as the case may be) to withdraw or otherwise dispose of
funds in the applicable Material Project Contract Account without any restriction or condition for
purposes contemplated in the applicable Material Project Contract.

A distribution account (the “Distribution Account”) will be established and created with
the Collateral Agent in the name of the Company on or prior to the RSA Date, but will not
constitute a Project Account and will not be subject to the Security Interest of the Collateral
Agent for the benefit of the Secured Parties and the Company will have the exclusive right to
withdraw or otherwise dispose of funds from the Distribution Account.

Additional Parity Bonds Proceeds Accounts

In connection with the incurrence of any Additional Parity Bonds following the RSA
Date, upon the written instruction of the Company, the Collateral Agent may hereafter establish
and maintain from time to time in the Company’s name one or more proceeds accounts (each, an
“Additional Parity Bonds Proceeds Account”). Each Additional Parity Bonds Proceeds Account
will constitute a Project Account and a Securities Account.
All proceeds from the issuance of any Additional Parity Bonds, net of any original issue
discount, underwriting discount or similar fee in respect thereof, and any amounts to be
deposited in any related Debt Service Reserve Sub-Account, in each case, received by the
Company pursuant to the terms of the applicable Additional Parity Bonds Loan Agreement and,
thereafter, any Account Interest or other earnings earned on such proceeds, will be deposited in
the applicable Additional Parity Bonds Proceeds Account.

All moneys in any Additional Parity Bonds Proceeds Account will be applied, at the
instruction of the Company in accordance with a Funds Transfer Certificate, solely to pay costs
in compliance with the applicable Additional Parity Bonds Loan Agreement and the applicable
provisions of the other Finance Documents relating to the incurrence of such Additional Parity
Bonds (and with respect to any future tax-exempt borrowings comprising Additional Parity
Bonds, the Code and the Tax Regulatory Agreement).

With respect to any future tax-exempt borrowings comprising Additional Parity Bonds,
upon a date that is no earlier than five (5) years after the date of issuance of any Additional
Parity Bonds, and no later than five (5) years and sixty (60) days after the date of issuance such
Additional Parity Bonds, the remaining unspent proceeds of such Additional Parity Bonds, in
each case, rounded down to the nearest multiple of $5,000, from any remaining unspent proceeds
of such Additional Parity Bonds on deposit in the applicable Additional Parity Bonds Proceeds
Account on such date (with respect to which, for the avoidance of doubt, no Secured Party will
have any right) will be applied as follows, pursuant to one or more written directions of an
Authorized Representative of the Company: (1) first any applicable amount thereof will be
transferred to the applicable rebate fund for such Additional Parity Bonds, as applicable; and
(2) second, any remaining amount will be transferred to the Mandatory Prepayment Account for
redemption of such Additional Parity Bonds in accordance with the mandatory redemption
provisions of the Indenture and the applicable Supplemental Indenture for such Additional Parity
Bonds; provided, that no such transfer to the Mandatory Prepayment Account and redemption of
the Additional Parity Bonds will be required if the Company has obtained an opinion of Bond
Counsel stating that the failure to redeem any such Additional Parity Bonds will not adversely
affect the exclusion of interest on such Additional Parity Bonds from gross income for federal or
State income tax purposes and that such redemption is not required by State law, in which case,
any such remaining proceeds will be transferred to the Revenue Account.

With respect to any proceeds of Additional Parity Bonds that do not constitute tax-
exempt borrowings, any amounts on deposit in any related Additional Parity Bonds Proceeds
Account, after the completion of the work with respect to which such Additional Parity Bonds
were incurred (as certified in writing by the Company to the Collateral Agent), shall promptly be
transferred to the Mandatory Prepayment Account for redemption of such Additional Parity
Bonds.

As soon as practicable, following the date that all amounts on deposit in any Additional
Parity Bonds Proceeds Account are transferred out of such Additional Parity Bonds Proceeds
Account, the Collateral Agent will close such Additional Parity Bonds Proceeds Account.

The Security Interest on any Additional Parity Bonds Proceeds Account (and all Account
Interest or other earnings thereon) will solely secure the obligations of the Company under the
applicable Additional Parity Bonds Loan Agreement and the related Security Interest of the Trustee and the Owners of the applicable Additional Parity Bonds (such exclusive Security Interest to continue upon the occurrence of a Company Bankruptcy Related Event) with respect to amounts on deposit in such Additional Parity Bonds Proceeds Account from time to time, and such amounts will be solely for the benefit of the Trustee on behalf of the Owners of such Additional Parity Bonds until such funds have been disbursed in accordance with the terms of the Collateral Agency Agreement, and such amounts will be solely applied to such obligations.

The Collateral Agent will promptly, and in any event prior to establishing any account as described in “—Operating Accounts; Other Operating Accounts; Material Project Accounts; Distribution Account” and “—Additional Parity Bonds Proceeds Accounts” to be established after the date of the Collateral Agency Agreement, provide written notice of any request or instruction from the Company to establish such account to the Intercreditor Agent (and the Intercreditor Agent will promptly deliver such written notice to the Secured Parties that are parties to the Collateral Agency Agreement or relevant representatives thereof). Upon creation of any account as described in “—Operating Accounts; Other Operating Accounts; Material Project Accounts; Distribution Account” and “—Additional Parity Bonds Proceeds Accounts,” the Collateral Agent will, by written notice, inform the Contracting Authority of each such account’s purposes, terms and instructions. The Operating Account, any Other Operating Accounts, any Material Project Contract Accounts, any Additional Parity Bonds Proceeds Accounts and the Distribution Account (each of which will be a separately identified account with a separate and distinct name and account number) will be identified in the manner set forth in the Collateral Agency Agreement.

All of the Project Accounts will be under the control of the Collateral Agent (in the case of the Operating Account and the Other Operating Accounts, if held by the Deposit Account Bank, such control will be pursuant to Control Agreements) and, except as expressly provided in the Collateral Agency Agreement, the Company will not have any right to withdraw funds from any Project Account (including sub-accounts). The Company irrevocably authorizes the Collateral Agent to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Project Account in accordance with the terms of the Collateral Agency Agreement. The Project Accounts will be maintained at all times in New York, New York or, in the case of the Operating Account or the Other Operating Accounts, in either New York, New York or at the Collateral Agent branch office in the State or at the Deposit Account Bank.

Construction Account

Prior to the RSA Date, except for amounts required to be deposited in other Project Accounts pursuant to the Collateral Agency Agreement, all (i) net proceeds of the 2016 Bonds (in respect of the 2016 Loan); (ii) proceeds of the TIFIA Loan; (iii) proceeds of all Capital Contributions, (iv) proceeds of Progress Payments, and (v) Project Proceeds will be deposited into the Construction Account (including the sub-accounts thereof). There also will be deposited into the Construction Account (or any applicable sub-account thereof, as designated in any accompanying direction from the Company), all moneys received by the Company, in each case, not otherwise required or permitted to be deposited into another account pursuant to the Collateral Agency Agreement, including proceeds of Permitted Indebtedness, amounts relating to change orders, other amounts relating to the Material Project Contracts, Voluntary Equity
Contributions and other liquidated damages, to the extent received prior to the RSA Date, and if received after the RSA Date but prior to the Final Completion Date, to the extent required to be retained in the Construction Account. Pending any deposit into the Construction Account, the Company will hold all such amounts coming into its possession in trust for the benefit of the Secured Parties.

Prior to the End of Funding Date, subject to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” “—Contracting Authority Funding Sub-Account” and “—the Equity Funding Sub-Account” below, from time to time, upon receipt by the Collateral Agent of an Approved Construction Requisition at least three Business Days prior to the applicable proposed transfer date which will be a Business Day (each such date being a “Construction Funds Transfer Date”), setting forth the amounts to be withdrawn from the Construction Account (or any sub-account thereof) and the amounts to be transferred (via wire transfer or by internal transfer between Project Accounts), the Collateral Agent is instructed to make such transfers in accordance with such Approved Construction Requisition on such Construction Funds Transfer Date.

On the RSA Date, the Company will provide the Collateral Agent and the Intercreditor Agent with a certificate (a “Construction Completion Certificate”), executed by an Authorized Representative of the Company and the Lenders’ Technical Advisor, instructing the Collateral Agent to retain in the Construction Account (or in one or more sub-accounts thereof) an aggregate amount equal to (i) any Project Costs incurred but not yet paid through and including the RSA Date plus (ii) any amounts projected to be payable with respect to D&C Work for the period from the RSA Date to and including the Final Completion Date, in each case as confirmed by the Lenders’ Technical Advisor (the “Construction Completion Amount”), together with a copy, certified by such Authorized Representative as true and complete, of the Certificate of Revenue Service Availability issued by the Independent Engineer pursuant to the P3 Agreement. The Construction Completion Amount will be available to the Company pursuant to Approved Construction Requisitions delivered pursuant to the Collateral Agency Agreement from time to time for the payment of the amounts described in clauses (i) and (ii) above. Except as otherwise required by any applicable Law or the Tax Regulatory Agreement, pursuant to the Construction Completion Certificate, the Company will instruct the Collateral Agent to transfer (and, promptly following receipt of such instruction, the Collateral Agent will transfer) to the Availability Payment Start-Up Reserve Account an amount not to exceed the AP Start-Up Amount from available amounts on deposit in the Construction Account (or in one or more sub-accounts thereof other than the Bond Proceeds Sub-Accounts) in excess of the Construction Completion Amount.

Except as otherwise required by any applicable Law or the Tax Regulatory Agreement, to the extent that on the RSA Payment Date there will be any funds remaining on deposit in the Construction Account (or in any sub-account thereof) in excess of the Construction Completion Amount (less the amounts withdrawn from the Construction Account (or any sub-account thereof) after the RSA Date and on or prior to the RSA Payment Date for the payment of Project Costs), such excess funds will be transferred by the Collateral Agent on the RSA Payment Date as follows:
First, to the Revenue Service Availability Payment Account in an amount up to the amount sufficient to cause the mandatory redemption of all of the then-outstanding the 2016A Bonds in accordance with the Indenture (taking into account amounts on deposit in the Revenue Service Availability Payment Account, including the RSA Payment);

Second, to the 2016D Bonds Debt Service Reserve Sub-Account up to the 2016D Bonds Debt Service Reserve Required Balance, solely from funds that do not constitute 2016A Bonds proceeds;

Third, to the TIFIA Debt Service Reserve Sub-Account up to the TIFIA Debt Service Reserve Required Balance, solely from funds that do not constitute TIFIA Loan proceeds, 2016 Bonds proceeds or Progress Payments;

Fourth, to the Mandatory Prepayment Account to the extent required pursuant to the TIFIA Loan Agreement to comply with the Maximum Debt to Equity Ratio on the RSA Payment Date, to be applied to the prepayment of the TIFIA Obligations, solely from funds that do not constitute TIFIA Loan proceeds or 2016 Bonds proceeds; and

Fifth, the remainder (if any) to the Revenue Account, subject to any limitations on uses of any remaining Bond proceeds set forth in the Tax Regulatory Agreement.

On the End of Funding Date, the Collateral Agent will confirm that all applicable transfers related to the Approved Construction Requisitions received by it have been made, and on or prior to such date, an Authorized Representative of the Company will deliver to the Collateral Agent and the Intercreditor Agent a copy, certified by such Authorized Representative as true and complete, of the Final Completion Certificate. On the End of Funding Date, all funds then on deposit in the Construction Account or any sub-accounts thereof, subject to any limitations on uses of any remaining Bond proceeds set forth in the Tax Regulatory Agreement, will be transferred to the Revenue Account pursuant to written notice by an Authorized Representative of the Company to the Collateral Agent and, as soon as practicable following such transfer, the Construction Account (including all sub-accounts thereof) will be closed.

Notwithstanding anything to the contrary in the Collateral Agency Agreement, on the Closing Date, the Collateral Agent will make the transfers and disbursements of funds as specified in a funds flow memorandum, in form and substance satisfactory to the Trustee, the TIFIA Lender, the Company and the Collateral Agent.

Any amounts deposited into the Construction Account pursuant to the first paragraph of “—Construction Account” above will be (A) deposited into sub-accounts thereof as set forth below, (B) any Approved Construction Requisition delivered pursuant to the second paragraph of “—Construction Account” above will apply funds on deposit in the following sub-accounts of the Construction Account subject to the conditions and limitations set forth below and (C) subject to certain uses of funds in the Construction Account on the RSA Payment Date and on the End of Funding Date (as more fully described above), any funds on deposit in the following sub-accounts will only be applied in accordance with an Approved Construction Requisition delivered pursuant to the second paragraph of “—Construction Account” above:
Bond Proceeds Sub-Accounts

All proceeds from the issuance of the 2016 Bonds (and any Additional Parity Bonds), net of any original issue discount, underwriting discount or similar fee in respect thereof, and any amounts to be deposited in any related Debt Service Reserve Sub-Account, in each case, received by the Company pursuant to the terms of the Series 2016 Loan Agreement or the Additional Parity Bonds Loan Agreement, as applicable, and, thereafter, any Account Interest or other earnings earned on such proceeds, will be deposited in the 2016A Proceeds Sub-Account, the 2016B Proceeds Sub-Account, the 2016C Proceeds Sub-Account, the 2016D Proceeds Sub-Account, and any additional sub-account established for the deposit of proceeds of Additional Parity Bonds, as applicable (each, a “Bond Proceeds Sub-Account”).

Moneys in the Bond Proceeds Sub-Accounts will be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs in compliance with the Series 2016 Loan Agreement, the Code and the Tax Regulatory Agreement.

Upon a date that is no earlier than five (5) years after the date of issuance of the 2016 Bonds (or with respect to any future tax-exempt borrowings comprising Additional Parity Bonds, the date of issuance thereof) and no later than five (5) years and sixty (60) days after the date of issuance of the 2016 Bonds (or with respect to any future tax-exempt borrowings comprising Additional Parity Bonds, the date of issuance thereof), the remaining unspent proceeds of the 2016 Bonds (or any future tax-exempt borrowings comprising Additional Parity Bonds), in each case, rounded down to the nearest multiple of $5,000, from any remaining unspent 2016 Bonds proceeds (or any proceeds of any future tax-exempt borrowings comprising Additional Parity Bonds) on deposit in the applicable Bond Proceeds Sub-Accounts on such date (with respect to which, for the avoidance of doubt, no Secured Party will have any right) will be applied as follows, pursuant to one or more written directions of an Authorized Representative of the Company:

First, any applicable amount thereof will be transferred to the Series 2016 Rebate Fund or any similar rebate fund established with respect to any future tax-exempt borrowings comprising Additional Parity Bonds, as applicable; and

Second, any remaining amount will be transferred to the PABs Mandatory Prepayment Sub-Account of the Mandatory Prepayment Account (or such other applicable sub-account thereof) for redemption of the 2016 Bonds (or such Additional Parity Bonds) in accordance with the Indenture;

provided that no such transfer to the Mandatory Prepayment Account and redemption of the 2016 Bonds (or such Additional Parity Bonds) will be required if the Company has obtained an opinion of Bond Counsel stating that the failure to redeem any such 2016 Bonds (or such Additional Parity Bonds) will not adversely affect the exclusion of interest on such 2016 Bonds (or such Additional Parity Bonds) from gross income for federal or State income tax purposes and that such redemption is not required by State law.
**TIFIA Loan Proceeds Sub-Account**

Proceeds from the disbursements of the TIFIA Loan (and any Account Interest or other earnings earned on such proceeds) will be deposited in the TIFIA Loan Proceeds Sub-Account.

Moneys in the TIFIA Loan Proceeds Sub-Account will be applied pursuant to the applicable Approved Construction Requisition in respect of Eligible Project Costs previously paid or incurred by the Company in connection with the Project in accordance with the terms of the TIFIA Loan Agreement.

**Contracting Authority Funding Sub-Account**

Any Progress Payments and other payments from the Contracting Authority under the P3 Agreement and Account Interest (other than as expressly provided herein with respect to Account Interest) received on or prior to the RSA Date will be deposited in the Contracting Authority Funding Sub-Account, except to the extent expressly provided in the Collateral Agency Agreement.

Moneys in the Contracting Authority Funding Sub-Account will be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs.

Notwithstanding the second paragraph of “—Construction Account” and the immediately preceding paragraph, which will apply to all other withdrawals from the Contracting Authority Funding Sub-Account, following the Closing Date but prior to the RSA Payment Date, the Company may direct the Collateral Agent to withdraw from time to time from funds on deposit in the Contracting Authority Funding Sub-Account amounts not to exceed in the aggregate the Tax Reserve Required Balance as of the Closing Date and deposit such amounts into the Tax Reserve Account; provided, that the amounts so withdrawn and transferred under this section and “—Equity Funding Sub-Account” will not exceed in the aggregate the Tax Reserve Required Balance as of the Closing Date.

**Equity Funding Sub-Account**

Except for amounts that are delivered to the Collateral Agent pursuant to the Equity Contribution Agreement and Voluntary Equity Contributions that are deposited into other Project Accounts, the proceeds of any Capital Contributions and Voluntary Equity Contributions made in accordance with the Equity Contribution Agreement and the proceeds of certain drawings upon any Equity Letter of Credit (or certain transfers from any Applicable Sponsor Cash Collateral Account) in accordance with the Equity Contribution Agreement will in each case be deposited in the Equity Funding Sub-Account.

Moneys in the Equity Funding Sub-Account will be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs.

Notwithstanding the second paragraph of “—Construction Account” and the immediately preceding paragraph, which will apply to all other withdrawals from the Equity Funding Sub-Account, following the Closing Date but prior to the RSA Payment Date, the Company may
direct the Collateral Agent to withdraw from time to time from funds on deposit in the Equity Funding Sub-Account amounts not to exceed in the aggregate the Tax Reserve Required Balance as of the Closing Date and deposit such amounts into the Tax Reserve Account; provided, that the amounts so withdrawn and transferred under this paragraph and the final paragraph of “—Contracting Authority Funding Sub-Account” will not exceed in the aggregate the Tax Reserve Required Balance as of the Closing Date.

**Sub-Accounts**

Upon the written instruction of the Company, the Collateral Agent may hereafter establish and maintain additional sub-accounts of the Construction Account in accordance with the Collateral Agency Agreement. Prior to the RSA Date, the Company may deposit into such additional sub-accounts the proceeds of any Other Permitted Senior Secured Indebtedness permitted to be incurred by the Finance Documents. The Collateral Agent will promptly, and in any event prior to establishing such sub-account, provide written notice of any such request or instruction from the Company pursuant to this paragraph to the Intercreditor Agent (and the Intercreditor Agent will promptly deliver such written notice to the Secured Parties that are parties to the Collateral Agency Agreement or relevant representatives thereof). Upon creation of any such additional sub-accounts, the Company or the Collateral Agent will, by written notice, inform the Contracting Authority of each such additional sub-account’s purposes, terms and instructions.

Moneys in any such additional sub-accounts of the Construction Account will be applied pursuant to the applicable Approved Construction Requisition to pay, or reimburse for a prior payment of, Project Costs.

Notwithstanding anything to the contrary in the Collateral Agency Agreement or in any other Finance Document, in connection with or following the taking of an Enforcement Action, any funds on deposit in the Construction Account will be applied in the manner set forth in “—Collateral and Remedies—Application of Proceeds” below, provided that:

- the Bond Proceeds Sub-Accounts will be pledged to the Collateral Agent pursuant to the Security Agreement and:
  - the Security Interest on the 2016A Proceeds Sub-Account (and all Account Interest or other earnings thereon) will solely secure the obligations of the Company under the Series 2016 Loan Agreement and the related Security Interest of the Trustee and the Holders of the 2016A Bonds (such exclusive Security Interest to continue upon the occurrence of a Company Bankruptcy Related Event) with respect to amounts on deposit in the 2016A Proceeds Sub-Account from time to time, and such amounts will be solely for the benefit of the Trustee on behalf of the Holders of such 2016A Bonds until such funds have been disbursed in accordance with this section;
  - the Security Interest on the 2016B Proceeds Sub-Account (and all Account Interest or other earnings thereon) will solely secure the obligations of the Company under the Series 2016 Loan Agreement and the related Security Interest of the Trustee and the Holders of the 2016B Bonds (such exclusive Security Interest to continue upon the occurrence of a Company Bankruptcy Related Event) with respect to amounts on deposit in the 2016B Proceeds Sub-Account from time to time, and such amounts will be solely for the benefit of the Trustee on behalf of the Holders of such 2016B Bonds until such funds have been disbursed in accordance with this section.
Interest of the Trustee and the Holders of the 2016B Bonds (such exclusive Security Interest to continue upon the occurrence of a Company Bankruptcy Related Event) with respect to amounts on deposit in the 2016B Proceeds Sub-Account from time to time, and such amounts will be solely for the benefit of the Trustee on behalf of the Holders of such 2016B Bonds until such funds have been disbursed in accordance with this section;

- the Security Interest on the 2016C Proceeds Sub-Account (and all Account Interest or other earnings thereon) will solely secure the obligations of the Company under the Series 2016 Loan Agreement and the related Security Interest of the Trustee and the Holders of the 2016C Bonds (such exclusive Security Interest to continue upon the occurrence of a Company Bankruptcy Related Event) with respect to amounts on deposit in the 2016C Proceeds Sub-Account from time to time, and such amounts will be solely for the benefit of the Trustee on behalf of the Holders of such 2016C Bonds until such funds have been disbursed in accordance with this section;

- the Security Interest on the 2016D Proceeds Sub-Account (and all Account Interest or other earnings thereon) will solely secure the obligations of the Company under the Series 2016 Loan Agreement and the related Security Interest of the Trustee and the Holders of the 2016D Bonds (such exclusive Security Interest to continue upon the occurrence of a Company Bankruptcy Related Event) with respect to amounts on deposit in the 2016D Proceeds Sub-Account from time to time, and such amounts will be solely for the benefit of the Trustee on behalf of the Holders of such 2016D Bonds until such funds have been disbursed in accordance with this section; and

- the Security Interest on any other Bond Proceeds Sub-Account (and all Account Interest or other earnings thereon) established from time to time will solely secure the obligations of the Company under the applicable Additional Finance Documents and the related Security Interest of the Trustee and the Holders of the applicable Additional Parity Bonds (such exclusive Security Interest to continue upon the occurrence of a Company Bankruptcy Related Event) with respect to amounts on deposit in such other Bond Proceeds Sub-Account from time to time, and such amounts will be solely for the benefit of the Trustee on behalf of the Holders of such Additional Parity Bonds until such funds have been disbursed in accordance with this section;

- provided, further that all amounts on deposit in each such Bond Proceeds Sub-Account will be solely applied to the respective obligations pursuant to which such Bond Proceeds Sub-Account was funded;

- the TIFIA Loan Proceeds Sub-Account will be pledged to the Collateral Agent pursuant to the Security Agreement and the Security Interest on the TIFIA Loan Proceeds Sub-Account (and all Account Interest or other earnings thereon) will solely secure the obligations of the Company under the TIFIA Loan Agreement and the related Security Interest of the TIFIA Lender with respect to amounts on deposit in
the TIFIA Loan Proceeds Sub-Account from time to time (such exclusive Security Interest to continue upon the occurrence of a Company Bankruptcy Related Event), such amounts will be solely for the benefit of the TIFIA Lender until such funds have been disbursed in accordance with this section, and such amounts will be solely applied to such obligations; and

- any additional sub-account of the Construction Account established for the deposit of proceeds of any Other Permitted Senior Secured Indebtedness will be pledged to the Collateral Agent pursuant to the Security Agreement and the Security Interest on any such additional sub-account (and all Account Interest or other earnings thereon) will solely secure the obligations of the Company under the applicable Additional Finance Documents and the related Security Interest of the relevant Secured Parties (such exclusive Security Interest to continue upon the occurrence of a Company Bankruptcy Related Event) with respect to amounts on deposit in such additional sub-accounts from time to time, such amounts will be solely for the benefit of such Secured Parties until such funds have been disbursed in accordance with this section, and such amounts will be solely applied to such obligations.

**Revenue Account**

On and after the RSA Date, except for amounts required or permitted to be deposited in other Project Accounts, all (i) Project Revenues (including Availability Payments), (ii) Project Proceeds and (iii) any other amounts received by the Company from any source whatsoever (including transfers from other Project Accounts from time to time as required by the terms of the Collateral Agency Agreement), will be deposited into the Revenue Account. Pending such deposit, the Company will hold all such amounts coming into its possession in trust for the benefit of the Secured Parties.

Amounts will be transferred from the Revenue Account to the Special Lifecycle Payment Account at the direction of the Company pursuant to the Collateral Agency Agreement. In addition, at the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default” below and subject to “—Collateral and Remedies—Application of Proceeds” below, beginning with the first Monthly Transfer Date after the RSA Date, the Collateral Agent will make the following withdrawals, transfers and payments from the Revenue Account (and any sub-accounts thereof) as set forth in the applicable Funds Transfer Certificate, on each Monthly Transfer Date or Restricted Payment Date, as applicable, in the following amounts and in the following order of priority (it being agreed that (i) no amount will be withdrawn on any date pursuant to any clause below (A) until amounts sufficient as of that date (to the extent applicable) for all the purposes specified under the prior clauses will have been withdrawn or set aside or (B) in respect of any items for which amounts have previously been transferred and (ii) each such transfer will be made only to the extent there are sufficient amounts on deposit in the Revenue Account, on such date to make any such transfer)(the “Flow of Funds”):

First, on each Monthly Transfer Date, to the Operating Account and any Other Operating Account, an aggregate amount not to exceed (together with amounts then on deposit therein
allocated to the payment of O&M Expenditures (other than Renewal Expenditures) pursuant to “—Operating Account”) the O&M Expenditures (other than Renewal Expenditures) then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date;

Second, on each Monthly Transfer Date, to the Operating Account and any Other Operating Account, after application of all funds then on deposit in the Rehabilitation Reserve Account toward any Renewal Expenditures, an aggregate amount not to exceed the Renewal Expenditures then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date solely to the extent amounts then on deposit in the Rehabilitation Reserve Account are insufficient to pay such Renewal Expenditures;

Third, on each Monthly Transfer Date, to any payments then due and payable by the Company to the Series 2016 Rebate Fund established under the Indenture or any similar rebate fund established with respect to any future tax-exempt borrowings comprising Additional Parity Bonds;

Fourth, on each Monthly Transfer Date, to the applicable payees and/or accounts for the payment of fees, costs and expenses then due and payable to the Secured Parties under the Finance Documents, if any, and to the payment of any costs of any Nationally Recognized Rating Agencies applicable to the Project then due and payable;

Fifth, on each Monthly Transfer Date, to the Senior Interest Payment Sub-Account of the Senior Debt Service Account, for payment in respect of the interest portion due on the outstanding Applicable Senior Secured Obligations (and any related Hedging Obligations, if any) on the next Interest Payment Date in an amount equal to (A) the total aggregate amount of interest to be paid in respect of the outstanding Applicable Senior Secured Obligations (and any related Hedging Obligations, if any) on the next Interest Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Interest Payment Date, but not counting such Interest Payment Date if it is a Monthly Transfer Date, to, and including, such next Interest Payment Date plus (B) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, an Interest Payment Date, any other amount required to make the amount credited to the Senior Interest Payment Sub-Account, taking into account the amount then on deposit in the Senior Interest Payment Sub-Account, equal to the amount required to pay the interest payment due on such Interest Payment Date on the Applicable Senior Secured Obligations (and any related Hedging Obligations, if any); provided, that on each Interest Payment Date, amounts on deposit in the Senior Interest Payment Sub-Account will be transferred by the Collateral Agent to the Trustee for deposit into the applicable sub-account of the Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be, or to any other applicable Secured Party (or representative or account thereof) for the payment of interest then due and payable on the relevant Applicable Senior Secured Obligations;

Sixth, on each Monthly Transfer Date, beginning no earlier than the date that is six (6) months prior to the first Principal Payment Date:
(a) to the Senior Principal Payment Sub-Account of the Senior Debt Service Account to make payments in respect of (A) scheduled principal payments and (B) mandatory sinking fund payments (collectively, the amounts referred to in clauses (A) and (B), the “Principal Related Payments”) applicable to the outstanding Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any (to the extent such Principal Related Payments are not paid or payable with amounts then available in the Revenue Service Availability Payment Account, the Final Completion Payment Account or the Special Lifecycle Payment Account in accordance with the terms hereof, as applicable) in an amount equal to (X) the total aggregate amount of such Principal Related Payments to be paid in respect of such Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any, on the next Principal Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Principal Payment Date, but not counting such Principal Payment Date if it is a Monthly Transfer Date, to, and including, such next Principal Payment Date, plus (Y) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (Z) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the Senior Principal Payment Sub-Account, taking into account the amount then on deposit in the Senior Principal Payment Sub-Account, equal to the amount required to pay the Principal Related Payments due on such Principal Payment Date on the Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any; provided, that on each Principal Payment Date, amounts on deposit in the Senior Principal Payment Sub-Account will be transferred by the Collateral Agent to the Trustee for deposit into the applicable sub-account of the Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be, or to any other applicable Secured Party (or representative or account thereof) for the payment of Principal Related Payments then due and payable on the relevant Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any; and

(b) to the Mandatory Prepayment Account to make payments in respect of mandatory prepayments and mandatory redemptions solely to the extent not payable from amounts on deposit in another Project Account pursuant to the terms hereof (collectively, the “Mandatory Payments”) of the outstanding Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any (and to the TIFIA Obligations on a pro rata basis with such Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any, solely to the extent required to be prepaid with amounts on deposit in the Revenue Account on a pro rata basis with any Senior Secured Obligations pursuant to “FINANCING FOR THE PROJECT—TIFIA Loan Agreement—Representations, Warranties and Covenants—Restrictions on Mandatory Prepayments from the Revenue Account”) (the TIFIA Obligations in such case being, the “Applicable TIFIA Obligations”) (to the extent such Mandatory Payments are not paid or payable with amounts then available in the Revenue Service Availability Payment Account, the Final Completion Payment Account or the Special Lifecycle Payment Account in accordance with the terms hereof, as applicable) in an amount equal to (X) the total aggregate amount of such Mandatory Payments to be paid in respect of such Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any (and the Applicable TIFIA Obligations, if any), on the next Principal Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Principal Payment Date, but not counting such Principal Payment Date if it is a Monthly Transfer Date, to, and including,
such next Principal Payment Date, plus (Y) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (Z) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the applicable sub-accounts of the Mandatory Prepayment Account, taking into account the amount then on deposit in the applicable sub-accounts of the Mandatory Prepayment Account, equal to the amount required to pay the Mandatory Payments due on such Principal Payment Date on the Applicable Senior Secured Obligations and related Permitted Hedging Termination Obligations, if any (and the Applicable TIFIA Obligations, if any);

**Seventh**, on each Monthly Transfer Date, to each sub-account of the Debt Service Reserve Account related to the Applicable Senior Secured Obligations, the amount, if any, necessary to fund such accounts so that the respective balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account, equals the applicable Debt Service Reserve Required Balance at such time;

**Eighth**, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, on each Monthly Transfer Date, to the TIFIA Interest Payment Sub-Account of the TIFIA Debt Service Account, an amount equal to (A) the total aggregate amount of interest to be paid in respect of outstanding TIFIA Obligations on the next Interest Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Interest Payment Date, but not counting such Interest Payment Date if it is a Monthly Transfer Date, to, and including, such next Interest Payment Date plus (B) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, an Interest Payment Date, any other amount required to make the amount credited to the TIFIA Interest Payment Sub-Account, taking into account the amount then on deposit in the TIFIA Interest Payment Sub-Account, equal to the amount required to pay the interest payment due on such Interest Payment Date on the TIFIA Obligations; provided, that on each Interest Payment Date, amounts on deposit in the TIFIA Interest Payment Sub-Account will be transferred by the Collateral Agent for the payment of interest then due and payable on the TIFIA Obligations;

**Ninth**, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, on each Monthly Transfer Date, to the TIFIA Principal Payment Sub-Account of the TIFIA Debt Service Account, an amount equal to (A) the total aggregate amount of any Principal Related Payments and Mandatory Payments to be paid in respect of such TIFIA Obligations on the next Principal Payment Date divided by the number of Monthly Transfer Dates from the immediately preceding Principal Payment Date, but not counting such Principal Payment Date if it is a Monthly Transfer Date, to, and including, such next Principal Payment Date plus (B) any deficiency then existing in such transfers required to have been made on any prior Monthly Transfer Date, plus (C) if such Monthly Transfer Date is, or is the last Monthly Transfer Date prior to, a Principal Payment Date, any other amount required to make the amount credited to the TIFIA Principal Payment Sub-Account, taking into account the amount then on deposit in the TIFIA Principal Payment Sub-Account, equal to the amount required to pay the Principal Related Payments and Mandatory Payments due on such Principal Payment Date on the TIFIA Obligations; provided, that on each Principal Payment Date, amounts on deposit in the
TIFIA Principal Payment Sub-Account will be transferred by the Collateral Agent for the payment of Principal Related Payments and Mandatory Payments then due and payable on the TIFIA Obligations;

**Tenth**, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, on each Monthly Transfer Date, to the TIFIA Debt Service Reserve Sub-Account of the Debt Service Reserve Account the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account, equals the TIFIA Debt Service Reserve Required Balance at such time;

**Eleventh**, on each Monthly Transfer Date, to the Rehabilitation Reserve Account the amount, if any, necessary to fund such account so that the balance therein, taking into account the amount available for drawing under any Acceptable Letter of Credit provided with respect to such Reserve Account, equals the Rehabilitation Reserve Required Balance at such time;

**Twelfth**, on each Monthly Transfer Date, to the Senior Principal Payment Sub-Account for the payment of any Hedging Termination Obligations (other than Permitted Hedging Termination Obligations payable pursuant to clause “Sixth” above) with respect to the Applicable Senior Secured Obligations that are due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date; provided, that on each Principal Payment Date, amounts on deposit in the Senior Principal Payment Sub-Account will be transferred by the Collateral Agent for the payment of Hedging Termination Obligations (other than Permitted Hedging Termination Obligations) then due and payable;

**Thirteenth**, on each Monthly Transfer Date, to any sub-account of the Revenue Account established for the payment of interest on Permitted Subordinated Loans (if any), an amount not to exceed (together with amounts then on deposit therein) the interest projected to become due and payable on any outstanding Permitted Subordinated Loans on the next Interest Payment Date (or such monthly portion thereof in accordance with the relevant financing documents); provided, that on each Interest Payment Date, amounts on deposit in such sub-account will be transferred by the Collateral Agent for the payment of interest then due and payable on such Permitted Subordinated Loans;

**Fourteenth**, on each Monthly Transfer Date, to any sub-account of the Revenue Account established for the payment of principal on Permitted Subordinated Loans (if any), an amount not to exceed (together with amounts then on deposit therein) the Principal Related Payments projected to become due and payable on any outstanding Permitted Subordinated Loans on the next Principal Payment Date (or such monthly portion thereof in accordance with the relevant financing documents); provided, that on each Principal Payment Date, amounts on deposit in such sub-account will be transferred by the Collateral Agent for the payment of the Principal Related Payments then due and payable on such Permitted Subordinated Loans;

**Fifteenth**, on each Monthly Transfer Date, to the Operating Account and any Other Operating Account, the aggregate amount required to pay any Discretionary Capital Expenditures then due and payable or projected to become due and payable prior to the next succeeding Monthly Transfer Date;
Sixteenth, on each Monthly Transfer Date, to the Voluntary Prepayment Account, an amount determined at the election of the Company as indicated in the applicable Funds Transfer Certificate to be applied to the prepayment or redemption of the Applicable Senior Secured Obligations (and any related Hedging Termination Obligations) or the TIFIA Obligations, as applicable;

Seventeenth, on each Restricted Payment Date, to the Equity Lock-up Account, all Applicable Excess Funds on deposit in the Revenue Account on the immediately preceding Semi-Annual Transfer Date if any of the Restricted Payment Conditions have not been satisfied as of the applicable Restricted Payment Condition Satisfaction Date; and

Eighteenth, on each Restricted Payment Date, subject to “—Distribution Account,” to the Distribution Account, all Applicable Excess Funds on deposit in the Revenue Account on the immediately preceding Semi-Annual Transfer Date; provided, that each Restricted Payment Condition was satisfied as of the applicable Restricted Payment Condition Satisfaction Date.

If, on the date of any withdrawal or transfer from the Revenue Account for payment pursuant to any of clauses “Third,” “Fourth,” “Fifth,” “Sixth,” “Seventh” and “Twelfth” of this section, the amount required to be withdrawn and transferred from the Revenue Account pursuant to such clause exceeds the amount then on deposit in or credited to the Revenue Account after the withdrawals and transfers made pursuant to all applicable preceding clauses are completed, the amount on deposit in or credited to the Revenue Account at the time of application pursuant to such clause will be transferred pro rata to each of the Persons (or Project Accounts) specified in such clause based on the respective amounts owed to such Persons (or otherwise required to be transferred) pursuant to such clause (including, upon and following the occurrence of a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, pursuant to clause “Seventh” of this section in accordance with the respective percentages of the deficiencies, as of such date of withdrawal or transfer, in the TIFIA Debt Service Reserve Required Balance, the 2016D Bonds Debt Service Reserve Required Balance or any other Senior Debt Service Reserve Required Balance, as applicable), as specified in the Funds Transfer Certificate or as otherwise determined by the Collateral Agent (acting on the instructions of the Intercreditor Agent); provided that (i) the payments described in this paragraph will be applied in accordance with the payment priorities set forth in this section and (ii) the payments due at a particular level of the waterfall set forth in this section will be made in full before any payment is made at the next level.

For the avoidance of doubt, after application of funds in the Revenue Account on any Monthly Transfer Date pursuant to the Flow of Funds, to the extent any funds remain in the Revenue Account, such funds will remain in the Revenue Account for application in accordance with the Collateral Agency Agreement.

To the extent that the balance of funds on deposit in any Project Account with a required minimum balance exceeds such required minimum balance as of any Monthly Transfer Date, such excess funds will be transferred to the Revenue Account for application as so contemplated by this section, subject to “—Rehabilitation Reserve Account” and “—Reserve Accounts; Reserve Letters of Credit” below.
Senior Debt Service Account

The Senior Interest Payment Sub-Account will be funded in accordance with and subject to clause “Fifth” of the Flow of Funds above.

The Senior Principal Payment Sub-Account will be funded in accordance with and subject to clause “Sixth” and clause “Twelfth” of the Flow of Funds above and “—Special Lifecycle Payment Account” below.

Funds on deposit in the Senior Interest Payment Sub-Account will be applied to pay accrued and unpaid interest due and payable on all Applicable Senior Secured Obligations and any related Hedging Obligations due to the Hedge Providers.

Funds on deposit in the Senior Principal Payment Sub-Account will be applied to pay Principal Related Payments (and related Hedging Termination Obligations, if any) that are due and payable on all Applicable Senior Secured Obligations.

TIFIA Debt Service Account

The TIFIA Interest Payment Sub-Account will be funded in accordance with and subject to clause “Eighth” of the Flow of Funds above. The TIFIA Principal Payment Sub-Account will be funded in accordance with and subject to clause “Ninth” of the Flow of Funds above.

Funds (i) on deposit in the TIFIA Interest Payment Sub-Account will be applied to pay accrued and unpaid interest due and payable on all TIFIA Obligations and (ii) on deposit in the TIFIA Principal Payment Sub-Account will be applied to pay Principal Related Payments and Mandatory Payments that are due and payable on all TIFIA Obligations, including, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, by and through transfer of such payments to the Mandatory Prepayment Account to make certain mandatory prepayments of the TIFIA Loan in accordance with the TIFIA Loan Agreement.

From and after a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, payments of TIFIA Debt Service will be made from the Senior Debt Service Account with amounts funded in accordance with and subject to clauses “Fifth” and “Sixth” of the Flow of Funds in accordance with the Collateral Agency Agreement.

Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts

The sub-accounts of the Debt Service Reserve Account will each be established solely for the benefit of the relevant Secured Parties. Each such sub-account will be held by the Collateral Agent and the Security Interest thereon will be maintained for the exclusive benefit of only such Secured Parties.

Pursuant to “—Establishment of Project Accounts,” the Collateral Agent will create a sub-account relating to the 2016D Bonds under the Debt Service Reserve Account, in the name of the Company and titled the “2016D Bonds Debt Service Reserve Sub-Account” which will be pledged to the Collateral Agent solely for the benefit of the Holders of the 2016D Bonds and the
Trustee. Subject to the next paragraph, the 2016D Bonds Debt Service Reserve Sub Account will be funded (i) on the RSA Payment Date, from available amounts on deposit in the Construction Account (subject to the Tax Regulatory Agreement) pursuant to “—Construction Account” or from other amounts available to the Company, in an amount equal to the 2016D Bonds Debt Service Reserve Required Balance (as calculated on such date) and (ii) thereafter in accordance with clause “Seventh” of the Flow of Funds above. Any amounts on deposit in the 2016D Bonds Debt Service Reserve Sub-Account in excess of the 2016D Bonds Debt Service Reserve Required Balance will, subject to “—Reserve Accounts; Reserve Letters of Credit” below, be deposited into the Revenue Account for application pursuant to the Flow of Funds above or in the manner described in the “—Reserve Accounts; Reserve Letters of Credit” below.

If an Event of Default under the 2016 Loan Documents has occurred and is continuing beyond any applicable grace period prior to the RSA Payment Date, the Collateral Agent will establish and fund the 2016D Bonds Debt Service Reserve Sub-Account from available amounts on deposit in the Construction Account (subject to the Tax Regulatory Agreement and solely from funds that do not constitute 2016A Bonds proceeds) in an amount not to exceed the 2016D Bonds Debt Service Reserve Required Balance (as calculated as of such date); provided, that if (i) the 2016D Bonds Debt Service Reserve Sub-Account has been funded prior to the RSA Payment Date due to the occurrence of an Event of Default under the 2016 Loan Documents that is continuing, (ii) prior to the RSA Payment Date, such Event of Default has been cured, and (iii) at the time of such cure, no other Event of Default under the 2016 Loan Documents has occurred and is continuing, then the entire balance of the 2016D Bonds Debt Service Reserve Sub-Account will be transferred back to the Construction Account and the relevant sub-accounts thereof and thereafter, the 2016D Bonds Debt Service Reserve Sub-Account will be funded on or prior to the earlier of (x) the RSA Payment Date and (y) the next date upon which an Event of Default under the 2016 Loan Documents has occurred and is continuing.

Funds on deposit in any sub-account of the Debt Service Reserve Account with respect to Applicable Senior Secured Obligations (each a “Senior Debt Service Reserve Sub-Account”) will be used by the Collateral Agent (without the requirement of a Funds Transfer Certificate) as follows:

- if on any Monthly Transfer Date immediately preceding or occurring on an Interest Payment Date or Principal Payment Date, as applicable, with respect to the Applicable Senior Secured Obligations, the funds on deposit in the Senior Interest Payment Sub-Account or the Senior Principal Payment Sub-Account available for the payment of such Applicable Senior Secured Obligations (in each case, after giving effect to the transfers as described in clauses “Fifth” and “Sixth,” as applicable, of the Flow of Funds above solely with respect to the relevant Applicable Senior Secured Obligations) are insufficient to pay the principal, Redemption Price or interest on the relevant Applicable Senior Secured Obligations, as applicable, on the applicable Interest Payment Date or Principal Payment Date, funds on deposit in the relevant Senior Debt Service Reserve Sub-Account will be transferred to the Senior Interest Payment Sub-Account or the Senior Principal Payment Sub-Account, as applicable, for payment of interest or principal, as applicable, which will become due and payable on the relevant Applicable Senior Secured Obligations as of such Interest Payment Date or Principal Payment Date, as applicable; and
• following the taking of an Enforcement Action, moneys in such sub-accounts of the Debt Service Reserve Account will be applied in the manner set forth in “—Collateral and Remedies—Application of Proceeds” below.

Notwithstanding any other provision of the Collateral Agency Agreement to the contrary, the Company may, upon notice to the Collateral Agent and relevant Senior Secured Party, substitute all or any portion of the cash or Permitted Investments on deposit in any Senior Debt Service Reserve Sub-Account with an Acceptable Letter of Credit in favor of the Collateral Agent for purposes of the applicable Debt Service Reserve Required Balance; provided, however, that if any proceeds of the Bonds are on deposit in such Senior Debt Service Reserve Sub-Account, an opinion of Bond Counsel that such substitution will not adversely affect the tax-exempt status of the Bonds will be required.

**TIFIA Debt Service Reserve Sub-Account**

The TIFIA Debt Service Reserve Sub-Account will be solely for the benefit of the TIFIA Lender and will not be subject to any Security Interest in favor of any Person other than the TIFIA Lender and will be held by the Collateral Agent for the exclusive benefit of only the TIFIA Lender.

Subject to the following paragraph, the TIFIA Debt Service Reserve Sub-Account will be funded (i) on the RSA Payment Date, from available amounts on deposit in the Construction Account (from amounts other than those on deposit in the Bond Proceeds Sub-Accounts and otherwise subject to the Tax Regulatory Agreement) pursuant to “—Construction Account,” or from other amounts available to the Company, in an amount equal to the TIFIA Debt Service Reserve Required Balance (as calculated on such date) and (ii) thereafter in accordance with clause “Tenth” of the Flow of Funds or, upon and following the occurrence of a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, clause “Seventh” of the Flow of Funds. Any amounts on deposit in the TIFIA Debt Service Reserve Sub-Account in excess of the TIFIA Debt Service Reserve Required Balance (including as a result of funding of the TIFIA Debt Service Reserve Sub-Account with an Acceptable Letter of Credit) will, subject to “—Reserve Accounts; Reserve Letters of Credit” below, be deposited into the Revenue Account for application pursuant to “—Revenue Account.”

If an Event of Default under the 2016 Loan Documents has occurred and is continuing beyond any applicable grace period prior to the RSA Payment Date, the Collateral Agent will establish the TIFIA Debt Service Reserve Sub-Account and, after the transfer from the Construction Account to fill the 2016D Bonds Debt Service Reserve Sub-Account described more fully in the third paragraph of “—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts” has been made in full (unless (x) a Company Bankruptcy Related Event has occurred, and (y) the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, in which case, the transfer pursuant to this section will be made pro rata with such transfer), the Collateral Agent will fund the TIFIA Debt Service Reserve Sub-Account from available amounts on deposit in the Construction Account (subject to the Tax Regulatory Agreement and solely from funds that do not constitute TIFIA Loan proceeds, 2016 Bonds proceeds or Progress Payments) in an amount not to exceed the TIFIA Debt Service Reserve Required Balance (as calculated as of such date); provided, that if (i) the TIFIA Debt Service
Reserve Sub-Account has been funded prior to the RSA Payment Date due to the occurrence of an Event of Default under the 2016 Loan Documents that is continuing, (ii) prior to the RSA Payment Date, such Event of Default has been cured, and (iii) at the time of such cure, no other Event of Default under the 2016 Loan Documents has occurred and is continuing, then the entire balance of the TIFIA Debt Service Reserve Sub-Account will be transferred back to the Construction Account and the relevant sub-accounts thereof and thereafter, the TIFIA Debt Service Reserve Sub-Account will be funded on or prior to the earlier of (x) the RSA Payment Date and (y) the next date upon which an Event of Default under the 2016 Loan Documents has occurred and is continuing.

To the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, funds on deposit in the TIFIA Debt Service Reserve Sub-Account will be used by the Collateral Agent (without the requirement of a Funds Transfer Certificate) as follows (provided that upon and following the occurrence of a Company Bankruptcy Related Event, if the TIFIA Loan is held by the TIFIA Lender or any TIFIA Agency Assignee, funds on deposit in the TIFIA Debt Service Reserve Sub-Account will be applied in accordance with “—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts”):

- if on any Monthly Transfer Date immediately preceding or occurring on an Interest Payment Date or Principal Payment Date, as applicable, with respect to the TIFIA Obligations, the funds on deposit in the TIFIA Interest Payment Sub-Account or the TIFIA Principal Payment Sub-Account available for the payment of the TIFIA Obligations (in each case, after giving effect to the transfers as described in clauses “Eighth” and “Ninth” of the Flow of Funds above) are insufficient to pay the principal, interest or any mandatory prepayment of or on the TIFIA Obligations, as applicable, on the applicable Interest Payment Date or Principal Payment Date, funds on deposit in the TIFIA Debt Service Reserve Sub-Account will be transferred to the TIFIA Interest Payment Sub-Account or the TIFIA Principal Payment Sub-Account for payment of interest or principal, as applicable, which will become due and payable on the TIFIA Obligations as of such Interest Payment Date or Principal Payment Date, as applicable; and

- following the taking of an Enforcement Action, moneys in such sub-account of the Debt Service Reserve Account will be applied in the manner set forth in “—Collateral and Remedies—Application of Proceeds” below.

The TIFIA Debt Service Reserve Sub-Account may be funded with an Acceptable Letter of Credit at the option of the Company and otherwise in accordance with the provisions of the Collateral Agency Agreement.

**Rehabilitation Reserve Account**

The Rehabilitation Reserve Account will be funded in an amount not to exceed the Rehabilitation Reserve Required Balance in accordance with the terms of the TIFIA Loan Agreement, clause “Eleventh” of the Flow of Funds and with any amounts and/or letters of credit received from the O&M Contractor for deposit in the Rehabilitation Reserve Account to fund all or any part of the Lifecycle Deficit Amount pursuant to the O&M Contract. Any amounts on
deposit in the Rehabilitation Reserve Account in excess of the Rehabilitation Reserve Required Balance will, subject to this section and “—Reserve Accounts; Reserve Letters of Credit,” be transferred to the Revenue Account to be applied, on the next succeeding Monthly Transfer Date, pursuant to the Flow of Funds provided that, to the extent that such excess funds are due to a reduction in the Lifecycle Deficit Amount as calculated in any year, such excess funds (in an amount not to exceed the amount of such reduction) will be transferred, at the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” pro rata to the extent the following clauses (i) and (ii) each apply, (i) to the extent the Lifecycle Deficit Amount has been funded by the O&M Contractor, to the O&M Contractor and (ii) to the extent the Lifecycle Deficit Amount has been funded from amounts on deposit in the Revenue Account pursuant to the Flow of Funds, to the Revenue Account to be applied, on the next succeeding Monthly Transfer Date, pursuant to clauses “Twelfth” through “Eighteenth” of the Flow of Funds.

At the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” the Collateral Agent will make withdrawals, transfers and payments from the Rehabilitation Reserve Account from time to time for the payment of Renewal Expenditures (including by and through transfer to the Operating Account and/or any Other Operating Account) in accordance with the terms of the TIFIA Loan Agreement.

The amounts on deposit in the Rehabilitation Reserve Account may be replaced in whole or in part with an Acceptable Letter of Credit at the option of the Company, and upon such replacement amounts on deposit in the Rehabilitation Reserve Account in excess of the Rehabilitation Reserve Required Balance will at the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” be transferred to the Distribution Account, to the account of any Sponsor(s) (or their designee) or other Affiliate of the Company, or otherwise as may be specified by the Company pursuant to “—Reserve Accounts; Reserve Letters of Credit.”

To the extent that the Lifecycle Deficit Amount has been funded with an Acceptable Letter of Credit, notwithstanding anything else herein to the contrary, such letter of credit may be reduced (or increased) annually such that the full remaining stated amount thereof equals the Lifecycle Deficit Amount and the Collateral Agent agrees that, at the written instruction of the Company, accompanied by a copy of the then-current Lifecycle Deficit Amount Certificate (as defined in the TIFIA Loan Agreement) from the Lenders’ Technical Advisor (with a copy of such certificate to be provided concurrently to the Contracting Authority), the Collateral Agent will submit to the applicable bank a reduction certificate (or certificate to increase the stated amount, as applicable) with respect to such letter of credit and execute and deliver any related consents or notices required thereunder, in each case, promptly following recalculation of the Lifecycle Deficit Amount in accordance with the TIFIA Loan Agreement; provided that, following any such increase or reduction, the remaining stated amount of such Acceptable Letter of Credit is at least equal to the Lifecycle Deficit Amount.
Voluntary Prepayment Account

The Voluntary Prepayment Account will be funded in accordance with clause “Sixteenth” of the Flow of Funds above. Funds in the Voluntary Prepayment Account will be applied (subject to the Tax Regulatory Agreement) to prepay or redeem the TIFIA Obligations and the Senior Secured Obligations (and pay any corresponding Hedging Termination Obligations resulting from such prepayment) at the direction of the Company and in accordance with the terms of the Finance Documents.

Equity Lock-Up Account

The Equity Lock-Up Account will be funded in accordance with clause “Seventeenth” of the Flow of Funds above.

At the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” funds on deposit in the Equity Lock-Up Account may be transferred to the Distribution Account (or to make Restricted Payments directly) on any Restricted Payment Date (each, a “Transfer Restricted Payment Date”) upon satisfaction of the Restricted Payment Conditions with respect to the Transfer Restricted Payment Date and also with respect to the Restricted Payment Date immediately preceding the Transfer Restricted Payment Date; provided, that (i) on each of the Transfer Restricted Payment Date and such immediately preceding Restricted Payment Date, an Authorized Representative of the Company will have delivered to the Collateral Agent a certification to the effect that the Restricted Payment Conditions have been satisfied with respect to the applicable Restricted Payment Date, (ii) prior to any such transfer on the Transfer Restricted Payment Date, an Authorized Representative of the Company will have delivered to the Collateral Agent (A) Senior Coverage Certificates with respect to the applicable Calculation Dates and (B) copies of the certificates (including the applicable TIFIA Coverage Certificates) delivered to the TIFIA Lender pursuant to the TIFIA Loan Agreement relating to the satisfaction of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) with respect to the Transfer Restricted Payment Date and such immediately preceding Restricted Payment Date and (iii) the amount of funds available to be transferred to the Distribution Account (or to make Restricted Payments directly) from the Equity Lock-Up Account on the Transfer Restricted Payment Date will be not greater in the aggregate than the amount of Applicable Excess Funds on deposit in the Equity Lock-Up Account on the Semi-Annual Transfer Date immediately preceding the Transfer Restricted Payment Date.

Funds on deposit in the Equity Lock-Up Account will be transferred to the Mandatory Prepayment Account for application in respect of mandatory prepayments and mandatory redemptions required in accordance with “—Mandatory Prepayment Account” below and the Finance Documents, which will include the transfer to the Mandatory Prepayment Account of any amounts that have remained in the Equity Lock-Up Account for at least thirty (30) months as of any Restricted Payment Date following the RSA Date, which amounts will be applied to the prepayment of the TIFIA Obligations.
**Distribution Account**

The Distribution Account will be funded in accordance with and subject to clause “Eighteenth” of the Flow of Funds and “—Equity Lock-Up Account” above; provided that, prior to any transfer pursuant to clause “Eighteenth” of “—Reserve Accounts; Reserve Letters of Credit” on a Restricted Payment Date, an Authorized Representative of the Company will have delivered to the Collateral Agent (i) a certification to the effect that the Restricted Payment Conditions have been satisfied with respect to the applicable Restricted Payment Date and (ii) (A) a senior coverage certificate with respect to the applicable Calculation Date and (B) a copy of the certificate (including the applicable TIFIA Coverage Certificate) delivered to the TIFIA Lender in accordance with the TIFIA Loan Agreement relating to the satisfaction of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) with respect to the applicable Restricted Payment Date.

Funds on deposit in the Distribution Account may be distributed to an account (or to such Person) as directed by the Company in its sole discretion, including to make Restricted Payments and Permitted Distributions.

**Operating Account**

The Operating Account (and any Other Operating Account) will be funded (i) in accordance with clauses “First,” “Second” and “Fifteenth” of the Flow of Funds above, (ii) with amounts transferred from the Rehabilitation Reserve Account in accordance with “—Rehabilitation Reserve Account” above, (iii) with amounts transferred from the Loss Proceeds Account in accordance with “—Loss Proceeds Account” and (iv) pursuant to transfers from the Construction Account (and the sub-accounts thereof) to facilitate the payment (or reimbursement of the prior payment) of Project Costs in accordance with “—Construction Account” above and subject to the Tax Regulatory Agreement.

The Company will apply amounts on deposit in the Operating Account (and any Other Operating Account) as follows: (i) amounts transferred thereto as described in clause (i) of the first paragraph of this section will be applied to the payment of O&M Expenditures or Discretionary Capital Expenditures, as the case may be; (ii) amounts transferred thereto as described in clause (ii) of the first paragraph of this section will be applied to the payment of Renewal Expenditures; (iii) amounts transferred thereto as described in clause (iii) of the first paragraph of this section will be applied to the payment of Project Costs in connection with the restoration of the Project; and (iv) amounts transferred thereto as described in clause (iv) of the first paragraph of this section will be applied to the payment of Project Costs and for the purposes set forth in the Approved Construction Requisitions delivered pursuant to “—Construction Account” and “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default.” Any amounts (if any) on deposit in the Operating Account (and any Other Operating Account) from time to time that have been transferred to the Operating Account (or any Other Operating Account) as set forth in clauses (i) through (iv) of this paragraph, but have neither been used to pay, nor been allocated to the future payment of, such expenditures or costs, will be taken into account (without duplication) when transferring amounts pursuant to the applicable clause of the first paragraph of this section.
**Loss Proceeds Account**

All Loss Proceeds will be deposited directly into the Loss Proceeds Account.

Amounts on deposit in the Loss Proceeds Account will be transferred to the Operating Account (and/or any Other Operating Account) or other accounts and/or payees in accordance with Funds Transfer Certificates (provided that such transfers to the Operating Account and/or any Other Operating Account will take into account any unallocated amounts then on deposit therein pursuant to “—Operating Account” and such transferred amounts will be applied to restoration of the Project or any portion thereof in accordance with the requirements of the P3 Agreement (and the parties acknowledge that the P3 Agreement requires, as of the date of the Collateral Agency Agreement that all insurance proceeds received for physical property damage to the Project under any Insurance Policies (as defined in the P3 Agreement), other than any business interruption or delay in start-up insurance maintained as part of such Insurance Policies, will be first applied to repair, restore or replace each part or parts of the Project or the Work with respect to which such proceeds were received), except that, to the extent that (i) the Loss Proceeds on deposit in the Loss Proceeds Account exceed the amount required to restore the Project or any portion thereof to the condition required by the P3 Agreement or, if the P3 Agreement requires restoration of the Project but does not specify the required condition for such restoration, to the condition existing prior to the event of loss or (ii) such proceeds will not be used to restore the Project due to waiver by the Contracting Authority, or other amendment, of the P3 Agreement, unless required to be disposed of in another manner pursuant to the terms of such waiver or amendment (other than by transfer to the Distribution Account or other distribution to the Sponsors) (subject to any consent requirement in respect of such waiver or amendment pursuant to the Finance Documents), and the Finance Documents otherwise require prepayment of the Secured Obligations with such amounts (any amounts described in clause (i) or (ii) above, “Net Loss Proceeds”), such Net Loss Proceeds will be transferred to the Mandatory Prepayment Account to cause the extraordinary mandatory redemption or mandatory prepayment, as applicable, of the Senior Secured Obligations and the TIFIA Obligations on a pro rata basis and in accordance with the related Finance Documents. Any Loss Proceeds remaining in the Loss Proceeds Account after the transfers described in this paragraph will be transferred to the Revenue Account.

If an amount of any insurance claim on deposit in or credited to the Loss Proceeds Account has been paid out of moneys withdrawn from the Revenue Account in accordance with the Flow of Funds above, then the Company may cause the transfer of moneys representing the proceeds of the claim from the Loss Proceeds Account to the Revenue Account.

Proceeds in respect of business interruption or delay in startup insurance (net of any amounts payable therefrom to the Contracting Authority pursuant to the P3 Agreement) will be deposited into the Loss Proceeds Account and will be withdrawn from the Loss Proceeds Account and transferred to (i) prior to the RSA Date, the Construction Account and (ii) thereafter, the Revenue Account, in each case, in a manner commensurate with the period of interruption or delay for which such insurance is intended to correspond.

Following the taking of an Enforcement Action, only Net Loss Proceeds and amounts deposited in accordance with the preceding paragraph of this section will be withdrawn from the
Loss Proceeds Account and applied in the manner set forth in “—Collateral and Remedies—Application of Proceeds.”

**Mandatory Prepayment Account**

The Mandatory Prepayment Account will be funded as follows:

- from Net Loss Proceeds transferred to the Mandatory Prepayment Account from the Loss Proceeds Account in accordance with “—Loss Proceeds Account” above;

- from proceeds of any Termination Compensation received from the Contracting Authority under the P3 Agreement and transferred from the Termination Compensation Account to the Mandatory Prepayment Account in accordance with “—Termination Compensation Account”;

- from amounts transferred from the Equity Lock-Up Account to the Mandatory Prepayment Account in accordance with “—Equity Lock-Up Account” above;

- from amounts transferred, if any, from the Revenue Account and the TIFIA Debt Service Account in accordance with sub-clause (b) of clause “Sixth” of the Flow of Funds and the second paragraph of “—TIFIA Debt Service Account,” respectively, to make only the following Mandatory Payments: (x) the extraordinary mandatory redemption of the 2016D Bonds pursuant to “THE 2016 BONDS—Extraordinary Mandatory Redemption—Early RSA Date—2016D Bonds” in the case that the RSA Date occurs prior to the RSA Deadline, (y) any mandatory prepayment or mandatory redemption of Other Permitted Senior Secured Indebtedness in accordance with the applicable Additional Finance Documents, subject to the consent rights of any existing Secured Party (or representative thereof) pursuant to its respective Finance Documents or (z) any mandatory prepayment of the TIFIA Loan to be made from time to time (i) with any compensation payable to the TIFIA Lender pursuant to certain provisions in the Intercreditor Agreement relating to any consent, waiver or other modification of the TIFIA Loan Agreement or the TIFIA Note after the occurrence and during the continuance of an Event of Default or (ii) as a result of any consent by the TIFIA Lender to mandatory redemptions or prepayments from the Flow of Funds in connection with the issuance of Other Permitted Senior Secured Indebtedness, as applicable;

- from amounts transferred from the Revenue Service Availability Payment Account, the Final Completion Payment Account and the Special Lifecycle Payment Account to the Mandatory Prepayment Account in accordance with “—Revenue Service Availability Payment Account,” “—Final Completion Payment Account” and “—Special Lifecycle Payment Account,” respectively, for the payment of mandatory prepayments and mandatory redemptions;

- from amounts transferred from any Bond Proceeds Sub-Accounts in accordance with the third paragraph in “—Bond Proceeds Sub-Accounts” above;
• from amounts transferred from any Additional Parity Bonds Proceeds Accounts in accordance with “—Additional Parity Bonds Proceeds Accounts” above; and

• from any amounts transferred to the Mandatory Prepayment Account from the Construction Account pursuant to “—Construction Account—Sub-Accounts” above.

Funds deposited into the Mandatory Prepayment Account will be transferred into the PABs Mandatory Prepayment Sub-Account and/or the TIFIA Mandatory Prepayment Sub-Account and/or any other sub-account of the Mandatory Prepayment Account established for any other Secured Obligations in accordance with the provisions of this section for prepayment and redemption of the Bonds, the TIFIA Loan and any other Secured Obligations to the extent required to be repaid thereby (and solely to the extent expressly required, on a pro rata basis based on the then outstanding principal amounts of the TIFIA Loan, the Bonds, and such other Senior Secured Obligations) in accordance with the terms of the Finance Documents and the other provisions of the Collateral Agency Agreement at such redemption prices and required prepayment amounts as and to the extent contemplated in the Collateral Agency Agreement and the Finance Documents; provided, that amounts on deposit in the PABs Mandatory Prepayment Sub-Account and/or the TIFIA Mandatory Prepayment Sub-Account and/or any other sub-account established for any other Secured Obligations will be transferred by the Collateral Agent to the Trustee for deposit into the applicable sub-account of the Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be, or to any other applicable Secured Party (or representative or account thereof) for the mandatory redemption and/or mandatory prepayment of the related Secured Obligations at the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default.”

Notwithstanding anything to the contrary in the Collateral Agency Agreement and subject to “—Collateral and Remedies—Application of Proceeds” below, (i) the PABs Mandatory Prepayment Sub-Account will be pledged solely as collateral to secure the Bonds and will be established solely for the benefit of the Bondholders, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such Bondholders and (ii) the TIFIA Mandatory Prepayment Sub-Account will be pledged solely as collateral to secure the TIFIA Loan and will be established solely for the benefit of the TIFIA Lender, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only the TIFIA Lender and (iii) any other sub-account established for any other Secured Obligations will be pledged solely as collateral to secure the related Secured Obligations and will be established solely for the benefit of the related Secured Parties, and will be held by the Collateral Agent, and the lien thereon maintained, for the exclusive benefit of only such related Secured Parties.

**Sponsor Cash Collateral Account**

The Applicable Sponsor Cash Collateral Account relating to each Sponsor will be funded with (i) certain amounts received from, or on behalf of, such Sponsor in accordance with the Equity Contribution Agreement and (ii) the proceeds of certain drawings upon such Sponsor’s Equity Letter of Credit in accordance with the Equity Contribution Agreement.
Funds in an Applicable Sponsor Cash Collateral Account will be transferred to (i) the Equity Funding Sub-Account of the Construction Account as directed by the Company or by the Collateral Agent in accordance with the Equity Contribution Agreement or (ii) the applicable Sponsor, at the direction of the Company, to the extent that such Sponsor has delivered an Equity Letter of Credit (which will not be secured by the Collateral) in substitution for such funds.

**Revenue Service Availability Payment Account**

The Revenue Service Availability Payment Account will be funded with the proceeds of the RSA Payment (and Account Interest, any other earnings thereon and interest, if any, thereon pursuant to the P3 Agreement) received by the Company from the Contracting Authority on the RSA Payment Date and with any amounts transferred to the Revenue Service Availability Payment Account from available amounts in the Construction Account (and the sub-accounts thereof) pursuant to “—Construction Account.”

At the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” funds on deposit in the Revenue Service Availability Payment Account will be used solely for, and will be available to the Company and will be applied by the Company for, the following purposes in the following order of priority on or prior to the later to occur of (i) the 35th day (or if such day is not a Business Day, the next subsequent Business Day) following the RSA Payment Date and (ii) November 30, 2021:

First, to repay, prepay or redeem, as applicable, (i) first, the 2016A Bonds, which payment will also satisfy the portion of the 2016 Loan related thereto (and any refinancing thereof permitted under the Finance Documents) and (ii) second, any Other Permitted Senior Secured Indebtedness to the extent the RSA Payment has been increased by an amount equivalent to or greater than the Other Permitted Senior Secured Indebtedness to be repaid therefrom, in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable, by transfer of the applicable redemption price and any mandatory prepayment amount to the Mandatory Prepayment Account to be applied in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable; and

Second, any remaining amounts on deposit in the Revenue Service Availability Payment Account following the transfers described in clause “First” above will be transferred to the Revenue Account.

On the first Monthly Transfer Date following the date that all amounts on deposit in the Revenue Service Availability Payment Account are transferred out of the Revenue Service Availability Payment Account pursuant to clause “Second” of this section the Collateral Agent will close the Revenue Service Availability Payment Account.

**Final Completion Payment Account**

The Final Completion Payment Account will be funded with the proceeds of the Final Completion Payment (and Account Interest, any other earnings thereon and interest, if any,
thereon pursuant to the P3 Agreement) received by the Company from the Contracting Authority on the Final Completion Payment Date.

At the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” funds on deposit in the Final Completion Payment Account will be used solely for, and will be available to the Company and will be applied by the Company for, the following purposes in the following order of priority on or prior to the later to occur of (i) the 35th day (or if such day is not a Business Day, the next subsequent Business Day) following the Final Completion Payment Date and (ii) November 30, 2021:

First, to pay the Design-Build Contractor pursuant to the Design-Build Contract only to the extent that amounts then due and payable to the Design-Build Contractor have not been paid in full;

Second, to repay, prepay or redeem, as applicable, (i) first, the 2016B Bonds, which payment will also satisfy the portion of the 2016 Loan related thereto (and any refinancing thereof permitted under the Finance Documents) and (ii) second, any Other Permitted Senior Secured Indebtedness to the extent the Final Completion Payment has been increased by an amount equivalent to or greater than the Other Permitted Senior Secured Indebtedness to be repaid therefrom, in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable by transfer of the applicable redemption price and any mandatory prepayment amount to the Mandatory Prepayment Account to be applied in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable; and

Third, any remaining amounts on deposit in the Final Completion Payment Account following the transfers described in clauses “First” and “Second” above will be transferred to the Mandatory Prepayment Account for application to the mandatory prepayment of the TIFIA Obligations.

On the first Monthly Transfer Date following the date that all amounts on deposit in the Final Completion Payment Account are transferred out of the Final Completion Payment Account pursuant to clause “Third” of this section, the Collateral Agent will close the Final Completion Payment Account.

Special Lifecycle Payment Account

The Special Lifecycle Payment Account will be funded from time to time from the Availability Payments received by the Company from the Contracting Authority upon the deposit of each Availability Payment in the Revenue Account, at the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” in an amount equal to the Special Lifecycle Payment portion of each Availability Payment as set forth in the P3 Agreement (and Account Interest, any other earnings thereon and interest, if any, thereon pursuant to the P3 Agreement).
At the instruction of the Company in accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” funds on deposit in the Special Lifecycle Payment Account will be used solely for, and will be available to the Company for, the following purposes:

(i) payment of the Principal Related Payments payable on (A) the 2016C Bonds (which payment will also satisfy the portion of the 2016 Loan related thereto) and any refinancing thereof permitted under the Finance Documents and (B) any Other Permitted Senior Secured Indebtedness to the extent the Special Lifecycle Payments to be paid on any date have been increased by an amount equivalent to or greater than the Other Permitted Senior Secured Indebtedness to be repaid therefrom, in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable, by transfer of the applicable amount(s) to the Senior Principal Payment Sub-Account, in each case, no later than the Monthly Transfer Date occurring on or immediately prior to any applicable Principal Payment Date;

(ii) payment of the redemption price or the required prepayment amounts related to optional redemptions or voluntary prepayments payable on the 2016C Bonds (which payment will also satisfy the 2016 Loan related thereto) and any permitted refinancing thereof, and any Other Permitted Senior Secured Indebtedness to the extent the Special Lifecycle Payments have been increased by an amount equivalent to or greater than the Other Permitted Senior Secured Indebtedness to be repaid therefrom, in accordance with the terms of the 2016 Loan Documents or any Finance Documents in respect of such Other Permitted Senior Secured Indebtedness, as applicable, by transfer of the applicable amount(s) to the Voluntary Prepayment Account from time to time at the option of the Company; and

(iii) after the 2016C Bonds have been repaid in full, transfer of any remaining amounts on deposit in the Special Lifecycle Payment Account to the Mandatory Prepayment Account for application to the mandatory prepayment of the TIFIA Obligations.

On the first Monthly Transfer Date following the date that all amounts on deposit in the Special Lifecycle Payment Account are transferred out of the Special Lifecycle Payment Account pursuant to clause (iii) of this section above, the Collateral Agent will close the Special Lifecycle Payment Account.

Availability Payment Start-Up Reserve Account

The Availability Payment Start-Up Reserve Account will be funded on the RSA Date from available amounts on deposit in the Construction Account (and the sub-accounts thereof other than the Bond Proceeds Sub-Accounts) pursuant to “—Construction Account” up to an amount equal to the product of (i) 1.25 and (ii) the difference (which may not be less than zero) between (A) the sum of (x) the interest that will accrue on the TIFIA Loan and the Senior Secured Obligations during the Availability Payment Start-Up Period and (y) the Company
Operations and Maintenance Expenses to be incurred during the Availability Payment Start-Up Period and (B) the aggregate amount of the general (i.e., MAPG) portions of the Availability Payments anticipated to be received by the Company during the Availability Payment Start-Up Period that are intended to be used to pay accrued interest on the TIFIA Loan and the Senior Secured Obligations (such amount, the “AP Start-Up Amount”).

In accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” on the first Monthly Transfer Date to occur during the Availability Payment Start-Up Period, the Company will instruct the Collateral Agent to transfer from the Availability Payment Start-Up Reserve Account to the Revenue Account an amount up to the product of (a) 1.25 and (b) the difference between (A) the sum of (x) the interest that has accrued since the commencement of the Availability Payment Start-Up Period that must be paid or reserved with respect to the Senior Secured Obligations and the TIFIA Loan on the first Monthly Transfer Date to occur during the Availability Payment Start-Up Period in accordance with the Collateral Agency Agreement and (y) the Company Operations and Maintenance Expenses incurred by the Company since the commencement of the Availability Payment Start-Up Period that must be paid or reserved on such Monthly Transfer Date in accordance with the Collateral Agency Agreement and (B) the aggregate amount of the general (i.e., MAPG) portions of the Availability Payments that will be used to pay or reserve such interest on the TIFIA Loan and the Senior Secured Obligations on such Monthly Transfer Date (the “AP Transfer Amount”). On the immediately succeeding Monthly Transfer Date, any remaining amounts on deposit in the Availability Payment Start-Up Reserve Account will be transferred to the Revenue Account.

On the first Monthly Transfer Date following the end of the Availability Payment Start-Up Period, the Collateral Agent will close the Availability Payment Start-Up Reserve Account.

**Termination Compensation Account**

The Termination Compensation Account will be funded with the Termination Compensation, if any (and interest, if any, thereon pursuant to the P3 Agreement) received by the Company from the Contracting Authority in respect of a termination of the P3 Agreement.

In accordance with a Funds Transfer Certificate pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” funds on deposit in the Termination Compensation Account will be applied in the following order of priority:

**First,** to repay, prepay or redeem the outstanding Applicable Senior Secured Obligations in full by transfer to the Mandatory Prepayment Account to be applied in accordance with the terms of the Collateral Agency Agreement and of the applicable Finance Documents;

**Second,** to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, to repay or prepay the outstanding TIFIA Obligations in full by transfer to the Mandatory Prepayment Account to be applied in accordance with the terms of the TIFIA Loan Agreement; and
Third, any remaining amounts will be paid (for the avoidance of doubt, without the delivery of a Funds Transfer Certificate, transfer of such funds to the Revenue Account, application of funds pursuant to the Flow of Funds or satisfaction of the Restricted Payment Conditions) to the Distribution Account;

provided that, except to the extent the TIFIA Obligations qualify as Applicable Senior Secured Obligations, in any case where the Termination Compensation under the P3 Agreement is in an amount less than 100% of the Company’s aggregate outstanding Indebtedness (other than Permitted Subordinated Debt (as defined in the TIFIA Loan Agreement)), the Termination Compensation will be allocated between the Applicable Senior Secured Obligations and the TIFIA Obligations pro rata based on the outstanding principal of such respective Indebtedness.

**Tax Reserve Account**

From time to time following the Closing Date but prior to the RSA Payment Date, the Tax Reserve Account will be funded from amounts on deposit in the Contracting Authority Funding Sub-Account in accordance with “—Contracting Authority Funding Sub-Account” and from amounts on deposit in the Equity Funding Sub-Account in accordance with “—Equity Funding Sub-Account” in an aggregate amount not to exceed the Tax Reserve Required Balance as of the Closing Date.

In accordance with a Funds Transfer Certificate delivered pursuant to “—Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default,” funds on deposit in the Tax Reserve Account may be withdrawn and transferred from time to time to an account (or to such Person) as directed by the Company in its sole discretion in connection with the projected corporate income Tax liability of the Sponsors attributable to their ownership interests in the Company set forth in the Base Case Model, in each case, up to the maximum amount of such Tax liability at such time, as calculated in accordance with the then-current Base Case Model. On the Semi-Annual Transfer Date immediately preceding the Restricted Payment Date upon which the Company will make its Initial Permitted Distribution, the Company may direct the Collateral Agent to transfer to the Revenue Account from the Tax Reserve Account all amounts, if any, then on deposit therein.

On the first Monthly Transfer Date following the Restricted Payment Date on which the Initial Permitted Distribution is made, any remaining amounts on deposit in the Tax Reserve Account will be transferred to the Revenue Account pursuant to written notice by an Authorized Representative of the Company to the Collateral Agent, and after such transfer, the Collateral Agent will close the Tax Reserve Account.

**Reserve Accounts; Reserve Letters of Credit**

The Applicable Reserve Requirement of any Reserve Account may be funded from time to time by any Applicable Reserve Letter of Credit; provided that the Collateral Agent will make a drawing upon any such Applicable Reserve Letter of Credit in an amount equal to the full remaining stated amount under such Applicable Reserve Letter of Credit in the event that:
• the issuer of such Applicable Reserve Letter of Credit fails to satisfy the requirements of an Acceptable LC Bank and, within ten (10) Business Days of the date on which the existing issuer ceased to be an Acceptable LC Bank, the Company fails to replace such Applicable Reserve Letter of Credit with either cash or another Acceptable Letter of Credit from an Acceptable LC Bank; or

• such Applicable Reserve Letter of Credit will expire within thirty (30) days and (A) the Collateral Agent has received a notice from the issuer thereof that such Applicable Reserve Letter of Credit will not be renewed in accordance with its terms and (B) the Company has failed to replace such Applicable Reserve Letter of Credit with either cash or another Acceptable Letter of Credit from an Acceptable LC Bank.

Any drawing upon any such Applicable Reserve Letter of Credit in accordance with the first paragraph of “—Reserve Accounts; Reserve Letters of Credit” will be in an amount equal to the lesser of (1) the Applicable Reserve Requirement at such time minus the sum of (x) the amount of cash on deposit in the applicable Reserve Account at such time and (y) the remaining stated amounts of any other Applicable Reserve Letters of Credit for the applicable Reserve Account available to be drawn pro rata with such Applicable Reserve Letter of Credit in accordance with clause (iii) of the succeeding paragraph and (2) the remaining stated amount under such Applicable Reserve Letter of Credit. The proceeds of any such drawing upon any such Applicable Reserve Letter of Credit will be deposited into the Reserve Account to which such Applicable Reserve Letter of Credit was credited by the Collateral Agent.

On any date that the Collateral Agent is required or permitted to withdraw funds from any Reserve Account, the Collateral Agent will, in the following order of priority: (i) first, withdraw available cash, if any, on deposit in such Reserve Account; (ii) second, liquidate Permitted Investments, if any, held in such Reserve Account and withdraw the proceeds of such liquidation; and (iii) third, make a pro rata drawing under each Applicable Reserve Letter of Credit in respect of such Reserve Account.

At the written request of an Authorized Representative of the Company, the Collateral Agent will release funds from any Reserve Account in the event that the Company has delivered (or has caused to be delivered) to the Collateral Agent an Applicable Reserve Letter of Credit in a stated amount at least equal to the amount of funds to be released from such Reserve Account; provided that, following such release, the amount on deposit in the applicable Reserve Account (taking into account the stated amount of any Acceptable Letters of Credit provided with respect to such Reserve Account) is at least equal to the Applicable Reserve Requirement. Any amounts so released will be transferred directly (for the avoidance of doubt, without the delivery of a Funds Transfer Certificate, transfer of such funds to the Revenue Account for application pursuant to the Flow of Funds above or satisfaction of the Restricted Payment Conditions) to the Distribution Account, to the account of any Sponsor(s) (or their designee) or other Affiliate of the Company, or otherwise as may be specified by the Company in a written direction to the Collateral Agent from an Authorized Representative of the Company on the date specified in such written direction. The Collateral Agent will credit any such additional Applicable Reserve Letter of Credit to the applicable Reserve Account.
In the event that (i) on a Restricted Payment Date, the amount on deposit in a Reserve Account other than the Rehabilitation Reserve Account (taking into account the stated amount of any Acceptable Letters of Credit provided with respect to such Reserve Account) exceeds the Applicable Reserve Requirement and (ii) the Restricted Payment Conditions have been satisfied with respect to the applicable Restricted Payment Date, at the written instruction of the Company in accordance with the terms of the Finance Documents, accompanied by a certification of an Authorized Representative of the Company that the applicable reduction or termination is in accordance with this section, the Collateral Agent will submit to the applicable bank a reduction certificate or termination notice with respect to any such Acceptable Letter of Credit, or surrender the original of any such Acceptable Letter of Credit for cancellation, and execute and deliver any related consents or notices required thereunder; provided that, following such reduction or termination, the amount on deposit in the applicable Reserve Account (taking into account the stated amount of any Acceptable Letters of Credit provided with respect to such Reserve Account) is at least equal to the Applicable Reserve Requirement.

**Invasion of Accounts**

One Business Day prior to any Monthly Transfer Date on which disbursements are required to be made from the Revenue Account pursuant to clauses “First” through “Eleventh” under the Flow of Funds above, if the amounts on deposit in the Revenue Account or credited thereto are not sufficient to make such disbursements, the Collateral Agent will transfer on such date funds, *first*, from the Equity Lock-Up Account, *second*, from the Voluntary Prepayment Account, *third*, from any sub-account of the Revenue Account established for the payment of principal on Permitted Subordinated Loans, *fourth*, from any sub-account of the Revenue Account established for the payment of interest on Permitted Subordinated Loans and *fifth*, from the Rehabilitation Reserve Account, in each case in order to fund deficiencies in such clauses “First” through “Eleventh” under the Flow of Funds; provided that (a) no amounts will be withdrawn as set forth in this sentence until amounts sufficient as of the date of such deficiency for all the purposes specified under higher-ranking clauses will have been withdrawn or set aside, in the amount of such deficiency and (b) for purposes of any mandatory prepayment of the TIFIA Loan with amounts on deposit in the Equity Lock-Up Account in accordance with “—Mandatory Prepayment Account,” the funds in the Equity Lock-Up Account transferred to pay amounts pursuant to the Flow of Funds will be deemed withdrawn from the Equity Lock-Up Account in inverse order of deposits, with the deposits in respect of the most recent Restricted Payment Date being applied to such payments prior to deposits in respect of prior Restricted Payment Dates.

**Funds as Collateral**

Any deposit made into the Project Accounts under the Collateral Agency Agreement (except through clerical or other manifest error or in a manner that is otherwise inconsistent with the Collateral Agency Agreement) will be irrevocable and all cash, cash equivalents, Permitted Investments, instruments, and other Securities on deposit in the Project Accounts will be subject to a Security Interest in favor of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Agreement and will be held by the Collateral Agent as Collateral for the benefit of the Secured Parties as provided in the Collateral Agency Agreement.
**Investment**

Funds in the Project Accounts may be invested and reinvested only in Permitted Investments in accordance with written instructions given to the Collateral Agent by the Company (prior to the occurrence of an Event of Default and, thereafter (so long as such Event of Default is continuing), as directed by the Intercreditor Agent and in accordance with the written instructions of the Intercreditor Agent) and, unless an Event of Default has occurred and is continuing, the Company is entitled to instruct the Collateral Agent to liquidate Permitted Investments for purposes of effecting any such investment or reinvestment, upon permitted withdrawals from the respective accounts or for any other purpose permitted in the Collateral Agency Agreement; provided that, absent such instruction, such amounts held in the Project Accounts will be invested and reinvested in Permitted Investments as selected by the Company in advance (which may be in the form of a standing instruction). The Collateral Agent will not be required to take any action with respect to investing the funds in any Project Account in the absence of written instructions by the Company or the Intercreditor Agent (to the extent provided in accordance with the terms of the Collateral Agency Agreement).

The Collateral Agent will not be liable for any loss resulting from any Permitted Investment or the sale or redemption thereof made in accordance with the terms of the Collateral Agency Agreement. If and when cash is required for disbursement in accordance with the Collateral Agency Agreement, the Collateral Agent is authorized, in the event the Company fails to direct the Collateral Agent to do so in a timely manner and to the extent necessary to make payments required pursuant to the Collateral Agency Agreement, to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Collateral Agent will deem reasonable and prudent under the circumstances. The Company acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Company the right to receive brokerage confirmations of security transactions as they occur, the Company specifically waives receipt of such confirmations to the extent permitted by law. The Collateral Agent will provide the Company periodic cash transaction statements which will include detail for all investment transactions made by the Collateral Agent under the Collateral Agency Agreement.

The Collateral Agent will have no obligation to invest or reinvest the funds if all or a portion of the funds is deposited with (or instructions with respect to the same are given to) the Collateral Agent after 11 a.m. (E.S.T. or E.D.T., as applicable) on the day of deposit. Instructions to invest or reinvest that are received after 11 a.m. (E.S.T. or E.D.T., as applicable) will be treated as if received on the following Business Day.

In the event the Collateral Agent does not receive investment instructions, the amounts held by the Collateral Agent pursuant to the provisions of the Collateral Agency Agreement will not be invested and the Collateral Agent will not incur any liability for interest or income thereon.

The parties to the Collateral Agency Agreement each acknowledge that non-deposit investment products are not obligations of or guaranteed, by U.S. Bank National Association nor any of its affiliates, are not FDIC insured, and are subject to investment risks, including the
possible loss of principal amount invested in one or more of the money market funds made available by the Collateral Agent and initially selected by the Company.

Any investment direction contained in the Collateral Agency Agreement may be executed through an affiliated broker or dealer of the Collateral Agent and any such affiliated broker or dealer will be entitled to such broker’s or dealer’s usual and customary fees for such execution as agreed to by the Company. It is agreed and understood that the Collateral Agent may earn fees associated with the investments outlined above to the extent previously agreed with the Company. Neither the Collateral Agent nor its affiliates will have a duty to monitor the investment ratings of any Permitted Investments.

Investments may be held by the Collateral Agent directly or through any clearing agency or depository including the federal reserve/treasury book-entry system for United States and federal agency securities, and The Depository Trust Company. The Collateral Agent will not have any responsibility or liability for the actions or omissions to act on the part of any clearing agency.

Withdrawal and Application of Funds; Priority of Transfers from Project Accounts; Event of Default

Each withdrawal or transfer of funds from the Construction Account by the Collateral Agent on behalf of the Company in accordance with the Collateral Agency Agreement (other than with respect to certain transfers between Project Accounts pursuant to “—Construction Account” and upon closure of the Construction Account pursuant to “—Construction Account” above) will be made pursuant to an Approved Construction Requisition in accordance with “—Construction Account” above and this section. Amounts in the Construction Account will be transferred by the Collateral Agent as directed in the applicable Construction Requisition Certificate to pay Project Costs (or to the Operating Account or any Other Operating Account for the payment therefrom of Project Costs) in accordance with “—Construction Account” upon receipt by the Intercreditor Agent and the Collateral Agent of the following documents and satisfaction of the following conditions, as applicable, not later than the third Business Day prior to the proposed Construction Funds Transfer Date (or such shorter period as is acceptable to the Collateral Agent and the Intercreditor Agent):

(i) to the extent applicable pursuant to the terms of this section, a duly executed Construction Requisition Certificate from the Company (1) setting forth the amount(s) requested to be transferred on such Construction Funds Transfer Date and the applicable accounts or payees to which such amount(s) will be transferred (with the description of each purpose therefor); and (2) certifying as to the following, as applicable, as of such date of transfer:

a. to the use of any 2016 Bond proceeds and any proceeds of any future tax-exempt borrowings comprising Additional Parity Bonds (including, in each case, any Account Interest or other earnings thereon), if any, being withdrawn on such Construction Funds Transfer Date, complies with the Code and with the Tax Regulatory Agreement;
b. no Event of Default under the 2016 Loan Documents has occurred and is continuing (unless such disbursement will cure such Event of Default);

c. no Funding Shortfall exists; and

d. all amounts requisitioned in such Construction Requisition Certificate relate to Project Costs that have been incurred or are reasonably projected to be incurred within the next sixty (60) days in connection with the Project and none have been the basis for a prior requisition (including any requisition for transfers of such amounts to, or on deposit in, the Operating Account or any Other Operating Account) that has been paid;

(ii) except to the extent not required pursuant to the provisos of this paragraph and the paragraph immediately below, a duly executed Technical Advisor Certificate certifying that, in the reasonable opinion of the Lenders’ Technical Advisor:

   a. for any funds to be applied to Project Costs for construction work under the Design-Build Contract, such funds are for payment in respect of actual Work completed or Work reasonably projected to be completed;

   b. no Funding Shortfall exists;

   c. all amounts requisitioned in the related Construction Requisition Certificate relate to Project Costs that have been incurred or are reasonably projected to be incurred within the next sixty (60) days in connection with the Project and none (including any such amounts requisitioned for transfers to, or on deposit in, the Operating Account or any Other Operating Account) have been the basis for a prior requisition that has been paid; and

   d. Revenue Service Availability of the Project is reasonably expected to be achieved on or prior to the Long Stop Date;

provided, however, that upon a determination by the Lenders’ Technical Advisor that Revenue Service Availability of the Project will not occur on or prior to the Long Stop Date, a transfer from the Construction Account (or any sub-account thereof) will be allowed so long as Lenders’ Technical Advisor is satisfied with the Company’s remedial plan demonstrating that Revenue Service Availability can be achieved on or prior to the Long Stop Date, which satisfaction must be evidenced by certification thereof by the Lenders’ Technical Advisor; provided, further, however, that none of the foregoing requirements of this clause (ii) will apply to transfers on any Construction Funds Transfer Date of amounts with respect to Project Costs constituting administrative expenses of the Company, including personnel, insurance and lease expenses; and

(iii) withdrawal of funds from the 2016A Proceeds Sub-Account, the 2016B Proceeds Sub-Account, the 2016C Proceeds Sub-Account or the 2016D Proceeds Sub-Account will be on a pro rata basis among such accounts;
provided, further, that, with respect to the Project Costs described in sub-clauses (x) and (y) of this proviso, the requirement of sub-clause (1) of the foregoing clause (i) (and solely with respect to 2016 Bond proceeds and any proceeds of future tax-exempt borrowings comprising Additional Parity Bonds (including, in each case, any Account Interest or other earnings thereon), if any, being withdrawn on the respective date for a transfer, the requirement of sub-clause (2)(A) of the foregoing clause (i)) will be the sole condition(s) to transfer on any Construction Funds Transfer Date of amounts with respect to Project Costs (x) constituting the payment of interest on the Senior Secured Obligations or the TIFIA Loan, fees payable to the Collateral Agent, other Secured Parties or any rating agencies, or the costs of issuance of the Senior Secured Obligations or the TIFIA Loan or (y) being transferred on a Construction Funds Transfer Date on or after the RSA Payment Date from amounts in the Construction Account (including any sub-account thereof) comprising the Construction Completion Amount.

Except as provided in “—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts,” “—TIFIA Debt Service Reserve Sub-Account,” “—Distribution Account,” “—Reserve Accounts; Reserve Letters of Credit” and the final paragraph of this section, each withdrawal or transfer of funds from the Project Accounts (other than from the Construction Account (subject to certain provisions therein, with respect to each of which a Funds Transfer Certificate will be provided) the Operating Account, the Other Operating Accounts or the Material Project Contract Accounts) by the Collateral Agent on behalf of the Company will be made pursuant to an executed Funds Transfer Certificate, which certificate will be provided and prepared by the Company and will contain a certification by the Company, as applicable, that such withdrawal or transfer complies with the requirements of the Collateral Agency Agreement.

Unless a shorter period is acceptable to the Collateral Agent, such Funds Transfer Certificate relating to each applicable Project Account (other than the Construction Account, the Operating Account, the Other Operating Accounts or the Material Project Contract Accounts) will be delivered to the Collateral Agent no later than two Business Days prior to each date on which funds are proposed to be withdrawn or transferred. In the event that a Funds Transfer Certificate does not comply with the requirements of the Collateral Agency Agreement and the other Finance Documents, the Collateral Agent has the right to reject such certificate and the Company will not be entitled to cause the proposed withdrawal or transfer until it has submitted a revised and compliant certificate.

The Company will, in the absence of an Event of Default that has occurred and is continuing, be entitled to withdraw funds from all of the Project Accounts contemplated in the Collateral Agency Agreement for the purposes (and in accordance with the terms) set forth in the Collateral Agency Agreement. For the avoidance of doubt, subject to the final paragraph of this section, the Company will have the right to withdraw or cause to be transferred funds from the Operating Account, solely for the purposes set forth in “—Operating Account” above, at any time without approval or consent of the Intercreditor Agent, the Collateral Agent, or any other Person, so long as such withdrawal is effected in accordance with the terms of the Collateral Agency Agreement.
The Company will deliver to the Collateral Agent at least two Business Days prior to each Restricted Payment Date (i) a senior coverage certificate with respect to the immediately preceding Calculation Date and (ii) a copy of the certificate (including the applicable TIFIA Coverage Certificate) delivered to the TIFIA Lender pursuant to the TIFIA Loan Agreement with respect to the satisfaction of the “Restricted Payment Conditions” (as defined in the TIFIA Loan Agreement) as of the immediately preceding Calculation Date.

Notwithstanding anything to the contrary contained in the Collateral Agency Agreement, upon receipt of a notice of an Event of Default and during the continuance of the related Event of Default, the Intercreditor Agent may (i) in connection with or following the taking of an Enforcement Action, without consent of the Company, instruct the Collateral Agent in writing to apply proceeds of the Project Accounts to the payment of Secured Obligations, in accordance with the terms of the Collateral Agency Agreement and the Intercreditor Agreement and in the order set forth in “—Collateral and Remedies—Application of Proceeds” below, so long as such payments are on account of amounts due under the Finance Documents in respect of such Secured Obligations and (ii) at any time prior to the taking of an Enforcement Action, instruct the Collateral Agent to apply the proceeds of the Project Accounts in the order set forth in the Flow of Funds above; provided, that in the case of this clause (ii), amounts on deposit in the Construction Account, any Senior Debt Service Reserve Sub-Account and the TIFIA Debt Service Reserve Sub-Account may only be applied in accordance with the provisions of “—Construction Account,” “—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts,” and “—TIFIA Debt Service Reserve Account,” respectively.

**Termination of Project Accounts**

Upon the payment in full in cash of the Secured Obligations, the Collateral Agency Agreement will terminate, and the Collateral Agent will, within thirty days of receipt of a request from the Company, countersigned by the Intercreditor Agent, and at the expense of the Company, close the Project Accounts (other than the Operating Account and the Other Operating Accounts which will remain in existence at the full discretion of the Company) and/or liquidate any investments credited thereto and/or transfer the funds deposited therein or credited thereto, as directed by the Company. Thereafter, the Collateral Agent will be released from any further obligation to (a) comply with Entitlement Orders originated by the Intercreditor Agent to the extent that any of the Project Accounts (other than the Operating Account and the Other Operating Accounts) is a “securities account” under the applicable provision of the UCC or (b) comply with instructions originated by the Intercreditor Agent, to the extent that any of the Project Accounts (other than the Operating Account and the Other Operating Accounts) is a “deposit account” under the applicable provision of the UCC or (c) comply with any obligation under any Finance Document except as specifically provided in the Collateral Agency Agreement or therein, in each case as contemplated Collateral Agency Agreement or therein. Nothing contained in this section will be construed to modify or otherwise affect the Collateral Agent’s Security Interest in the Project Accounts and the funds therein, prior to such closure and liquidation and/or transfer in accordance with the terms in the Collateral Agency Agreement.
Securities Intermediary

The Securities Accounts will be established and maintained as securities accounts (within the meaning of the UCC) with a securities intermediary. Each of the parties to the Collateral Agency Agreement, including U.S. Bank National Association, agrees that U.S. Bank National Association (or any successor thereto) will act as the securities intermediary (within the meaning of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) (in such capacity, the “Securities Intermediary”) under and for the purposes of the Collateral Agency Agreement and for so long as U.S. Bank National Association (or any successor thereto) is the Collateral Agent.

The Securities Intermediary agrees that any financial assets credited to such Securities Accounts, or any “securities entitlement” (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, will not be subject to any Security Interest or right of set-off in favor of the Securities Intermediary or anyone claiming through the Securities Intermediary (other than the Collateral Agent).

It is the intent of the Collateral Agent and the Company that the Collateral Agent (for the benefit of the Secured Parties) be the Entitlement Holder with respect to the Securities Accounts. In any event, the Securities Intermediary agrees that it will comply with Entitlement Orders with respect to the Securities Accounts originated by the Collateral Agent without further consent by the Company or any other Person. The Securities Intermediary covenants that it will not agree with any Person other than the Collateral Agent to comply with Entitlement Orders with respect to the Securities Accounts originated by any Person or entity other than the Collateral Agent. The Securities Intermediary will at all times act as a “securities intermediary” (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) in maintaining the Securities Accounts and will credit to each Securities Account each financial asset to be held in or credited to each Securities Account pursuant to the Collateral Agency Agreement. To the extent, if any, that the Collateral Agent is deemed to hold directly, as opposed to having a security entitlement in, any financial asset held by the Securities Intermediary for the Collateral Agent, the Securities Intermediary agrees that it is holding such financial asset as the agent of the Collateral Agent and expressly acknowledges and agrees that it has received notification of the Collateral Agent’s security interest in such financial asset and that it is holding possession of such financial asset for the benefit of the Collateral Agent.

Each Securities Account will remain held at all times by a “securities intermediary” (within the meaning of Section 8-102(a)(14) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) that is a bank organized under the laws of the United States of America or any state thereof that has offices in the State of New York with unsecured long-term debt which will be rated “A” or better by S&P or “A2” or better by Moody’s and that has a total capital stock and unimpaired surplus of not less than $500,000,000. The Securities Intermediary will give notice to the Collateral Agent and the Company of the location of the Securities Accounts and of any change thereof prior to the use or change thereof. If at any time the Securities Intermediary will fail to meet such requirements and qualifications
set forth in the first sentence above, the Company will replace the Securities Intermediary as soon as practicable with a qualifying Securities Intermediary.

Any income received by the Collateral Agent with respect to the balance from time to time on deposit in each Securities Account, including any interest or capital gains on investments in overnight securities made with amounts on deposit in each Securities Account, will be credited to the applicable Securities Account. All right, title and interest in and to the cash amounts on deposit from time to time in each Securities Account together with any investments in overnight securities from time to time made pursuant this section will constitute part of the Collateral for the Secured Obligations and will be held for the benefit of the Secured Parties and the Company as their interests will appear under the Collateral Agency Agreement and will not constitute payment of the Secured Obligations (or any other obligations to which such funds are provided under the Collateral Agency Agreement to be applied) until applied thereto as provided in the Collateral Agency Agreement.

In the event that, notwithstanding the second paragraph of “—Securities Intermediary” above, the Securities Intermediary has or subsequently obtains by agreement, operation of Law or otherwise a Security Interest in any of the Securities Accounts, or any financial asset credited thereto, or any “securities entitlement” (as defined in Section 8-102(a)(17) of the UCC or, with respect to book-entry securities, in the applicable Federal Book-Entry Regulations) with respect thereto, the Securities Intermediary agrees that such Security Interest will be subordinate to the Security Interest of the Collateral Agent.

The Securities Intermediary agrees to comply with any and all instructions originated by the Collateral Agent directing disposition of funds in the Project Accounts and the Operating Account without any further consent of the Company.

Collateral and Remedies

Administration of Collateral

The Account Collateral will be held by the Collateral Agent for the benefit of the Secured Parties pursuant to the terms of the Collateral Agency Agreement and the other applicable Security Documents and will be administered by the Collateral Agent in the manner contemplated by the Collateral Agency Agreement and thereby.

Knowledge of Event of Default

The Collateral Agent, unless a responsible officer of the Collateral Agent has actual knowledge thereof, will not be deemed to have any knowledge of any Event of Default unless and until it has received written notice from the Company, the Intercreditor Agent or any other Secured Party describing such Event of Default in reasonable detail. If the Collateral Agent receives any such notice from a Person other than the Intercreditor Agent, the Collateral Agent will deliver a copy thereof to the other Secured Parties that are parties to the Collateral Agency Agreement (or representatives thereof) and the Contracting Authority, and if the Collateral Agent receives any such notice from a Person other than the Company, the Collateral Agent also will deliver a copy thereof to the Company, the Secured Parties that are parties to the Collateral Agency Agreement and the Contracting Authority.

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**Enforcement of Remedies**

Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent will, subject to the other provisions of the Collateral Agency Agreement, take such Enforcement Action with respect to such Event of Default as directed by the Intercreditor Agent, acting in accordance with the terms of the Intercreditor Agreement (with a copy to the Contracting Authority) (a “Direction Notice”); provided that, in the absence of a Direction Notice, the Collateral Agent may (but will not be obligated to) take such action (with written notice thereof to the Intercreditor Agent (which will deliver such notice to the other Secured Parties that are parties to the Collateral Agency Agreement or the representatives thereof and to the Contracting Authority) or refrain from taking such action with respect to such Event of Default as it deems in the best interests of the Secured Parties and solely to the extent permitted hereunder or pursuant to the other Security Documents. Upon receipt by the Collateral Agent of a Direction Notice, the Collateral Agent will seek to enforce the Security Documents (with prior notice thereof to the Contracting Authority and, to the extent not in violation of Law or court order, the Company) and to realize upon the Collateral in accordance with such Direction Notice and otherwise in accordance with the terms hereof and of the Security Documents (including by (a) drawing on any Equity Letters of Credit pursuant to the Equity Contribution Agreement and (b) the delivery by the Collateral Agent of a Lenders’ Contribution Notice (as defined in the Equity Contribution Agreement) to a Sponsor pursuant to the terms of the Equity Contribution Agreement); provided, however, that the Collateral Agent will not be obligated to follow any Direction Notice if the Collateral Agent reasonably determines that such Direction Notice is in conflict with any provisions of any applicable law or any Security Document, and the Collateral Agent will not, under any circumstances except in the event of gross negligence, fraud, bad faith or willful misconduct, be liable to any Secured Party, the Company or any other Person for following a Direction Notice.

**Remedies of the Secured Parties**

Unless otherwise consented to in writing by the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement), no Secured Party, individually or together with any other Secured Parties (excepting the Collateral Agent in its capacity as a Secured Party) will have the right, nor will it (i) exercise or enforce any of the rights, powers or remedies which the Collateral Agent is authorized to exercise or enforce under the Collateral Agency Agreement or any of the other Security Documents, (ii) sue for or institute any creditor’s process (including an injunction garnishment, execution or levy, whether before or after judgment) in respect of any Secured Obligation (whether or not for the payment of money) owing to it under or in respect of any Finance Document, (iii) take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding in relation to, the Company, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Company, or (iv) apply for any order for an injunction or specific performance in respect of the Company in relation to any of the Finance Documents. Notwithstanding the foregoing, the Secured Parties will expressly acknowledge the TIFIA Lender’s rights to take certain actions in accordance with the Intercreditor Agreement, subject to the Intercreditor Agreement. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2016 BONDS—Intercreditor Terms Among the Secured Parties.”
**Application of Proceeds**

Subject to the following paragraphs of this section, after the taking of an Enforcement Action, all Proceeds received by the Collateral Agent derived from the funds set forth in clauses (i)-(vi) below pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents will be applied as follows (provided, that any such proceeds which are to be used to pay any amounts to any Holders of Bonds will be paid to the Trustee for deposit into the applicable sub-accounts of the Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be):

(i) All amounts on deposit in, and all Proceeds attributable to, the 2016A Proceeds Sub-Account, the 2016B Proceeds Sub-Account, the 2016C Proceeds Sub-Account, the 2016D Proceeds Sub-Account and any other Bond Proceeds Sub-Account, in each case, of the Construction Account will be transferred to the Trustee in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement, first to pay for the pro rata payment of all accrued and unpaid interest on the applicable series of Bonds with respect to such Bond Proceeds Sub-Account, and second, if any unpaid principal of any such Bonds is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts;

(ii) All amounts on deposit in, and all Proceeds attributable to any Additional Parity Bonds Proceeds Account will be transferred to the Trustee in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement, first to pay for the pro rata payment of all accrued and unpaid interest on the applicable series of Additional Parity Bonds with respect to such Additional Parity Bonds Proceeds Account, and second, if any unpaid principal of any such Additional Parity Bonds is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts;

(iii) All amounts on deposit in, and all Proceeds attributable to, the TIFIA Loan Proceeds Sub-Account of the Construction Account will be transferred to the TIFIA Lender in accordance with the Security Interests granted on such account and Proceeds attributable thereto pursuant to the Security Agreement, first to pay for the pro rata payment of all accrued and unpaid interest on the TIFIA Loan, and second, if any unpaid principal of the TIFIA Loan is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts;

(iv) All amounts on deposit in, and all Proceeds attributable to, any additional sub-account of the Construction Account established pursuant to the terms hereof for the deposit of proceeds of any Other Permitted Senior Secured Indebtedness will be transferred to the relevant Secured Parties with respect to such sub-account in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement, first to pay for the pro rata payment of all accrued and unpaid interest on the relevant Other Permitted Senior Secured Indebtedness, and second, if any unpaid principal of any such
Other Permitted Senior Secured Indebtedness is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts;

(v) All amounts on deposit in, and all Proceeds attributable to, any sub-account of the Debt Service Reserve Account will be transferred to the relevant Secured Parties with respect to such sub-account in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement, as applicable, first to pay for the pro rata payment of all accrued and unpaid interest on the relevant Secured Obligations and second, if any unpaid principal of any such Secured Obligations is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts; and

(vi) All amounts on deposit in, and all Proceeds attributable to, any sub-account of the Mandatory Prepayment Account will be transferred to the relevant Secured Parties with respect to such sub-account in accordance with the Security Interest granted on such account and Proceeds attributable thereto pursuant to the Security Agreement, first to pay for the pro rata payment of all accrued and unpaid interest on the relevant Secured Obligations and second, if any unpaid principal of any such Secured Obligations is due and payable (by acceleration or otherwise), to the pro rata payment of such principal amounts.

Following the taking of an Enforcement Action, notwithstanding any provision contrary in the Collateral Agency Agreement or any other Finance Document (but subject to certain provisions of the Collateral Agency Agreement including those set forth in the preceding paragraphs and in “—Debt Service Reserve Account and Senior Debt Service Reserve Sub-Accounts,” “—TIFIA Debt Service Reserve Sub-Account,” “—Rehabilitation Reserve Account,” “—Loss Proceeds Account,” and “—Mandatory Prepayment Account”, the Collateral Agent, as directed by the Intercreditor Agent, will have the right to direct the application of all amounts on deposit in or credited to the Project Accounts, and to otherwise deal with the Collateral, without the need for consent of, or any other action by, the Company or any other Secured Party. Subject to the prior application of the funds as described in the preceding paragraphs of this section, following the taking of an Enforcement Action, all Proceeds received by the Collateral Agent pursuant to the exercise of any rights or remedies accorded to the Collateral Agent pursuant to, or by the operation of any of the terms of, any of the Security Documents, including Net Loss Proceeds, Termination Compensation, Asset Sale Proceeds or proceeds from the sale or disposition of Collateral or other Enforcement Action and amounts available in or otherwise transferred from the Project Accounts will be applied promptly by the Collateral Agent as directed by the Intercreditor Agent as follows (provided, that any such proceeds which are to be used to pay any amounts to the Holders of Bonds will be paid to the Trustee for deposit into the applicable sub-accounts of the Series 2016 Debt Service Fund or other debt service fund applicable to the Bonds, as the case may be):

First, to the pro rata payment of the unpaid fees, administrative costs and expenses due and payable to the Secured Parties under the Finance Documents, if any;

Second, to the pro rata payment of all accrued and unpaid interest due and payable on all Applicable Senior Secured Obligations and Hedging Obligations held by any Hedge Providers;
Third, to the pro rata payment of (i) any unpaid principal of any Applicable Senior Secured Obligation that is due and payable (by acceleration or otherwise) and (ii) any Hedging Termination Obligations then due and payable to the Hedge Providers that are due and payable (by acceleration or otherwise);

Fourth, to the pro rata payment of all accrued and unpaid redemption or prepayment premiums due and payable, if any, on all Applicable Senior Secured Obligations;

Fifth, to the pro rata payment of all other amounts, if any, due and payable under the Finance Documents to the Senior Secured Parties with respect to any Applicable Senior Secured Obligations;

Sixth, to the extent that the TIFIA Obligations do not qualify as Applicable Senior Secured Obligations, to the payment of all amounts due and payable in respect of the TIFIA Obligations; and

Seventh, upon the payment in full of all Secured Obligations in accordance with clauses “First” through “Sixth” hereof, to pay to the Company, or as may be directed by the Company, or as a court of competent jurisdiction may direct, any Proceeds then remaining.

If at any time any Secured Party will for any reason obtain any payment or distribution upon or with respect to the Secured Obligations contrary to the terms of the Collateral Agency Agreement or the Intercreditor Agreement, whether as a result of the Collateral Agent’s exercise of any Enforcement Action in respect of the Collateral or otherwise, such Secured Party agrees that it will have received such amounts in trust, and will promptly remit such amount so received in error to the Collateral Agent to be applied in accordance with the terms of the Collateral Agency Agreement.

Miscellaneous Provisions

Amendments; Waivers

Any term, covenant, agreement or condition of the Collateral Agency Agreement or any of the other Security Documents may be amended or waived only by an instrument in writing signed by each of the Collateral Agent (acting upon the instruction of the Intercreditor Agent), the Intercreditor Agent (acting in accordance with the terms of the Intercreditor Agreement) and the Company (or the applicable Sponsor solely with respect to each Pledge Agreement); provided that the consent of the Securities Intermediary will be required for any amendment to the provision described under “—The Project Accounts—Securities Intermediary” or any other amendment that would modify the rights or obligations of the Securities Intermediary.

The waiver (whether express or implied) by the Collateral Agent of any breach of the terms or conditions of the Collateral Agency Agreement, and the consent (whether express or implied) of the Intercreditor Agent will not prejudice any remedy of the Collateral Agent or the Intercreditor Agent in respect of any continuing or other breach of the terms and conditions of the Collateral Agency Agreement, and will not be construed as a bar to any right or remedy which the Collateral Agent or the Intercreditor Agent would otherwise have on any future occasion under the Collateral Agency Agreement.
No failure to exercise nor any delay in exercising, on the part of the Collateral Agent or any other Secured Party, of any right, power or privilege under the Collateral Agency Agreement will operate as a waiver thereof. No single or partial exercise by the Collateral Agent or any other Secured Party of any right, power or privilege under the Collateral Agency Agreement will preclude any other or further exercise thereof or the exercise of any other right, power or privilege available to it. All remedies under the Collateral Agency Agreement and under the other Security Documents are cumulative and are not exclusive of any other remedies that may be available to the Collateral Agent, whether at law, in equity or otherwise.

**Governing Law**

The Collateral Agency Agreement and the rights and obligations of the parties under the Collateral Agency Agreement will be governed by and construed in accordance with the laws of the State of New York.

**Collateral Agent’s Rights**

If at any time the Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Collateral (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of such property), the Collateral Agent is authorized to comply therewith in any manner it or legal counsel of its own choosing reasonably deems appropriate. If the Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Collateral Agent will not be liable to any of the parties to the Collateral Agency Agreement or to any other Person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

In the event of any dispute between or conflicting claims by or among the Company, and the Secured Parties with respect to any property being held by the Collateral Agent in connection with the Collateral Agency Agreement or the other Security Documents, the Collateral Agent will be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions with respect to such property so long as such dispute or conflict continues, and the Collateral Agent will not be or become liable in any way to the Company or the Secured Parties for failure or refusal to comply with such conflicting claims, demands or instructions. The Collateral Agent will be entitled to refuse to act until, in its sole discretion, either (i) such conflicting or adverse claims or demands will have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in a writing reasonably satisfactory to the Collateral Agent or (ii) the Collateral Agent will have received security or an indemnity reasonably satisfactory to it sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. Any court order, judgment or decree will be accompanied by a legal opinion by counsel for the presenting party, reasonably satisfactory to the Collateral Agent, to the effect that said order, judgment or decree represents a final adjudication of the rights of the parties by a court of competent jurisdiction, and that the time for appeal from such order, judgment or decree has expired without an appeal having been
perfected. The Collateral Agent will act on such court order and legal opinions without further question.

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. When any account or sub-account is opened, the Collateral Agent will be entitled to such information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.
APPENDIX G

SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

Summary of the Indenture of Trust between
the Maryland Economic Development Corporation and
U.S. Bank National Association, as Trustee

The following is a summary of selected provisions of the Indenture relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Borrower or the Trustee. Unless otherwise stated, any reference herein to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Capitalized terms used but not defined in this summary have the meanings set forth in Appendix B – “DEFINITIONS OF TERMS.”

The Indenture

The parties have entered into the Indenture in connection with the issuance of the 2016 Bonds, the proceeds of which will be distributed in the form of the 2016 Loan under the Series 2016 Loan Agreement to the Borrower.

Grant of Trust Estate

The Bond Issuer, in consideration for the purchase of the Bonds by the Holders and other good and valuable consideration, in order to secure the payment of the Bonds and to secure the performance and observance of all the covenants and conditions set forth in the Bonds and the Indenture, has executed and delivered the Indenture and has pledged and assigned or has required to be pledged and assigned, and does pledge and assign unto the Trustee and to its successors and assigns forever and, subject to the Security Documents and the Intercreditor Agreement, for the benefit of the Holders, all of the following described property, franchises, rights and income, including any title or interest therein acquired after the date of the Indenture but excluding therefrom the Reserved Rights (collectively, the “Trust Estate”):

(a) all right, title and interest of the Bond Issuer (except for Reserved Rights) in, to and under the Series 2016 Loan Agreement and any Additional Parity Bonds Loan Agreement (if executed), the present and continuing right of the Bond Issuer to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Series 2016 Loan Agreement and any Additional Parity Bonds Loan Agreement (if executed), to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Bond Issuer is entitled to do under such Series 2016 Loan Agreement and any Additional Parity Bonds Loan Agreement (if executed);

(b) all moneys from time to time held by the Trustee under the Indenture in any Fund or Account other than (i) the Series 2016 Rebate Fund and (ii) any Defeasance Escrow Account;

(c) any Security Interest granted to the Collateral Agent for the benefit of the Trustee (as a Secured Creditor) on behalf of the Holders of the Bonds under the Security Documents, including without limitation in respect of the Collateral pledged thereunder, and the present and continuing right of the Collateral Agent on behalf of the Trustee (as a Secured Creditor) to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Security Documents, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Collateral Agent on behalf of the Trustee (as a Secured Creditor) is entitled to do under such Security Documents;

(d) subject to the Collateral Agency Agreement, the Intercreditor Agreement and the Security Agreement, all funds deposited from time to time and earnings thereon in the Revenue Account, the Senior Debt Service Account, the Construction Account, the 2016D Bonds Debt Service Reserve Sub-Account, the PABs
Mandatory Prepayment Sub-Account, the Rehabilitation Reserve Account, the Equity Lock-Up Account, the Availability Payment Start-Up Reserve Account, the Termination Compensation Account, the Revenue Service Availability Payment Account, the Final Completion Payment Account, the Special Lifecycle Payment Account, the Loss Proceeds Account, any and all other accounts established from time to time pursuant to the Collateral Agency Agreement, and any and all sub-accounts created thereunder, each held by the Collateral Agent under the Collateral Agency Agreement; and

(e) any and all other property, revenues, rights or funds from time to time hereafter by delivery or by writing of any kind specifically granted, assigned or pledged as and for additional security for any of the Bonds, the Series 2016 Loan Agreement or any Additional Parity Bonds Loan Agreement (if executed) in favor of the Trustee (as a Secured Creditor) or the Collateral Agent on behalf of the Trustee (as a Secured Creditor), including any of the foregoing granted, assigned or pledged by the Borrower or any other Person on behalf of the Borrower, and the Trustee (as a Secured Creditor) and/or the Collateral Agent on behalf of the Trustee (as a Secured Creditor) is authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture.

Time of Pledge; Delivery of Trust Estate

The creation, perfection, enforcement, and priority of the pledge of the Trust Estate by the Bond Issuer to secure or pay the Bonds as provided in the Indenture shall be governed by the Act, the Bond Resolution and the Indenture. The Trust Estate pledged for the payment of the Bonds, as received by or otherwise credited to the Bond Issuer, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding against all parties having claims of any kind against the Bond Issuer, irrespective of whether such parties have notice thereof, and shall create a perfected security interest, without the necessity for separation or delivery of funds or for the filing or recording of the bond proceedings by which such pledge is created or any certificate, statement, or other document with respect thereto; and the pledge of such pledged receipts and special funds is effective and the money therefrom and thereof may be applied to the purposes for which such pledge has been made without necessity for any act of appropriation.

Amounts Received Pursuant to the Collateral Agency Agreement

All funds provided pursuant to the Collateral Agency Agreement for deposit into any Fund or Account of the Indenture will be available together with other moneys then on deposit in such Funds and Accounts to be used for the applicable purposes as set forth in the Indenture.

Bonds Secured on Equal and Proportionate Basis

Except as expressly provided in the Indenture and subject to the separate pledges of revenues as payment for certain series of the Bonds under the terms of the Collateral Agency Agreement, the Trust Estate shall be held by the Trustee for the equal and proportionate benefit of the Holders and any of them, without preference, priority or distinction as to lien or otherwise.

Establishment of Funds and Accounts

The following Funds and Accounts will be created and established with the Trustee under the Indenture:

(a) The Series 2016 Debt Service Fund, and within the Series 2016 Debt Service Fund, three accounts designated (i) the Series 2016 Interest Account, (ii) the Series 2016 Principal Account and (iii) the Series 2016 Redemption Account; and

(b) The Series 2016 Rebate Fund.

Notwithstanding anything in the Indenture to the contrary, the Trustee may from time to time establish and maintain additional funds, accounts or sub-accounts necessary or useful in connection with any other provision of the Indenture or any Supplemental Indenture or to the extent deemed necessary by the Trustee.
**Series 2016 Debt Service Fund**

There shall be deposited into the appropriate Account of the Series 2016 Debt Service Fund: (i) amounts remitted or transferred to such Account from the Revenue Account pursuant to the Collateral Agency Agreement; (ii) any moneys paid to the Trustee pursuant to the Indenture and the Collateral Agency Agreement with respect to the Redemption Price of the 2016 Bonds; (iii) any amounts remitted or moneys transferred to such Account from the 2016D Bonds Debt Service Reserve Sub-Account pursuant to the Collateral Agency Agreement; (iv) any amounts remitted or moneys transferred to such Account from the Construction Account pursuant to the Collateral Agency Agreement; (v) any moneys deposited into such Account pursuant to the Indenture and the Collateral Agency Agreement in the event of an exercise of remedies; and (vi) all other moneys received by the Trustee that are accompanied by directions that such moneys are to be deposited into such Account.

If on any Interest Payment Date the funds on deposit in the Series 2016 Interest Account are not sufficient to pay the Interest Payment in full on such Interest Payment Date, the Trustee shall transfer moneys from the Series 2016 Principal Account to the Series 2016 Interest Account sufficient to make such payment. If on any Principal Payment Date there exists both (i) funds on deposit in the Series 2016 Interest Account in excess of the amount necessary to pay the Interest Payment due on such date, and (ii) insufficient funds on deposit in the Series 2016 Principal Account to make the principal payment due on such date in full, the Trustee shall transfer all or such portion of such excess funds on deposit in the Series 2016 Interest Account to the Series 2016 Principal Account as necessary to provide for such principal payment in full.

Moneys in each Account of the Series 2016 Debt Service Fund shall be used solely for the payment (within each Account) of the principal of and interest on and the Redemption Price of the 2016 Bonds; provided, that (i) moneys paid by the Bond Issuer pursuant to the redemption provisions of the Indenture and moneys transferred pursuant to the Collateral Agency Agreement for the redemption of the 2016 Bonds shall be used to pay the Redemption Price of the 2016 Bonds and (ii) moneys held in such Account of the Series 2016 Debt Service Fund following an acceleration of the 2016 Bonds upon the occurrence of and during the continuance of an Event of Default shall be used as provided in the Indenture and the Collateral Agency Agreement.

**Series 2016 Rebate Fund**

The Series 2016 Rebate Fund shall be for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation, the Holders. The Series 2016 Rebate Fund is established for the purpose of complying with Section 148 of the Code and the Treasury Regulations promulgated pursuant thereto. There shall be deposited into the Series 2016 Rebate Fund all amounts to be transferred to such Fund pursuant to the Collateral Agency Agreement. The money deposited in the Series 2016 Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in the Tax Regulatory Agreement. The Series 2016 Rebate Fund is not a portion of the Trust Estate and is not subject to any lien under the Indenture. Notwithstanding the foregoing, the Trustee with respect to the Series 2016 Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it under the Indenture. Notwithstanding anything contained in the Indenture to the contrary, neither the Bond Issuer nor the Trustee shall be responsible or liable for any loss, liability or expense incurred as a result of the failure of the Borrower to fulfill its obligation with respect to the calculation and payment of the Rebate Amount. The Bond Issuer and the Trustee shall be entitled to rely conclusively upon the calculations provided by the Borrower.

The Trustee, at the direction of the Borrower given in accordance with the Series 2016 Loan Agreement, shall apply or cause to be applied the amounts in the Series 2016 Rebate Fund at the times and in the amounts required by Section 148 of the Code solely for the purpose of paying the United States of America in accordance with Section 148 of the Code.

Moneys held in the Series 2016 Rebate Fund shall be invested and reinvested upon the written direction of the Borrower by the Trustee in Permitted Investments that mature at such times specified in such written direction, which times shall not be later than such times as shall be necessary to provide money when needed for payments to be made from such Series 2016 Rebate Fund and in accordance with the provisions of the Indenture. The interest earned on moneys or investments in the Series 2016 Rebate Fund shall be retained in the Series 2016 Rebate Fund. Moneys held in the Series 2016 Rebate Fund, after payment of any Rebate Amount then due pursuant to the...
provisions of the Tax Regulatory Agreement, shall be held by the Trustee for a period of not less than seventy-five (75) days following the redemption or final maturity of the Bonds.

**Moneys to be Held in Trust**

The Series 2016 Debt Service Fund and any other Fund or Account created under the Indenture (excluding the Series 2016 Rebate Fund and any Defeasance Escrow Account), shall be held by the Trustee in trust, for the benefit of the Holders of the Bonds as specified in the Indenture. The Series 2016 Rebate Fund shall be held by the Trustee for the purpose of making payments to the United States as provided above under the heading “Series 2016 Rebate Fund”. Any Defeasance Escrow Account shall be held solely for the benefit of the Holders of the Bonds to be paid therefrom as provided in the agreement governing such Defeasance Escrow Account.

**Investment of Moneys**

All moneys held as part of any Fund or Account shall be deposited or invested and reinvested by the Trustee, at the written direction of the Borrower, in Permitted Investments; provided, however, that moneys in the Defeasance Escrow Account may only be invested in Defeasance Securities.

Earnings from the investment of moneys held in any Fund or Account and losses from the investment of moneys held in any Fund or Account shall be credited or charged against the Fund or Account in which they were realized.

The Trustee shall sell and reduce to cash a sufficient amount of the investments held in any Fund or Account whenever the cash balance therein is insufficient to make any payment to be made therefrom and the Trustee shall not be liable or responsible for any loss or tax resulting from such sale.

The Bond Issuer and the Borrower (by its execution of the Series 2016 Loan Agreement) acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Bond Issuer or the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Bond Issuer and the Borrower specifically waive receipt of such confirmations to the extent permitted by Law. The Trustee will furnish the Bond Issuer and the Borrower periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee under the Indenture.

**Covenants of the Bond Issuer**

(a) The Bond Issuer has not, except pursuant to the Indenture, pledged, granted or created in any manner any Security Interest on, or rights with respect to, the Trust Estate.

(b) The execution, delivery and performance of its obligations under the Indenture by the Bond Issuer do not and will not conflict with or result in a violation or a breach of any Law or the terms, conditions or provisions of any restriction under any Law, contract, agreement or instrument to which the Bond Issuer is now a party or by which the Bond Issuer is bound, or constitute a default under any of the foregoing. All consents, approvals, authorizations and orders of governmental or regulatory authorities which are required to be obtained by the Bond Issuer for the consummation of the transaction contemplated hereby have been obtained. No authority or proceedings for issuance of the 2016 Bonds or documents in connection therewith have been repealed, revoked or rescinded or superseded.

(c) To the best knowledge of the Bond Issuer, there is no action, suit or proceeding at law or in equity, pending or threatened against the Bond Issuer to restrain or enjoin the issuance or sale of the 2016 Bonds or in any way contesting the validity or affecting the power of the Bond Issuer with respect to the issuance and sale of the 2016 Bonds or the documents or instruments executed by the Bond Issuer in connection therewith or the existence of the Bond Issuer or the power or the right of the Bond Issuer to finance the Project.

(d) The Bond Issuer agrees that it will cooperate with the Borrower and the Collateral Agent in connection with their obligation to cause all documents, statements, memoranda or other instruments to be
registered, filed or recorded in such manner and at such places as may be required by Law to fully protect the security of the registered Holders and the right, title and interest of the Trustee and Collateral Agent in and to the Security Interests in the Collateral (whether now existing or hereafter arising) and any moneys or securities held under the Indenture or any part thereof (including any re-filings, continuation statements or such other documents as may be required). The Bond Issuer shall have no responsibilities for such filings whatsoever, other than executing the documents requested by the Borrower or the Collateral Agent. The Bond Issuer’s approval shall not be required prior to the release of liens that have been properly discharged.

(e) The Bond Issuer will not, except as specifically permitted pursuant to the Indenture or pursuant to any Security Document or with respect to any other Permitted Security Interest, pledge, grant, create or permit to exist in any manner any Security Interest on, or rights with respect to, the Trust Estate, except for a contract or agreement under which the financial obligations of the Bond Issuer and the rights of any Person to require the Bond Issuer to make any payment are (a) limited to (i) moneys in the Funds and Accounts that are to be used pursuant to such contract or agreement for the purposes for which moneys in such Funds and Accounts may be used pursuant to the terms of the Indenture or (ii) moneys of the Bond Issuer that are not part of the Trust Estate; and (b) subordinate to the rights of the Holders of the Bonds under the Indenture.

(f) The Bond Issuer shall not take any action or omit to take any action with respect to the 2016 Bonds or the Additional Parity Tax-Exempt Bonds, if any, the proceeds of the 2016 Bonds or the Additional Parity Tax-Exempt Bonds, if any, the Trust Estate, the Project or any other funds or property of the Bond Issuer, and it will not permit, to the extent of its control, any other Person to take any action with respect to the 2016 Bonds or the Additional Parity Tax-Exempt Bonds, if any, the Trust Estate, the Project or any other funds or property of the Bond Issuer if such action or omission would cause interest on any of the 2016 Bonds or the Additional Parity Tax-Exempt Bonds, if any, to be included in gross income for federal income tax purposes. In furtherance of this covenant, the Bond Issuer agrees to comply with the procedures set forth in the applicable Tax Regulatory Agreement for the 2016 Bonds or the Additional Parity Tax-Exempt Bonds, if any. The covenants set forth in this paragraph shall remain in full force and effect notwithstanding the payment in full or defeasance of the 2016 Bonds or the Additional Parity Tax-Exempt Bonds, if any, until the date on which all of the Bond Issuer obligations in fulfilling such covenants have been satisfied. Pursuant to the Series 2016 Loan Agreement and the Additional Parity Bonds Loan Agreement (if executed), all investments of the proceeds of the Bonds will be at the direction of the Borrower.

(g) The Bond Issuer shall not create, incur, assume or permit to exist any indebtedness of the Bond Issuer with respect to the Trust Estate pledged under the Indenture, other than the Bonds, unless the Borrower shall request the Bond Issuer to issue Additional Parity Bonds pursuant to and in accordance with the Indenture.

Events of Default

Any of the following shall constitute an “Event of Default” under the Indenture with respect to all of the Outstanding Bonds:

(a) Failure to pay any portion of the principal of or Redemption Price on, any Outstanding Bond when such principal or Redemption Price is due and payable;

(b) Failure to pay any portion of interest on any Outstanding Bond within five (5) Business Days after such interest payment is due and payable;

(c) Failure by the Bond Issuer to cure any noncompliance with any other provision of the Indenture within sixty (60) days after receiving written notice of such noncompliance from the Trustee or the Collateral Agent (with a copy to the Borrower, the Intercreditor Agent, the Contracting Authority and the Collateral Agent or Trustee, as applicable) with respect to the Bonds;

(d) A Senior Loan Agreement Default shall have occurred and be continuing; or

(e) The occurrence and continuance, with respect to the Bond Issuer, of a Bankruptcy Event;
provided that where any such failure to pay described in clauses (a) or (b) above is a result of a technical or an administrative error caused by a party other than the Borrower in connection with the administration of the accounts from which such payment is made or is due to be made, no Event of Default shall occur until failure to pay within five (5) Business Days after notice is received by Borrower from the Trustee requiring such payment to be made.

Remedies Following and During the Continuance of an Event of Default

(a) Upon the occurrence and during the continuance of an Event of Default, any Holder or the Bond Issuer may deliver to the Trustee a written notice, with a copy to the Bond Issuer, the Collateral Agent, the Contracting Authority, the Intercreditor Agent and the Borrower, that an Event of Default has occurred and is continuing. The Trustee shall not be deemed to have any knowledge of the occurrence of an Event of Default, except with respect to an “Event of Default” described in clauses (a) or (b) above under the heading “Events of Default” or if such Event of Default is a result of a Bankruptcy Event of the Borrower pursuant to the Series 2016 Loan Agreement, unless and until it has received such a notice from the relevant party.

(b) At any time during which an Event of Default has occurred and is continuing commencing on the date of delivery to the Trustee of the notice described in (a) above (except with respect to an Event of Default described in clauses (a) or (b) under the heading “Events of Default” or if such Event of Default is a result of a Bankruptcy Event of the Borrower pursuant to the Series 2016 Loan Agreement in which no notice shall be required), the Majority Holders shall have the right to give the Trustee one or more enforcement directions directing the Trustee to exercise on behalf of the Holders, subject to the terms of the Collateral Agency Agreement, the Intercreditor Agreement and paragraph (c) below, whatever action at law or in equity may appear necessary or desirable to enforce the rights of the Bondholders on behalf of the Bondholders.

(c) Upon the occurrence and during the continuance of an Event of Default, if so instructed by the Majority Holders, the Trustee, subject to the immediately succeeding provisos, shall declare all Bonds, all interest accrued and unpaid thereon, and all other amounts payable in respect thereof to be due and payable, whereupon the same shall become immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are waived by the Bond Issuer; provided that the Bonds may be accelerated pursuant to this clause (c) only to the extent that (i) in the case of the 2016 Bonds, the 2016 Loan is concurrently being accelerated pursuant to the Series 2016 Loan Agreement or (ii) in the case of any Additional Parity Bonds, the applicable Additional Parity Bonds Loan (pursuant to which such the proceeds of such Additional Parity Bonds have been loaned to the Borrower) is concurrently being accelerated pursuant to the applicable Additional Parity Bonds Loan Agreement.

(d) The Majority Holders may, by written notice to the Trustee, on behalf of all of the Holders, rescind any acceleration and its consequences if such rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived and the Bond Issuer has paid or deposited, or caused to be paid or deposited, with the Trustee a sum sufficient to pay all sums paid or advanced by the Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel. In case of any such rescission, then and in every such case the Bond Issuer, the Trustee and the Holders shall be restored to their former positions and rights.

(e) All rights and actions and claims under the Indenture may be prosecuted and enforced by the Trustee on behalf of the Holders of the Bonds. In the case of pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization or other similar judicial proceeding relative to the Bond Issuer or the Trust Estate, the Trustee, subject to the Collateral Agency Agreement and the Intercreditor Agreement, shall be entitled to file and prove a claim for the amount of the Bond Issuer’s and the Borrower’s obligations to the Holders of the Bonds owing and unpaid and to file such other papers or documents as may be necessary in order to have the claims of the Holders allowed in such judicial proceeding and, to the extent permitted by Law, to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same in accordance with the terms of the Indenture and of the Collateral Agency Agreement.
Use of Moneys Received from Exercise of Remedies

After an acceleration as described above under the heading “Remedies Following and During the Continuance of and Event of Default”, moneys received by the Trustee from the Collateral Agent pursuant to and in accordance with the Collateral Agency Agreement, the Indenture, the Intercreditor Agreement and the other Security Documents in respect of the Bond Issuer’s obligations under the Indenture shall be applied first to pay the reasonable and proper fees and expenses (including the reasonable fees and expenses of counsel, advisors and agents) of, and indemnification payments owing to, the Trustee pursuant to the Finance Documents, including those incurred in connection with the exercise of remedies following such Event of Default, and thereafter remaining amounts shall be applied promptly by the Trustee as follows:

First, to the payments then due and payable by the Borrower to the Series 2016 Rebate Fund;

Second, ratably, to all accrued and unpaid interest on the Bonds;

Third, ratably, to the Outstanding principal amount on the Bonds; and

Fourth, to the Borrower, upon termination, expiration or payment in full of all commitments, any surplus to be applied at the Borrower’s discretion in accordance with the Collateral Agency Agreement and the other Finance Documents.

Limitations on Rights of Holders Acting Individually

Subject to the Collateral Agency Agreement and the Intercreditor Agreement, no Holder shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any remedy under the Indenture or for the enforcement of the terms of the Indenture, unless an Event of Default under the Indenture has occurred and is continuing and (i) the Holder has made a written request to the Trustee, and has given the Trustee sixty (60) days, to take such action in its capacity as Trustee, (ii) the Trustee shall have been provided reasonable security or indemnity against the cost, expenses and liabilities to be incurred in connection with such action to be taken, (iii) the Trustee shall have refused or unreasonably neglected to comply with such request and (iv) during such sixty (60) day period, no direction inconsistent with such written request shall have been delivered to the Trustee by the Majority Holders. Nothing in this paragraph shall affect or impair the right of the Holder to enforce the payment of the principal of and interest on or the Redemption Price of any Bond at and after the date such payment is due, subject, however, to the limitations on remedies set forth above under the heading “Remedies Following and During the Continuance of and Event of Default”. In addition, any action by any Holder taken with respect to the Trust Estate shall only be taken in accordance with the provisions of the Indenture described above under the heading “Remedies Following and During the Continuance of and Event of Default.”

Waivers of Events of Default

The Trustee, notwithstanding anything else to the contrary contained in the Indenture, shall waive any Event of Default upon the written direction of the Majority Holders; provided, however, that any Event of Default in the payment of the principal of or interest on, or the Redemption Price or purchase price of, any Bond when due shall not be waived (except as contemplated in paragraph (d) under the heading “Remedies Following and During the Continuance of and Event of Default”) without the consent of the Holders of 100% of the Bonds, unless, prior to such waiver, all such amounts (with interest on amounts past due on any Bond at the interest rate on such Bond) and all expenses of the Trustee (with interest on amounts past due with respect to any expenses of the Trustee at a rate per year equal to the highest yield on any series of Outstanding Bonds) in connection with such Event of Default have been paid or provided for. In case of any such waiver, then and in every such case the Bond Issuer, the Trustee and the Holders shall be restored to their former positions and rights under the Indenture, but no such waiver shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Resignation or Replacement of Trustee

The present Trustee or any future Trustee may resign by giving written notice to the Bond Issuer and the Collateral Agent (with a copy to the Borrower and the Intercreditor Agent) not less than sixty (60) days before such resignation is to take effect. Such resignation shall take effect only upon the appointment of and acceptance by a
successor qualified as provided in paragraph (c) below under the heading “Resignation or Replacement of Trustee”. If no successor is appointed within sixty (60) days following the date designated in the notice for the Trustee’s resignation to take effect, the resigning Trustee may petition, at the reasonable expense of the Borrower, a court of competent jurisdiction for the appointment of a successor. The present or any future Trustee may be removed at any time by the Bond Issuer in the event the Bond Issuer reasonably determines that the Trustee is not duly performing its obligations under the Indenture or that such removal is in the best interests of the Bond Issuer or the Holders.

(b) In case the present or any future Trustee shall at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the Bond Issuer, with the written consent of the Borrower (such consent not to be unreasonably withheld, delayed or conditioned). Upon making any such appointment, the Bond Issuer shall forthwith give notice thereof to each Holder, which notice may be given concurrently with the notice of resignation given by any resigning Trustee.

(c) Every successor Trustee shall be a bank or trust company in good standing, qualified to do business in the State, duly authorized to exercise trust powers and subject to examination by federal or state authority, qualified to act under the Indenture and having a capital and surplus of not less than $500,000,000. Any successor Trustee appointed under the Indenture shall execute, acknowledge and deliver to the Bond Issuer (with a copy to the Borrower, the Collateral Agent and the Intercreditor Agent) an instrument accepting such appointment under the Indenture, and thereupon such successor shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trust under the Indenture with like effect as if originally named as Trustee in the Indenture; but the Trustee retiring shall, nevertheless, on the written demand of its successor, execute and deliver an instrument conveying and transferring to such successor, upon the trusts in the Indenture expressed, all the estates, properties, rights, powers and trusts of the predecessor, which shall duly assign, transfer and deliver to the successor all properties and moneys held by it under the Indenture. Every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee under the Indenture to its successor. The instruments evidencing the resignation or removal of the Trustee and the appointment of a successor under the Indenture, together with all other instruments provided for in the Indenture and described under this heading “Resignation or Replacement of Trustee” shall be filed and/or recorded by the successor Trustee in each recording office, if any, where the Indenture shall have been filed and/or recorded. Should any instrument in writing from the Bond Issuer be required by any successor for more fully and certainly vesting in and confirming to it, such instrument in writing shall, at the reasonable discretion of the Bond Issuer, be made, executed, acknowledged and delivered by the Bond Issuer on request of such successor.

Supplemental Indentures Not Requiring Consents of Holders

The Bond Issuer and the Trustee may, without the consent of, or notice to, the Holders, but with the written consent of the Borrower and written notice to the Contracting Authority, enter into a Supplemental Indenture for any one or more of the following purposes:

(a) to provide for the issuance by the Bond Issuer of the Additional Parity Bonds in accordance with “Additional Parity Bonds” below;

(b) to add additional covenants to the covenants and agreements of the Bond Issuer set forth in the Indenture;

(c) to add additional revenues, properties or collateral to the Trust Estate;

(d) to cure any ambiguity, or to cure, correct or supplement any defect, omission or inconsistent provision contained in the Indenture, provided that such action shall not materially adversely affect the security for the payment of the Bonds;

(e) to amend any existing provision of the Indenture or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any Bonds for exclusion from gross income for federal income tax purposes; (ii) to qualify, or to preserve the qualification of, the Indenture or any Supplemental Indenture under the federal Trust Indenture Act of 1939, as amended; or (iii) to qualify, or preserve the qualification of, any Bonds for an exemption from registration or other
limitations under the laws of any state or territory of the United States and under any federal law of the United States, provided that such action shall not materially adversely affect the security for the payment of the Bonds;

(f) to amend any provision of the Indenture relating to the Series 2016 Rebate Fund if, in the opinion of Bond Counsel, such amendment does not adversely affect the excludability of the interest on the Bonds from gross income for federal income tax purposes;

(g) to provide for or eliminate book-entry registration of any of the Bonds;

(h) to obtain or maintain a rating (but not a particular rating level) of the Bonds by a Nationally Recognized Rating Agency, provided that such action shall not materially adversely affect the security for the payment of the Bonds;

(i) to facilitate the receipt of moneys;

(j) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this section; or

(k) in connection with any other change which does not materially adversely affect the security for the payment of the Bonds, including, without limitation, conforming the Indenture to the terms and provisions of the P3 Agreement, the Collateral Agency Agreement or the Intercreditor Agreement, which may be based upon a legal opinion with respect thereto of counsel selected by the Trustee, which legal counsel may rely on a certificate of an investment banker or financial advisor with respect to financial matters.

Supplemental Indentures Requiring Consent of Holders

The Bond Issuer and the Trustee may enter into a Supplemental Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or modifying the rights of the Holders in any way under the Indenture (other than as contemplated above under the heading “Supplemental Indentures Not Requiring Consent of Holders”) with the written consent of the Majority Holders or Holders of a majority in the aggregate principal amount of any series of Bonds affected by the proposed amendment, with the written consent of the Borrower, provided, however, that no Supplemental Indenture modifying the Indenture in the way described below may be entered into without the written consent of the Holder of each Bond affected thereby:

(a) a reduction of the principal of or interest on or Redemption Price payable on any Bond, a change in the maturity date of any Bond, a change in any Interest Payment Date for any Bond or a change in the redemption provisions applicable to any Bond;

(b) the release of a portion of the Trust Estate granted by the Indenture (other than in connection with (i) the sale, transfer, lease, assignment or other disposition thereof or (ii) a merger, liquidation, dissolution, consolidation, amalgamation or analogous arrangement, in each case to the extent permitted pursuant to the terms of each Senior Loan Agreement);

(c) the creation of a priority right in the Trust Estate of another Bond over the right of the affected Bond, except as permitted in the Indenture; or

(d) a reduction in the percentage of the aggregate Outstanding Bonds required for consent to any Supplemental Indenture or the parties whose consent is required.

Conditions to Effectiveness of Supplemental Indentures

In each case, subject to the provisions below under the heading “Compliance with P3 Agreement”:

(a) No Supplemental Indenture shall be effective until (i) it has been executed by the Bond Issuer and the Trustee and the Borrower and (ii) Bond Counsel has delivered a written opinion to the effect that the
Supplemental Indenture complies with the provisions of the Indenture and that it will not adversely affect the excludability from gross income for federal income tax purposes of interest on any series of Outstanding Bonds where the interest on such Bonds was excludable from gross income for federal income tax purposes on the original date of issuance of such Bonds.

(b) No Supplemental Indenture entered into pursuant to the section above under the heading “Supplemental Indentures Requiring Consent of Holders” shall be effective until, in addition to the conditions set forth in subsection (a) of this section, (i) a notice has been mailed to each Holder, which notice describes the nature of the proposed Supplemental Indenture and states that copies of it are on file at the office of the Trustee for inspection by the Holders and (ii) if required by the Indenture, subject to the provisions of any Supplemental Indenture, Holders of the required percentage of the Bonds have consented to the Supplemental Indenture.

(c) Anything in the Indenture to the contrary notwithstanding, if an Holder does not respond (in any way) to a request with respect to any Supplemental Indenture requiring consent of the Majority Holders, but not requiring consent from greater than the Majority Holders, pursuant to the section above under the heading “Supplemental Indentures Requiring Consent of Holders”, within ten (10) Business Days of delivery of such request, then any Bonds registered to such Holder shall not be counted for the purpose of calculating the consent of the Majority Holders. For the avoidance of doubt, this provision (i) shall not apply to clause (a)-(d) above under the heading “Supplemental Indentures Requiring Consent of Holders”, (ii) shall not be utilized to effectuate a Supplemental Indenture that materially adversely affects the interests of Holders and (iii) requires an opinion of Bond Counsel confirming the continued tax-exempt status of the Bonds.

Consent of Borrower

Anything in the Indenture to the contrary notwithstanding, a Supplemental Indenture pursuant to the terms of the Indenture shall not become effective unless and until the Borrower shall have consented to the execution and delivery of such Supplemental Indenture.

Amendments to Senior Loan Agreements Not Requiring Consent of Holders

The Bond Issuer may, subject to the Intercreditor Agreement, (i) upon receipt of an opinion of Bond Counsel to the effect that the proposed amendment will not adversely affect the excludability of interest on any Tax-Exempt Bonds from gross income for federal income tax purposes and is authorized by the Indenture and (ii) upon the receipt of the written consent of the Borrower, consent to any amendment, change or modification of a Senior Loan Agreement, without the consent of, or notice to, the Holders, for any one or more or all of the following purposes:

(a) to add additional covenants to the covenants and agreements of the Borrower set forth therein;

(b) to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained therein;

(c) to amend any existing provision thereof or to add additional provisions which, in the opinion of Bond Counsel, are necessary or advisable (i) to qualify, or to preserve the qualification of, the interest on any Bonds for exclusion from gross income for federal income tax purposes or (ii) to qualify, or to preserve the qualification of, any Bonds for an exemption from registration or other limitations under the Laws of any state or territory of the United States;

(d) to facilitate the receipt of moneys;

(e) to establish additional funds, accounts or subaccounts necessary or useful in connection with any other provision of this section; or
(f) in connection with any other change which does not materially adversely affect the security for the payment of the Bonds, including, without limitation, conforming such Senior Loan Agreement to the terms and provisions of the P3 Agreement or any Finance Document.

For the avoidance of doubt, the Bond Issuer may, subject to the Intercreditor Agreement, (i) upon receipt of an opinion of Bond Counsel to the effect that the proposed amendment will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is authorized by the Indenture and (ii) upon the receipt of the written consent of the Borrower, consent to any amendment, change or modification of any other Finance Document, to the extent Bond Issuer’s consent is required, without the consent of, or notice to, the Holders, for any one or more or all of the purposes set forth above.

Amendments to Senior Loan Agreements Requiring Consent of Holders

Except for the amendments, changes or modifications as provided in the section above under the heading “Amendments to Senior Loan Agreements Not Requiring Consent of Holders”, the Bond Issuer may, subject to the Intercreditor Agreement, consent to any other amendment, change or modification of the Series 2016 Loan Agreement and the Additional Parity Bonds Loan Agreement (if applicable) with the prior written consent of the Majority Holders and with the written consent of the Borrower; provided, however, that no amendment, change or modification of any Senior Loan Agreement may be entered into in respect of the matters contemplated below unless the prior written consent of the Holders affected thereby and the Borrower has been obtained:

(a) (x) a reduction of the interest rate, principal of or interest on, or (y) a change in the maturity date, the Interest Payment Date or the prepayment provisions applicable to, the 2016 Loan or the Additional Parity Bonds Loan; or

(b) the deprivation of the Trustee or Collateral Agent of the Security Interest granted by the Security Documents.

The Trustee shall, upon notice of the same from the Bond Issuer and upon satisfactory indemnification with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided by the section above under the heading “Conditions to Effectiveness of Supplemental Indentures” with respect to Supplemental Indentures; provided, that prior to the delivery of such notice or request, the Trustee may require that an opinion of Bond Counsel be furnished to the effect that such amendment, change or modification complies with the provisions of the Indenture and will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Designated Payment Office of the Trustee for inspection by all Holders.

Additional Parity Bonds Loan Agreement

In the event that the Series 2016 Loan Agreement is amended pursuant to the Indenture prior to execution of any Additional Parity Bonds Loan Agreement, any such Additional Parity Bonds Loan Agreement shall be deemed to reflect such changes mutatis mutandis.

Actions of Trustee Requiring Holder Consent Pursuant to the Intercreditor Agreement or any Senior Loan Agreement

In the event that the Intercreditor Agreement, the Series 2016 Loan Agreement or any Additional Parity Bonds Loan Agreement, if applicable, or any other Finance Document requires certain actions by the Trustee at the direction of a designated portion of the Holders of the applicable Bonds, the Trustee hereby agrees as follows:

(a) if the Borrower requests consent of the Trustee to be provided at the direction of a designated portion of the Holders of the applicable Bonds, the Trustee shall, upon notice of the same from the Borrower, and upon being satisfactorily indemnified with respect to reasonable and documented expenses, cause notice of such requested consent or action to be given in the same manner as provided by the section above under the heading “Conditions to Effectiveness of Supplemental Indentures” with respect to Supplemental Indentures; provided, that prior to the delivery of such notice or request, the Trustee shall be furnished with an opinion of Bond Counsel to the effect that such consent or action complies with the provisions of the Indenture and will not adversely affect the
excludability of the interest on the Bonds from gross income for federal income tax purposes. Such notice shall briefly set forth the nature of such requested consent or action and shall state that any copies of such request from the Borrower are on file at the Designated Payment Office of the Trustee for inspection by all Holders; and/or

(b) upon direction from Holders of not less than the required percentage in aggregate principal amount of the Outstanding Bonds in accordance with the terms of the Indenture, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, take any such directed action in accordance with the terms of the Indenture, the Series 2016 Loan Agreement or any Additional Parity Bonds Loan Agreement, if applicable (including, in connection with any Intercreditor Vote); provided, that prior to the delivery of such notice or request, the Trustee shall be furnished with an opinion of Bond Counsel to the effect that such consent or action complies with the provisions of the Indenture and will not adversely affect the excludability of the interest on the Bonds from gross income for federal income tax purposes.

For the avoidance of doubt, the Trustee may, subject to the Intercreditor Agreement, (i) upon receipt of an opinion of Bond Counsel to the effect that the proposed amendment will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is authorized by the Indenture and (ii) upon the receipt of the written consent of the Borrower, consent to any amendment, change or modification of any Finance Document, to the extent Trustee’s consent is required, without the consent of, or notice to, the Holders, for any one or more or all of the purposes set forth in the section above under the heading “Amendments to Senior Loan Agreements Requiring Consent of Holders”.

**Discharge of Indenture**

If 100% of the principal of and interest on and Redemption Price due, or to become due, on all the Bonds, fees and expenses due to the Trustee and all other amounts payable under the Indenture have been paid, or if provision shall have been made for the payment thereof in accordance with the section below described under the heading “Defeasance of Bonds” and the opinion of Bond Counsel required by the section below described under the heading “Opinion of Bond Counsel” has been delivered, then (a) the right, title and interest of the Trustee in and to the Trust Estate shall terminate and be discharged (referred to in the Indenture as the “discharge” of the Indenture); (b) the Trustee shall transfer and convey to, or to the order of the Bond Issuer, all property that was part of the Trust Estate, including but not limited to any moneys held in any Fund or Account under the Indenture, except any Defeasance Escrow Account created pursuant to the section below described under the heading “Defeasance of Bonds” (which Defeasance Escrow Account shall continue to be held in accordance with the agreement governing the administration thereof, and, consistent with the Indenture, subject to any applicable abandoned property law, the Trustee shall pay the Borrower upon request any money held by it for the payment of the principal of or interest on the Redemption Price that remains unclaimed for three years, and, thereafter, Holders entitled to the money must look to the Borrower for payment); and (c) the Trustee shall execute any instrument requested by the Bond Issuer to evidence such discharge, transfer and conveyance.

**Defeasance of Bonds**

(a) All or any portion of the Outstanding Bonds shall be deemed to have been paid (referred to in the Indenture as “defeased”) prior to their maturity or redemption if:

1. the defeased Bonds are to be redeemed prior to their maturity, the Bond Issuer has irrevocably instructed the Trustee to give notice of redemption of such Bonds in accordance with the Indenture;

2. there has been deposited in trust in a Defeasance Escrow Account created with the Trustee either moneys in an amount that shall be sufficient to pay when due the principal of and the interest or Redemption Price, as applicable, of the defeased Bonds or non-callable Defeasance Securities that without any reinvestment thereof will provide moneys which, together with the moneys, if any, deposited into or held in the Defeasance Escrow Account, shall be sufficient to pay when due the principal of and interest on or Redemption Price, as applicable, due and to become due on the defeased Bonds on and prior to the redemption date or maturity date thereof, as the case may be;
(3) a verification agent, acceptable to Bond Counsel, has delivered a verification report verifying the delivery of the instruction described in paragraph (1) of this subsection and the deposit described in paragraph (2) of this subsection; and

(4) the opinion of Bond Counsel required by the section below described under the heading “Opinion of Bond Counsel” has been delivered.

(b) The Defeasance Securities and moneys deposited in a Defeasance Escrow Account pursuant to this section and the principal and interest payments on such Defeasance Securities shall not be withdrawn or used for any purpose other than, and shall be held in trust solely for, the payment of the principal of and interest on and Redemption Price of the defeased Bonds; provided, however, that (i) any moneys received from principal and interest payments on such Defeasance Securities that are not required to pay the principal of and interest on or Redemption Price of the defeased Bonds on the date of receipt shall, to the extent practicable, be reinvested in Defeasance Securities maturing at the times and in amounts sufficient to pay when due the principal of and interest on and Redemption Price to become due on the defeased Bonds on or prior to the redemption date or maturity date thereof, as the case may be; and (ii) any moneys or Defeasance Securities may be withdrawn from a Defeasance Escrow Account if (A) the moneys and Defeasance Securities that are on deposit in the Defeasance Escrow Account, including any moneys or Defeasance Securities that are substituted for the moneys or Defeasance Securities that are withdrawn from the Defeasance Escrow Account, satisfy the conditions stated in paragraph (a)(2) above and (B) a verification report and opinion of Bond Counsel are delivered that comply with paragraphs (a)(3) and (a)(4) above.

(c) Any Bonds that are defeased as provided in this section shall no longer be secured by or entitled to any right, title or interest in or to the Trust Estate, and the principal of and interest on and Redemption Price thereof shall be paid solely from the Defeasance Securities and money held in the Defeasance Escrow Account.

Opinion of Bond Counsel

Prior to any discharge of the Indenture pursuant to the section above described under the heading “Discharge of Indenture” or the defeasance of any Bonds pursuant to the section above described under the heading “Defeasance of Bonds”, Bond Counsel must have delivered a written opinion to the effect that all requirements of the Indenture for such discharge or defeasance have been complied with and that such discharge or defeasance will not adversely affect the tax-exempt status of interest on any series of Tax-Exempt Bonds where the interest on such Tax-Exempt Bonds was excludable from gross income for federal income tax purposes on the original date of issuance of such Tax-Exempt Bonds.

Authorization for Additional Parity Bonds

Subject to the restrictions set forth in the Indenture and upon request by the Borrower, the Bond Issuer may issue Additional Parity Bonds, which shall be ratably and equally secured by the Trust Estate, upon execution of a Supplemental Indenture without consent of the Holders of the Bonds pursuant to the section above under the heading “Amendments to Senior Loan Agreements Not Requiring Consent of Holders”. Except to the extent inconsistent with the express terms of the Additional Parity Bonds issued and the related Supplemental Indenture executed pursuant to the Indenture, all of the provisions, terms, covenants and conditions of the Indenture shall be applicable to any Additional Parity Bonds issued under the Indenture.

Additional Parity Bonds

The Bond Issuer may issue Additional Parity Bonds in accordance with the Indenture for any purpose contemplated under (and in accordance with the conditions set forth in) the definition of “Other Permitted Senior Secured Indebtedness” in the Collateral Agency Agreement.

All Additional Parity Bonds must be issued on the same terms and conditions then applicable to the then Outstanding Bonds, unless otherwise approved by the Bond Issuer and the Borrower, except that the interest rate on such Additional Parity Bonds must be fixed and the amortization applicable to any such Additional Parity Bonds would be subject to then-current market conditions and on terms acceptable to the Borrower.
To the extent that any or all of the 2016 Bonds (or any Additional Parity Bonds) are Outstanding at the time the Additional Parity Bonds are proposed to be incurred, the additional financing documents entered into in connection therewith (i) shall not prohibit the Borrower from incurring new indebtedness to refinance such Bonds (at least to the extent permitted under the Indenture and under the Series 2016 Loan Agreement) and (ii) shall provide that all principal and interest payment dates with respect to such Additional Parity Bonds will be the same principal and interest payment dates as the Bonds that remain Outstanding through maturity of such Bonds.

Prior to the issuance of any Additional Parity Bonds, the Borrower must cause compliance with the requirements of the Indenture for the delivery of Bonds and in addition deliver to the Trustee and the Collateral Agent the following:

(1) a certificate of the Borrower, signed by a Borrower Representative, dated as of the date of issuance of such proposed Additional Parity Bonds stating that no Default or Event of Default under the 2016 Loan Documents has occurred and is continuing or will result from the issuance of such Additional Parity Bonds (or a certificate, accompanied by the consent of the Majority Holders, that the issuance of any such Other Permitted Senior Secured Indebtedness would cure such Default or Event of Default);

(2) executed counterparts of all financing documents related to the Additional Parity Bonds including, without limitation, (A) a certified copy of the executed counterpart of the Additional Parity Bonds Loan Agreement, under which the Bond Issuer agrees to loan the proceeds of the Additional Parity Bonds to the Borrower, and (B) an original executed counterpart of the Supplemental Indenture under which the Additional Parity Bonds have been issued;

(3) evidence that a Nationally Recognized Rating Agency then providing a rating on the Bonds has confirmed that the incurrence of such Additional Parity Bonds shall not, in and of itself, result in a downgrade of the rating of the Bonds below the higher of (x) the then current rating of the Bonds or (y) an Investment Grade Rating; and

(4) Notwithstanding anything to the contrary in the Indenture, any issuance of Additional Parity Bonds for the purpose of refinancing or replacing any or all of the Bonds is subject to the further condition that it must comply with the refinancing requirements set forth in the P3 Agreement.

Applicable Law

The Indenture shall be governed by and construed in accordance with the laws of the State of Maryland.

Compliance with the P3 Agreement

Notwithstanding any other provision in the Finance Documents to the contrary, the statements required by the P3 Agreement enabling the Bond Obligations and interest thereon to meet the requirements of Project Debt, Funding Agreements and Security Documents under, and as defined in the P3 Agreement, and entitling the holders of the Senior Secured Obligations and the Holder to each of their respective rights, benefits and protections granted in, or subject to, the P3 Agreement, are incorporated into the Indenture by reference; provided that such statements are not intended to modify or affect and shall not modify or affect the sections of the Indenture relating to the Bond Issuer’s limitation of liability, rights to receive notice and rights of exculpation or the Reserved Rights of the Bond Issuer.

Any amendment to the Indenture and/or Senior Loan Agreements, as applicable, including Supplemental Indentures, shall expressly incorporate by reference the statements required by the P3 Agreement. The Contracting Authority shall have the limited right to confirm that any amendment to be made to the Indenture and/or the Senior Loan Agreements, as applicable, including Supplemental Indentures, incorporates by reference the statements required by P3 Agreement (which confirmation shall not be unreasonably withheld or delayed). Notwithstanding the foregoing, if the Contracting Authority has not responded to any request by the Bond Issuer, the Trustee or the Borrower to provide such confirmation within two (2) Business Days of receipt of such request by the Bond Issuer, the Trustee or the Borrower, the Contracting Authority’s confirmation required by this section shall be deemed given if such amendment or Supplemental Indenture contains, mutatis mutandis, the language set forth in the
The Contracting Authority shall have no other consent rights with respect to such amendments or Supplemental Indentures.

The provisions of the Indenture described in this section may not be amended by any Supplemental Indenture. Any purported amendment to the provisions of the Indenture described in the two preceding paragraphs is null and void *ab initio* and without legal effect.
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APPENDIX H

SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2016 LOAN AGREEMENT

Summary of the Loan Agreement between
the Maryland Economic Development Corporation and
Purple Line Transit Partners LLC

The following is a summary of selected provisions of the Series 2016 Loan Agreement relating to the Project and is not a full statement of the terms of such agreement. Accordingly, the following summary is qualified in its entirety by reference to such agreement and is subject to the full text of such agreement. A copy of such agreement is available, free of charge, upon request from the Borrower or the Trustee. Unless otherwise stated, any reference herein to any agreement means such agreement and all schedules, exhibits and attachments thereto, as amended, supplemented or otherwise modified and in effect as of the date hereof. Capitalized terms used but not defined in this summary have the meanings set forth in Appendix B – “DEFINITIONS OF TERMS.”

Borrower to Provide Funds

In the event that proceeds derived from the 2016 Loan, or any other available (or to be available) funds, are not sufficient to finance the Project Costs, the Borrower shall not be entitled to any reimbursement from the Issuer or the Trustee for the payment of such costs nor shall the Borrower be entitled to any abatement, diminution or postponement of its payments under the Series 2016 Loan Agreement.

Loan to Finance Project Costs

The Borrower shall use the proceeds of the 2016 Loan to pay a portion of the Project Costs (including, without limitation, funding the 2016D Bonds Debt Service Reserve Sub-Account).

Security for Repayment of Loan

Prior to or simultaneously with the delivery of the Series 2016 Loan Agreement, the Borrower shall deliver the Security Documents and Collateral to the Trustee and the Collateral Agent as security for the payments and obligations of the Borrower under the Series 2016 Loan Agreement.

Compliance with Indenture

In accordance with any applicable provisions of the Indenture and subject to the limitations contained in the Indenture and the Series 2016 Loan Agreement with respect to the limitation of the Issuer’s liability, the Issuer shall take any action directed by the Borrower to the extent required under, or permitted by, the provisions of the Indenture or the Series 2016 Loan Agreement. The Borrower shall take all action required to be taken by, and shall comply with all obligations of, the Borrower in the Indenture as if the Borrower were a party to the Indenture.

Amounts Payable

The Borrower covenants and agrees to repay the 2016 Loan, as follows: on or before any Interest Payment Date for the 2016 Bonds or any other date that any payment of interest, principal or Redemption Price on the 2016 Bonds is required to be made in respect of the 2016 Bonds pursuant to the Indenture (which payments for principal and interest include Sinking Fund Installments and will be in the respective amounts set forth on the debt service schedule attached to the Series 2016 Loan Agreement as Attachment A, which shall be amended from time to time pursuant to the Indenture), until the payment of interest, principal, or Redemption Price on the 2016 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in the applicable Account of the Series 2016 Debt Service Fund, as applicable, will enable the Trustee to pay to the Owners of the 2016 Bonds the amount due and payable on such date as interest, principal or Redemption Price on
the 2016 Bonds (including Sinking Fund Installments) as provided in the Indenture. All payments made by the Borrower shall be made free and clear of (and grossed up for) any tax or stamp duty.

The Borrower also shall pay to the Issuer the Issuer’s reasonable costs, fees and expenses directly related to the issuance of the 2016 Bonds, including the reasonable fees and expenses of its counsel, the reasonable and documented fees and expenses of the Trustee pursuant to the Indenture, and certain other costs pursuant to the Series 2016 Loan Agreement and the Indenture.

**Obligations of Borrower Unconditional**

The obligations of the Borrower to make the payments described in “Amounts Payable” above and to perform and observe the other agreements contained in the Series 2016 Loan Agreement shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of (a) any breach by the Issuer or the Trustee of any obligation to the Borrower, whether under the Series 2016 Loan Agreement or otherwise, or (b) any indebtedness or liability at any time owing to the Borrower by the Issuer or the Trustee, and, until such time as the principal of, premium, if any, and interest on the 2016 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Borrower (1) will not suspend or discontinue any payments provided for in “Amounts Payable” above, (2) will perform and observe all other agreements contained in the Series 2016 Loan Agreement and the Security Documents and (3) except as otherwise provided in the Series 2016 Loan Agreement, will not terminate the Series 2016 Loan Agreement or any of the Security Documents for any cause, or any failure of the Issuer or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Series 2016 Loan Agreement. Nothing contained in this paragraph shall be construed to release the Issuer from the performance of any of the agreements on its part contained in the Series 2016 Loan Agreement, and in the event the Issuer should fail to perform any such agreement on its part, the Borrower may institute such action against the Issuer as the Borrower may deem necessary to compel performance so long as such action does not abrogate the obligations of the Borrower contained in the first sentence of this paragraph.

**Prepayment and Redemption**

The Borrower shall have the option to prepay its obligations under the Series 2016 Loan Agreement at the times and in the amounts as necessary to cause the Issuer to redeem the 2016 Bonds in accordance with the terms of the Indenture and the 2016 Bonds. The Issuer, at the request of the Borrower and at Borrower’s reasonable cost and expense, if applicable, shall forthwith take all steps (other than the payment of funds necessary to effect such redemption) necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the Outstanding 2016 Bonds, as may be specified by the Borrower and required by the Indenture, on the date established for such redemption.

**Covenants of the Borrower**

Covenants made by the Borrower under the Series 2016 Loan Agreement include, but are not limited to, the following:

* **Borrower to Provide Certain Information**

Promptly following delivery thereof to the Contracting Authority as required under the P3 Agreement, the Borrower shall provide to the Issuer copies of any historical employment-related data with respect to the Project that it is required to deliver to the Contracting Authority pursuant to the P3 Agreement.

* **Notice of Suspension of the Project**

The Borrower shall promptly notify the Trustee, the Contracting Authority and the Issuer of any proposal to suspend or permanently abandon the Project (except to the extent the suspension is a result of an emergency, or except as otherwise permitted under the Material Project Contracts, in which case notification will be provided as promptly as possible following the Borrower’s actual knowledge thereof).
Governmental Approvals and Laws

The Borrower shall obtain, maintain and comply with, in all material respects, all required Governmental Approvals and all applicable Laws, in either case, that are material to the conduct of its business, the failure to obtain, maintain or comply with which could reasonably be expected to have a Material Adverse Effect, and except with respect to any such Governmental Approval where the failure to obtain, maintain or comply is permitted under the Public-Private Agreement, including any provision affording the Borrower any relief or cure period.

Taxes

The Borrower shall timely pay and discharge all Taxes imposed upon the Borrower or the Project prior to the date on which penalties, fines or interest attach thereto, provided that the Borrower may permit any such Tax to remain unpaid if (a) it is being contested in good faith by appropriate proceedings and adequate reserves have been provided and are maintained in accordance with GAAP or (b) the failure to pay and discharge them would not reasonably be expected to have a Material Adverse Effect.

Insurance

The Borrower shall maintain, or cause its relevant contractors to maintain, all insurance required pursuant to the terms of the P3 Agreement, in accordance with the terms of the P3 Agreement (other than coverage not required to be in effect until a later date pursuant to the Public-Private Agreement).

Project Accounts and Other Accounts

The Borrower shall not establish and maintain any bank accounts except for (i) the Project Accounts (including such additional Project Accounts and sub-accounts thereof as may be required, permitted or contemplated to be established by the 2016 Loan Documents), (ii) the Distribution Account, (iii) any other accounts required or permitted to be established pursuant to the Material Project Contracts (including any handback reserve), and (iv) any other bank accounts established in the name of the Borrower if, in the reasonable judgment of the Borrower, the creation of such accounts will enable the Borrower to facilitate construction or maintenance or better administer the Project; provided that (x) the Borrower shall not, in each case, deposit moneys into such accounts other than in accordance with, and to the extent permitted by, the Collateral Agency Agreement, and (y) the Borrower shall, prior to depositing any moneys into any accounts not otherwise subject to a security interest in favor of the Collateral Agent (unless exclusion from the Collateral Agent’s security interest is expressly contemplated by the Finance Documents or the Material Project Contracts), enter into a Control Agreement covering such account to perfect the Security Interest created in favor of the Collateral Agent over such account and the monies therein.

Arm’s-Length Transactions

Other than the Transaction Documents in effect at the Closing Date, the Borrower will not enter into any material transactions with any Affiliate unless such transaction is fair and commercially reasonable to the Borrower and contains terms no less favorable to the Borrower than those which would reasonably be included in a comparable arm’s-length transaction with a non-Affiliate; provided, that the following will be deemed not to violate this covenant: (i) the Design-Build Contract, each Design-Build Guaranty, the O&M Contract, each O&M Guaranty and the Interface Agreement; and (ii) those certain payments that would be considered Restricted Payments but for the proviso in the definition of “Restricted Payments” in the Collateral Agency Agreement.

Use of Proceeds; Tax Negative Covenant

The Borrower will not: (a) take any action or omit to take any action or permit any action or omission with respect to the 2016 Bonds, the proceeds thereof or any other funds of the Borrower if such action or omission (i) would cause the interest on the 2016 Bonds to lose its excludability from gross income for federal income tax purposes under Section 103 of the Code, (ii) would cause interest on the 2016 Bonds to lose its exemption from income taxation in the State or (iii) would otherwise violate the Tax Regulatory Agreement;
(b) permit any use of the proceeds of the 2016 Bonds, or take or omit to take any action which would cause the 2016 Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code;

(c) permit any use of the proceeds of the 2016 Bonds except pursuant to the Indenture, the Series 2016 Loan Agreement and the Collateral Agency Agreement;

(d) sell, assign or otherwise transfer all or substantially all of its interest in the Project unless the Borrower, in addition to satisfying the other requirements of the Finance Documents, shall have delivered to the Trustee and the Bond Issuer an opinion of Bond Counsel to the effect that such transaction will not adversely affect either the legality of the 2016 Bonds or the exclusion of interest on the 2016 Bonds from gross income of the holders thereof for Federal income tax purposes; or

(e) file an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation or otherwise subject to taxation as a corporation for U.S. federal income tax purposes.

Abandonment of Project

The Borrower shall not, unless required or permitted under the P3 Agreement, abandon all or a material portion of the Project, which abandonment shall be deemed to have occurred if the Borrower, without reasonable cause or unless as required or permitted by the P3 Agreement, (i) expressly declares in writing that it will not resume Work on the Project (or such material portion), or (ii) fails to pursue the construction of the Project (or such material portion) for a continuous period of more than ninety (90) days.

No Remedy Exclusive

Subject to the Indenture, no remedy under the Series 2016 Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Series 2016 Loan Agreement or now or hereafter existing at Law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in the Series 2016 Loan Agreement, it shall not be necessary to give any notice, other than such notice as may be required by Law or under the Series 2016 Loan Agreement or under any other Finance Documents. Any rights and remedies as are given to the Issuer under the Series 2016 Loan Agreement will also extend to the Owners of the 2016 Bonds, and subject to the provisions of the Indenture, the Trustee and the Collateral Agent will be entitled to the benefit of all covenants and agreements contained in the Series 2016 Loan Agreement, subject to the terms of the Security Documents and the Intercreditor Agreement.

Term of Agreement

Except to the extent otherwise provided in the Series 2016 Loan Agreement, the Series 2016 Loan Agreement shall be effective upon its execution and delivery and shall expire at such time as all of the 2016 Bonds and the fees and expenses of the Issuer and the Trustee shall have been fully paid or provision made for such payments, whichever is later; provided, however, that the Series 2016 Loan Agreement may be terminated prior to such date pursuant to the Series 2016 Loan Agreement and the Indenture, but in no event before all of the obligations and duties of the Borrower thereunder have been fully performed, including, without limitation, the payments of all costs and fees mandated under the Series 2016 Loan Agreement or under the Indenture.

Indemnification

The Borrower shall and hereby agrees to indemnify and hold harmless the Issuer and the Trustee, and their respective members, directors, officers, employees and agents (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) against and from all liability, losses, damages, costs, expenses (including reasonable and documented legal fees and expenses), taxes, causes of action, suits, claims, demands and judgments of any nature, actual or threatened, by or on behalf of any person, firm, corporation or other legal entity arising from the Series 2016 Loan Agreement, the Indenture or the transactions contemplated thereby, in each case by the Borrower or on its behalf, including without limitation (i) any condition of the Project or any taxes, assessments, impositions and
other charges in respect of the Project, (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under the Series 2016 Loan Agreement, (iii) any claims relating to the financing or refinancing of the Project, the issuance of the Bonds and their tax status or any other activity taken or to be taken or not taken by an Indemnified Party in connection therewith or the trusts thereunder or the performance of duties thereunder or any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the use thereof, including without limitation any lease thereof or assignment of its interest in the Series 2016 Loan Agreement, (iv) any act or negligence of the Borrower or of any of its agents, contractors, servants, employees or licensees, (v) any untrue statement of a material fact contained in information provided by the Borrower with respect to the transactions contemplated hereby or (vi) any act or negligence of any assignee or lessee of the Borrower, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Borrower. The Borrower shall indemnify and save the Indemnified Parties harmless from any such claim arising as aforesaid, or in connection with any action or proceeding brought thereon, and upon written notice from the Issuer and the Trustee, the Borrower shall defend such parties, as applicable, in any such action or proceeding; provided that any and all counsel engaged by the Borrower to conduct such defense first shall be approved in writing by such Indemnified Party; provided further, however, that the failure to provide such notice will not relieve the Borrower of the Borrower’s obligations and liability under this section and will not give rise to any claim against or liability of such Indemnified Party. The Borrower shall have the sole right and duty to assume, and shall assume, the defense thereof, with counsel acceptable to the Indemnified Party on behalf of whom the Borrower undertakes a defense, with full power to litigate, compromise or settle the same in its sole discretion.

**Applicable Law**

The Series 2016 Loan Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

**Compliance with the P3 Agreement**

Nothing in the Series 2016 Loan Agreement alters in any way the Borrower’s rights, duties and obligations under the P3 Agreement. Notwithstanding any other provision in the Finance Documents to the contrary, the statements required by the P3 Agreement enabling the Bond Obligations and interest thereon to meet the requirements of Project Debt, Funding Agreements and Security Documents under, and as defined in the P3 Agreement, and entitling the holders of the Senior Secured Obligations and the Owner to each of their respective rights, benefits and protections granted in, or subject to, the P3 Agreement, are incorporated into the Series 2016 Loan Agreement by reference; provided that such statements are not intended to modify or affect and shall not modify or affect the sections of the Series 2016 Loan Agreement relating to the Issuer’s limitation of liability, rights to receive notice, rights to indemnification and rights of exculpation or the Reserved Rights of the Issuer. The provisions of the Series 2016 Loan Agreement summarized in this paragraph may not be amended by any amendment to the Series 2016 Loan Agreement.
Report
For
Purple Line LRT, Maryland

Dominic Leadsom
Director

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14th June 2016
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## Executive Summary

Turner & Townsend has been retained by Purple Line Transit Partners (the “Consortium”) to provide Lenders Technical Advisor (LTA) services for the Purple Line LRT Project (the “Project”) in Maryland.

### Public-Private Partnership Agreement

We have undertaken a review of the Public-Private Partnership Agreement (PPPA) Execution Version, as amended.

1. **We have reviewed the execution version of the PPPA and confirm that the drafting and intention of the document is in line with our expectations for a P3 project of this type.**

2. **Under Section 5.5, neither “formal review” nor “over-the-shoulder-review” are defined terms for the purposes of the PPPA. Technical provisions Book II Part 2A section 10 sets out the submittal process and the approval and review/comment procedures. We have reviewed the Project schedule and are satisfied that reasonable time has been allowed for the submittal and review process.**

3. **Under Section 7.3.2 – Float. The DB CONTRACTOR is taking schedule risk through the provision of Liquidated Damages within the DB contract, so the reduction in ‘float’ included as contingency in the construction schedule would increase that risk burden. We have discussed this with the DB CONTRACTOR and are satisfied that they have made adequate provision for this in their schedule and pricing.**

4. **The potential cost associated with the obligation to make Technology Enhancements to comply with Good Industry Practice is difficult to estimate over the Concession period. Although this can be incorporated to some extent within the Asset Management Plan, technology associated with the Fare System and how this may impact availability and performance KPIs through the life of the concession requires consideration. The PPPA identifies the locations of the Ticket Vending Machines (TVMs) and the Validators. We have discussed this further with the O&M Contractor and have clarified that Good Industry Practice can be benchmarked as what is ‘reasonably expected’. This is a risk requiring management through the Concession period. The O&M Contractor has priced for the Operations and Maintenance and included the allowance for fare media in their estimate. Maintenance pricing has been based on similar systems in service at other locations. Addendum 3 removed the obligation for the O&M Contractor to price the Life Cycle replacement as the Owner takes this responsibility. Contingency has been applied to the pricing. Based on the information available and our discussions with the O&M Contractor, we are satisfied that they understand the risk and have made provisions in their Asset Management Plan and proposed pricing to mitigate it.**
The responsibility for fare collection is unusual for an availability-payment P3 project. The language in the PPPA states that failure to “properly” deposit and account for fare revenues constitutes a Concessionaire Default.

We have discussed this with the Consortium. The requirements of the Technical Provisions will provide the basis for determining whether or not the Concessionaire performed “properly”. ACI, an integral member of the O&M Contractor team, has been performing fare collection services successfully on the Tren Urbano in San Juan, Puerto Rico over the last 10 years. The information from the TVMs and other fare equipment provides a balancing number against the deposits, so that reconciliation ties out the deposit each month against the calculated amount that should have been received. It is anticipated that circa 50% of the transactions will be through electronic/mobile apps/smart cards/etc., which will lower the amount of cash being handled. This is a risk that requires management through the Concession period. Based on the information we have available and our discussions with the O&M Contractor, we are satisfied that they understand the risk and have made provisions in their Asset Management Plan and proposed pricing to manage it.

In relation to Section 9.1 of the PPPA, Disclosure of Contracts and Contractors, the reasons for an Owner’s Authorised Representative’s objection with respect to Prime Contracts and Contracts with Affiliates are not identified. With this open position, there is a risk that an objection could occur more than once when schedule requirements may dictate that a contract needs to be signed expeditiously. We would recommend that the grounds for an objection are defined. We understand that this has been raised with the Owner and they have responded that this is standard wording for MDOT contracts. We have discussed this with the DB Contractor and this is an inherent risk that will be managed through the schedule. We are satisfied that the risk and client is known, understood and can be managed through appropriate schedule management.

The DBE/MBE requirement to make ‘continuing good faith efforts’ is satisfactory for the Project. The goals for the Design Build Period are higher than we have seen elsewhere. The Fluor-Lane team on the P3 contracts for the nearby Express Lane 495 and 95 megaprojects were successful in meeting goals higher than those stated for this contract. We are satisfied that the DB CONTRACTOR partners understand the requirements and have processes available to meet them.

Financial Model

We have reviewed the Financial Model dated 14th June 2016 and confirm that the DB Contract Price and the O&M Monthly Availability Payments are included as per the Execution Versions of the DB Contract and O&M Contract respectively.
Subcontracts

DB Contract

We have reviewed the Design Build Contract, Amended and Restated Version, dated 14th June 2016. We are satisfied that the drafting reflects a reasonable transfer of risk from the PPPA and associated documents.

The Long Stop Date under the DB Contract is appropriate for the Project. It is further of note that under the Direct Agreement to be entered into by the Owner, Concessionaire and Lenders, if there is a failure (or an apparent failure) to achieve Revenue Service Availability (“RSA”) by the Long Stop Date, and the Lenders exercise their right to Step-In to the Project, the Lenders will have an additional six (6) months beyond the Long Stop Date to achieve (or cause Concessionaire to achieve) RSA.

O&M Contract

We have reviewed the O&M Contract, Amended and Restated Version, dated 14th June 2016. Other than as noted below we are satisfied that the drafting reflects a reasonable transfer of risk from the PPPA and associated documents.

We are satisfied that the LC and guaranty proposed is suitable for the Project.

We are satisfied that the non-termination default limitation of O&M Contractor Operating Annual Turnover is reasonable. We are satisfied that the termination liability cap is reasonable for the Project.

Performance Security

We have reviewed the DB Contract Performance Security package and we are satisfied that the Liability Cap and Liquid Security proposed is appropriate for the Project.

We have reviewed the performance security provided under the O&M Contract. Our analysis of the potential liabilities that could arise from the default of the O&M Contractor, including vehicle supplier, shows that the liability cap and liquid security proposed is reasonable for the Project.
Payment Mechanism

We have reviewed a copy of the payment mechanism Exhibit 4D to the PPPA.

Based on our review of the payment mechanism we are satisfied that the drafting is recognized in the P3 market and is considered to be suitable for this Project.

We have undertaken a sensitivity analysis of the payment mechanism and modelled various scenarios. We are satisfied that the thresholds in the PPPA are reasonable based on this sensitivity analysis.

O&M Proposals

The requirements identified in the O&M specifications are in accordance with what we would expect on a project of this type and nature.

We have received the O&M Costs, dated 1st April 2016. Following our review of the O&M annual costs we are satisfied that they are reasonable for the Project.

We have undertaken a review of the Consortium’s proposal. It has been developed to address various operational and maintenance requirements as identified in the PPPA. The Consortium’s approach is detailed and includes operating strategies for normal, abnormal (such as special events etc.), emergency activities, balancing multiple uses and safety. In our opinion this is a thoughtful approach to developing an operating strategy for a project of such nature.

Life Cycle proposals

We have undertaken a review of the life cycle costs, dated 1st April 2016. We have developed our own assessment of costs for the system to test our benchmark range. Our own estimate of the system Lifecycle Costs was 14-16% higher than the provided figures. This is as a result of allocation of costs between O&M annual expenditure and cyclical Life Cycle replacement expenditure.

The annual O&M costs are $36,375,988 and are within our benchmark range for a system of this type. The Life Cycle costs are $8,864,069/mile and are slightly below our benchmark range.

The Life Cycle costs for the Maintenance & Storage facilities related to fire protection systems and non-revenue vehicle and equipment replacement are being carried in the Systems cost line as opposed to the OMF cost line. We have established that the labor
Cost for vehicle life cycle works is carried in the Operations cost line for the annual O&M costs, as opposed to the LRV cost line in the Life cycle costs. We understand that annual maintenance will be undertaken with a view to reducing life cycle expenditure and our analysis supports this.

Having reviewed the combined overall costs for the annual O&M works and the Life Cycle works, we are satisfied that the total costs are reasonable for the Project.

We have undertaken a review of the Consortium’s proposal that has been developed to address various maintenance, rehabilitation and handback requirements as identified in the PPPA. The Consortium’s approach is detailed and includes strategies for asset management that will evolve over the life of the project and the various assets. The asset handback renewal work plan includes activities such as determining residual life at handback, maintenance, repair, reconstruction, rehabilitation, overhaul and replacement of project assets, handback schedule development and owner training and transition. In our opinion this is a thoughtful approach to handback for a project of such nature.

Construction Schedule

We have reviewed the construction schedule dated 31st May 2016. We consider that the schedule has been well developed with good logic applied across the activities. We are satisfied that the overall durations included across the 8 segments of work are reasonable to complete the Project in line with the Project document requirements.

We have received a summary statement of schedule float from the DB CONTRACTOR. The DB CONTRACTOR has confirmed that a minimum of 5% float (106 days) will be included in the schedule. The construction schedule has been produced using a 5 day working week, with shifts of 8 hours per day. This gives the opportunity to extend working hours and use weekend days to mitigate any delays, subject to approval from MTA. We also note the allowance of 60 weather days per year, which can be regarded as conservative, thereby allowing additional contingency in the schedule to mitigate delays.

Construction Cost

We have reviewed the construction cost summary, dated 1st December 2015, which was submitted with the bid on 8th December 2015. We have also reviewed amendments made to the construction cost since the award of preferred proponent. The amendments have provided savings to the construction cost, resulting in a revised contract price of $2,009,873,600. We have calculated a benchmark to show how the Purple Line total cost compares to other projects that we have selected as part of the benchmark analysis. All of the projects chosen for the benchmark analysis are light rail projects and all of the
data has been normalized to 2015$ and East Coast of US location. The Purple Line project sits within our benchmark range. Following our review of the costs provided we consider the direct costs, indirect costs and vehicle costs are reasonable for the Project.

Environmental and Geotechnical Review

The environmental information made available is satisfactory to allow design to progress within the ROD and FEIS stipulations. Any deviation from this is borne by the Concessionaire. At this time we are not aware of any deviation from the stipulations included in the ROD and FEIS within the Concessionaire’s design approach.

The soil information provided for the Project and specifically for the tunnel section is extensive. The Owner conducted what is considered to be a thorough geotechnical and environmental review along the corridor. The geotechnical investigation was provided to the design team and used to determine the foundations and approach to soils along the corridor. The Consortium’s approach to understanding the Geotechnical conditions appears well understood and we are satisfied that a fulsome strategy has been developed to address issues during construction.

Design review

The Output Specifications and PPPA obligations transfer technical risks to the Concessionaire, in the most part as would be expected under a P3 procurement for this type of project. There are some areas where specific focus should be applied in the development of the design solutions, to avoid undue risk being taken on. Specifically, keeping within the ROD stipulations will be critical in avoiding additional risks associated with approvals.

The Consortium has performed analysis showing the LRV model the Consortium plans to use for the Project fits within the profile and track geometry. The Consortium has also shown that the LRV meets the functional and performance requirements of the PPPA and that it complies with the provisions of the Buy America Act. As the Consortium is an experienced integrator of similar LRTs, we believe the proposed LRV design is adequate and complete and does not pose undue risk to the Project.

The review of the Concessionaire’s proposal indicates that it meets the intent of the PPPA and other requirements within. The list of ATCs identified in Section 3.8 have been reviewed by the Owner to identify any variances or deviations from the PPPA and their potential impact either on ROD or public perception and acceptance of the Project. All of the ATCs proposed in the bid submission have been accepted by the Owner.
# Glossary

Unless otherwise indicated, all capitalized terms used in this report shall have the meaning described in the Public-Private Partnership Agreement or the relevant subcontract.

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>“ATC”</td>
<td>Alternative Technical Concept</td>
</tr>
<tr>
<td>“D&amp;C”</td>
<td>Design &amp; Construction</td>
</tr>
<tr>
<td>“DBE”</td>
<td>Disadvantaged Business Enterprise</td>
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<tr>
<td>“DB CONTRACTOR”</td>
<td>Design-Build Contractor</td>
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<tr>
<td>“EIS”</td>
<td>Environmental Impact Statement</td>
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<tr>
<td>“EPA”</td>
<td>Environmental Protection Agency</td>
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<tr>
<td>“FHWA”</td>
<td>Federal Highway Administration</td>
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<tr>
<td>“ITS”</td>
<td>Intelligent Transportation Systems</td>
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<tr>
<td>“LRT”</td>
<td>Light Rail Transit</td>
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<tr>
<td>“LRV”</td>
<td>Light Rail Vehicle</td>
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<tr>
<td>“LTA”</td>
<td>Lenders Technical Advisor, which for the purposes of the Project is Turner &amp; Townsend</td>
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<tr>
<td>“MDOT”</td>
<td>Maryland Department of Transportation</td>
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<tr>
<td>“MTA”</td>
<td>Maryland Transit Authority</td>
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<tr>
<td>“NEPA”</td>
<td>National Environmental Policy Act</td>
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<tr>
<td>“NTP”</td>
<td>Notice to Proceed</td>
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<tr>
<td>“O&amp;M”</td>
<td>Operations &amp; Maintenance</td>
</tr>
<tr>
<td>“OCS”</td>
<td>Overhead Contact System</td>
</tr>
<tr>
<td>“OECD”</td>
<td>Organization for Economic Development and Cooperation</td>
</tr>
<tr>
<td>“OM&amp;R”</td>
<td>Operations, Maintenance and Rehabilitation</td>
</tr>
<tr>
<td>“P3”</td>
<td>Public-Private Partnership</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>&quot;PLTP&quot;</td>
<td>Purple Line Transit Partners</td>
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<tr>
<td>&quot;PLTC&quot;</td>
<td>Purple Line Transit Constructors</td>
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<tr>
<td>&quot;PLTO&quot;</td>
<td>Purple Line Transit Operators</td>
</tr>
<tr>
<td>&quot;PPPA&quot;</td>
<td>Public-Private Partnership Agreement</td>
</tr>
<tr>
<td>&quot;ROD&quot;</td>
<td>Record of Decision</td>
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<tr>
<td>&quot;ROW&quot;</td>
<td>Right of Way</td>
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<tr>
<td>&quot;RSA&quot;</td>
<td>Revenue Service Availability</td>
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<tr>
<td>&quot;TBOH&quot;</td>
<td>Total Baseline Operating Hours</td>
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<tr>
<td>&quot;TBVM&quot;</td>
<td>Total Baseline LRV Miles</td>
</tr>
<tr>
<td>&quot;TSOH&quot;</td>
<td>Total Scheduled Operating Hours</td>
</tr>
<tr>
<td>&quot;TSVM&quot;</td>
<td>Total Scheduled LRV Miles</td>
</tr>
<tr>
<td>&quot;WMATA&quot;</td>
<td>Washington Metropolitan Area Transit Authority</td>
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1 Introduction

Turner & Townsend has been retained by Purple Line Transit Partners (the "Consortium") to provide Lenders Technical Advisor (LTA) services for the Purple Line LRT Project (the "Project") in Maryland.

The Project includes a 16.2-mile, 21-Station, east-west, light rail transit (LRT) Transitway that will extend from its western terminus just west of Wisconsin Avenue and the Bethesda Metro Station in Montgomery County to its eastern terminus at the New Carrollton Metro Station in Prince George’s County, located just inside the Washington, DC area I-495/Capital Beltway. The project is being procured as an availability payment P3 project, and includes the design, build, finance, operations and maintenance of the LRT system and rolling stock.

The LTA is appointed to conduct an independent review and evaluation of the technical solution proposed by the Consortium. For the pre-financial close phase the scope of the LTA review includes:

- Providing the potential Lenders a general understanding of the technical aspects of the Project;
- Highlighting potential issues and concerns;
- Providing the basis for the Lenders’ in principle acceptance of the proposed treatment of the technical matters under the PPPA, Design-Build Contract, O&M Contract (if applicable) and the related sub-contract arrangements submitted with the Consortium’s bid; and
- Reviewing the D&C and O&M approaches provided with the bid submission, the principal risks, the proposed risk mitigation measures and the overall technical solution.

This report is based on information provided up to 14th June 2016. The Consortium has been awarded Preferred Proponent status. Commercial Close has occurred on 7th April 2016, one day after the Board of Public Works’ approval (which took place on April 6th 2016). The target date to reach Financial Close is June 17th 2016.

This report has been prepared on the instructions of the Consortium. The use of this document shall be governed by the Terms of Appointment between the Consortium and Turner and Townsend dated 14th May 2014. For clarity and in accordance with the Terms of Appointment referenced herein, ‘Lenders’ shall include commercial banks, underwriters (including underwriters of bonds issued by a conduit), bondholders (including holders of bonds issued by a conduit), the USDOT as a provider of a TIFIA loan, and any trustee or agent of any of the foregoing as well as rating agencies. The contents are confidential and should not be disclosed to any third party without the permission of the Lenders, the Consortium or the authors.

Unless otherwise indicated, all capitalized terms used in this report shall have the meaning described in the PPPA or the relevant subcontracts. Where we have used abbreviated terms, we included their definitions in the Glossary at the front of this report. All currency references are to US dollars, unless otherwise stated.
2 Project Background

2.1 Project Description

The planned Project includes a 16.2-mile, 21-Station, east-west, light rail transit (LRT) Transitway that will extend from its western terminus just west of Wisconsin Avenue and the Bethesda Metro Station in Montgomery County to its eastern terminus at the New Carrollton Metro Station in Prince George's County, located just inside the Washington, DC area I-495/Capital Beltway. As planned, the Transitway will be largely at grade with one short tunnel section, three sections elevated on structures and several bridge structures. The Transitway will operate mainly in dedicated or exclusive lanes, serving five major activity centers just north of Washington, DC: Bethesda, Silver Spring, Takoma-Langley Park, College Park/University of Maryland, and New Carrollton.

These activity centers are experiencing active development and major commercial and residential projects are planned. The Washington DC region’s Metrorail system (Metrorail), operated by the Washington Metropolitan Area Transit Authority (WMATA), serves four of these major activity centers, while three of these centers are served by MARC, Maryland’s commuter rail system. Amtrak services along its Northeast Corridor connect at New Carrollton. The Project will provide passenger transfer capability at each of the major activity centers; however, the Transitway is physically and operationally independent from the Metrorail and MARC operations and there are no shared operations and no at grade crossings with these operations. The transit services that connect at these major activity centers include:

- Bethesda – Metrorail Red Line (west leg) and major bus service hub for WMATA Metrobus and Montgomery County’s Ride On services (generally the western terminus of the Project);
- Silver Spring – Metrorail Red Line (east leg), MARC Brunswick Line, as well as major bus hub at Silver Spring Transit Center for WMATA Metrobus and Montgomery County’s Ride On services;
- Takoma-Langley Park – a transit center under construction for WMATA Metrobus, Montgomery County’s Ride On bus services, and Prince George’s County TheBus services;
- College Park/University of Maryland – Metrorail Green Line, MARC Camden Line, and University of Maryland Shuttle bus system as well as WMATA Metrobus and Prince George’s County TheBus services; and
- New Carrollton – Metrorail Orange Line, Marc Penn Line, Amtrak Northeast Corridor services, and major bus hub for WMATA Metrobus and Prince George’s County TheBus services (generally the eastern terminus of the Project).

In addition to these five centers, there are another 16 Stations serving the residential communities, commercial districts, and institutional establishments between the major activity centers, including three Stations serving the University of Maryland with its approximately 37,000 students (2013), 13,000 employees (2013), and visitors. The Project is expected to attract over 60,000 daily boardings in 2030,
with over one-third expected to use Metrorail and/or MARC services for some part of their trip, with the Project typically providing the access or egress connections.

Concessionaire shall develop, design, furnish, construct, test, integrate, operate, maintain and turnover to the Owner at the end of the Term all assets of the Project in accordance with the Contract Documents.

MTA is currently following FTA’s guidance for compliance with the National Environmental Policy Act (“NEPA”). The Alternatives Analysis and Draft Environmental Impact Statement (“AA/DEIS”) document was made available for review on October 17, 2008 and then discussed at formal public hearings held in November 2008. On August 4, 2009, MTA selected the Locally Preferred Alternative for the Purple Line, which marked the completion of the AA/DEIS phase of the Project. The Final Environmental Impact Statement (“FEIS”) was published in the Federal Register on September 6, 2013. A NEPA Record of Decision (“ROD”) for the Project was signed by FTA on March 19, 2014 and published in the Federal Register on March 31, 2014.

MDOT/MTA will pay Partial Progress Payments during the design-build period, subject to annual cumulative caps and a total cap of $860,000,000. Partial Progress Payments will be paid monthly based on 85% of earned value complete. Once Revenue Service Availability is achieved, MDOT/MTA will make a Revenue Service Availability Payment within a range of $100,000,000 and $500,000,000 (final numbers to be confirmed), and will make a $30 million payment at Final Completion, which must be within 24 months of the Revenue Service Availability Date.

We have included a route map below.
Route map
2.2 Highlight of Various Elements of the Project

The following section details the Project scope of work as identified in the Project documents, together with some comments relating to the Consortium's general approach in meeting these requirements. Through the body of this report we have identified in more detail how the Consortium is meeting specific scope requirements or where alternative solutions have been proposed.

2.2.1 Stations

There will be 21 stations provided, including:

- 15 At Grade / Surface Stations
- 3 Aerial Stations – Connecticut Avenue, Silver Spring Transit Centre and Riverdale Park
- 2 Below Grade- Bethesda and Manchester Place
- 1 Station (partially above grade and partially below grade) – Silver Spring Library (Fenton Street)

2.2.2 Major Structures – Tunnels, Aerial LRT Structures, Highway Bridges and Other Structures

There are four (4) underground structures associated with the Project, as noted below:

- The Plymouth Tunnel: consists of a mined section with cut-and-cover structures at each end. The mined tunnel section has a length of 1,022 linear feet and the cut-and-cover section to the east is 191 linear feet long. The cut-and-cover section on the west end has a length of 288 feet and houses Manchester Place Station.

- The Bethesda South Entrance Shaft and Cavern: consists of a rectangular shaft, located below Elm Street, 88 feet deep, connecting to a 63 foot high cavern. The shaft passes through 31 feet of overburden and 57 feet of rock. See diagram below.

- The Connecting Stub Tunnel: is an existing stub tunnel that was excavated during the construction of the Bethesda Metro Station. Part of the existing stub tunnel is removed by the cavern excavation; the balance of the stub tunnel is enlarged to accommodate the permanent facilities for the new South entrance to the Bethesda Station.

- The existing “air-rights” tunnel: is 780 feet long, located on the former Georgetown Branch right-of-way, formed by the subsequent construction of buildings above the right-of-way.
The Consortium’s technical proposal has detailed the process for the construction of these tunnel elements of the Project. The techniques include conventional underground tunneling and cut-and-cover in the shallower areas of the Plymouth Tunnel. The former was selected due to short length of the tunneled sections of the Project. Regarding the Plymouth Tunnel, the design team performed a settlement analysis and construction impact assessment for the excavation of the tunnel and the open-cut sections. It was found that there were three buildings located within the zone of influence, where settlements are anticipated to be in the range of 0.04 to 0.39 inches. These buildings will have to be further investigated as part of the Pre-construction Survey after award. Protective measures will be instigated based on the findings as necessary. As these buildings appear relatively new and based on the fact that the predicted settlements are relatively small, it is unlikely that extensive protective measures will be required. In addition, a ground and structure monitoring program will be in place that will allow detection of ground movements. The DB CONTRACTORs Settlement Alert & Response Plan identifies the mitigation actions that will be implemented before damages occur.

The DB CONTRACTOR has developed a detailed approach for the below grade construction that includes excavation and support, dewatering, noise, dust and vibration control during construction. The plant and equipment they intend to use for the construction of the tunnels and below-ground stations will be new or fully refurbished and in compliance with occupational health and safety regulations applicable in the State of Maryland and Montgomery County. It will also be subjected to the DB CONTRACTOR Equipment Inspection and Maintenance Program, which has been developed to minimize equipment down-time and
environmental impacts (noise, air, and groundwater pollution), as well as improving the occupational health and safety conditions underground. A Sequential Excavation Method (SEM) was selected for the tunneling activity, and the equipment as a result is conventional and does not involve specialized equipment such as TBMs. Haul routes have been developed with a focus on minimizing disruption to local traffic and environmental impacts, noise mitigation, and upholding of safe traffic conditions in the neighborhood. We have commented on the DB CONTRACTOR’s tunneling experience in Section 3 of this report.

We are satisfied that the construction schedule and pricing includes for these works. The proposal has also detailed an approach to interfacing with the adjacent property owners; limiting dust, noise and vibration; addressing geotechnical issues; equipment that will be used to construct and rehabilitate tunnels; and preliminary access and route haul plan.

2.2.3 Track

The scope of work provides an overall track length of 16.2 miles, including:

- Surface = 14.7 miles
- Tunnel = 0.5 miles
- Aerial = 1.0 mile

The Consortium’s approach to trackwork has been detailed in the technical proposal. The design has paid attention to determine the best approach to transitions, accommodating systems in trackwork, material selection and areas where the track design requires a design that needs customization such as near end of track areas or crossovers and elevations. The design follows the guidelines in the RFP with regards to methods, codes, standards and any supporting design criterion. The design is based on principles that are dictated AREMA (American Railway Engineering and Maintenance) industry standards and MTA design guidelines.

2.2.4 Maintenance and Storage Facilities (Yard and Shop)

In terms of the maintenance and storage facilities the following are scoped for the Project:

- Lyttonsville Shop and Yard – Shared Vehicle Storage & Back-up Operation Control Center, located at the Western end of the Alignment on Brookville Road in Montgomery County. The Lyttonsville yard and facility is for storage and light maintenance (inspections) and is used to reduce dead head moves at the start and end of service.

- Glenridge Yard and Shop – Primary Maintenance Facility & Primary Control Center, located at the Eastern end of the alignment on Veterans Parkway in Prince George’s County.
The Maintenance and Storage Facilities need only be fitted out for Service Level 1. The LRV yard storage tracks need to be designed for Service Level 3, but the initial construction need only be built out for the Service level 1 fleet plus one additional peak period train.

LEED Silver certification for Operation and Maintenance Facilities.

There is no extension required to the maintenance facilities for any future change in Service Level fleet size. Expansion of the storage tracks will be required if the LRV Options are implemented but this is taken into account by the Consortium design.

The Consortium proposal has developed strategies for operations and maintenance for optimal use of these maintenance and storage yards. By analyzing operational and maintenance characteristics of the Purple Line fleet yards, key functions were distributed between the Gienridge and Lyttonsville operation and maintenance facilities. Additional optimization was realized based on the utilization of a 5 module LRV. Details of these functional allocations and resulting efficiencies are described in the Consortium’s proposal.

2.2.5 Traction Power and Traction Power Substations

The Consortium’s proposal includes details on the proposed design of the traction power and power substations. A 1500 V DC traction power system, creating less current than a comparable 750 V DC system, is being utilized. This helps mitigate electromagnetic interference (EMI) and stray current corrosion and reduces power consumption. Eight mainline traction power substations are able to be used, thereby eliminating the need for 10 designated Project right-of-way substation sites identified in the Contract Drawings. The design follows the specifications that have been noted in the RFP.

2.2.6 Systems Integration

The Consortium’s approach to systems integration will adopt to an industry-recognized (system engineering) process to implement the design, construction and system integration of the Purple Line transit system. This has been implemented by the members of Consortium on other large rail transit projects. The proposed configuration of the Purple Line transit system is comprised of fixed facilities and operating systems. Each operating system is further comprised of sub-systems and components. The systems and components will work together as an individual sub-system and then together with other sub-systems and facilities as an integrated transit system. A key process that will be implemented during the design, construction, and integration phases as a platform to successful system integration is interface management.

The Consortium’s traffic monitoring and management ITS solution provides a straightforward expansion of the transportation management systems of each affected authority having jurisdiction (AHJ) with traffic signal interconnect, CCTV cameras and connections to the AHJ’s traffic management centers (TMCs).

The Consortium will develop a Project Testing and Commissioning Plan to detail their overall Test Program for the Purple Line System. The plan will define the Test Program Plans, including Integration Test.
Program Plans and other associated plans and will detail the verification and validation methods, testing, commissioning, integration and system acceptance activities that will be used to deliver the Purple Line System and demonstrate compliance with the requirements.

### 2.2.7 Vehicles

The Consortium has chosen CAF as its vehicle supplier for the Purple Line Project. CAF has an LRV design that is currently in production in the USA that will be modified to meet MTA’s requirements. The vehicle will be largely manufactured and assembled in CAF’s Elmira, NY facility. CAF will build the carshells and truck frames in Spain and then ship these components to Elmira. All assembly takes place in Elmira, including the installation of wiring, insulation, interior liners, windows, seats, propulsion, HVAC, couplers, lighting, APSE, pantograph, etc. The trucks are also assembled in NY from a bare frame.

CAF has 3 projects currently in manufacturing in Elmira, all three of which will be completed by the end of 2017:

- Cincinnati Streetcar (Manufacturing and delivery will be completed in 2016).
- Kansas City Streetcar (Manufacturing and delivery will be completed in 2016).
- Amtrak (Manufacturing and delivery will be completed in 2017).

CAF has one project that has been awarded that is still in the design phase:

- Boston Green Line LRV – 24 Vehicles (Manufacturing is scheduled to begin in 2016 and to be completed by the end of 2018).

For the Purple Line, if the NTP proceeds as planned, carshell fabrication will begin in Spain in January 2018 and assembly will begin in Elmira in October 2018. By this time, the Boston Green Line Project will be substantially complete and the other projects noted above will be completed. It is therefore considered that the plant will have enough capacity available for the Project.

The DB CONTRACTOR have engaged Interfleet to undertake a consultancy role on the project that covers all facets of the LRV supply from CAF, from design review through Final LRV Acceptance on the project site. Interfleet will review all CAF design submittals prior to these submittals being made to the Concessionaire and Owner. Particular emphasis will be placed on areas of design change from the Houston vehicle (the Houston vehicle is the basis of the Purple Line vehicle), such as the 1500VDC current collection and voltage converter. Interfleet will perform First Article Inspections for all major sub systems. Type testing will be largely of an audit nature, except for those that are design changes from the Houston Vehicle.

Interfleet will also provide Production Quality Assurance/Quality Control at CAF’s manufacturing facilities, both in Spain and Elmira, NY. Identified hold points will be established in the production schedule allowing for monitoring and witnessing of prescribed factory testing. For Vehicle Testing and Acceptance at the
site, Interfleet will have a continuous presence on site, witnessing all Acceptance Testing and providing Technical support as required.

*Turner & Townsend have worked alongside Interfleet on rail projects previously and are familiar with their capabilities in this area. We are satisfied that they have the appropriate experience to fulfill this role on the Project.*

The passenger capacity of the CAF Purple Line vehicle is 302 at AW 2.0. This capacity allows for the vehicle to operate as a single vehicle train at any Service Level, thereby allowing for a substantially smaller fleet size. The total Service Level 1 fleet is 26 vehicles. This number represents an in service fleet of 21 with 5 spares. The fleet size was determined by applying the Owner’s criteria for vehicle loading, peak hour capacities and required headways. For Service Level 1 the peak hour ridership is stated as 2300 passengers, the required headway is 7.5 minutes and peak hour loading is AW 2.0. So, there will be 8 trains an hour per the headway requirement; each train can carry 302 passengers; 8 trains X 302 passengers = 2416 peak capacity riders, or 116 more passengers than required by the Owner’s criteria. Similarly this equation continues to work throughout all the Owner’s stated service levels.

### 2.3 Design and Construction Approach

The Consortium has divided the Project into eight design segments based on the scope of work and complexity. The deliverables for the design will be completed by segments. These eight segments are clubbed under three construction areas. The diagram below depicts these segments and the construction areas with the milepost numbers of the station construction areas.
Geographically, Area 1 is west of the Plymouth Tunnel, Area 2 is the Plymouth Tunnel, and Area 3 east of the Plymouth Tunnel. Area 2 will also be responsible for the Bethesda South Entrance underground construction. In general, construction will be sequenced in accordance with the Project CPM Schedule. The Project schedule will be updated monthly and will incorporate progress, issues, changes in sequence logic, and incorporation of previous unknowns. Each Construction Area will use the CPM schedule to prepare 90-day and 3-week "look-ahead" rolling schedules, incorporating additional activities to fine-tune the sequencing and planning. They will use the detailed schedules in their daily meetings and weekly meetings with their field engineers, superintendents, and foremen, to plan the upcoming work, receive input from the safety department, develop MOT resource requests, review potential quality issues, and discuss public relations. The Consortium has developed a project management and technical solutions plan that has detailed the strategy to manage the overall design and construction activities. Highlights of some of the activities in each of the areas that will be undertaken is given below.
2.3.1 Construction Area 1

This area has segments 1, 2 and 3 of the construction zones. Bethesda, Connecticut Avenue and Lyttonville are the stations that form part of segment 1. Segment 2 is the Lyttonville Yard. Segment 3 has the construction of Silver Sprint Transit Centre, Silver Spring Library and Dale Drive.

Key highlights of this construction area include the following:

- Construction of the Bethesda station
- Lyttonville Yard and the installation of systems with testing and commissioning
- Construction along Segment 3 will involve street running, working under constrained footprint and interfaces with the CSX and WMATA facilities

2.3.2 Construction Area 2

This area has segment 4 of the construction zone. This area includes the Manchester Place Station/western cut and cover portal, eastern cut and cover tunnel portal, and the SEM Plymouth Tunnel. The stations in this segment are Manchester Place, Ling Beach, and Piney Branch Road.
Key highlights of this construction area include the following:

- The construction of the Plymouth Tunnel, which will be a controlling portion of the work due to the nature of the work involved
- Systems installation within the tunnel
- East cut and cover portal
- Construction of the Manchester place cut and cover tunnel

2.3.3 Construction Area 3

This area has segments 5, 6, 7 and 8 of the construction zones. Takoma/Langley and Rigges Road stations form part of segment 5. Adelphi Road, Campus Center and East Campus stations form part of segment 6. College Park Metro, M Square, Riverdale Park, Beacon Heights, Annapolis Road and New Carrollton form part of segment 7. Segment 8 only has the Glenridge Facility.
Key highlights of this construction area include the following:

- Segment 5 is at-grade and is street running
- The University of Maryland (UMD) area is under segment 6 and the activities in this segment will involve coordination with UMD
- The remainder of segment 7 is predominantly built on embankment; this section will have the test tracks.

2.4 Operations and Maintenance

We have discussed in Section 7 of the report the scope of works that has been identified with regards to the O&M activities for the Project. The Consortium has developed a strategy for operations and maintenance that has been detailed in the proposal. An understanding of the operations planning has been developed by undertaking an extensive analysis that is driven by a clear understanding of the system such that there is ability to respond to changes in service levels and preparing a data driven solution for the system. Approach for mixed-traffic conditions in areas of the segments that will have a shared use has been defined. Safety and Service reliability are drivers of the O&M proposal. Strategies
have been developed to manage abnormal operating conditions such as during game days etc. and capabilities to deploy proven systems that produce realistic timetables and to monitor service and maintenance has been taken into consideration. A highlight of some of the key work items in O&M include the following areas:

- Tracks and Trackway, Station Stops, Operations and Maintenance Facility (OMF)
- LRT portions of the Traffic Control installations
- Automatic Train Protection Systems
- ITS Component and Systems, Communication and Security Systems, Performance Reporting and Monitoring
- Light Rail Vehicles, Traction Power Substations and OCS
- Asset Management Plan coordinated with the Consortium integrated within Operations and Maintenance to provide required Service Life
- Snow and ice removal as required, Hand Back requirements are managed during the design / construction phase to minimize whole life costs.

2.5 MTA Retained Responsibility

Some of the responsibilities that have been retained by the MTA include Public relations, General Terms of 3rd Party Agreements, 3 Private property owners, 1 Class I Railroad (CSX), 22 Utilities, Right of Way (ROW) acquisition, Fare policy, revenue and ridership risk, providing oversight, Fed. Environmental Documentation, quality assurance and oversight, and security and demolition of select properties on Riverdale Road and Kenilworth Avenue. The responsibilities that are retained by the Owner are well understood by the Consortium and have been taken into consideration in developing the proposal for the Project.

2.6 Challenges and Considerations

Some of the principle challenges and considerations that have been identified for the Project are discussed below. Through the report we have discussed these aspects in more details as appropriate.

2.6.1 Utility relocation

The utility relocations for the Project are not considered particularly challenging but the need to get the designs finalized and the utilities relocated is important. The Utility Owners on the Project are allowing the DB CONTRACTOR to produce the design, with an approved engineer, and in most instances to perform the construction activities as well. There are some areas where the RoW is close to the utilities and these areas will need to be shored to mitigate impacts outside of the RoW.
2.6.2 Environmental Approvals/Permitting

There are several permits with long procurement periods for the Project. The average procurement duration has been allowed for in the schedule and reconciled against the engineering progress to assure that the design will be complete enough to support the permitting effort. A few of the permits with longer durations for procurement are the LOMR and CLOMR, the discharge permit for process water from tunneling operation, the section 404 permit, and the major permit for alteration of floodplain, waterway, and non-tidal wetland. A 15 business day approval time frame has been given by MTA and included in the schedule.

2.6.3 Other rail operation/permits

The work to construct the Project will be in the right of way of both CSX and WMATA at several locations. The DB CONTRACTOR will not be allowed to interfere with these rail operations without coordination and approval of the outages. The following permits from railroads will be required:

- Railroad access (Amtrak, CSX)
- Railroad permit for adjacent construction (WMATA)

These items have been considered in the sequencing and scheduling of work.

2.6.4 Structures

The design of the Project utilizes several different girder types for the design of the bridges. They vary from steel plate, cast-in-place, and bulb-t derivatives. The location of some of the bridges does increase the complexity for erection. One example of this is the SSTC, where the Purple Line crosses the WMATA and CSX active railroads and the cranes for the picks must be de-rated. The space for the cranes in these areas are also tight. The DB CONTRACTOR have taken these in to consideration in the scheduling of this work.

The LRT and pedestrian bridges at Rock Creek are not considered complex. There is some complexity associated with the placement of the girders as there is a restriction on where these can be picked from to limit impacts to the park. The bridge at Kenilworth and the East-West Expressway is a curved bridge which transects the intersection. The DB CONTRACTOR are proposing local detours for the erection of this bridge which should simplify construction.

Of the aerial stations, the SSTC is the most complex but from a vertical construction standpoint it is relatively straightforward. Addendum 4 simplified this station due to the elimination of the ornate canopy previously required. Chevy Chase Lakes and Riverdale are the other two “aerial” stations, but both are a standard platform on an MSE wall embankment. The Bethesda station is below grade but is being constructed in the envelope of an existing trail running beneath the Apex and Air Rights buildings.
Notwithstanding the comments noted above, we do not consider the craneage operations to be particularly complex and are satisfied that the DB CONTRACTOR has the experience and demonstrated understanding to manage these operations effectively.

2.6.5 Traffic Management

The development of the traffic management plan (TMP) will be a key focus on the Project. The corridor is congested and there are several AHJs along the corridor that will comment on the TMP. The majority of the corridor has been designed so that it can be built in two phases, thereby limiting the impacts on the public. The corridor is a developed urban corridor and the Consortium will design in enough space to construct the improvements while maintaining traffic. The Consortium’s technical proposal details specific strategies for traffic management on various sections of the Project.

2.6.6 Compatibility between LRV and Train Control and Traffic System

The Consortium has selected Siemens as the signaling provider. This is the same provider as used by the LRV provider (CAF) for the Houston LRV project. In our discussions with the Consortium we understand that the interface with the LRV should be the same or very similar to the Houston example. Additionally, CAF gained significant experience with the Siemens system during testing and commissioning of this system. The interface with non-LRV traffic systems in the alignment are provided with a handoff of a defined signal set to the traffic control cabinet owned and maintained by local jurisdictions and will provide either pre-emption or priority switching for road traffic signals as designated by the Owner. The Consortium’s technical proposal includes further details on these items.

2.7 Special Operational Considerations

These include:

- Busiest Stations such as Silver Spring station and Bethesda station. The Consortium’s design, construction and O&M proposal have identified strategies to manage activities in these stations. We have discussed these in appropriate sections of the report.

- Operations in, along or across roadways under jurisdiction of Maryland State Highway Administration, Prince George’s County, Montgomery County and University of Maryland. The Consortium’s proposal has included strategies to manage and mitigate operational issues along these jurisdictions.

- University of Maryland - Detailed proposals have been developed to address operation through the University of Maryland area for the Project. The track through Campus is embedded and the maintenance for it will be the same as for the other embedded sections of track along the corridor. An item that UMD was concerned with is the safety of the students during construction and operation of the rail line. To deal with the aspects of safety during construction, the Consortium will utilize orange safety fence to channelize students to specific crossings and shield them from the work zone. The Consortium’s operational proposal has taken into consideration adequate details for safe operation of the vehicles through the University zone.
2.8 Other Considerations

Some other considerations for the Project include ROW acquisition, training, DBE participation, deduction regime, stakeholder consultation and development of local partnerships. We have discussed these with the Consortium and have included further detail in the report, under appropriate sections, on how these have been addressed and what strategies are in place.

2.8.1 Town of Chevy Chase Opposition

In our discussions with the Consortium we understand that to date the opposition has not been effective in delaying the Project. The opposition did finance the biological survey attempt to locate amphipods in Rock Creek. The results of the survey was that the amphipods were not located. The Chevy Chase contingent also participated in the Purple Line Implementation Group that was attended by members of the Consortium. The largest concern that surfaced in these meetings was noise related. The MTA has mandated noise walls in several areas where they are not necessarily justified from an engineering standpoint. We understand further commentary is available in the legal due diligence report.

2.8.2 Endangered Species

2.8.2.1 Friends of Capital Crescent Trail v FTA litigation

On August 26, 2014 the Friends of the Capital Crescent Trail and other interested individuals (the “Plaintiffs”) filed suit in the United States District Court for the District of Columbia against the Federal Transportation Administration (the “FTA”), the U.S. Department of Transportation, U.S. Fish and Wildlife Service and the U.S. Department of the Interior (the “Defendants”) alleging, among other things, that Defendants violated federal law by their actions with respect to the Project. The Plaintiffs allege that the Defendants approval of federal financial assistance and other findings regarding the Project failed to adequately consider adverse environmental impacts of the Project in violation of the National Environmental Policy Act (“NEPA”). Defendants assert that the FTA improperly evaluated adverse direct and cumulative impacts on wildlife, biodiversity, the environment and the aesthetic enjoyment of both Rock Creek Park, a national park, and the Capital Crescent Trail, a popular hiking-biking trail that will be partially displaced by the Project. In addition, Plaintiffs allege that the FTA failed to adequately consider alternatives to the Project that would have avoided or reduced these impacts.

The State and the MTA each became a Defendant-Intervenor in the action. The complaint was amended on January 20, 2016 alleging, among other things, that certain changes to the design of the Project made as cost cutting measures will have adverse environmental effects that require a new or supplemental EIS. On February 19, 2016 the Plaintiffs filed a motion for summary judgment on their claims and requesting immediate relief. On April 11, 2016 the State and the MTA filed a cross-motion for summary judgment arguing, among other things, that Defendants’ actions were arbitrary, capricious or not in accordance with law.
The P3 Agreement, in Section 6.2.4, states the following:

*Owner acknowledges that litigation has been filed in the U.S. District Court in the District of Columbia, captioned Friends of the Capital Crescent Trail v. FTA, Civil Case No. 14-01471 (RJL), and agrees that a determination by the court in such action, or by an AHJ, that a Threatened or Endangered Species exists at, near or on the Project ROW shall constitute a Relief Event to the extent that Concessionaire is required to stop Work or perform Extra Work as a result.*

A decision on the motions for summary is likely to be issued in 2016. While the outcome of the litigation cannot be predicted, the likely result is a period of uncertainty.

A second species has also been identified, the Northern Long Eared Bat. The Consortium engaged a Consultant to review this and the following conclusion was reported:

‘With respect to the addition of the long-eared bat to the listing of threatened species, the documented hibernacula and roost sites only occur in western Maryland. No follow up is required with the agencies within central and southern Maryland, which would include the Washington Metropolitan area. Therefore, it has been confirmed that the region of Maryland where the Purple Project is, does not overlap the areas where the Northern Long Eared Bat resides, so no further consultation is required for this project.’

The PPPA provides relief if endangered species are encountered.

### 2.9 Project milestones

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue Final RFP</td>
<td>July 28th 2014</td>
</tr>
<tr>
<td>Technical Proposal Due Date</td>
<td>November 17th 2015</td>
</tr>
<tr>
<td>Financial Proposal Due Date</td>
<td>December 8th 2015</td>
</tr>
<tr>
<td>Announcement of Selected Proposer</td>
<td>March 2016</td>
</tr>
<tr>
<td>Commercial Close</td>
<td>7th April 2016</td>
</tr>
<tr>
<td>Limited Notice to Proceed</td>
<td>April 7th 2016</td>
</tr>
<tr>
<td>Financial Close Target Date</td>
<td>17th June 2016</td>
</tr>
<tr>
<td>Commencement of Non-Construction Work</td>
<td>Day after Financial Close [June 18th 2016]</td>
</tr>
</tbody>
</table>
3 Capability of the Consortium Members

3.1 General

<table>
<thead>
<tr>
<th>Role</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consortium Members (Equity)</strong></td>
<td>Meridiam Infrastructure (70%), Fluor Enterprises, Inc. (15%), Star America Fund GP LLC (15%)</td>
</tr>
<tr>
<td><strong>Design – Build Team</strong></td>
<td>Fluor Enterprises, Inc. (50%), The Lane Construction Corporation (30%), Traylor Bros, Inc. (20%)</td>
</tr>
<tr>
<td><strong>Operations &amp; Maintenance Team</strong></td>
<td>Fluor Enterprises, Inc. (40%), Alternate Concepts, Inc. (40%), CAF USA, Inc (20%)</td>
</tr>
<tr>
<td><strong>Engineers</strong></td>
<td>Atkins North America Inc</td>
</tr>
<tr>
<td><strong>Financial Advisor</strong></td>
<td>BTMU</td>
</tr>
</tbody>
</table>

3.2 Organization chart
Purple Line Transit Partners
Purple Line LRT, Maryland

Economic Empowerment Subcontractor
(I.S. Caldwell & Associates, Inc.)

Concessioneer/Proposer

Maryland Department of Transportation and Maryland Transit Administration

P3 Agreement

Purple Line
TRANSIT PARTNERS
meridiann
(meridiann Infrastructure Purple Line, LLC) 70%
fluor
(fluor enterprises, Inc.) 15%
star America
(Star America Purple Line, LLC) 15%

DB Contract

Lead Contractor

Fluor
(fluence Enterprises, Inc.) 50%

The Lane Construction Corporation 30%

Taylor Bros., Inc. 20%

LANE

Traylor

Lead Operations & Maintenance Firm

Fluor
(fluence Enterprises, Inc.) 40%

ACI
(Alternate Concepts, Inc.) 60%

CAF USA
(CAF USA, Inc.) 20%

Interface Agreement

Lead Design Firm

Atkins
(atkins North America, Inc.)

LRV Supplier

CAF USA
(CAF USA, Inc.)

Stations/OMF Construction Subcontractor

Hensel Phelps
(Hensel Phelps)

Systems Construction Subcontractor

McDean
(MC Dean, Inc.)

Rolling Stock Advisor

Interfleet
(Interfleet Technology, Inc.)

Design Subconsultant

Hatch Mott MacDonald
(Hatch Mott MacDonald, LLC)

Lead Underwriter

J.P. Morgan
(J.P. Morgan Securities, LLC)

Lead Underwriter

RBC Capital Markets
(RBC Capital Markets)

Financial Advisor

Bank of Tokyo-Mitsubishi UFJ
(BTMU)

Legal Advisor

Orrick
(Orrick, Herrington & Sutcliffe LLP)

Lender’s Counsel

Latham & Watkins
(Latham & Watkins LLP)
3.3 Equity Providers

3.3.1 Meridiam Infrastructure

Meridiam’s commitment to long-term investment and focus on active project development and asset management has led to more than $1.5 billion in successful equity investments in 40 P3 projects – 21 in transportation, including 4 in rail – with a total capital value exceeding $35 billion. Meridiam is a leading P3 developer in the US, with 6 projects under construction or in operation. Meridiam has extensive availability based P3 project experience, having closed 20 such projects in the US and globally. Some examples of relevant projects are shown in the table below.

<table>
<thead>
<tr>
<th>Recent Relevant Experience</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Lyndon B Johnson Express, Texas</td>
<td>North Tarrant Expressway, Texas</td>
</tr>
<tr>
<td>Presidio Parkway, California</td>
<td>Port of Miami Tunnel, Florida</td>
</tr>
<tr>
<td>Nottingham Express Transit, UK</td>
<td>Nimes-Montpellier HSR, France</td>
</tr>
<tr>
<td>Tours-Bordeaux HSR, France</td>
<td>Long Beach Courthouse, California</td>
</tr>
<tr>
<td>Waterloo Light Rail, Canada</td>
<td></td>
</tr>
</tbody>
</table>

3.3.2 Fluor Enterprises, Inc.

Fluor Enterprises, Inc. (Fluor) is the chief operating subsidiary of Fluor Corporation and brings experience gained managing award winning P3 projects in four States. Fluor has annual revenues over $28 billion and was ranked as one of the world’s top contractors and the number one design-build firm by Engineering News-Record. Fluor has relevant experience including the Eagle P3 Commuter Rail Line project in Denver, which is expected to enter in Revenue Service in 2016. An example of Fluor’s financing capabilities was highlighted in the closing of a $1.9 billion financing package for the I-495 Express Lanes Project. Having reached Substantial Completion ahead of schedule in 2013, this project represents one of only two completed, privately-financed managed lanes projects in the US that included PAB’s and TIFIA funds. Some examples of relevant projects are shown in the table below.
Recent Relevant Experience

<table>
<thead>
<tr>
<th>Project/Location</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eagle P3 Commuter Rail Line, Denver, Colorado</td>
<td>$2.0bn</td>
</tr>
<tr>
<td>Pocahontas Parkway (Route 895 Connector), Richmond, Virginia</td>
<td>$324m</td>
</tr>
<tr>
<td>I-95 Express Lanes Fairfax and Stafford Counties, VA</td>
<td>$940m</td>
</tr>
<tr>
<td>State Highway 130 Segments 1-4, TX</td>
<td>$1.1bn</td>
</tr>
<tr>
<td>Right Honorable Herb Gray Parkway, Windsor, Ontario, Canada</td>
<td>$1.2bn</td>
</tr>
<tr>
<td>I-495 Express Lanes, Virginia</td>
<td>$1.9bn</td>
</tr>
</tbody>
</table>

3.3.3  **Star America Fund GP LLC**

Star America Fund GP LLC (acting as General Partner of Star America Infrastructure Fund, LP and Star America Infrastructure Fund Affiliates, LP) (“Star America”) is an independent developer, investor and manager of public infrastructure, focusing primarily on greenfield P3 projects in North America. Star America’s current P3 investment is the South Fraser Perimeter Road, BC. Star America team members have financed, underwritten and managed the construction of more than 45 infrastructure projects valued at over $60 billion over the last fifteen years, as well as advised on or raised finance for 25 P3 projects.

Star America’s current infrastructure investments are shown in the table below.

<table>
<thead>
<tr>
<th>Project/Location</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Fraser Perimeter Road, BC</td>
<td></td>
</tr>
<tr>
<td>Portsmouth Bypass, Ohio</td>
<td></td>
</tr>
</tbody>
</table>

*Turner & Townsend is familiar with all 3 Equity Providers and the projects that they are involved with, both in North America and globally. We are satisfied that they have the resource, capability and experience to fulfill their obligations on the Project.*

3.4  **Design – Build JV**

3.4.1  **Fluor Enterprises, Inc.**

Fluor brings experience gained managing award winning P3 projects in North America. The following table shows some recent relevant experience.
3.4.2 **The Lane Construction Corporation**

The Lane Construction Corporation has extensive experience as the prime contractor for Design-Build projects, is experienced in P3 contracts and had entered into numerous Joint Venture agreements. Lane and Fluor have completed one of the largest public-private partnership (P3) projects in the United States, the 495 Express Lanes in VA., valued at $1.5 billion. The project was completed ahead of schedule.

<table>
<thead>
<tr>
<th>Recent Relevant Experience</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>I-495 Express Lanes, Virginia, $1.5bn</td>
<td>Blue Line extension, Washington</td>
</tr>
<tr>
<td>I-95 Express Lanes, Fairfax and Stafford Counties, VA, $940m</td>
<td>I-4 Florida</td>
</tr>
</tbody>
</table>

3.4.3 **Traylor Bros, Inc.**

Traylor Bros, Inc. (Traylor) is a family owned corporation founded in 1946. Their services include tunnels and other underground structures, bridges, locks and dams, ports and wharfs and mine development as well as equipment support. Traylor is a respected and sought-after tunneling contractor who have completed over a 100 projects, including the following:

- 27 hard rock tunnels
- 35 soft ground tunnels
- 6 drill and shoot tunnels
- 7 NATM tunnels
- 10 EPB tunnels
- 2 slurry shield tunnel
Traylor has driven tunnels for 14 transportation projects. The projects include highway, subway, and rail tunnels in all types of ground, with several in densely populated urban areas with complex stakeholder coordination. The Queens Bored Tunnels in New York were constructed beneath Amtrak’s Sunnyside Yard and the Long Island Railroad’s Harold Interlocking, some of the busiest rail yards in the U.S. Use of the slurry TBM system resulted in no settlement and therefore no impact to the rail yards. The University Link U220 Tunnel in Washington State included constructing tunnels that connect the University of Washington with downtown Seattle; extensive stakeholder coordination was key to maintaining the activities of local businesses and services. Traylor performed 2 projects for the Los Angeles County Metropolitan Transportation Authority, the Eastside Light Rail Extension and the Metro Red Line North, in congested areas of Los Angeles. Comprehensive traffic management plans and an electronically monitored TBM kept traffic moving and the ground from settling. In each instance, Traylor developed technical innovations that minimized or eliminated impacts to the surrounding communities. The following table shows some recent relevant experience:

<table>
<thead>
<tr>
<th>Recent Relevant Experience</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastside Light Rail extension - $120m</td>
<td>University Link Light Rail tunnel - $330m</td>
</tr>
<tr>
<td>Tappan Zee Hudson River Crossing Project in Tarrytown, NY, $3.1bn</td>
<td>Bill Emerson Memorial Bridge, MO, $60m</td>
</tr>
<tr>
<td>Huey P.Long Bridge Main Span Superstructure, LA, $450m</td>
<td>Stan Musial Veterans Memorial Bridge, St Louis, MO, $230m</td>
</tr>
</tbody>
</table>

Turner & Townsend is familiar with the DB CONTRACTOR members and the projects that they are involved with, both in North America and globally. We are satisfied that they have the resource, capability and experience to fulfill their obligations on the Project.

3.5 Design Team

3.5.1 Atkins North America

Atkins is a large multi-disciplinary design firm, recognized globally. They employ over 17,000 people and have an annual revenue of $2.6bn. Atkins North America is recognized in the top 10 design firms in the US and has extensive experience across all transportation sectors. The following table shows some recent relevant experience:

<table>
<thead>
<tr>
<th>Relevant Experience</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>East Phoenix LRT</td>
<td>Miami Metro Rail</td>
</tr>
<tr>
<td>Tampa Bay Intermodal centres</td>
<td>FTA Portland Streetcar</td>
</tr>
<tr>
<td>Copenhagen Metro City Circle Line, Denmark</td>
<td>Crossrail, UK</td>
</tr>
</tbody>
</table>
Turner & Townsend is familiar with Atkins, both in North America and globally. We are satisfied that they have the resource, capability and experience to fulfill their obligations on the Project.

3.6 Service Provider

3.6.1 Fluor Enterprises, Inc.

Fluor will undertake 40% of the service provider role. They have a long history of successful maintenance planning and management on infrastructure projects globally. SH130, Eagle P3 Commuter Rail Line and OTIA III – State Bridge Delivery Program are a few examples for which Fluor has performed management of operations and maintenance. The following table shows some recent relevant experience.

<table>
<thead>
<tr>
<th>Recent Relevant Experience</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Eagle P3 Commuter Rail Line, Denver, Colorado</td>
<td>I-495 Express Lanes, Fairfax County, Virginia</td>
</tr>
<tr>
<td>I-95 Express Lanes Fairfax and Stafford Counties, VA, $940m</td>
<td>A8 Highway improvements, Germany</td>
</tr>
<tr>
<td>Right Honorable Herb Gray Parkway, Windsor, Ontario, Canada</td>
<td>E-470 Public Highway, Denver, Colorado</td>
</tr>
</tbody>
</table>

3.6.2 Alternate Concepts, Inc. (ACI)

ACI was founded in 1989. The mission of the company at its founding was to provide public and private sector clients with alternate concepts to manage financial and logistical challenges. Throughout the United States, ACI has worked with private customers and public agencies in a broad array of areas, including multi-modal transportation, finance, management, and public/private joint development issues. The following table shows some recent relevant experience.

<table>
<thead>
<tr>
<th>Recent Relevant Experience</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Phoenix LRT</td>
<td>Denver FastTracks</td>
</tr>
<tr>
<td>Houston LRT</td>
<td>Massachusetts Bay Commuter Railroad Company</td>
</tr>
<tr>
<td>San Juan heavy rail transit line</td>
<td></td>
</tr>
</tbody>
</table>
CAF USA, Inc. (CAF)

CAF offers comprehensive global rail solutions which, in addition to the supply of trains, includes viability studies, civil work, electrification, signaling, maintenance and system operation. CAF has worked on integrated projects based on concession or turnkey models, providing a single, specific solution combining integration and compatibility of systems. CAF has been building trains in the US since 1998 and has successfully completed several projects during this time. The following table shows some relevant experience.

<table>
<thead>
<tr>
<th>Recent Relevant Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pittsburgh Articulated Unit</td>
</tr>
<tr>
<td>Sacramento S/200 Articulated Unit</td>
</tr>
<tr>
<td>Boston Green Line LRV</td>
</tr>
<tr>
<td>Budapest Tram project</td>
</tr>
<tr>
<td>Houston LRV</td>
</tr>
<tr>
<td>WMATA 5000 series</td>
</tr>
<tr>
<td>Kansas City streetcar</td>
</tr>
<tr>
<td>Cincinnati streetcar</td>
</tr>
</tbody>
</table>

We understand that all of the above contracts that have been completed were delivered as required to achieve the Revenue Service Date on time. We note that the vehicle to be used for the Purple Line is largely based on that provided for the Houston contract. The Houston LRV will have been in operation for nearly 4 years by the time the Purple Line LRV design is completed. We consider this provides a strong benefit as a result of the ability to take account of the lessons learnt from the Houston vehicle. This is of particular relevance in the testing and commissioning phases of the contract.

*Turner & Townsend is familiar with Fluor and the projects that they have completed in North America. We are not familiar directly with ACI, however we have reviewed their experience and proposed personnel for the Project. Turner & Townsend are familiar with CAF, specifically in Europe. We are satisfied that the O&M JV have the resources, capability and experience to fulfill their obligations on the Project.*

Interfleet

The DB CONTRACTOR have engaged Interfleet to undertake a consultancy role on the project that covers all facets of the LRV supply from CAF, from design review through Final LRV Acceptance on the project site. Interfleet Technology was formed in April 1994, as part of the privatization of the UK rail industry. Interfleet originated from the former InterCity Fleet Engineering division of the British Rail engineering and technical headquarters, which managed the rolling-stock operated by the then InterCity sector of British Rail. In October 2011, Interfleet was acquired by the SNC-Lavalin Group. From the 1st January 2016, Interfleet Technology was re-branded as SNC-Lavalin Rail & Transit. This integration brought together SNC-Lavalin’s Transit Engineers in Vancouver and Toronto and the Transport Systems team in
Montreal, to form a new group SNC-Lavalin Rail & Transit. Experience includes engineering and technical support, through to management of major projects such as new train procurement and strategic support to bidders for passenger rail franchises.

On the Project, Interfleet will review all CAF design submittals prior to these submittals being made to the Concessionaire and Owner. Particular emphasis will be placed on areas of design change from the Houston vehicle (the Houston vehicle is the basis of the Purple Line vehicle), such as the 1500VDC current collection and voltage converter. Interfleet will perform First Article Inspections for all major sub systems. Type testing will be largely of an audit nature, except for those that are design changes from the Houston Vehicle.

Interfleet will also provide Production Quality Assurance/Quality Control at CAF’s manufacturing facilities, both in Spain and Elmira, NY. Identified hold points will be established in the production schedule allowing for monitoring and witnessing of prescribed factory testing. For Vehicle Testing and Acceptance at the site, Interfleet will have a continuous presence on site, witnessing all Acceptance Testing and providing Technical support as required.

*Turner & Townsend have worked alongside Interfleet on rail projects previously and are familiar with their capabilities in this area. We are satisfied that they have the appropriate experience to fulfill this role on the Project.*

### 3.7 Conclusion

*We have reviewed the capability and experience of the organisations included in the Purple Line Transit Partners Consortium. In our opinion, the Consortium has the requisite experience to fulfill their obligations on this Project.*
4 Contract Review

4.1 Project Agreement

We have undertaken a review of the Public-Private Partnership Agreement (PPPA) Execution Version, as amended. The commentary below is undertaken on a “by exception” basis, whereby we have commented on those areas where we consider there to be an item of note, a risk or potential risk to the Project, which should, in our opinion, be brought to the notice of the lenders.

4.2 Article 5 – Management Systems and Oversight

4.2.1 Section 5.1.5 – Owner Actions Relevant to Submittals

“Whenever the Contract Documents indicate that:

(a) A submittal is subject to Owner’s review and comment but that Owner’s approval is not required, and Owner delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under the Contract Documents, or

(b) Concessionaire is to deliver a Submittal to Owner for its information, then Concessionaire may proceed with the Work contemplated by the Submittal at Concessionaire’s sole election and risk, without prejudice to Owner’s rights to later object to, reject or disapprove the Work on the basis that the Work is not in accordance with the requirements of the Contract Documents. No failure or delay by Owner in taking action within the applicable time period under the Contract Documents (including reviewing Submittals and delivering comments, exceptions, objections, rejections or disapprovals) shall constitute a Relief Event, Force Majeure Event or other basis for any Claim except to the extent such failure or delay constitutes an Owner-Caused Delay. In accordance with Part 2A, Section 10.4.4 of the Technical Provisions, Submittals are subject to Owner’s Review and Approval unless the Contract Documents or the Owner-approved Submittal List provide(s) that the Submittal is to be provided for Owner’s information or for Owner’s Review and Comment.”

We believe the PPPA should provide the Concessionaire with more certainty that Submittals which are not subject to approval, are deemed to be approved unless the Owner delivers comments or objections. We have discussed this with the Concessionaire and are satisfied that through their discussions to date with the Owner, this risk should be minimal.

4.2.2 Section 5.3 – Maintenance of Traffic; Liquidated Damages

Concessionaire shall conduct the work at all times in such a manner and in such sequence as will assure the least interference with the public. Concessionaire shall be liable for and pay to Owner liquidated damages as set forth in Exhibit 11 with respect to low traffic control ratings received by Concessionaire during the Design-Build Period and for any failure of Concessionaire to restore full traffic capacity as described in said Exhibit 11. Concessionaire has passed down all of its obligations with respect to the maintenance of traffic to the DB CONTRACTOR, who will pay the referenced liquidated damages to Concessionaire if the DB CONTRACTOR fails to meet the relevant requirements. The following tables identify the Liquidated Damages that can be applied.
### Expressways or Freeways

<table>
<thead>
<tr>
<th>Elapsed Time (Minutes)</th>
<th>Liquidated Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>For Complete Closures (all lanes blocked)</td>
<td></td>
</tr>
<tr>
<td>1 – 10</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Over 10</td>
<td>$2,500.00 per minute (in addition to the original 10 minute deduction)</td>
</tr>
<tr>
<td>For Triple (3) Lane Closures</td>
<td></td>
</tr>
<tr>
<td>1 – 10</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>Over 10</td>
<td>$1,500.00 per minute (in addition to the original 10 minute deduction)</td>
</tr>
<tr>
<td>For Double (2) Lane Closures</td>
<td></td>
</tr>
<tr>
<td>1 – 10</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Over 10</td>
<td>$1,000.00 per minute (in addition to the original 10 minute deduction)</td>
</tr>
<tr>
<td>For Single (1) Lane Closures</td>
<td></td>
</tr>
<tr>
<td>1 – 10</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Over 10</td>
<td>$500.00 per minute (in addition to the original 10 minute deduction)</td>
</tr>
</tbody>
</table>

### Arterial Roadways

<table>
<thead>
<tr>
<th>Elapsed Time (Minutes)</th>
<th>Liquidated Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>For More Than One Lane Closed or for Complete Ramp Closures</td>
<td></td>
</tr>
<tr>
<td>1 – 10</td>
<td>$600.00</td>
</tr>
<tr>
<td>Over 10</td>
<td>$300.00 per minute (in addition to the original 10 minute deduction)</td>
</tr>
<tr>
<td>For Single (1) Lane Closures</td>
<td></td>
</tr>
<tr>
<td>1 – 10</td>
<td>$300.00</td>
</tr>
<tr>
<td>Over 10</td>
<td>$150.00 per minute (in addition to the original 10 minute deduction)</td>
</tr>
</tbody>
</table>

### All other roadways

<table>
<thead>
<tr>
<th>Elapsed Time (Minutes)</th>
<th>Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>For More Than One Lane Closed</td>
<td></td>
</tr>
<tr>
<td>1 – 10</td>
<td>$300.00</td>
</tr>
<tr>
<td>Over 10</td>
<td>$150.00 per minute (in addition to the original 10 minute deduction)</td>
</tr>
<tr>
<td>For Single (1) Lane Closures</td>
<td></td>
</tr>
<tr>
<td>1 – 10</td>
<td>$150.00</td>
</tr>
<tr>
<td>Over 10</td>
<td>$75.00 per minute (in addition to the original 10 minute deduction)</td>
</tr>
</tbody>
</table>
We are satisfied that the DB CONTRACTOR has proposed a reasonable traffic management plan during the construction period. We are also satisfied that the DB CONTRACTOR recognises the risk inherent in this aspect of the construction works and have allowed for potential penalties within their pricing. The Consortium has provided a detailed approach to traffic management in their proposals. The key philosophy is to minimize the number of switches/staging changes. Successful approaches have been demonstrated by the Consortium on projects such as I-15 in Utah and I-495 in Virginia. Consideration has been given to developing a public outreach process such that the public will know what to expect and when to expect.

The TMP will be developed in close coordination with the MTA, MDOT, Prince George and Montgomery County and University of Maryland. Detailed simulation models have been developed to model the traffic conditions that can be expected during construction. We have been told by the Consortium that adequate allowances have been built into the budget for LDs as a result. From a high level perspective, the build-up follows an approach that takes into account delays on the freeway, arterial roadways and other roadways. A predictive model using industry recognized simulation models such as VISSIM has been used to simulate the conditions during construction. These modelling techniques are industry recognized practices that are deployed to predict traffic conditions during major highway construction activities. The results from this model are then used to develop the anticipated dollar values that might be incurred as a result of such temporary disruptive conditions. This is a reasonable approach and the level of detail that can be expected from the Consortium.

4.2.3 Section 5.5.1.3 – Oversight, Inspection and Testing

“Owner shall have the right to conduct formal reviews of every Design Document and Construction Document, but shall have no obligation to do so, except to the extent necessary or advisable to comply with FTA or other applicable federal agency requirements. Owner shall also have the right, but not the obligation, to conduct “over-the-shoulder” reviews of Design Documents and other Submittals.”

Neither “formal review” nor “over-the-shoulder-review” are defined terms for the purposes of the PPPA. 'Formal review’ is likely meant to be the review process described in the TPs, Part 2a, Section 10.4.4.2; 'Over the shoulder review’ has a standard understanding in the industry where the parties meet and go over the work product. Technical provisions Book II Part 2A section 10 sets out submittal process and approval/review procedures. We have reviewed the Project schedule and are satisfied that reasonable time has been allowed for the submittal and review process.

4.2.4 Section 5.5.2 – Increased Oversight, Testing & Inspection

“The Owner shall, by notice to Concessionaire, be entitled to change the type and/or increase the level of its Oversight of the Project and Concessionaire’s compliance with its obligations under the Contract Documents, in such manner and to such level as Owner reasonably sees fit, if at any time:

a) Over the course of three consecutive Payment Periods (determined on a rolling basis), the Concessionaire has accumulated 2,400 or more Non-Compliance Points for Availability Non-Compliances or 960 or more Non-Compliance Points for Activity Non-Compliances;
b) There exists a Remedial Plan Default; or

c) Concessionaire receives one or more Notices of Concessionaire Default that may become a Default Termination Event as set forth in Section 19.3.1.

If Owner changes the type or increases the level of its Oversight pursuant to section 5.5.2.1, then Concessionaire shall pay and reimburse Owner within 30 days after receipt of written demand and reasonable supporting documentation, for all reasonable increased costs and fees Owner incurs in connection with such action, including Owner’s Recoverable Costs. Such obligation to pay and reimburse shall apply to all changes in the type or increases in the level of Owner’s Oversight occurring until Concessionaire has:

a) Fully and completely cured the breaches and failures that are the basis for a potential Default Termination Event and any other then-existing Concessionaire Defaults;

b) Submitted and complied with any remedial plan approved under Section 16.6.2;

c) If applicable, reduced the number of uncured Noncompliance Points below the thresholds identified in Section 5.5.2.1(a); and

d) If applicable, reduced by 50% the number of uncured Noncompliance Points outstanding on the date Owner delivers the notice under Section 5.5.2.1.”

We have commented on the reasonableness of the thresholds for increased Oversight at Section 6 of our report.

4.2.5 Section 6.3.2 – Government Approvals

Owner has initiated the process for obtaining the NPS Special Use Permit. Owner has obtained a permit for access, inspection, surveys, and non-intrusive investigations and has coordinated with NPS in the planning for the Project improvements in the Baltimore Washington Parkway. Concessionaire acknowledges and agrees that the NPS Special Use Permit is required for the Work and that Concessionaire has received and is familiar with NPS ROD and supporting documentation included in the Reference Documents. Concessionaire bears the risk of (a) conditions imposed on performance of the Work by such NPS Special Use Permit and (b) any delay in obtaining the NPS Special Use Permit except to the extent that the delay qualifies as a Force Majeure Event.

We consider this risk is reasonable for the Project. The risk has been passed down fully to the DB CONTRACTOR.

4.2.6 Section 6.3.4 – Government Approvals

The Parties acknowledge that certain Governmental Approvals are required from Montgomery County, WMATA and the Maryland-National Capital Park and Planning Commission (Montgomery County) with
respect to the Silver Spring ATC Work. Although Concessionaire is responsible for obtaining such approvals, material changes in the Work due to conditions imposed by such approvals will be considered an Owner Change under Section 14.1, and certain delays in obtaining such approvals will be considered an Owner-Caused Delay under clause (m) of the definition of Owner-Caused Delay; provided, however, that Concessionaire shall promptly inform Owner of any such conditions imposed by such approvals for Owner’s determination whether to proceed with the Silver Spring ATC Work. Any change to the Silver Spring ATC Work resulting from Owner’s further determination is also an Owner Change under Section 14.1. Notwithstanding the foregoing, the Governmental Approvals that Concessionaire is required to obtain under this Section 6.3.4 exclude the Owner-Provided Approvals.

_The clause is a risk step-down and is a favorable position for the Consortium._

4.2.7 **Section 6.3.5 – Government Approvals**

The Concessionaire shall obtain all Governmental Approvals required for the Project other than the Owner-Provided Approvals, and shall bear the risk of any delay in obtaining such approvals as well as the risk of conditions imposed on performance of the Work by such approvals.

_We consider this risk is reasonable for the Project. The risk has been passed down fully to the DB CONTRACTOR._

4.2.8 **Section 6.4 – Environmental Compliance**

Owner delegates to Concessionaire, and Concessionaire accepts, all obligations, commitments and responsibilities of Owner under the Environmental Approvals, except to the extent that Part 2A, Section 5 of the Technical Provisions states that Owner retains certain obligations.

_We consider this risk is reasonable for the Project. The risk has been passed down fully to the DB CONTRACTOR._

4.2.9 **Section 6.5 – Compliance with Approvals**

Throughout the Term and the course of the Work, the Concessionaire shall:

(a) comply with all Environmental Laws;

(b) comply with all conditions, and requirements imposed by all Environmental Approvals to be obtained by the Concessionaire;

(c) perform all commitments and mitigation measures set forth in all Environmental Approvals, except to the extent that the Contract Documents specifically state that the Concessionaire is not responsible for such commitments and mitigation measures; and
(d) Undertake all actions required by, or necessary to maintain in full force and effect, (i) all Governmental Approvals to be obtained by Concessionaire and (ii) the Owner-Provided Approvals, to the extent specified in the Technical Provisions and Books 3 through 5.

*We consider this apportionment of environmental risk is reasonable for the Project. The risk has been passed down fully to the DB CONTRACTOR.*

**4.2.10 Section 7.4.2 - Float**

Float shall be considered as a jointly-owned, expiring resource available to the Project and shall not be considered as time for the exclusive use or benefit of either the Owner or the Concessionaire. All Float contained in the Project Schedule, as shown in the Initial Baseline Schedule or as generated during the course of the Work, shall be considered a shared, jointly owned Project resource available to both Owner and the Concessionaire. The Concessionaire shall cause all Contracts with each Design-Build Contractor to acknowledge Project Float to be a shared, jointly owned resource available to the Owner as well as the Concessionaire as needed to absorb delay caused by Relief Events, Force Majeure Events or other events, achieve interim completion dates and achieve Contract Deadlines. All Float shall be identified as such in the Project Schedule on each affected schedule path. The Owner shall have the right to examine the identification of (or failure to identify) Float on the Project Schedule in determining whether to approve the Project Schedule. Once identified, the Concessionaire shall monitor, account for and maintain Float in accordance with critical path methodology.

*The Design Build Contractor is taking schedule risk through the provision of Liquidated Damages within the DB contract, so the reduction in ‘float’ included as contingency in the construction schedule would increase that risk burden. We have discussed this with the DB CONTRACTOR and are satisfied that they have made adequate provision for this in their schedule and pricing.*

**4.2.11 Section 7.4.5 – Commencement of Construction Work**

This section lists the conditions precedent to commencement of Construction Work.

*We have reviewed the list and consider it is reasonable for the Project.*

**4.2.12 Section 7.5 – Acquisition of Real Property – Acquisition schedule**

Owner has identified certain property to be used for the Project, the boundaries of which are depicted in the Right of Way plans in Book 4 (Contract Drawings). Owner will acquire, at its cost, the Project ROW as well as certain other property rights. Owner will staff a ROW team that will be available to acquire ROW and deal with all issues that may arise relating to ROW acquisition.

The Property Acquisition Schedule in Exhibit 9 & Exhibit 2, Section 7 (related to TPSS and SSTC – ATC) to the PPPA specifies dates by which Owner intends to provide Concessionaire with rights of access for properties as identified in said Exhibit 9. Concessionaire must obtain from Owner a notice of clear right of way prior to entering any property listed on Exhibit 9 or that is otherwise to be obtained by Owner.
If Owner determines that it is necessary to acquire other real property interests for the Project as a result of a Relief Event during the Design-Build Period, then those real property interests will be added to the Property Acquisition Schedule and will not be treated as Additional Properties.

If Concessionaire considers that other real property interests are required for the permanent System improvements or Third Party Work and were erroneously excluded from the Property Acquisition Schedule, Concessionaire may, by notice to Owner, request Owner to add such other real property interests to the acquisition schedule. Concessionaire's notice shall include an analysis identifying alternative approaches that could be adopted to avoid the need for the acquisition, including use of retaining walls and other design modifications. If Owner determines that any real property interests identified by Concessionaire are necessary for the permanent System improvements or Third Party Work and should therefore have been included in the Property Acquisition Schedule, Owner will add such real property interests to the Property Acquisition Schedule. Owner will determine acquisition dates and acquire such real property interests at its own expense and will not treat such real property interests as Additional Properties. However, Concessionaire shall remain responsible for any costs incurred with respect to such real property interests in relation to the preparation of documentation required to justify the acquisition.

Real property required for Utility Easements will be considered an Additional Property for which Concessionaire is required to pay 50% of the acquisition costs, with the following exceptions:

(a) If it is impracticable to design the Project to avoid the need for the additional Utility Easement (that is, if such a design is impossible, overly costly or otherwise not in the best interest of the Project), the real property required for such Utility Easement will not be considered an Additional Property.

(b) If the Utility Easement is required as the result of an unreasonable refusal or delay by the Utility Owner to approve placement of Utility Adjustments within the boundaries of the properties identified in Exhibit 9, the real property required for such Utility Easement will not be considered an Additional Property.

In conjunction with MDOT/MTA, the Consortium has met with PEPCO (Potomac Electric Power Company), WSSC (Washington Sub Sanitary Commission), Washington Gas, Verizon, AT&T, CenturyLink, Comcast, Zayo, and Fiberlight to address how potential conflicts can be avoided and/or minimized. The assigned Utility Manager, who has been part of the proposal process, will conduct early and frequent meetings with the Utility Owners to obtain easement requirements and agreements on the design approach and to review plans and estimates from the various companies to minimize schedule delays. The DB CONTRACTOR will build upon the work already performed by MDOT/MTA and refine the Utility Conflict Matrix to assist with the planning and design of utility relocations, where avoidance cannot be obtained.

Where the foregoing exceptions apply, Owner will be responsible for the costs of acquiring the real property required, and delays under exception (b) above will be considered Utility Owner Delays. In all other cases, Concessionaire shall be responsible for 50% of the cost of acquisition of any such property,
and shall be responsible for the risk of delays related to acquisition of such property. Such Utility Easements will be added to the Property Acquisition Schedule.

*We have reviewed Exhibit 9 and discussed with the DB Contractor. We are satisfied that the current property acquisition schedule has been suitably accommodated in the construction schedule and acquisition schedule has been duly noted in Exhibit 9.*

**4.2.13 Section 7.6 – Utility Adjustments**

**4.2.13.1 Concessionaire’s Responsibility**

The Concessionaire shall:

(a) ensure completion of all Utility Adjustments necessary to accommodate construction, operation, maintenance and/or use of the Project are completed in accordance with the Project Schedule and the requirements of the Contract Documents

(b) conduct reasonable site investigation and exploration prior to commencement of Construction Work in a particular area to correctly identify all Utilities in the area

(c) include in the design all utilities in clause (b) to ensure that Utility service is not mistakenly disrupted by the Construction Work

(d) Ensure that all Utility Work performed by Concessionaire-Related Entities complies with the Contract Documents; and

(e) Coordinate, monitor and otherwise undertake appropriate efforts to make sure timely performance of Utility Work by Utility Owners, in coordination with the D&C Work, and in compliance with the standards and other applicable requirements specified in the Contract Documents and Owner Utility Agreements. Concessionaire shall keep Owner informed of any concerns regarding work by Utility Owners, and Owner agrees to cooperate as reasonably requested by Concessionaire to ensure proper performance by the Utility Owners.

**4.2.13.2 Utility Agreements**

The Owner Utility Agreements and, in some cases, draft Owner Utility Agreements, are included as Reference Documents and portions of such agreements are incorporated into the Contract Documents by reference. The Owner Utility Agreements provide information regarding the responsibilities of Utility Owners and Concessionaire to perform the Utility Work, the basis for compensation, preliminary engineering agreements, extent of design reviews, requirements for Contractors engaged by Concessionaire to perform Utility Work, and other relevant information.

If Concessionaire determines that a Utility Adjustment is required for a facility owned by a Utility Owner that has not entered into an Owner Utility Agreement, Concessionaire shall promptly notify Owner
regarding the circumstances. In such event, unless Owner directs otherwise, Concessionaire shall prepare, negotiate and enter into a Concessionaire Utility Agreement with such Utility Owner, enabling Utility Work to proceed.

Concessionaire is responsible for proper completion of the Utility Work required for the Project, in accordance with the Contract Documents, regardless of the nature or provisions of the Utility Agreements and regardless of whether Concessionaire or its Contractors, or the Utility Owner or its contractors, is performing the Utility Work. No extension of time will be allowed for delays associated with Utility Work, and no additional compensation will be allowed relating to Utility Work, except to the extent specifically permitted by the Contract Documents.

4.2.13.3 Costs of Utility Work

Concessionaire shall be responsible for:

(a) all costs of Utility Work performed by Concessionaire-Related Entities;

(b) all payments owing to Utility Owners for Utility Work under Concessionaire Utility Agreements (if any);

(c) A share of the costs of acquisition of property required for Utility Easements as provided in Section 7.5.2;

(d) all costs of Incidental Utility Work; and

(e) all costs of materials furnished by Utility Owners under Owner Utility Agreements.

Concessionaire is responsible for making payments directly to the Utility Owner for costs that Section 7.6.4.1 or Part 1, Section 9 of the Technical Provisions requires Concessionaire to pay.

Owner is responsible for payments owing to Utility Owners under the Owner Utility Agreements, except as otherwise provided in this Section 7.6.

*These provisions have been appropriately passed down to the DB and O&M Contracts.*

4.2.13.4 Utility Owner Delays

Subject to the requirements and limitations of Article 15 and this Section, (a) the risk of additional costs directly attributable to Utility Owner Delays shall be shared by the Parties in accordance with Section 15.3.2.2 (Compensation for Utility Related Relief Events), (b) the RSA Deadline shall be extended by one day for every two days of Utility Owner Delay until the $5,000,000 limit under Section 15.3.2.2(c) is reached, and (c) once the $5,000,000 limit under Section 15.3.2.2(c) is reached, the RSA Deadline shall thereafter be extended on a day-for-day basis. Concessionaire shall give notice to Owner of any circumstances which may lead to a claim of a Utility Owner Delay within five days of Concessionaire becoming aware that such circumstance has occurred or is likely to occur.
We consider this risk transfer is reasonable for the Project. The Consortium recognizes this risk and the proposal has developed a Utility Management Plan to minimize the risk. The Consortium has developed a utility matrix, identified the key utilities that will be prioritized, has developed relationships with Utility Owners by way of other projects, and has a dedicated utility manager to develop, manage and update the utility coordination plan. To accelerate the utility relocation, special utility designers will be deployed to expedite the design development process and construction process. We consider this is a reasonable approach to manage this risk. The risk has been passed down fully to the DB CONTRACTOR.

4.2.14 Section 7.7.4 – Fare System Allowance

A Fare System Allowance in the amount of $15,000,000 is available to reimburse the Concessionaire for certain D&C work activities related to the Fare System, in accordance with Part 2B, Section 19.7 of the Technical Provisions, without markup. No Change Order is required for invoicing amounts within the Fare System Allowance amount. Concessionaire acknowledges and agrees that other payments to Concessionaire provided under this Agreement provide compensation for all other costs relating to the Fare System and Fare System Equipment incurred as part of the D&C Work, including designing the Project to accommodate the Fare System Equipment, overhead expenses associated with administration of the Contract for supply of the Fare System Equipment and other work activities that Part 2B, Section 19.7 of the Technical Provisions states are not payable from the Fare System Allowance. If at any time the estimated costs of performing the D&C Work to be covered by the Fare System Allowance exceed the Fare System Allowance amount, the Parties shall consult regarding measures to bring the cost within budget, provided that if it becomes apparent that the D&C Work to be covered by the Fare System Allowance cannot be performed within the Fare System Allowance and that the scope of D&C Work cannot be modified to reduce the cost to the Fare System Allowance, the Parties shall negotiate a Change Order for such excess costs. Concessionaire shall have no obligation to expend funds in excess of the Fare System Allowance amount.

This is a reasonable provision for the Project.

4.2.15 Section 7.8.1– Hazardous Material Management

Except as specifically excepted, the Concessionaire is responsible for performing all Hazardous Materials Management required in connection with the Project in accordance with applicable Law, Governmental Approvals, the approved Comprehensive Environmental Protection Program and all applicable provisions of the Contract Documents.

We consider this risk transfer is reasonable for the Project.

4.2.16 Section 7.8.4 – Hazardous Materials Remediation Allowance

Owner may also elect to use the Hazardous Materials Remediation Allowance as a source of payment for Hazardous Materials Management Work directly attributable to a Hazardous Materials Relief Event.
No Change Order is required for invoicing amounts within the Hazardous Materials Remediation Allowance amount. Concessionaire shall promptly notify Owner if it becomes apparent that the Hazardous Materials Remediation Allowance amount will be exceeded, in which event the Parties shall negotiate a Change Order increasing the Allowance amount and/or modifying the scope of the Work to avoid the need to increase the Allowance.

*We consider this approach to compensating the Consortium for Hazardous Materials Management Work is reasonable for the Project.*

**4.2.17 Section 7.10 – Revenue Service Availability and Final Completion**

We have reviewed this section, including the conditions to Revenue Service Availability and the process for issuance of the Revenue Service Availability Certificate.

*We are satisfied that the DB Contractor has a full understanding of the requirements of this section and do not consider it places undue risk on the DB Contractor to achieve Revenue Service Availability and Final Completion.*

**4.2.18 Section 7.15 – System Integration**

Concessionaire shall perform, or cause to be performed, the successful commissioning, testing and acceptance of all components of the System, including operational readiness of the LRVs, subsystems and Fare System Equipment, in accordance with Part 2C of the Technical Provisions, so that the System may be opened for Revenue Service by the RSA Deadline. The Concessionaire shall manage, administer, control, coordinate and integrate the work of all of the Contractors in execution of the D&C Work.

*It should be noted the Consortium’s responsibilities include the LRVs, sub systems and Fare System Equipment, although this is an availability payment project. We consider these requirements appropriate to this Project.*

**4.2.19 Section 8.1.1 – O&M General Obligations**

In addition to standard O&M responsibilities expected on a P3 project, the Concessionaire for the Project shall maintain, repair and replace consumable and life-expired items and rehabilitation or overhaul of the LRVs.

*We consider this requirement appropriate to this Project and confirm the Consortium’s O&M Contractor have the experience to meet these requirements.*

Concessionaire shall develop the Project to accommodate future anticipated Technology Enhancements in keeping with Good Industry Practice. Concessionaire shall implement or incorporate Technology Enhancements for the System, at no cost to Owner, to the extent such enhancements are (a) scheduled in the Asset Management Plan, (b) needed to correct Defects in the Work, and (c) required to comply with Good Industry Practice. Exhibit 1 defines Technology Enhancements as follows:
Technology Enhancements means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to operational technology, or to any related documentation that accomplish incidental, performance, structural, or functional improvements. The term "Technology Enhancements” specifically includes modifications, updates, or revisions made to software or any related documentation that correct errors or support new models of input-output devices with which the software is designed to operate, but excludes any such modifications, additions, refinements, substitutions, revisions, replacements or upgrades to LRVs.

The potential cost associated with the obligation to make Technology Enhancements to comply with Good Industry Practice is difficult to estimate over the concession period. Although this can be incorporated to some extent within the Asset Management Plan, technology associated with the Fare System and how this may impact availability and performance KPIs through the life of the concession requires consideration. We understand that this has been raised by the Consortium in their comments on the final RFP. The PPPA identifies the locations of the Ticket Vending Machines (TVMs) and the Validators. We have discussed this further with the O&M Contractor and have clarified that Good Industry Practice can be benchmarked as what is ‘reasonably expected’. This is a risk requiring management through the Concession period. The O&M Contractor has priced for the Operations and Maintenance and included the allowance for fare media in their estimate. Maintenance pricing has been based on similar systems in service at other locations. Addendum 3 removed the obligation for the O&M Contractor to price the Life Cycle replacement as the Owner takes this responsibility. Contingency has been applied to the pricing. Based on the information available and our discussions with the O&M Contractor we are satisfied that they understand the risk and have made provisions in their Asset Management Plan and pricing to manage it.

4.2.20 Section 8.6.1 – Fare Collection and Fare System

The Concessionaire shall be responsible for the operation and maintenance of the Fare System Equipment (including making all repairs and replacements necessary to enable the Concessionaire to meet performance requirements or remediate defects), stocking ticket vending machines, collecting cash from such machines, depositing cash receipts and arranging for proceeds of credit and other electronic transactions to be deposited into a designated Owner account, maintaining generally accepted fiscal controls and procedures in accordance with Owner and Comptroller of Maryland requirements, providing accounting reports regarding all transactions and deposits, and Monitoring and providing reports regarding fare evasion and monitoring Fare System Equipment for intrusion or tampering.

The Availability Payment formula is not dependent on the value of revenues collected but Noncompliance Points may be assessed for any performance failure by Concessionaire, and failure to collect properly, deposit and account for fare revenues’ deposits constitutes a Concessionaire Default [emphasis added].

The responsibility for fare collection is unusual for an availability-payment P3 project. The language states that failure to “properly” deposit and account for fare revenues constitutes a Concessionaire Default. We have discussed this with the O&M Contractor. The requirements of the Technical Provision will provide the basis for determining whether or not the Concessionaire performed “properly”. ACI, an integral member of the O&M Contractor team, has been performing fare collection services successfully on the Tren Urbano in San Juan, Puerto Rico over the last 10 years. The information from the TVMs and
other fare equipment provides a balancing number against the deposits, so that a reconciliation ties out the deposit each month against the calculated amount that should have been received. It is anticipated that circa 50% of the transactions will be through electronic/mobile apps/smart cards/etc., which will lower the amount of cash being handled. This is a risk that requires management through the Concession period. Based on the information we have available and our discussions with the O&M Contractor, we are satisfied that they understand the risk and have made provisions in their Asset Management Plan and pricing to manage it.

4.2.21 Section 8.8.1.3 – Performance of Renewal Work

The Concessionaire shall take every reasonable precaution against loss or damage to the System and other improvements and assets within the O&M Limits by the action of the elements, users, or from any other cause, whether arising from the execution or from the non-execution of the O&M Work.

Section 8.8.3.5(a) states: “If, with respect to individual acts of Vandalism (other than acts of Vandalism occurring within areas for which Concessionaire is responsible for providing security) resulting in losses or damages exceeding $1,000 (in Base Date dollars) in a 24-hour period, the total of such Incremental Costs during the Contract Year exceed $100,000 (in Base Date dollars), Owner will reimburse Concessionaire for the excess amount.

In addition, Section 8.8.3.5(b) appears to cap the exposure to the Concessionaire to $10,000,000 for all repairs and the like that are not covered by insurance. We note that the initial $4m is for the account of the O&M Contractor and the next $6m is split between the O&M Contractor and the Consortium.

We are satisfied that this represents a reasonable risk sharing position for the Project.

4.2.22 Section 8.13 – Handback Requirements

No later than five calendar years before the end of the Term, the Concessionaire and the Owner shall jointly: (a) identify the Renewal Work required for the Project to be in the condition and meet all of the requirements for Residual Life at the conclusion of the O&M Period specified in the Handback Requirements; and (b) determine the schedule (and Concessionaire’s estimated budget) for the performance, Owner inspection and Concessionaire completion of all such Renewal Work.

Each year of the five calendar years before the end of the Term or the remaining period before any Early Termination Date, the Handback Renewal Work Plan will be produced and be a separate document from, but complementary to, the Asset Management Plan. No later than 90 days prior to the beginning of each calendar year, the Concessionaire shall update the Handback Renewal Work Plan and provide the update to Owner. Following delivery of the update the Parties shall meet to discuss whether any changes should be made to the scope or schedule for performance of the Renewal Work.

If, prior to and at the end of the Term, the Owner determines that the Project does not comply with any Handback Requirement, or Renewal Work is not timely or properly performed, then, in addition to the
Owner’s rights under the Contract Documents, the Concessionaire shall be liable for the Owner’s Recoverable Costs incurred in bringing the Project into compliance with the Handback Requirement(s).

In recovering such amounts, the Owner may: (a) reduce any Availability Payment then due and owing from the Owner to the Concessionaire; (b) invoice the Concessionaire for such amount, as a lump sum payment; (c) set off such amount against any other amount then due and owing from the Owner to the Concessionaire; (d) draw against funds withheld under the Project handback reserve account or letter of credit related thereto; (e) require funds in the Project handback reserve account to be used to pay for required Renewal Work; or (f) any combination of the foregoing.

This is a satisfactory process for addressing the Handback Requirements. We confirm these obligations have been passed through to the O&M Contractor.

4.2.23 Section 8.14 - Handback Requirements Holdback

When the schedule for Renewal Work to meet Handback Requirements is set, the Parties shall determine whether the remaining budget for Renewal Work included in the Availability Payments is sufficient to cover the cost of such Renewal Work. If a shortfall exists, the Parties shall then determine whether the shortfall is covered by amounts held in a Project handback reserve account. If a shortfall exists, Parties shall then determine whether the shortfall is covered by amounts held in a Project handback reserve account that is subject to restrictions satisfactory to Owner ensuring that funds from said account will be used only to pay for reasonable costs of performance of Renewal Work and any other uses that have previously been approved by Owner.

If the shortfall is not covered by amounts held in such a reserve account, Owner may withhold sufficient funds from future Availability Payments to cover any remaining deficit after accounting for funds in the handback reserve account. The amount to be withheld from each Monthly Availability Payment shall not exceed the greater of: (a) the portion of the payment that would otherwise be available for Distributions to Equity Members; or (b) the shortfall amount divided by 60.

The foregoing assessment (progress of Renewal Work, estimated cost of Renewal Work, value of the handback reserve account) will be updated semi-annually.

The Concessionaire shall have the right to provide a letter of credit as described to secure its obligation to perform the Renewal Work, and thereby have the right to receive Monthly Availability Payments without any withholding based on the deficit.

This is a satisfactory process for providing security to the Owner for performance of the Handback Requirements. We confirm these provisions have been passed through to the O&M Contractor.

4.2.24 Section 9.1 – Disclosure of Contracts and Contractors

The provisions of this Section 9.1 apply with respect to (a) Prime Contracts and lower tier Contracts entered into by Prime Contractors, excluding personal services contracts and contracts with Suppliers
other than Key Contractors, and (b) Contracts with Affiliates, regardless of the nature or tier of the Contract. With respect to each such Contract, Concessionaire shall notify Owner’s Authorized Representative of the proposed Contractor and proposed scope of work to be performed by the Contractor, at least 10 days in advance of execution and delivery of the Contract.

The reasons for an Owner’s Authorised Representative’s objection are not identified. With this open position, there is a risk that an objection could occur more than once when schedule requirements may dictate that a contract needs to be signed expeditiously. We would recommend that the grounds for an objection are defined. We understand that this has been raised with the Owner and they have responded that this is standard wording for MDOT contracts. We have discussed this with the DB Contractor and this is an inherent risk that will be managed through the schedule. We are satisfied that the risk is understood and can be managed through appropriate schedule management.

4.2.25 Section 9.10 – Disadvantaged Business Enterprises (DBE)/Minority Business Enterprises (MBE)

The Concessionaire is required to make “continuing good faith efforts” over the course of the Project to achieve the DBE/MBE participation goal(s). The DBE participation goal(s) for the Design-Build Period of the Project (excluding supply of LRVs) are 26% for D&C Design Services and 22% for D&C Construction Services.

This DBE/MBE requirement to make ‘continuing good faith efforts’ is satisfactory for the Project. The goals for the Design Build Period are higher than we have seen elsewhere. The Fluor-Lane team on the P3 contracts for Express Lane 495 and 95 were successful in meeting goals higher than those stated for this contract. We are satisfied that the DB CONTRACTOR partners understand the requirements and have processes available to meet them.

4.2.26 Section 9.11 – Workforce Provisions

Concessionaire shall make good faith efforts to assure that:

- Not less than 33% of all Construction Work Hours are performed by Nationally Targeted Workers
- Not less than 10% of all Construction Work hours are performed by Nationally Targeted Workers of Social Disadvantage and
- Not more than 50% of the aggregate Construction Work Hours performed pursuant to the two points above may be worked by Helpers or other Unskilled Laborer position as defined in the Davis-Bacon Act.

This Workforce Provisions requirement to make ‘good faith efforts’ is satisfactory for the Project.
4.2.27  **Section 10.1 – Interface with Related Transportation Facilities**

The Concessionaire is responsible for interfaces and integration of the Project with Related Transportation Facilities, including the roadway network, the MARC commuter rail system, intermodal connections and interfaces with facilities owned by WMATA and other transit service providers. We note the Owner will provide “reasonable assistance” to the Concessionaire in obtaining the cooperation of these third-parties.

*We consider these requirements sufficient for this Project, although we would be more comfortable with a positive obligation on the Owner to compel the cooperation of third-parties. The Consortium is adopting the industry recognized systems integration approach to make sure the proposed system interacts and interfaces with the other facility. The Operation Control Centre, which is the heart of the system, will be subject to a rigorous testing procedure to make sure all systems interface with the proposed LRT as expected.*

During test runs field issues that arise as a result of operating a rail line within a mixed traffic condition will be identified and addressed. There are likely to be risks that will need to be managed and mitigated as far as possible prior to full operation of the system. This is typical during the test run process and is an integral part of the testing and commissioning process. Some of the tests that will be performed include:

- System readiness drills - to test the responsiveness of an emergency situation;
- Trial running operations testing - simulate revenue service operation; and
- System performance demonstration - a 14 day systems performance demonstration will be performed during the trial running period.

We are satisfied with the strategies that have been developed and the approach highlighted.

4.2.28  **Section 11.1 – Insurance**

We have assumed this section will be addressed within the Lenders Insurance Advisor report.

4.2.29  **Section 11.2 – Payment and Performance Security**

Concurrent with Financial Close, the Concessionaire shall obtain a Payment Bond and Performance Bond each equal to 55% of the ”Total Value of the D&C Construction Work”.

*We confirm this requirement has been passed down to the DB CONTRACTOR through the DB Contract but Concessionaire is the primary obligee of such surety bonds issued by the DB CONTRACTOR, with Owner and the Collateral Agent as additional obligee.*

4.2.30  **Section 12.1 – Exercise of LRV Option**

Owner has three separate options (the "LRV Options") to require Concessionaire to purchase Option LRVs and commission said LRVs: (a) LRV Option A for the committed number of additional LRVs required for a
change from Service Level 1 to Service Level 2; (b) LRV Option B for the committed number of additional LRVs required to enable Concessionaire to meet the Peak Period Headways for Service Level 1 or Service Level 2, as applicable, if Actual Combined Tsc is 1.00 through 6.00 minutes higher than Bid Combined Tsc in a Peak Period; and (c) LRV Option C for the committed number of additional LRVs required to enable Concessionaire to meet the Peak Period Headways for Service Level 1 or Service Level 2, as applicable, if Actual Combined Tsc is 6.01 through 12.00 minutes higher than Bid Combined Tsc in a Peak Period.

The number of LRVs and pricing information for each such option are specified in Section 12.1.2 of the PPPA. The Owner must exercise each such option by delivery of notice to Concessionaire to such effect (an “LRV Option Notice”), identifying which option is being exercised. The LRV Options may be exercised independently of each other. LRV Option A may be exercised at any time during the period starting at Financial Close and ending on the seventh anniversary of Commercial Close. LRV Options B, and C may only be exercised during the period starting on the fifth anniversary of Commercial Close and ending on the seventh anniversary of Commercial Close.

The base capital project provides a fleet for Service Level 1, based on 2300 peak hour loads at a 7.5 minute headway. It’s assumed that when the actual ridership exceeds 2300 in the peak, the Owner will exercise Option A, which will increase the fleet size to that required for Service Level 2. Service Level 2 is based on 3000 passengers per peak hour at a 6 minute headway. The DB CONTRACTOR has provided the following costs for the 3 options, reflected in the executed PPPA:

- Option A = 5 LRV’s at $9,234,296 per LRV
- Option B = 1 LRV at $13,796,112 per LRV
- Option C = 2 LRV’s at $10,931,144 per LRV

Following delivery by Owner to Concessionaire of an LRV Option Notice, Concessionaire shall procure the Option LRVs for delivery and commissioning and shall notify Owner regarding the scheduled date for such delivery and commissioning. If the LRV Option Notice is delivered more than 36 months before the RSA Deadline, the scheduled date shall be the RSA Deadline. In all other cases, the scheduled date shall be no later than 36 months after the date of the LRV Option Notice. Payments for Option LRVs shall be made based on milestones in accordance with the schedule in Part D of Exhibit 4A.

If Owner has exercised LRV Option A, Concessionaire has the option to make LRV Deferral Payments to Owner and thereby defer the start date for moving to Service Level 2 by up to 24 months. The amount of each LRV Deferral Payment shall be calculated as a percentage of the total value of the relevant LRV Option order, as follows: (1) for delays up to 12 months after the established date, 0.4% per month; (2) for delays during the following six months (that is, months 13 through 18), 0.7% per month; and (3) for delays during the following six months (that is, months 19 through 24), 1.0% per month. The aggregate total of LRV Deferral Payments for an LRV Option may not exceed 15% of the total value of the relevant LRV Option order.
We have reviewed the LRV Option provisions and discussed these with the DB Contractor and O&M Contractor (who both share the responsibility for the delivery of Option LRVs). The 36 months given for the procurement and delivery of additional vehicles is considered reasonable and we note that CAF expects to deliver vehicles in a 30 month period.

4.2.31 Section 13.1 – Design-Build Period Progress Payments

The Owner will make payments for the D&C Work to the Concessionaire during the Design-Build Period following receipt of periodic requests for payment submitted by the Concessionaire. Certain payments will be made based on monthly invoices submitted during the Design-Build Period, based on progress determinations (the “Progress Payments”), equal to 85% of the value of D&C Work eligible for Progress Payments performed during the period covered by the invoice.

The cumulative amount of Progress Payments made by Owner as of any date, in combination with mobilization payments and Allowance payments up to the allowance amounts in Exhibit 4A, Part A, may not exceed the cumulative D&C Payment Cap for such period specified in Exhibit 4A.

The remaining payments will be made through the Loan Agreements.

4.2.32 Section 13.1.1.7 – RSA (Revenue Service Availability) Payment

The RSA Payment is payable following issuance of the Independent Engineer’s Certificate of Revenue Service Availability and Final Completion Payment is payable following achievement of Final Completion.

This structure is considered appropriate for the Project.

4.2.33 Section 13.2 – Availability Payments

The Owner will pay Availability Payments to Concessionaire during the O&M Period as calculated according to the methodology set forth in Exhibit 4D (Payment Mechanism). The Availability Payments will be made monthly.

We have commented on the Payment Mechanism in Section 6 of this report.

4.2.34 Section 13.10.1 – Backfill Provisions

The Parties acknowledge that the Total Value of D&C Construction Work is based, in part, upon the assumption that excavation required for the Project will produce at least 496,000 tons of select backfill material for Backfill Uses during performance of the Work.

If Project excavation fails to produce select backfill material in at least the estimated quantity available for Backfill Uses or adverse weather conditions unreasonably inhibit the use of such backfill material, Concessionaire shall be entitled to a “Backfill Change Order.” The Backfill Change Order shall provide for payment based on delivery tickets at a unit price of $28.20 for each ton of #57 stone required to be
obtained for Backfill Uses due to the shortfall. The procedural requirements for obtaining a Backfill Change Order apply in lieu of the procedural requirements for issuance of Change Orders under Article 15.

In its performance of the Work, Concessionaire shall exercise diligent efforts to maximize production of select backfill material available for Backfill Uses. Concessionaire shall provide monthly reports regarding the quality and quantity of materials produced through excavation, quantities of #57 stone obtained for Backfill Uses, and an updated estimate regarding the total quantity of select backfill material that will be produced and available for Backfill Uses, including appropriate backup information and any other information reasonably requested by Owner. If Concessionaire establishes that a shortfall exists despite Concessionaire’s diligent efforts as described above, Owner will process and issue a Backfill Change Order covering the estimated quantities of #57 stone required as a result of the shortfall, not to exceed $14,000,000. As the Work proceeds, the Backfill Change Order shall be subject to adjustment (increased or decreased) based on updated estimates and actual quantities, but shall in no event exceed $14,000,000.

In its performance of the Work, if Concessionaire determines in its reasonable discretion that available material does not meet the standard for suitable select backfill material available for Backfill Uses at a given location, then Concessionaire shall notify Owner of Concessionaire’s intent to arrange for and use of #57 stone at such location. Concessionaire shall use good faith efforts for such notification to occur at least 1 Business Day prior to making such arrangements; provided, however, that after giving such notice, Concessionaire may arrange for and use #57 stone at such location.

As noted in the clause the Owner has requested that the DB CONTRACTOR attempt to use cut material from Project excavations where deemed appropriate, in lieu of the #57 stone. The DB CONTRACTOR is to determine with the Owner’s Engineer if the cut material is appropriate to use as fill. The DB CONTRACTOR is under no obligation to use a minimum quantity of material as fill.

Concessionaire acknowledges and agrees that (a) other payments to Concessionaire provided under this Agreement provide compensation for its costs relating to Backfill Uses not covered by the unit prices, as well as any costs exceeding the maximum amount of the Backfill Change Order, and (b) any delay arising out of or relating to obtaining, hauling or otherwise utilizing #57 stone due to a shortfall in select backfill material available for Backfill Uses shall not constitute an Owner-Caused Delay, Owner Change, Relief Event, Force Majeure Event or other basis for a Claim.

The compensation for costs relating to Backfill Uses not covered by unit price is a favorable position for the Concessionaire.

**4.2.35 Section 13.10.2 – Landfill Provisions**

The Parties acknowledge that the Total Value of D&C Construction Work is based, in part, upon the assumption that (a) the Gude Drive Landfill in Montgomery County will accept delivery of up to 90,000 cubic yards of soil and construction or demolition debris, at 8.5 cubic yards/truckload ("Fill") without assessing a fee and (b) the Brown Station Road Landfill in Prince George’s County will accept delivery of up to 40,000 cubic yards, at 8.5 cubic yards/truckload of Fill without assessing a fee.
As per the clause above the Owner has negotiated a tipping waiver for material from the Project at the Prince George and Montgomery County landfill sites. We are satisfied that this change has not materially changed the risk profile of the Project.

**4.2.36 Section 14 – Owner Changes, Concessionaire Modification Requests; Directive Letters**

Section 14 sets out the processes for Owner-initiated changes in scope and Concessionaire requests for changes.

*We are satisfied the processes established at Section 14 are reasonable for the Project.*

**4.2.37 Section 15 – Relief Events; Force Majeure Events; Non-Concessionaire Caused Disruptions**

Per Section 15, if Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, the Concessionaire is entitled, among other things, to a commensurate extension in the period required to achieve Revenue Service Availability.

*We reviewed the Relief Events, Force Majeure Events and Non-Concessionaire Caused Disruptions delineated at Exhibit 1 and we are satisfied they are appropriate for the Project.*

**4.2.38 Section 15.3.2 – Utility-Related Relief Events**

**Materially Inaccurate Utility Information.** For Relief Events under clause (e) of the Relief Event definition, compensation payable by Owner shall be limited as follows:

(a) Concessionaire shall bear the first $2,750,000 of aggregate Incremental Costs (including payments by Concessionaire to Utility Owners) that would not have been required had the information provided been accurate;

(b) The Parties shall share equally in the next $2,750,000 of aggregate Incremental Costs;

(c) Owner will be responsible for all aggregate Incremental Costs exceeding $5,500,000 to the extent that costs are not fully addressed by clauses (a) and (b) above; and

(d) Owner will be responsible for Delay Costs and Delay Interest as provided in Sections 15.6 and 15.7 of the PPPA.

**Utility Owner Delays.** For Relief Events under clause (o) of the Relief Event definition, compensation payable by Owner shall be limited as follows:

(a) Until the $5,000,000 limit identified in clause (c) below has been reached, Owner will be responsible for Delay Interest as provided in Section 15.7 of the PPPA only with respect to Owner’s 50% share of the Utility Owner Delay;
(b) Concessionaire shall bear the first $750,000 of aggregate Incremental Costs directly attributable to the Utility Owner Delays;

(c) The Parties shall share equally in aggregate Incremental Costs in excess of $750,000 until the total Incremental Costs plus interest on Project Debt directly attributable to Utility Owner Delays (including Delay Interest as well as interest paid by Concessionaire with respect to its 50% share of the Utility Owner Delay) reach $5,000,000; and

(d) Once the $5,000,000 limit identified in clause (c) above has been reached, Owner will be responsible for Delay Interest and all aggregate Incremental Costs incurred directly attributable to the Utility Owner Delays, to the extent that such costs are not fully addressed by clauses (a), (b) and (c) above.

We have reviewed the construction costs and are satisfied that appropriate risk allowances have been made for these items. The Consortium has developed strategies in its technical proposal to manage utility related risk during the course of the Project. A dedicated Utility Coordination Manager will develop, manage and maintain a Utility Coordination Plan (UCP). The UCP will be a live document that will be in effect during the execution of the Project and will undergo regular updates. We are satisfied that with these strategies and approaches in place, utility related risks can be effectively managed.

4.2.39 Section 16 – Noncompliance Events and Noncompliance Points

The Payment Mechanism includes a table identifying representative Noncompliance Events and the Rectification Time (if any) available to the Concessionaire for each Noncompliance Event during the O&M Period (see Appendix C to Exhibit 4D). A Rectification Time is a Cure Period within which the Concessionaire can rectify the Noncompliance Event. In addition to Noncompliance Points, Noncompliance Events may also result in:

- Monetary deductions in the form of Deductions from Monthly Availability Payments as set forth in the Payment Mechanism at Exhibit 4D, Part C.

- Increased Oversight, as specified in section 5.5.2, if the Concessionaire accrues Noncompliance Points in excess of the amount stated therein.

- Development and implementation of a Remedial Plan under section 16.6 per the circumstances specified therein.

- The Owner exercising certain step-in rights under section 17.2.4 relating to the accumulation of Non-Compliance Points.

- Requiring the Concessionaire to replace the O&M Contractor under Section 16.8.

We have discussed this further in Section 6 of this report.
4.2.40  Section 16.8 – Rectification by Replacement of O&M Contractor

If at any time the Concessionaire accrues 14,040 or more Noncompliance Points over the course of 6 consecutive Payment Periods (determined on a rolling basis) Owner may, by notice (a “Replacement Notice”) to Concessionaire, require Concessionaire to replace the O&M Contractor. Owner’s exercise of such right is in addition to all other rights and remedies available to Owner under the Contract Documents, and shall not be grounds for any Claim by Concessionaire against Owner.

For the purposes of determining whether accumulated points constitute an Event of Default under section 17.1, upon start of work by the replacement O&M Contractor, the total accumulated points associated with O&M Work performed by the departing O&M Contractor as determined by the Owner will automatically be reduced by 50%.

This is a typical provision in P3 projects and has been accepted by the market on closed deals. Points are accrued for activity and availability related failures. There is a response and rectification time associated with the KPI that drive these points. We have conducted a sensitivity analysis in subsequent sections of the report that talks to the expected accrual of these points. The points are accrued if no response and rectification is being done to manage the accrual, which we consider unlikely. We consider this threshold is not sensitive with competent O&M management and planning.

4.2.41  Section 17.1 – Concessionaire Default

Section 17 lists a number of events or conditions which constitute a Concessionaire Default. From a technical perspective, it bears noting that Concessionaire Defaults include:

- failing to achieve (a) Revenue Service Availability by the Long Stop Date, or (b) Final Completion by the Final Completion Deadline;
- failing to comply with a remedial plan to address a Remedial Plan Default per section 16.6.2;
- failing to comply with any applicable Governmental Approval or Law;
- failing to comply with the terms of the Labor Peace Agreement;
- receiving a total of 14,640 or more Non-Compliance Points over the course of three consecutive Payment Periods (determined on a rolling basis);
- receiving a total of 24,240 or more Non-Compliance Points over the course of six consecutive Payment Periods (determined on a rolling basis); or
- receiving a total of 33,720 or more Non-Compliance Points over the course of 12 consecutive Payment Periods (determined on a rolling basis).

Each Concessionaire Default event has a different cure period, ranging from zero (0) to thirty (30) days.
The Long Stop Date is 12 months after the Revenue Service Availability Deadline, which is standard and appropriate. We reviewed the Concessionaire Default events and we are satisfied they are reasonable for the Project. We have commented on the Non-Compliance Point thresholds in section 6 of this report.

4.2.42 Section 17.2.4 – Owner Step-in Rights

In addition to any Step-In Rights for Concessionaire Default, such Step-in Rights apply if the Concessionaire is assessed:

- 3,600 Non-Compliance Points for Availability Non-Compliance Events in any one (1) Payment Period
- 1,920 Non-Compliance Points for Activity Non-Compliance Events in any one (1) Payment Period;
- 7,200 Non-Compliance Points for Availability Non-compliance Events or Activity Non-compliance Events over the course of three (3) consecutive Payment Periods (determined on a rolling basis).

In any such event, the term “cure” as used in this Section 17.2.4 shall be construed to include “Rectification” and the term “cure period” shall be construed to include “Rectification Time”.

We have commented on the Non-Compliance Point thresholds in section 6 of this report.

4.2.43 Section 24 – Federal Requirements; Compliance with Other Laws

Per section 24, the Concessionaire shall comply and require its contractors to comply with all applicable federal requirements as set out at Exhibit 16. The Concessionaire is required to acknowledge the Project may require federal approval of design and construction standards, a project management plan, a finance plan and annual updates thereto.

In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail.

These provisions are reasonable for USA transportation P3 project.

4.3 Exhibit 1 – Abbreviations and Definitions

We have noted below the definitions that are of note from our review of Exhibit 1.

Activity Noncompliance Event means any Activity Noncompliance Occurrence which:

(a) has not been responded to within any applicable Response Time;
(b) has not been rectified within any applicable Rectification Time; or
(c) following the expiration of a Rectification Time, has not been rectified within any further Application (Maximum Exposure) Time.
**Change Order** means a written order issued by Owner directing the Concessionaire to make changes which the changes clause of the Agreement authorizes Owner to order with or without the consent of the Concessionaire. This written document amends the Contract Documents by adding, deleting or modifying the documents to include price, time, work and conditions not previously addressed within the Contract Documents.

**Construction Work** means all Work that constitutes building, altering, repairing, improving or demolishing any structure, building, or other improvement to real property (including the Fixed Facilities and Fixed Equipment) included in the Project, including testing and commissioning LRVs, but excluding:

(a) design, architectural, engineering, surveying, professional environmental services and similar services,

(b) preparing and processing applications for Governmental Approvals,

(c) coordinating with adjacent property owners and Utility Owners,

(d) manufacturing and supply of LRVs (provided that Construction Work includes testing and commissioning of LRVs at the Site (excluding Project-Specific Locations)),

(e) Operations Work, and;

(f) Maintenance services during the O&M Period that (i) are not performed under a Major Construction Contract, and (ii) do not constitute building, altering, performing major repairs to, improving or demolishing any structure, building or other improvement to real property.

**Critical Path** means each path shown on the Baseline Schedule for which there is zero Float.

**D&C Payment Cap** means the annual and aggregate cap on Progress Payments in Part C of Exhibit 4A.

*We have noted below the payment caps as noted in Part C of Exhibit 4A.*

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
<th>Cumulative Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year 2016</td>
<td>$190,000,000</td>
<td>$190,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2017</td>
<td>$220,000,000</td>
<td>$410,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2018</td>
<td>$220,000,000</td>
<td>$630,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2019</td>
<td>$180,000,000</td>
<td>$810,000,000</td>
</tr>
<tr>
<td>Fiscal Year 2020</td>
<td>$50,000,000</td>
<td>$660,000,000</td>
</tr>
</tbody>
</table>
**Deduction** means a deduction from the relevant Monthly Availability Payment in accordance with Part C of Exhibit 4D.

*We have discussed in Section 6 of our report the sensitivities of the Deductions.*

**Float** means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect Concessionaire’s ability to achieve Revenue Service Availability by the RSA Deadline. Float is generally identified on the Project Schedule as the difference between the early completion times and late completion times for activities. The term includes float contained within an activity as well as any period containing an artificial activity (that is, an activity that is not encompassed within the meaning of the definition of D&C Work).

**Handback** means delivery of the Project assets by Concessionaire to Owner upon expiration of the Term or Early Termination Date.

**Handback Renewal Work Plan** means the plan prepared and submitted to the Owner in accordance with Part 3, Section 7.2 of the Technical Provisions.

**Handback Requirements** means the terms, conditions, requirements and procedures governing the condition in which Concessionaire is to deliver the Project assets upon Handback, as stated in Part 1, Section 7 of the Technical Provisions.

*The Consortium has prepared a proposal for Handback that we have discussed in Section 8 of this report.*

**Long Stop Date** means 12 months after the RSA (Revenue Service Availability) Deadline, as such deadline may be extended from time to time under the Agreement.

**Maintenance Work** means Work to be performed during the O&M Period relating to maintenance, repair, preservation, modification, and Renewal Work, but excluding (a) Work to be performed during the O&M Period relating to operation, management and administration of the Project, including operation of the Purple Line System; and (b) Work remaining to be performed by the Design-Build Contractor under the Design-Build Contract following Revenue Service Availability. For purposes of MAPM, Maintenance Work shall exclude Renewal Work.

**Major Quality Activity Noncompliance Event** means each event identified as noncompliance event type “QNC” which is categorized as “major” under the Activity Noncompliance Occurrence Table.

**Major Service Change** means a change in Service Levels as contemplated in Part 3, Section 3.6 of the Technical Provisions.

**Major Service Activity Noncompliance Event** means each event identified as noncompliance event type “SNC” which is categorized as “major” under the Activity Noncompliance Occurrence Table.
**Minor Service Change** means any changes in Train Service within the parameters that apply to Minor Service Changes identified in Part 3, Section 3.6 of the Technical Provisions.

We have undertaken a review of Technical Provisions, Book 2 Part 3, Operations and Maintenance, and commented on this in Section 7 of the report.

**Minor Service Activity Noncompliance Event** means each event identified as noncompliance event type "SNC" which is categorized as "minor" under the Activity Noncompliance Occurrence Table.

**Mixed-Traffic Alignment** means any section of the alignment in which Trains operate in mixed traffic, sharing the same alignment space as other types of road vehicles and/or pedestrians including streets, transit malls and pedestrian malls. At intersections with cross streets and designated pedestrian crossings, traffic signals are used to control vehicle and pedestrian movements.

**Noncompliance Event** means any Activity Noncompliance Event, any Operations Availability Noncompliance Event and any other event expressly stated to be a Noncompliance Event within the Agreement or each of them as the context requires.

**Non-Concessionaire Caused Disruption** means any of the following events occurring in the O&M Period:

(a) an order issued by the Owner or an agent of the Owner which affects service, including an order to slow down or stop train service on the System;

(b) any change in service required to accommodate performance of work (i) by a Utility Owner pursuant to a permit issued by an Authority Having Jurisdiction as described in Section 7.6.8 or (ii) by a Third Party, provided Owner has agreed in writing to the service change;

(c) a derailment, grade crossing accident, collision or any other accident involving LRVs;

(d) obstruction of any grade crossing or the Transitway caused by third parties, excluding obstructions due to vehicular or pedestrian traffic\(^1\);

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\(^1\) For the avoidance of doubt:

- the following shall be considered obstructions caused by third parties and not due to vehicular or pedestrian traffic in this subsection (d): (i) vehicles parked or disabled in the Transitway, (ii) vehicular traffic perpendicular to the Transitway that blocks the Transitway and intersection for at least one Transitway green phase, and (iii) demonstrations or pedestrians that purposely block the Train by standing in the Transitway; and

- the following shall be considered obstructions due to vehicular or pedestrian traffic in this subsection (d): (1) roadway traffic traveling in the same direction as the Transitway, (2) pedestrians (including passengers) that cause a Train to slow down or stop by crossing the roadway in front of a Train, and (3) unusually high levels of roadway traffic.
(e) on-board Train passenger activity during Revenue Service Hours that causes interruption to System operations, including requests for an emergency stop of the Train or sick or injured passengers requiring medical attention;

(f) failure of any Non-Concessionaire Contractor to comply with Concessionaire’s reasonable instructions regarding coordination, scheduling, or safety; or any unlawful or negligent act of a Non-Concessionaire Contractor;

(g) disruptions due to trespassers (including suicide attempts and blockages of the Transitway in connection with an unlawful demonstration) or other criminal action by third parties;

(h) (i) power network change in voltage or (ii) loss of electrical supply to two or more traction power substations concurrently due to a failure of the electricity supplier, that, in either case, has a material adverse effect on LRT operations;

(i) actions of governmental authorities or emergency response personnel who require access to the System, interrupting operation of the System,

(j) delay in or suspension of service required by police or other public official having jurisdiction, or reasonably occurring in anticipation of the response of police or such public official (for example, suspension due to suspicious luggage or package);

(k) to the extent that the event is not covered by insurance and relief from Deductions is not already provided in the Agreement, disruptions due to

i. Relief Events or Force Majeure Events; or

ii. excluding facilities providing electrical power to the System (which are addressed in clause (h) above), any unexpected damage to a Utility (A) serving the Project and located within the Project ROW or (B) located within the Transitway or at a Station serving LRVs for the Purple Line System;

(l) Owner’s failure to perform or observe any of its material covenants or obligations under this Agreement or the Contract Documents or to comply with Law or Governmental Approvals; and

(m) Reduction in service during an unusually severe weather event, to ensure compliance with Safety Standards; so long as Concessionaire notifies Owner, as soon as practicable before or during the event (or if earlier notification is impracticable, promptly after commencing the reduction in service);

except to the extent such event or consequences of the event (i) arose out of (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission by a Concessionaire-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Concessionaire-Related Entity, or (ii) could reasonably have been avoided by Concessionaire.
**Off-Peak Period** means all hours during which Revenue Service is required to be provided on the System, and which are not Peak Period hours.

**Peak Hour** means each hour within the Peak Period.

**Peak Period** means the AM Peak Period and the PM Peak Period (as such terms are defined in Part 3, Exhibit 3.1 of the Technical Provisions) for the relevant Baseline Service.

**Planned Service Interruption** means a Service Interruption due to: (a) Maintenance Work planned by the Concessionaire with at least 60 days’ notice to Owner (i.e., submittal of a complete Workblock Request Package to Owner) and approved by Owner; (b) maintenance activities planned by a Utility or Third Party and Approved by Owner; or (c) any other Service Interruption requested by Owner.

**Revenue Service** means operation of the System carrying fare-paying passengers.

**Revenue Service Availability** means that all D&C Work is complete (except for Punch List items that do not affect normal and safe use and operation of the System and any D&C Work that, by its nature, is to be performed after the Revenue Service Availability Date), and all other prerequisites for start of Revenue Service have been met. Revenue Service Availability is deemed to have occurred upon satisfaction of all the conditions for the Project, as confirmed by the Independent Engineer’s issuance of a Certificate of Revenue Service Availability in accordance with the procedures and within the time frame established in the PPPA.

**Revenue Service Availability (RSA) Date** means the date the Independent Engineer issues a Certificate of Revenue Service Availability for the Project.

**Rule Book** means the appendix to the Operation Plan and Timetable that includes information regarding procedures for normal, abnormal and emergency operations, as more particularly described in Part 3, Section 1.1.1 of the Technical Provisions.

**Utility or utility** means a privately, publicly, or cooperatively owned facility (which term includes lines, systems and other facilities, and includes municipal and/or government facilities) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system as well as streetlights associated with roadways owned by local agencies. However, when used in the context of Adjustments of facilities to accommodate the Project, the term "Utility" or "utility" excludes (a) storm water facilities, and (b) traffic signals, ramp metering systems, flashing beacon systems, and lighting systems for the mainline Project. The necessary appurtenances to each utility facility shall be considered part of the facility, including the utility source, guide poles, Service Lines, supports, etc. Without limitation, any service lateral connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service lateral.

**Utility Adjustment** means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned utility facilities as well as newly-abandoned facilities), replacement,
reinstallation, and/or modification of existing Utilities necessary to accommodate the Project or the Work. The term "Utility Adjustment", however, excludes work associated with facilities owned by any railroad. For any utility crossing the Project ROW, the Utility Work for each crossing of the Project ROW by that utility shall be considered a separate Utility Adjustment. For any utility installed longitudinally within the Project ROW, the Utility Work for each continuous segment of that utility located within the Project ROW shall be considered a separate Utility Adjustment. The term "Utility Adjustments" specifically excludes any work relating to storm water facilities providing drainage for the Project ROW. The term "Relocation" used in Owner Utility Agreements has the same meaning as “Utility Adjustment”.

**Utility Agreement** means either an Owner Utility Agreement or a Concessionaire Utility Agreement.

**Utility Easement** means a permanent replacement easement, license, franchise, permit and/or other interest required for relocation of a Utility to real property located outside of the right of way boundaries in the ROW Maps.

**Utility Information** means the information regarding Utilities included in the Contract Drawings and Engineering Data. The Utility Information includes survey information and information from record documents regarding existing utilities, utility maps included as an overlay on the survey, and SUE maps depicting existing Utilities potentially impacted by the Project.

**Utility Owner** means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

**Utility Owner Delay** means a delay to the Critical Path directly attributable to (a) a Utility Owner’s failure to meet any time parameters for performance in the Utility Agreement(s) to which it is a party or (b) a Utility Owner’s unreasonable refusal to approve relocation of a utility facility within the boundaries of the properties identified in Exhibit 9, resulting in a requirement to acquire additional Utility Easements. The term "Utility Owner Delay" does not include any failure to perform by a Utility Owner which is excused under the force majeure provisions of the Utility Agreement, and does not include any requirement to acquire additional Utility Easements resulting from Concessionaire’s design.

**Utility Standards** means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Except as may be specifically identified in the Technical Provisions or in Book 3, “Utility Standards” are not Codes and Standards.

**Utility Work** means the design and construction necessary for a Utility Adjustment. Any Utility Work furnished or performed by Concessionaire is part of the D&C Work; any Utility Work furnished or performed by a Utility Owner is not part of the D&C Work.

*Generally we are satisfied that the definitions that relate to technical aspects of the Project, as included in Exhibit 1 – Abbreviations and Definitions to the PPPA, are clear and appropriate for the Project.*
We have reviewed the execution version of the PPPA, as amended. We confirm that the drafting and intention of the document is in line with our expectations for a P3 project of this type.

Under Section 5.5, neither “formal review” nor “over-the-shoulder-review” are defined terms for the purposes of the PPPA. Technical provisions Book II Part 2A section 10 sets out the submittal process and the approval and review/comment procedures. We have reviewed the Project schedule and are satisfied that reasonable time has been allowed for the submittal and review process.

Under Section 7.3.2 – Float. The DB CONTRACTOR is taking schedule risk through the provision of Liquidated Damages within the DB contract, so the reduction in ‘float’ included as contingency in the construction schedule would increase that risk burden. We have discussed this with the DB CONTRACTOR and are satisfied that they have made adequate provision for this in their schedule and pricing.

The potential cost associated with the obligation to make Technology Enhancements to comply with Good Industry Practice is difficult to estimate over the Concession period. Although this can be incorporated to some extent within the Asset Management Plan, technology associated with the Fare System and how this may impact availability and performance KPIs through the life of the concession requires consideration. The PPPA identifies the locations of the Ticket Vending Machines (TVMs) and the Validators. We have discussed this further with the O&M Contractor and have clarified that Good Industry Practice can be benchmarked as what is ‘reasonably expected’. This is a risk requiring management through the Concession period. The O&M Contractor has priced for the Operations and Maintenance and included the allowance for fare media in their estimate. Maintenance pricing has been based on similar systems in service at other locations. Addendum 3 removed the obligation for the O&M Contractor to price the Life Cycle replacement as the Owner takes this responsibility. Contingency has been applied to the pricing. Based on the information available and our discussions with the O&M Contractor we are satisfied that they understand the risk and have made provisions in their Asset Management Plan and pricing to mitigate it.

The responsibility for fare collection is unusual for an availability-payment P3 project. The language in the PPPA states that failure to “properly” deposit and account for fare revenues constitutes a Concessionaire Default.

We have discussed this with the O&M Contractor. The requirements of the Technical Provision will provide the basis for determining whether or not the Concessionaire performed “properly”. ACI, an integral member of the O&M Contractor team, has been performing fare collection services successfully on the Tren Urbano in San Juan, Puerto
Rico over the last 10 years. The information from the TVMs and other fare equipment provides a balancing number against the deposits, so that a reconciliation ties out the deposit each month against the calculated amount that should have been received. It is anticipated that circa 50% of the transactions will be through electronic/mobile apps/smart cards/etc., which will lower the amount of cash being handled. This is a risk that requires management through the Concession period. Based on the information we have available and our discussions with the O&M Contractor, we are satisfied that they understand the risk and have made provisions in their Asset Management Plan and pricing to manage it.

In relation to Section 9.1 of the PPPA, Disclosure of Contracts and Contractors, the reasons for an Owner’s Authorised Representative’s objection with respect to Prime Contracts and Contracts with Affiliates are not identified. With this open position, there is a risk that an objection could occur more than once when schedule requirements may dictate that a contract needs to be signed expeditiously. We would recommend that the grounds for an objection are defined. We understand that this has been raised with the Owner and they have responded that this is standard wording for MDOT contracts. We have discussed this with the DB Contractor and this is an inherent risk that will be managed through the schedule. We are satisfied that the risk is understood and can be managed through appropriate schedule management.

The DBE/MBE requirement to make ‘continuing good faith efforts’ is satisfactory for the Project. The goals for the Design Build Period are higher than we have seen elsewhere. The Fluor-Lane team on the P3 contracts for the nearby Express Lane 495 and 95 megaprojects were successful in meeting goals higher than those stated for this contract. We are satisfied that the DB CONTRACTOR partners understand the requirements and have processes available to meet them.
4.4 Design Build Contract

We have reviewed the Design Build Contract Amended and Restated Version, dated 14th June 2016. We have commented below by exception, identifying those areas that we consider are of note or should be brought to the attention of the Lenders.

4.4.1 CPs to Commencement of Construction Work

The DB Contractor shall be responsible for satisfying all conditions precedent to commencement of Construction Work set forth in Section 7.4.5 of the PPPA, except: (i) the worker’s compensation, the directors & officers and automobile liability insurance policies for the Concessionaire, to the extent required to be provided under Section 7.4.5.2 of the PPPA (which shall be the responsibility of the Concessionaire); (ii) any component of the items required to be provided under clauses (a) and (d) of Section 7.4.5.6 related to the O&M Work; (iii) the condition precedent set forth in Section 7.4.5.5 to the extent not part of the DB Work; and (iv) the condition precedent set forth in Section 7.4.5.10 of the PPPA (other than to the extent based on the representations and warranties made by the DB Contractor or any of the Guarantors (as defined below)).

The DB Contractor shall (a) reasonably coordinate with the O&M Contractor with respect to the preparation by the O&M Contractor of the items described in (ii) and (iii) above that are the responsibility of the O&M Contractor under the O&M Contract and (b) consolidate such O&M Contractor’s items with its items and make the complete submittals to the Concessionaire. If the O&M Contractor fails to timely prepare and submit to the DB Contractor any of the items described in (ii) and (iii) above that are the responsibility of the O&M Contractor under the O&M Contract, in a form and substance necessary for the Concessionaire to satisfy the relevant conditions precedent to commencement of Construction Work under the PPPA, DB Contractor shall, at no cost to Concessionaire, timely prepare such items, or cause them to be prepared, to ensure that such conditions precedent are timely satisfied; provided, that preparation of such items is not included in the DB Work and DB Contractor’s only obligation with respect thereto is to ensure that such items are prepared, if O&M Contractor fails to do so, so that the failure to satisfy such conditions precedent does not prevent the commencement of Construction Work.

We consider the above to be appropriate for the Project.

4.4.2 Section 5.3: Maintenance of Traffic; Liquidated Damages

Other than with respect to Concessionaire Contractors (excluding O&M Contractor), DB Contractor shall, to the extent required by the PPPA, up until the DB RSA Date, maintain traffic so as to ensure the safe and efficient passage of all pedestrians, bicycles and vehicular traffic through and around work areas, while maintaining safety and accessibility for all workers on the Project and minimizing adverse impacts on residents, visitors, businesses and road users, as more specifically described in Part 2A, Section 20 of the Technical Provisions. DB Contractor shall conduct the DB Work at all times in such a manner and in such sequence as will assure the least practicable obstruction to all forms of traffic and minimal interference with the public. To the extent assessed by Owner, DB Contractor shall be liable for and pay to Concessionaire (who will in turn pay the same over to Owner) liquidated damages in accordance with
Exhibit 11 with respect to low traffic control ratings received by DB Contractor during the Design-Build Period and for any failure of DB Contractor to restore full traffic capacity as described in said Exhibit 11.

*We confirm that this is a pass through of the obligations under the PPPA, as Exhibit 11 under the DB Contract is the same as Exhibit 11 under the PPPA.*

### 4.4.3 Section 6.2: Site Conditions

We have reviewed this section of the DB Contract and confirm that it is a pass through of the Concessionaire obligations under Section 6.2 of the PPPA.

### 4.4.4 Section 6.4: Environmental Compliance

The Technical Provisions include requirements to be met by Concessionaire to ensure that the DB Work will comply with the requirements of the Environmental Approvals, and DB Contractor shall, on behalf of Concessionaire, fulfill all such Concessionaire’s obligations. Concessionaire hereby delegates to DB Contractor, and DB Contractor accepts, all obligations, commitments and responsibilities of Owner under the Environmental Approvals pertaining to the DB Work, except to the extent that Part 2A, Section 5 of the Technical Provisions states that Owner retains certain obligations.

*This is as we would expect to see.*

### 4.4.5 Section 6.7: Alternative Technical Concepts

DB Contractor acknowledges and agrees that:

- It has sole responsibility for obtaining, and shall use good faith efforts to obtain, any approvals required to implement ATCs with respect to the DB Work included in the Proposal; and

- If any condition in Owner’s pre-approval of such ATC has not been met as of the Effective Date, DB Contractor shall (i) ensure that such condition is satisfied before implementing such ATC and (ii) use its good faith efforts to satisfy such condition.

If DB Contractor cannot obtain any required approval required to implement ATCs with respect to the DB Work included in the Proposal, fails to satisfy any such condition, or fails in any other way to implement such approved ATC:

- DB Contractor shall provide notice to Concessionaire’s Authorized Representative and shall comply with the corresponding baseline requirements (unmodified by the ATC) at its cost, without any additional compensation, time extension or other basis for any Claim; and

- Under the PPPA, to the extent an ATC included in the Proposal represented additional Work or higher quality materials from what is otherwise required by the PPPA Contract Documents and resulted in a total net increase in amounts payable by Owner under the PPPA Contract Documents (accounting both...
for costs incurred during the Design-Build Period and the O&M Period), Owner is entitled to a credit for the net present value of the reduced cost (using the then-applicable yield on two-year U.S. Treasury bonds as the discount rate) to Concessionaire of reverting to the baseline requirements of the PPPA Contract Documents, including reduced costs relating to financing and equity investment. To the extent such credit that is required to be provided to Owner by Concessionaire under the PPPA is attributable to an ATC with respect to the DB Work included in the Proposal, which ATC represented additional DB Work or higher quality materials from what is otherwise required by the Contract Documents, Concessionaire shall be entitled to a credit for the net present value of such reduced costs to DB Contractor for reverting to the baseline requirements of the Contract Documents, and shall credit Owner accordingly.

DB Contractor acknowledges and agrees that, to the extent that DB Contractor uses any ATCs submitted by any other proposer provided to DB Contractor by Owner (through Concessionaire), DB Contractor does so at its sole risk and such use shall in no way confer or be deemed to confer liability upon Concessionaire or Owner or the unsuccessful proposer.

We confirm that this is an appropriate pass through of the Concessionaire obligations under Section 6.7 of the PPPA.

4.4.6 Section 7.1: General Obligations of DB Contractor Concerning DB Work

DB Contractor shall perform the following (collectively, the “DB Work”) on a fixed-price, lump-sum, date-certain, turnkey basis:

- except for the Excluded Work, all D&C Work necessary to be performed by Concessionaire under the PPPA to achieve DB Revenue Service Availability;
- Concessionaire’s obligations under the PPPA with respect to the supply, commissioning, testing, and integration of the O&M Spare LRV;
- after the DB RSA Date, the following obligations of Concessionaire under the PPPA:
  - DB Contractor’s warranty obligations as set forth in this Agreement; and
  - satisfaction of the conditions precedent to DB Final Completion specified in this Agreement as the responsibility of DB Contractor; and
- contemporaneously with providing the PMO and PCMOs and related items for Owner as required by Section 22 of Part 2A of the Technical Provisions, the design and construction of a fully functional, outfitted and secure office space for Concessionaire at the Operation and Maintenance Facilities sufficient for eleven (11) people.

Without limiting the foregoing, the DB Work includes: (A) the supply, commissioning, testing and integration of (i) LRVs included in the initial Fleet, (ii) the O&M Spare LRV as set forth in Section 7.16.6.
and (iii) those Option LRVs ordered by Owner under the PPPA before the date that is thirty (30) months before the Guaranteed DB RSA Date (such date, as of the date of Owner’s exercise of the first LRV Option); (B) the procurement of the initial inventory of spare parts and other items as set forth in Section 7.16.5; (C) obtaining all Governmental Approvals required to perform the DB Work other than Owner-Provided Approvals, including preparing applications for such Governmental Approvals; (D) coordinating with adjacent property and utility owners as required to perform the DB Work, to the extent not required to be performed by Owner under the PPPA; and (E) fulfilling those Concessionaire’s obligations with respect to connecting the Project to the power grid and facilitating start-up of permanent power service to the Project as set forth in Section 8.9.

Notwithstanding anything to the contrary in this Agreement, the scope of DB Work excludes the following (clauses (a), (b) and (c) below, collectively, the “Excluded Work”):

- the O&M Work and any other Work contracted by Concessionaire to the O&M Contractor under the O&M Contract (including the Pre-O&M Commencement Services);

- (i) Concessionaire’s obligations under the PPPA with respect to financing, reporting, making Submittals and other similar activities; (ii) Concessionaire’s internal administrative, support and other similar services; (iii) all work with respect to the Project contracted by Concessionaire to Prime Contractors other than DB Contractor and O&M Contractor; and (iv) Concessionaire’s obligations described in Section 7.16.9 (collectively, the “Concessionaire D&C Work”); and

- specific exclusions from the scope of the DB Work described in this Agreement.

Certain details of the DB Work (including as described in the relevant provisions of the Technical Provisions) are described in this Agreement but DB Contractor shall perform or cause to be performed all DB Work necessary to complete the Project generally described in or reasonably inferable from the PPPA and this Agreement.

For the purposes of this Agreement, any use of the terms “DB Work,” “D&C Work,” “Construction Work” and “Design Work” (including by reference to the PPPA) shall be deemed to exclude the Excluded Work and any use of the term “O&M Work” in Section 7.1.2 (including by reference to the PPPA) shall be deemed to include that portion of the Work contracted by Concessionaire to O&M Contractor under the O&M Contract (including the Pre-O&M Commencement Services).

Without limiting the foregoing provisions of this Section 7.1, DB Contractor shall, as part of the DB Work:

- expeditiously and diligently progress performance of the DB Work with the goal of achieving DB Revenue Service Availability and DB Final Completion by the applicable Contract Deadlines;

- carry out or do all things necessary to perform the DB Work and design and construct the Project in accordance with the Contract Documents and Good Industry Practice;
- Ensure that each of the following is fit for its intended function and uses: (i) all goods, equipment, consumables, and materials used or supplied by each DB Contractor-Related Entity in connection with the DB Work and (ii) those LRV components obtained as part of the DB Work;

- Provide services as described in Part 2A, Section 24 of the Technical Provisions and Section 7.13 of this Agreement;

- Ensure adequate materials, equipment and resources are available to ensure compliance of the DB Work with the requirements of the Contract Documents under normal conditions and reasonable anticipated abnormal conditions;

- Ensure all materials and equipment incorporated in the DB Work are of good quality and new unless otherwise expressly stated;

- Ensure the DB Work shall be free of defects, including design defects, errors and omissions,

- Ensure the Site is kept in a neat and clean condition at all times until the DB RSA Date;

- Cooperate with Concessionaire, Owner and AHJs in all matters relating to the DB Work, including their review, inspection and oversight of DB Work;

- Remove and replace Nonconforming Work and/or materials, whether discovered or rejected by DB Contractor, Owner or Concessionaire, or otherwise remedy such Nonconforming Work and/or materials in an acceptable manner approved, in advance, by Concessionaire;

- During the Design-Build Period, grant authorized personnel of O&M Contractor such access to the Project ROW and the DB Work as is reasonable under the circumstances for the purposes of carrying out O&M Contractor’s obligations under the O&M Contract or the Interface Agreement to be undertaken prior to the commencement of the O&M Period; and

- During the O&M Period, use (and cause its Subcontractors to use) reasonable efforts to avoid any material impairment, interference or disruption to the carrying out of the O&M Work by O&M Contractor, and comply with O&M Contractor’s safety and other rules and regulations for conduct of personnel performing O&M Work.

These provisions are considered to be reasonable for the Project.

4.4.7 Section 7.4: Schedule, Deadlines, Notices to Proceed and Commencement of DB Work

We have reviewed this section and confirm that there is an appropriate pass through of the Concessionaire obligations under Section 7.4 of the PPPA to the DB Contractor.
4.4.8 **Section 7.6.1: Utility Adjustments – DB Contractor’s Responsibility**

DB Contractor shall:

- Ensure that all Utility Adjustments necessary to accommodate the Project are completed in accordance with the Project Schedule and the requirements of the Contract Documents, including Part 2A, Section 9 of the Technical Provisions and Part 2B, Section 6 of the Technical Provisions;

- Conduct reasonable site investigation and exploration before commencement of the DB Work included in the Construction Work in any particular area to correctly identify all Utilities in the area;

- Include in the design all utilities identified in clause (b) to ensure that Utility services are not mistakenly disrupted by the construction portion of the DB Work;

- Ensure that all Utility Work performed by DB Contractor Related Entities complies with the Contract Documents; and

- Coordinate, monitor and otherwise undertake appropriate efforts to ensure timely performance of Utility Work by Utility Owners, in coordination with the DB Work, and in compliance with the standards and other applicable requirements specified in the Contract Documents and Owner Utility Agreements. DB Contractor shall keep Concessionaire informed of any concerns regarding work by Utility Owners, and Concessionaire agrees to, and to request Owner to, cooperate as reasonably requested by DB Contractor to ensure proper performance by the Utility Owners.

4.4.9 **7.6.4 – Costs of Utility Work**

DB Contractor shall be responsible for:

- all costs of Utility Work performed by DB Contractor-Related Entities;

- all payments owing to Utility Owners for Utility Work under DB Contractor Utility Agreements (if any);

- A share of the costs of acquisition of property required for Utility Easements, as provided in Section 7.5.2;

- all costs of Incidental Utility Work; and

- all costs of materials furnished by Utility Owners under Owner Utility Agreements for which DB Contractor is responsible in accordance with Section 7.6.2.2.

DB Contractor is responsible for making payments directly to the Utility Owner for costs pertaining to the DB Work that Section (a) 7.6.4.1 requires DB Contractor to pay or (b) Part 1, Section 9 of the Technical Provisions requires Concessionaire to pay until the DB RSA Date.
Under the PPPA Owner is responsible for payments owing to Utility Owners under the Owner Utility Agreements, except as otherwise provided in Section 7.6 of the PPPA and, in turn, this Section 7.6.

We have reviewed Section 7.6 of the DB Contract relating to Utility Adjustments, including obligations set out above and in relation to Utility Agreements and Utility Owner Delays. We are satisfied that an appropriate pass through of the Concessionaire’s obligations under the PPPA Section 7.6 has been achieved.

4.4.10 7.7: Supply of LRVs and Fare System Equipment

We have reviewed this section of the DB Contract and confirm that an appropriate pass though of responsibilities from the Concessionaire to the DB Contractor has been achieved. We confirm that the Fare System allowance of US$15,000,000 is back to back between the PPPA and DB Contract.

4.4.11 7.10.1: Guaranteed DB RSA Date; Acceleration Request

DB Contractor guarantees that DB Revenue Service Availability will occur on or before the Guaranteed DB RSA Date. Failure to achieve DB Revenue Service Availability by the Guaranteed DB Long Stop Date is a DB Contractor Default under Section 17.1.1(d)(i). DB Contractor acknowledges that Owner’s approval pursuant to Section 7.10.1 of the PPPA is required for any proposed opening before the Guaranteed DB RSA Date. DB Contractor shall also obtain O&M Contractor’s approval of such proposed opening before submitting its request for early opening to Concessionaire. Any request for early opening must be submitted to Concessionaire at least thirteen (13) months before the date on which DB Contractor wishes to achieve DB Revenue Service Availability.

We confirm that this represents an appropriate pass through of the obligations of the Concessionaire under the PPPA. We confirm that there is 1 month headroom between the early opening notice under the PPPA and the same under the DB Contract, which is appropriate.

4.4.12 7.10.2: Conditions to DB Revenue Service Availability

We have reviewed this section of the DB Contract and confirm that an appropriate pass though of responsibilities from the Concessionaire to the DB Contractor has been achieved.

We confirm that there is 3 months headroom between the date that the DB Contractor shall provide to Concessionaire a schedule for the period up to and including the anticipated DB RSA Date for the purpose of enabling Concessionaire, Owner and the Independent Engineer to schedule their activities relating to the System opening, and the date the Concessionaire must do the same under the PPPA. This is considered appropriate.
4.4.13  Section 7.11: Warranties

DB Contractor hereby warrants and guarantees with respect to the DB Work (the "Warranty") for the benefit of (i) Concessionaire, (ii) Owner and (iii) to the extent any portion of the DB Work is being performed for Third Parties, such Third Parties, that:

- the design and engineering of the DB Work shall be performed in accordance with the standards of care, skill and diligence as would be provided by an engineering firm experienced in supplying similar services nationally in the United States of America for projects of technology, complexity and size similar to that of the DB Work, and otherwise in compliance with the requirements of this Agreement and the other Contract Documents;

- all DB Work, including LRVs and materials, equipment, tools and supplies furnished as part of the construction of the DB Work, shall be of good quality, in conformance with the requirements of this Agreement and the other Contract Documents, free of defects in material, equipment and workmanship, and the completed DB Work shall be free of all defects and deficiencies in materials, equipment and workmanship; and

- the Record Documents and the Final Design Documents shall be accurate and complete, comply with the requirements of this Agreement and the other Contract Documents, and accurately reflect the condition of the Project as of the DB RSA Date.

Other than with respect to Third Party Warranties, the Warranty shall commence on the DB RSA Date and end on the later of (a) the first (1st) anniversary of the DB RSA Date and (b) the DB Final Completion Date, but in no event shall the Warranty extend later than the second (2nd) anniversary of the DB RSA Date (the "Base Warranty Period"); provided, that:

- with respect to any Project component included in the DB Work (regardless of number) that is altered, repaired or replaced, as applicable, pursuant to the Warranty, the term of the Warranty shall run until the later of (i) the expiration of the Base Warranty Period and (ii) the date that is one (1) year after such alteration, repair, or replacement;

- the liability period for latent defects shall be per the statutory limit; and

- the term of the Warranty with respect to any LRV (or associated equipment, part, system or component) included in the DB Work that is replaced due to an identified Fleet Defect shall be as provided in Section 7.11.5 of the PPPA;

- (the Base Warranty Period, as may be extended pursuant to clauses (a) and (c) above with respect to particular portions of the DB Work, the "Warranty Period").

We confirm that this is appropriate for the Project.
4.4.14 Section 9.10: Disadvantaged Business Enterprise (DBE)/Minority Business Enterprise (MBE)

DB Contractor acknowledges that the spirit and intent of the State of Maryland is to afford small, disadvantaged, minority and women-owned businesses the opportunity to perform viable and meaningful services in a teaming effort and that it is the desire of the State to maximize notice, and the opportunity to participate in the solicitation process, to a diverse and broad range of small, disadvantaged, minority and women-owned businesses.

The governing statutes, regulations and program requirements are: 49 CFR Part 26; the Maryland Annotated Code, State Finance and Procurement Article Sections 14-301 through 14-309; COMAR 21.11.03, COMAR 11.01.10.01; and the State of Maryland Minority Business and Federal Disadvantaged Business Enterprise Program Manuals. These manuals can be found at the Maryland Department of Transportation website: http://www.mdot.maryland.gov/OfficeofMinorityBusinessEnterprise/Resources_Information/Resources Information, or success or site.

DB Contractor shall support and actively participate in various meetings, as directed by Owner (through Concessionaire), including executive steering committees, workgroups, advisory groups, USDOT OSDBU “Bonding Education Program” and local business leadership councils.

Concessionaire expects continuing good faith efforts on the part of DB Contractor over the course of the performance of DB Work to achieve the DBE or MBE participation goal(s).

This Section sets out requirements and procedures consistent with Laws or policies applicable to the unique aspects of this Agreement:

- The DBE participation goal(s) for the Design-Build Period of the Project (excluding supply of LRVs) are twenty-six percent (26%) for DB Work included in D&C Design Services and twenty-two percent (22%) for DB Work included in D&C Construction Services;

- The LRV Supplier shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The requirements of 49 CFR Part 26.49, “Transit Vehicle Manufacturer’s Certification of Compliance with DBE Regulations,” are incorporated into this Agreement by reference. Failure by the LRV Supplier to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or such other remedy as Owner (through Concessionaire) deems appropriate. Each Subcontract the LRV Supplier signs with DB Contractor must include the assurance in this paragraph (see 49 CFR 26.13(b));

- Only MDOT-certified DBEs can be utilized to achieve the Project’s DBE participation goal(s) and only MDOT-certified MBEs can be utilized to achieve the Project’s MBE participation goals/subgoals;

- At Financial Close, Concessionaire is required under the PPPA to provide to Owner the following information: (i) a list of D&C Construction Services contracts, including the dollar value, for which
Construction Work is anticipated to begin within the first one hundred eighty (180) days after Financial Close; and (ii) the DBE Participation Forms (as directed by Owner) for each D&C Construction Services contract awarded as of Financial Close. DB Contractor shall provide to Concessionaire any such information to the extent related to the DB Work;

- Beginning eighty-five (85) days after Financial Close and on a quarterly basis thereafter, DB Contractor shall submit, to the extent related to the DB Work: (i) an updated list of Construction Work contracts, including the dollar value, for which Construction Work is anticipated to begin within the next one hundred eighty (180)-day period; (ii) DBE Participation Forms, as directed by Owner, for the Construction Work contracts awarded since the last submission of DBE Participation Forms; and (iii) any other forms or information the Owner or Concessionaire requests related to the total dollar value of the awarded Construction Work contracts and total commitments to DBE firms;

- On a quarterly basis after Financial Close, DB Contractor shall also provide a brief description of the scope of work for each Construction Work contract to be issued for bid by DB Contractor in the upcoming ninety (90)-day period;

- Where DB Contractor is unable to meet a specific DBE or MBE goal established by Owner, DB Contractor shall submit to Owner (through Concessionaire) a waiver request, with documentation of DB Contractor’s good faith efforts, and Concessionaire, and Owner in accordance with the PPPA, will work with DB Contractor to establish an improvement plan as part of the DBE Participation Plan, or determine whether to seek other appropriate remedies herein;

In accordance with the “DBE/MBE Participation Plan” portion of the “Project Management Technical Solutions” in the Proposal, DB Contractor shall, promptly following Commercial Close, submit an updated DBE/MBE Participation Plan detailing DB Contractor’s continuing responsibility to meet its DBE commitments, including its obligation to use good faith efforts to achieve the Project’s DBE participation goal(s), including how final design will lead to maintaining the goal(s) or achieving additional participation (the “DBE Participation Plan”). The DBE Participation Plan shall also include a system of reports and procedures that will document adjustments and maintenance of the DBE participation schedule, achievement of the DBE goal(s) and compliance with the requirements of COMAR 21.11.03.13. DB Contractor shall coordinate with O&M Contractor with respect to such portion of the DBE Participation Plan related to the Pre-O&M Commencement Services and shall consolidate such portion into a single Submittal as set forth in Section 7.4.4.

We have reviewed this section of the DB Contract and confirm that an appropriate pass though of responsibilities from the Concessionaire to the DB Contractor has been achieved.

4.4.15 Section 11.2: Payment and Performance Security

Design and Construction Security Requirements

Concurrently with Financial Close, and in no event later than the start of DB Work included in the Construction Work, DB Contractor shall, obtain and deliver (a) one or more Payment Bonds with an
aggregate value equal to fifty-five percent (55%) of the “Total Value of D&C Construction Work” specified in Exhibit 4A to the PPPA; and (b) separate Performance Security in the same form of surety bond in the same aggregate amount in each case in accordance with Section 7.4.5.1.

The Payment Bond(s) shall be substantially in the form of Exhibit 6B, issued by an Eligible Surety to Concessionaire, with a multiple obligee rider(s) naming Owner and the Collateral Agent as additional obligees in the form of Exhibit 6D, and otherwise to the reasonable satisfaction of Owner under the PPPA.

The Performance Security in the form of surety bond shall cover DB Contractor’s obligations under this Agreement, and shall remain in force until said obligations have been fulfilled. The Performance Security required under this Section 11.2.1 is not required to cover the LRV Supplier’s obligations. The Performance Security shall be to the reasonable satisfaction of Owner under the PPPA and shall be:

- Surety bond for the benefit of Concessionaire substantially in the form of Exhibit 6C with a multiple obligee rider(s) naming Owner and the Collateral Agent as additional obligees in the form of Exhibit 6E, issued by Eligible Sureties, covering all obligations under the Contract Documents relating to the DB Work to be performed by DB Contractor, including any obligations to pay liquidated damages and to perform warranty DB Work, and maintained in force until all obligations related to the DB Work to be performed by DB Contractor have been fulfilled.

**Concessionaire Construction Letter of Credit**

In addition to providing the Payment Bond(s) and the Performance Security as set forth in Sections 11.2.1 and 11.2.2, DB Contractor shall provide to Concessionaire, on or before Financial Close, one or more Concessionaire Construction Letters of Credit in an initial aggregate amount equal to 50% of potential (a) RSA Delay LDs payable up to the Guaranteed DB Long Stop Date and (b) Final Completion Delay LDs payable up to the DB Final Completion Deadline, which amount will be reflected in an amendment to this Agreement entered into by the Parties prior to Financial Close, to secure performance of DB Contractor’s obligations under this Agreement to Concessionaire; provided, that the initial stated aggregate amount of the Concessionaire Construction Letter(s) of Credit shall be increased to an aggregate amount equal to 100% of potential (i) RSA Delay LDs payable up to the Guaranteed DB Long Stop Date and (ii) Final Completion Delay LDs payable up to the DB Final Completion Deadline, which amount will be reflected in an amendment to this Agreement entered into by the Parties prior to Financial Close (the “Step-Up Amount”), if at any time prior to the DB RSA Date (but no sooner than three (3) years after commencement of the DB Work included in the Construction Work) a look forward analysis conducted by the LTA shows that DB Revenue Service Availability is likely to occur more than sixty (60) days after the Guaranteed DB RSA Date.

The stated aggregate amount of the Concessionaire Construction Letter(s) of Credit may be reduced by DB Contractor to Twelve Million U.S. Dollars ($12,000,000.00) as of the DB RSA Date, whereupon such Concessionaire Construction Letter(s) of Credit shall be maintained until expiration of the Warranty Period, at which point all such Concessionaire Construction Letter(s) of Credit will be returned to DB Contractor.
If, at any time DB Contractor is obligated to maintain, or cause to be maintained, a Concessionaire Construction Letter of Credit, DB Contractor fails to renew or replace, or cause to be renewed or replaced, such Concessionaire Construction Letter of Credit in the required amount by the date that is thirty (30) days before its stated expiry date, Concessionaire shall be entitled to draw on the full available amount of such outstanding Concessionaire Construction Letter of Credit up to the required amount of the replacement security, which draw shall be held by Concessionaire as replacement security until one or more other replacement Concessionaire Construction Letters of Credit are provided or are applied for any reason for which a Concessionaire Construction Letter of Credit may be applied.

**DB Guaranties**

DB Contractor shall cause each of the DB Guarantors to execute and deliver to Concessionaire a DB Guaranty no later than the Effective Date. DB Guaranties shall meet the requirements of Sections 11.4.1(b) and 11.4.2 of the PPPA and shall be enforceable by Owner as a transferee beneficiary under the circumstances set forth in Sections 11.4.2 and 11.4.3 of the PPPA as described in Sections 11.4.2 and 11.4.3 below. Concurrently with the issuance of each of the DB Guaranties, DB Contractor shall provide to Concessionaire a duplicate original thereof to allow Concessionaire to deliver such duplicate original to Owner in compliance with Section 11.4.1(b) of the PPPA.

*We confirm that these provisions match those included in the Heads of Terms prior to bid submission and are considered appropriate for the Project.*

**4.4.16 Section 12: LRV Options**

We have reviewed this section in the DB Contract and confirm that an appropriate pass through of the Concessionaire’s obligations under the PPPA section 12 has been achieved.

**4.4.17 Section 13: Payments to DB Contractor**

As consideration to DB Contractor for the full and complete performance of the DB Work in accordance with the terms hereof and all costs incurred in connection therewith, Concessionaire shall pay, and DB Contractor shall accept, a firm, fixed price, lump sum equal to two billion nine million eight hundred seventy-three thousand and six hundred U.S. Dollars ($2,009,873,600), to be paid in installments as set forth in Section 13.2 (such amount, as it may be adjusted from time to time in accordance with this Agreement, herein referred to as the "Contract Price"). The Contract Price is not subject to adjustment for any reason, other than (i) pursuant to a Scope Change Order authorized by Concessionaire or which DB Contractor is entitled to claim as set forth in this Agreement or (ii) as determined through Dispute Resolution Procedures hereunder. The Parties acknowledge that any amounts paid by Concessionaire to DB Contractor under any limited NTP are included in the Contract Price. This Section 13.1.1.1 is not intended to limit DB Contractor’s rights set forth in the other provisions of this Agreement that entitle DB Contractor to a compensation separate from the Scheduled Payments.

The Contract Price includes all applicable duties, sales tax, use tax, excises and other transfer taxes and governmental fees payable by DB Contractor in connection with the Project, it being understood, however,
that Concessionaire and DB Contractor shall work together and cooperate so as to minimize such taxes and governmental fees to the extent practicable. The Contract Price is also inclusive of all state and local sales and use taxes payable by Concessionaire to DB Contractor. The Parties acknowledge that DB Contractor is entitled to claim a Relief Event (in clause (p) of the definition thereof) in accordance with Section 15.3.7 with respect to sales or use tax on LRVs.

4.4.18 Section 13.2: Scheduled Payments

Subject to the conditions for payment set forth in Section 13.2.2, the Contract Price shall be paid by Concessionaire to DB Contractor in monthly installments (“Scheduled Payments”) for performance of elements of the DB Work as specified on the Payment and Values Schedule set forth in Exhibit 5-A, as confirmed by Concessionaire (and the LTA, if required), subject to the Maximum Cumulative Payment Curve as set forth in Exhibit 5-B hereto, based on the following:

- with respect to LRVs (excluding the O&M Spare LRV), the amounts specified in an agreed payment and values schedule set forth in Exhibit 5A due for achievement of the milestones set forth in Exhibit 5-A;
- with respect to mobilization for the DB Work, (i) the amounts with respect to the DB Work included in the Construction Work under the PPPA, as provided in Section 13.1.1.1(a) of the PPPA (excluding the eighty-five percent (85%) limitation contained therein), and (ii) any additional mobilization payments, as provided in Exhibit 5-A;
- with respect to all other DB Work, based on percentage completion of components of the DB Work having the values set forth in Exhibit 5A;
- with respect to the O&M Spare LRV, following delivery and commissioning, the amount specified in Exhibit 5A; and
- with respect to the other itemized DB Contractor’s costs and expenses (including for the performance security, its development fee and warranty), the amounts as set forth in Exhibit 5A.

These provisions are considered standard and appropriate for the Project.

4.4.19 Section 13.3.1: Liquidated Damages Related to DB Revenue Service Availability

Subject only to the adjustments made in accordance with this Agreement, DB Contractor guarantees that DB Revenue Service Availability will be achieved on or before the Guaranteed DB RSA Date. If DB Contractor does not achieve DB Revenue Service Availability on or before the Guaranteed DB RSA Date, DB Contractor, as part of the consideration for awarding of this Agreement, shall, subject to Section 13.3.4, pay to Concessionaire liquidated damages in the amount of two hundred and one thousand, one hundred and twenty five U.S. Dollars ($201,125.00) for each day (or part thereof) thereafter until DB Revenue Service Availability is achieved (“RSA Delay LDs”).
4.4.20  **Section 13.3.2: Liquidated Damages Related to DB Final Completion**

Subject only to the adjustments made in accordance with this Agreement, DB Contractor guarantees that DB Final Completion will be achieved on or before the Guaranteed DB Final Completion Date. If DB Contractor does not achieve DB Final Completion on or before the Guaranteed DB Final Completion Date, DB Contractor, as part of the consideration for awarding of this Agreement, shall, subject to Section 13.3.4, pay to Concessionaire liquidated damages in the amount of two thousand four hundred forty two U.S. Dollars ($2,442) for each day (or part thereof) thereafter until DB Final Completion is achieved ("Final Completion Delay LDs").

*The provision is considered standard and appropriate for the Project.*

4.4.21  **Section 13.3.4: Limitation on DB Contractor’s Liquidated Damages**

The DB Contractor’s obligation to pay RSA Delay LDs and Final Completion Delay LDs to Concessionaire shall not exceed, in the aggregate, an amount equal to the sum of (a) the product of the RSA Delay LDs multiplied by 275 days, plus (b) the product of the Final Completion Delay LDs multiplied by 543 days (or such other amount agreed to by the Parties prior to Financial Close which will be reflected in an amendment to this Agreement).

Notwithstanding the foregoing, (a) if the Concessionaire terminates the DB Contract, the DB Contractor’s obligation to pay RSA Delay LDs and Final Completion LDs shall cease as of the date of such termination and such liquidated damages shall not accrue after the date of such termination, and (b) if at the DB Contractor’s request (which the Concessionaire may grant or deny at its sole discretion), the Concessionaire grants an extension of the Guaranteed DB Long Stop Date and the Guaranteed DB RSA Date (to which extension the DB Contractor is not otherwise entitled under the DB Contract), the DB Contractor shall continue to be responsible for RSA Delay LDs for failure to achieve DB Revenue Service Availability by the Guaranteed DB RSA Date (as extended) until DB Revenue Service Availability is achieved (at the same daily rate for up to the number of additional days by which the Guaranteed DB Long Stop Date is so extended).

*We have undertaken a contractor replacement analysis in Section 5 of this report and we consider the Limitation on DB Contractor’s Liquidated Damages is reasonable for the Project.*
4.4.22 Section 17.1.1: DB Contractor Default

DB Contractor’s defaults under the DB Contract include:

- DB Contractor fails to (i) commence DB Work promptly following issuance of a Notice to Proceed or an agreed-upon limited NTP hereunder, or (ii) diligently prosecute the DB Work to completion in accordance with the Contract Documents;

- DB Contractor abandons all or a material part of the Project, which abandonment is deemed to occur if (i) DB Contractor demonstrates through statements, acts or omissions an intent not to continue (for any reason other than a Relief Event, Force Majeure Event, Concessionaire DB Work Suspension, Concessionaire-Caused Delay or a Work Order) that materially impairs DB Contractor’s ability to continue to design or construct all or a material part of the Project or (ii) no significant portion of the DB Work (taking into account the Project Schedule, if applicable, and any Relief Event, Force Majeure Event or Concessionaire-Caused Delay) with respect to the Project or a material part thereof is performed for a continuous period of more than thirty (30) days unless due to a Concessionaire DB Work Suspension;

- DB Contractor fails to achieve (i) DB Revenue Service Availability by the Guaranteed DB Long Stop Date, or (ii) DB Final Completion by the DB Final Completion Deadline;

- Subject to Section 11.1.7, DB Contractor fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of Concessionaire, Owner or other relevant parties, or DB Contractor fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;

- If a Remedial Plan is required under the terms of Section 16.6, (i) DB Contractor fails to timely deliver such Remedial Plan meeting the applicable requirements described in Section 16.6 or (ii) DB Contractor fails to fully comply with the schedule or specific elements of, or actions required under, the approved Remedial Plan;

- DB Contractor’s payment of amounts due Concessionaire or any other Person under this Agreement or the Interface Agreement to which the limitation of DB Contractor’s aggregate liability hereunder applies in accordance with Section 17.6.1 equals or exceeds such limitation of liability;

- DB Contractor’s payment of Delay Liquidated Damages due Concessionaire under this Agreement equals or exceeds the limitation of DB Contractor’s liability for Delay Liquidated Damages set forth in Section 13.3.4;

The Guaranteed DB Long Stop Date is 9 months after the Guaranteed DB RSA Date. The DB Final Completion Deadline is initially set at 24 months after the DB RSA Date. These reflect the periods agreed at bid submission and we consider them to be reasonable for the Project.
4.4.23  **Section 17.6: Limitation on Liability**

DB Contractor’s total aggregate liability under this Agreement shall not exceed thirty-five percent (35%) of the Contract Price; provided, that the foregoing limitation shall not apply to or include:

- the proceeds of insurance, not to exceed amounts required to be maintained by DB Contractor in accordance with the terms of this Agreement;

- costs, liabilities or obligations that arise from the gross negligence, willful misconduct, criminal conduct, intentional disregard of laws, or actual fraud of DB Contractor;

- costs, liabilities or obligations that arise from DB Contractor’s abandonment of the DB Work or from DB Contractor’s or any DB Guarantor’s bankruptcy or insolvency;

- costs, liabilities or obligations that arise from any liens, encumbrances or other security interests on the Project arising from or in connection with the performance of the DB Work, except where caused by Concessionaire’s failure to pay undisputed amounts due DB Contractor under this Agreement;

- costs, liabilities or obligations that arise from the failure of DB Contractor to provide good title to any portion of the Project included within the DB Work free and clear of any charge, lien, encumbrance or other security interest (except to the extent due to Concessionaire’s unexcused failure to pay amounts owing to DB Contractor under this Agreement);

- DB Contractor’s indemnity obligations in respect of claims by third parties;

- costs, liabilities and obligations arising from DB Contractor’s failure to comply with environmental laws and other obligations under this Agreement in respect of Hazardous Materials and environmental matters;

- amounts paid by DB Contractor to Concessionaire that are subsequently recovered from O&M Contractor under the Interface Agreement;

- the following payments or reimbursements by DB Contractor to O&M Contractor under the Interface Agreement with respect to:
  - increased costs incurred by O&M Contractor and indemnity obligations by DB Contractor in favor of O&M Contractor, in each case due to inconsistencies with the base design, to the extent set forth in Section 3.1.3 of the Interface Agreement, but only if Concessionaire does not reduce payments to, or otherwise recover amounts from, the O&M Contractor in connection therewith;
  - costs incurred or paid by O&M Contractor for rectifying any failures or deficiencies in the DB Work arising during the commissioning, verification, start-up and testing of the Project.
and its component systems in accordance with the organization of testing and commissioning works agreed in the Interface Agreement;

- costs incurred or paid by O&M Contractor for replacement of spares used by DB Contractor for achieving DB Revenue Service Availability or DB Final Completion or for fulfilling Warranty obligations under this Agreement; and

- indemnity obligations by DB Contractor in favor of O&M Contractor for (A) losses attributable to DB Contractor covered by the proceeds of insurance required to be maintained by DB Contractor under this Agreement or (B) losses arising out of fraud, criminal conduct, intentional misconduct, gross negligence, recklessness, bad faith, strict liability or violations of law on the part of DB Contractor without regard for insurance coverage; and

- costs incurred by DB Contractor in completing the DB Work and achieving DB Revenue Service Availability.

except, in each case, to the extent proven to have been caused by Concessionaire.

For the avoidance of doubt and without limitation, the following shall be included within the limitation of DB Contractor’s liability under this Agreement:

- under this Agreement, (A) any withholdings and reductions made to the payments to DB Contractor by Concessionaire, and (B) the amounts paid by DB Contractor to Concessionaire when Concessionaire withholding or reduction to the payments to DB Contractor is not sufficient to cover the corresponding Owner withholding or reduction; in each case, to the extent that such withholdings, reductions and amounts have not been subsequently paid or refunded to DB Contractor by Concessionaire; and

- under the Interface Agreement, all amounts paid or reimbursed by DB Contractor to O&M Contractor that are not excluded from the limitation on DB Contractor’s liability in Section 17.6.2(h) and (i) above.

- Notwithstanding anything to the contrary, neither Party shall be responsible for incidental, special, punitive or consequential damages, including lost profits, incurred by the other Party, except to the extent resulting from such Party’s fraud or willful misconduct; however, indemnities (as set forth in Section 11.5) in respect of amounts payable to third parties shall not be considered punitive, exemplary, indirect or consequential damages.

- Limitation on DB Contractor’s liability for Delay Liquidated Damages is set forth in Section 13.3.4.
We have reviewed the Design Build Contract Amended and Restated Version, dated 14th June 2016. We are satisfied that the drafting reflects a reasonable transfer of risk from the PPPA and associated documents.

The Long Stop Date under the DB Contract is appropriate for the Project. It is further of note that under the Direct Agreement to be entered into by the Owner, Concessionaire and Lenders, if there is a failure (or an apparent failure) to achieve Revenue Service Availability (“RSA”) by the Long Stop Date, and the Lenders exercise their right to Step-In to the Project, the Lenders will have an additional six (6) months beyond the Long Stop Date to achieve (or cause Concessionaire to achieve) RSA.

4.5 Operations and Maintenance Contract

We have reviewed the Operations and Maintenance Contract, Amended and Restated Version, dated 14th June 2016. We have commented below by exception, identifying those areas that we consider are of note or should be brought to the attention of the Lenders.

4.5.1 Section 5.1.2: Approval and Review Time Periods

"Concessionaire Approval" means the right of Concessionaire to review and approve such Submittals designated on the Schedule of Submittals or in this Agreement as requiring Concessionaire’s approval (which approval by Concessionaire shall be contingent upon Concessionaire’s receipt of Owner’s approval when required under the PPPA).

O&M Contractor will submit such Submittal to Concessionaire by the date, if any, specified in this Agreement. Before Concessionaire is required to provide such Submittal to Owner under the PPPA, Concessionaire shall be afforded review time for such Submittal equal to (i) two (2) days, if the time available to Owner for review of the corresponding Submittal under the PPPA is less than five (5) days or (ii) thirty percent (30%) of the time available to Owner for review of the corresponding Submittal under the PPPA but in any event not to exceed twenty (20) days, if such Owner review time is equal to or greater than five (5) days. Concessionaire will, within such review time, approve or disapprove such Submittal in whole or in part (or if Concessionaire fails to respond within the time allotted, such Submittal shall be deemed approved, conditioned only upon Owner’s approval under the PPPA). In the event of disapproval, Concessionaire shall provide O&M Contractor a written summary, in reasonable detail, of the reasons for its determination. Following such disapproval, O&M Contractor shall, as promptly as reasonably practical, taking into account a deadline for such Submittal, if any, under the PPPA, resubmit such Submittal to Concessionaire. Concessionaire shall review such resubmittal as soon as reasonably practicable but in no event later than five (5) days of the receipt of such resubmittal or, if sooner, by the time required by the PPPA. If Concessionaire approves (or is deemed to have approved) such a resubmittal, Concessionaire shall provide it to Owner as soon as reasonably practical but in no event later than five (5) days of the receipt of the resubmittal, or if sooner, by the time required by the PPPA.

We are satisfied that this represents appropriate buffers for submittals within the O&M Contract.
4.5.2 **Section 5.5.2: Owner Increased Oversight, Testing and Inspection and Section 5.5.3: Concessionaire Increased Oversight**

O&M Contractor acknowledges and agrees that, pursuant to Section 5.5.2.1 of the PPPA, Owner has the right to change the type and/or increase the level of its Oversight of the Project and Concessionaire’s compliance with its obligations under the PPPA Contract Documents, in such manner and to such level as Owner reasonably sees fit, if at any time:

- Over the course of three (3) consecutive Payment Periods (determined on a rolling basis), Concessionaire has accumulated 2,400 or more Noncompliance Points for Operations Availability Noncompliance Events or 960 or more Noncompliance Points for Activity Noncompliance Events;
- There exists a Concessionaire’s “Remedial Plan Default” under the PPPA; or
- Concessionaire receives one or more “Notices of Concessionaire Default” under the PPPA that may become a “Default Termination Event” under Section 19.3.1 of the PPPA.

O&M Contractor shall fully cooperate with Owner and Concessionaire to facilitate Owner’s conduct of such Oversight, and if any of the “Concessionaire Defaults” under the PPPA that triggered such Oversight is attributable to the O&M Contractor’s failure to perform its obligations hereunder, O&M Contractor shall, promptly fully and completely cure such failure following Concessionaire’s written notice thereof.

In addition, Concessionaire itself may, at its own cost, by written notice to O&M Contractor, commence or increase its own oversight of the Services, if at any time:

- over the course of four (4) consecutive Payment Periods (determined on a rolling basis), O&M Contractor has accumulated 2,880 or more Noncompliance Points for Operations Availability Noncompliance Events or 960 or more Noncompliance Points for Activity Noncompliance Events;
- there exists an “O&M Remedial Plan Default,” which shall exist if and only for so long as:
  - an O&M Contractor Default occurs under Section 17.1.1(b), (e) or (i) (excluding Activity Noncompliance Occurrences and Noncompliance Events) that is curable but is not cured within the applicable cure period; or
  - an O&M Contractor Default occurs under Section 17.1.1(r) or (s), excluding Activity Noncompliance Occurrences and Noncompliance Events; or
- O&M Contractor receives one or more Notices of O&M Contractor Default with respect to O&M Contractor Defaults passed down to the O&M Contractor under the PPPA (which are set forth in Sections 17.1.1(b) through (v) of this Agreement) that correspond to a “Notice of Concessionaire Default” under the PPPA with respect to a “Concessionaire Default” under the PPPA attributable to O&M Contractor that may become a “Default Termination Event” under Section 19.3.1 of the PPPA.
If Concessionaire elected to commence or increase its oversight of the Services based on the occurrence of any of events in Section 5.5.3.1, such oversight will remain in effect as follows (unless Concessionaire notifies O&M Contractor in writing that it wishes to cease such oversight prior to such time):

- with respect to the first bullet above, until O&M Contractor has reduced the uncured Noncompliance Points over the course of four (4) consecutive Payment Periods (determined on a rolling basis) below the threshold set forth above;
- with respect to the second bullet above, until O&M Contractor has fully cured the then-existing O&M Contractor Default(s) that triggered the oversight; and
- with respect to third bullet above, until O&M Contractor has fully cured the breaches and failures that are the basis for the O&M Contractor Default that triggered the oversight.

If O&M Contractor fails to cure an O&M Remedial Plan Default within the applicable cure period, Concessionaire may require O&M Contractor to prepare and submit a Concessionaire Remedial Plan in accordance with Section 16.6.1.

We confirm that the thresholds listed in this Section reflect those agreed to in the O&M Heads of Terms at bid submission. Increased oversight is a standard concept in P3 contracts across North America.

4.5.3 Section 6.2: Site conditions; Section 6.4: Environmental Compliance

We have reviewed these sections and are satisfied that an appropriate pass through of the Concessionaire’s obligations under the PPPA has been achieved.

4.5.4 Section 6.7: Alternative Technical Concepts (ATCs)

O&M Contractor acknowledges and agrees that:

- It has sole responsibility for obtaining, and shall use good faith efforts to obtain, any approvals required to implement ATCs with respect to the Services included in the Proposal; and
- If any condition in Owner’s pre-approval of such ATC has not been met as of the Effective Date, O&M Contractor shall (i) ensure that such condition is satisfied before implementing such ATC and (ii) use its good faith efforts to satisfy such condition.

If O&M Contractor cannot obtain any required approval required to implement ATCs with respect to the Services included in the Proposal, fails to satisfy any such condition, or fails in any other way to implement such approved ATC:

- O&M Contractor shall provide notice to Concessionaire’s Authorized Representative and shall comply with the corresponding baseline requirements (unmodified by the ATC) at its cost, without any additional compensation, time extension or other basis for any Claim; and
Under the PPPA, to the extent an ATC included in the Proposal represented additional Work or higher quality materials from what is otherwise required by the PPPA Contract Documents and resulted in a total net increase in amounts payable by Owner under the PPPA Contract Documents (accounting both for costs incurred during the Design-Build Period and the O&M Period), Owner is entitled to a credit for the net present value of the reduced cost (using the then-applicable yield on two-year U.S. Treasury bonds as the discount rate) to Concessionaire of reverting to the baseline requirements of the PPPA Contract Documents, including reduced costs relating to financing and equity investment. To the extent such credit required to be provided to Owner by Concessionaire under the PPPA is attributable to ATC with respect to the Services included in the Proposal, which ATC represented additional Services or higher quality materials from what is otherwise required by the Contract Documents, Concessionaire shall be entitled to a credit for the net present value of such reduced costs to O&M Contractor for reverting to the baseline requirements of the Contract Documents, and shall credit Owner accordingly.

O&M Contractor acknowledges and agrees that, to the extent that O&M Contractor uses any ATCs submitted by any other proposer provided to O&M Contractor by Owner (through Concessionaire), O&M Contractor does so at its sole risk and such use shall in no way confer or be deemed to confer liability upon Concessionaire or Owner or the unsuccessful proposer.

We confirm that this represents a suitable pass through of the Concessionaire’s obligations under the PPPA.

4.5.5 Section 7.6.1: Utility Adjustments – O&M Contractor responsibility; Section 7.6.4 – Costs of Utility Work

O&M Contractor shall:

- Ensure that all Utility Adjustments (if any) pertaining to the Services are completed in accordance with the requirements of the Contract Documents, including Part 2A, Section 9 of the Technical Provisions and Part 2B, Section 6 of the Technical Provisions;

- Conduct reasonable site investigation and exploration before commencement of the Construction Work included in the Services in any particular area to correctly identify all Utilities in the area;

- Include in the design all utilities identified in clause (b) to ensure that Utility services are not mistakenly disrupted by the construction portion of the Services;

- Ensure that all Utility Work performed by O&M Contractor Related Entities (if any) complies with the Contract Documents; and

- Coordinate, monitor and otherwise undertake appropriate efforts to ensure timely performance of Utility Work by Utility Owners, in coordination with the Services, and in compliance with the standards and other applicable requirements specified in the Contract Documents and Owner Utility Agreements. O&M Contractor shall keep Concessionaire informed of any concerns regarding work by Utility Owners,
and Concessionaire agrees to, and request Owner to, cooperate as reasonably requested by O&M Contractor to ensure proper performance by the Utility Owners.

Except as otherwise provided in Section 7.6.4.3, O&M Contractor shall be responsible for the following, solely to the extent applicable to the Services if required under the PPPA;

O&M Contractor shall be responsible for:

- all costs of Utility Work performed by O&M Contractor-Related Entities;
- all payments owing to Utility Owners for Utility Work under O&M Contractor Utility Agreements (if any);
- all costs of Incidental Utility Work; and
- all costs of materials furnished by Utility Owners under Owner Utility Agreements during the O&M Period.

O&M Contractor is responsible for making payments directly to the Utility Owner for costs that (a) Section 7.6.4.1 requires O&M Contractor to pay, or (b) Part 1, Section 9 of the Technical Provisions requires Concessionaire to pay during the O&M Period. Under the PPPA Owner is responsible for payments owing to Utility Owners under the Owner Utility Agreements, except as otherwise provided Section 7.6 of the PPPA and, in turn this Section 7.6.

We are satisfied that this presents a pass through of the Concessionaire’s obligations relating to Utilities, insofar as they relate to the Services.

4.5.6 Section 7.7: Supply of Option LRVs

O&M Contractor shall:

- Obtain Option LRVs from the LRV Supplier, meeting requirements specified in the Contract Documents, including all requirements in Section 7.11.2 c), Part 2B, Section 12 of the Technical Provisions, this Section 7.7 and any additional commitments described in Exhibit 2 to the PPPA; and

- Ensure that Option LRVs are properly integrated with the System.

The Parties acknowledge and agree that the LRV Subcontract is a Key Contract under the PPPA.

O&M Contractor shall take appropriate measures to identify Fleet Defects and, if any Fleet Defects are identified, (a) require LRV Supplier to correct all Fleet Defects in the Option LRVs and all associated Equipment and (b) afford Concessionaire right of Concessionaire Review of Fleet Defect corrective actions taken.
We are satisfied that this presents a reasonable pass through of the Concessionaire’s obligations under the PPPA.

4.5.7 Section 7.11: Warranties

O&M Contractor hereby warrants and guarantees with respect to the Services (the “Warranty”) for the benefit of (i) Concessionaire, (ii) Owner and (iii) to the extent any portion of the Services is being performed for Third Parties, such Third Parties, that:

- the Services will be performed by qualified personnel in a good and workmanlike manner and satisfy the performance standards described in Section 8.1.1.7(b), reflecting Good Industry Practice, and any parts or components repaired or replaced as part of the Services will also meet the foregoing standard;

- all design and engineering included in the Services shall be performed in accordance with the standards of care, skill and diligence as would be provided by an engineering firm experienced in supplying similar services nationally in the United States of America for projects of technology, complexity and size similar to that of the Project, and otherwise in compliance with the requirements of this Agreement and the other Contract Documents;

- all Option LRVs and all construction included in the Services, including materials, equipment, tools and supplies furnished as part of the construction, shall be of good quality, in conformance with the requirements of this Agreement and the other Contract Documents, free of defects in material, equipment and workmanship, and such completed Services shall be free of all defects and deficiencies in materials, equipment and workmanship; and

- the record documents and the Final Design Documents prepared by O&M Contractor in connection with any design and construction included in the Services shall be accurate and complete, comply with the requirements of this Agreement and the other Contract Documents, and accurately reflect the condition of the Project as of the completion of such Services.

The term of the Warranty shall be one (1) year following the performance of any Services (or, with respect to each Option LRV, following delivery thereof) and shall in no event extend after the end of the O&M Term; provided, that:

- the term of the Warranty with respect to all Services performed for Third Parties (“Third-Party Warranties”) shall be for a minimum of one (1) year after the date of acceptance of such Services by the Third Party or such longer term as may be required in Part 1, Section 8 of the Technical Provisions, for such Third Party’s benefit (with rights of enforcement), as set forth in Section 7.12;

- the Warranty with respect to O&M Renewal Work performed during the last two (2) years of the O&M Term and any O&M Contractor’s Warranties that extend beyond the scheduled end of the O&M Term shall be provided by O&M Contractor for the joint benefit of Owner and Concessionaire.
Contractor acknowledges that Concessionaire under the PPPA has assigned to Owner such Warranties, as well as Concessionaire’s rights under this Agreement, effective as of the end of the O&M Term;

- the term of the Warranty with respect to any Option LRV (or associated equipment, part, system or component), that is replaced due to an identified Fleet Defect, shall be as provided in Section 7.11.5 of the PPPA; and

- the liability period for latent defects shall be per the statutory limit;

(such term, as may be modified by clauses (a) through (c) with respect to particular portions of the Services, the “Warranty Period”).

*We confirm that these provisions are in line with our expectations for the Project.*

### 4.5.8 Section 8.1: General obligation of O&M Contractor concerning Services

The O&M Contractor shall perform the following (collectively, the “Services”):

- prior to the O&M Commencement Date, certain mobilization activities and other obligations of the Concessionaire under the PPPA, all as set forth in Annex 1 to the Interface Agreement (including the supply, commissioning, testing, and integration of certain PPPA Option LRVs ordered by Owner as set forth in Section 8.1.1.2, and satisfaction of those certain conditions precedent (or portions thereof, as applicable) to (i) commencement of “non-Construction Work” under the PPPA after Financial Close, (ii) commencement of Construction Work under the PPPA, and (iii) PPPA Revenue Service Availability, that in each case ((i) through (iii)) are specified in this Agreement as the O&M Contractor’s responsibility), but excluding any component thereof related to the Concessionaire O&M Work (as defined below) (collectively, the “Pre-O&M Commencement Services”); and

- all O&M Work necessary to be performed by Concessionaire under the PPPA after the O&M Commencement Date (except for the Excluded Work).

Without limiting the foregoing, the Services include: (a) the supply, commissioning, testing and integration of Option LRVs ordered by Owner under the PPPA after the date that is thirty (30) months before the Guaranteed DB RSA Date under the DB Contract (such date, as of the date of Owner’s exercise of the first LRV Option, as described in Article 12; (b) the of the LRVs, which, for the avoidance of doubt, consist of (i) the Initial Fleet, (ii) Option LRVs required to be supplied by O&M Contractor pursuant to the foregoing clause (a), and (iii) Option LRVs required to be supplied by DB Contractor under the DB Contract; (c) obtaining and maintaining all Governmental Approvals required to perform the Services other than Owner-Provided Approvals; (iv) satisfying, on behalf of Concessionaire, the conditions precedent to PPPA Final Completion specified in Section 7.10.4.2 as O&M Contractor’s responsibility; and (v) operating and maintaining Concessionaire’s office space at the Operations and Maintenance Facilities constructed by the DB Contractor.
Certain details of the Services (including as described in the relevant provisions of the Technical Provisions) are described in this Agreement, but O&M Contractor shall perform or cause to be performed all Services necessary to operate and maintain the Project generally described in or reasonably inferable from the PPPA and this Agreement. For clarity, the O&M Contractor shall be responsible for any additional costs incurred in the performance of the O&M Services. Notwithstanding anything to the contrary in this Agreement, the Services exclude the following, (collectively, the "Excluded Work"):

- any D&C Work and any other Work contracted by the Concessionaire to the DB Contractor under the DB Contract; and

- (a) Concessionaire’s obligations under the PPPA with respect to financing, reporting, making submittals and other similar activities, (b) Concessionaire’s internal administrative, support and other similar services, (c) all work with respect to the Project contracted by Concessionaire to Prime Contractors (other than O&M Contractor and DB Contractor) and (d) Concessionaire’s obligations described in Section 8.16 of the Agreement (collectively, the "Concessionaire O&M Work").

These provisions are considered to be reasonable for the Project.

4.5.9 Section 8.3: Calculation of Total trip run time and Tsc

Owner and Concessionaire (with O&M Contractor’s participation) under the PPPA are to conduct the activities specified in Part 2C, Section 4.9 of the Technical Provisions so as to enable Actual Combined Tsc and Total Trip Run Time to be determined before the start of Revenue Service Demonstration. O&M Contractor shall, on behalf of Concessionaire, conduct all such activities. During the five (5) Business Day period after completion of the activities specified in said Section 4.9 in connection with the Revenue Service Demonstration, Concessionaire (with O&M Contractor’s participation) and Owner under the PPPA are to consult regarding:

- the differences between (i) the commitments regarding Total Trip Run Time in Tables AA-1 through AA-4 of Section 3 of Exhibit 2 to the PPPA and (ii) actual Total Trip Run Time;

- the extent to which the differences in Total Trip Run Time are attributable to changes between the Bid Combined Tsc values in Table AA-5 of Section 3 to Exhibit 2 to the PPPA and the Actual Combined Tsc values;

- the effect of changes between the Bid Combined Tsc and the Actual Combined Tsc values on (i) O&M Contractor’s ability to meet the Performance Requirements and (ii) its costs of performance; and

- the extent to which it would be appropriate to exercise an LRV Option and/or implement Minor Service Changes to address the changes between the Bid Combined Tsc and the Actual Combined Tsc values.

Concessionaire will consult with O&M Contractor hereunder in connection with the foregoing matters, and include O&M Contractor in its consultations with Owner, to the extent permitted by Owner.
Following such consultations, if and to the extent appropriate to address the impacts of changes between Bid Combined Tsc and Actual Combined Tsc under the PPPA, Owner is to direct a Minor Service Change in accordance with Section 8.2.2 of the PPPA and revise the Total Scheduled Operating Hours and Total Scheduled LRV Miles to reflect the impacts of changes between Bid Combined Tsc and Actual Combined Tsc, and Concessionaire shall in turn direct such Minor Service Change under Section 8.2.2 hereunder and make the corresponding revisions. O&M Contractor acknowledges that under the PPPA Owner may also exercise an LRV Option in accordance with Article 12 of the PPPA and Article 12 hereof shall apply in such case.

Concessionaire and Owner under the PPPA are to repeat the activities specified in Part 3, Section 3.15 of the Technical Provisions to obtain a new determination upon request by either of them subject to the constraints in Section 8.3.2 of the PPPA and O&M Contractor shall, on behalf of Concessionaire, perform such activities. Under the PPPA, Owner and Concessionaire are to anticipate that a re-determination will be made following a Service Level Change, but otherwise a re-determination will not be made more often than once during each five (5)-year period, starting from the date of the most recent determination of Actual Combined Tsc values. Under the PPPA, Owner and Concessionaire are each to notify the other in writing, before the end of each five (5)-year period, whether or not each wishes to conduct such activities, and O&M Contractor shall provide such notice to Concessionaire if it wishes to conduct such activities, which notice Concessionaire will provide to Owner. The purpose of such activities is to recalculate the Actual Combined Tsc values and ascertain any changes to the other Total Trip Run Time elements, with the goal of producing a final report regarding current Actual Combined Tsc values and Total Trip Run Time at least ninety-five (95) days prior the end of each five (5)-year period. During the thirty (30)-day period after completion of the activities specified in said Section 3.15, Owner and Concessionaire are to consult under the PPPA regarding:

- the differences between the actual Total Trip Run Time and the commitments in Tables AA-1 through AA-4 of Section 3 to Exhibit 2 to the PPPA;
- the extent to which the differences in Total Trip Run Time are attributable to changes in between Bid Combined Tsc and Actual Combined Tsc;
- the effect of changes in between Bid Combined Tsc and Actual Combined Tsc on Concessionaire’s ability to meet the Performance Requirements and its costs of performance; and
- the extent to which it would be appropriate to modify requirements of the Contract Documents or implement Minor Service Changes to address the changes between Bid Combined Tsc and Actual Combined Tsc.

Concessionaire will consult with O&M Contractor hereunder with respect to the foregoing matters, and include O&M Contractor in its consultations with Owner, to the extent permitted by Owner.

Following such consultations, if appropriate, Owner may, in its discretion, under the PPPA direct a Minor Service Change in accordance with Section 8.2.2 of the PPPA and Concessionaire will direct a corresponding Minor Service Change under Section 8.2.2 hereunder, or Concessionaire (in consultation
with O&M Contractor) and Owner may negotiate an Owner Change Order under the PPPA that includes equitable adjustments to Section 3 of Exhibit 2 of the PPPA and/or other requirements of the PPPA Contract Documents as necessary to account for the changes between Bid Combined Tsc and Actual Combined Tsc, and if Owner issues such Owner Change Order under the PPPA, Concessionaire shall issue a corresponding Scope Change Order under this Agreement. O&M Contractor acknowledges that Owner may also exercise an LRV Option or otherwise provide additional LRVs in accordance with Article 12 of the PPPA and O&M Contractor shall fulfill all such Concessionaire’s obligations under the PPPA as set forth in Article 12. If the Owner under the PPPA directs a Minor Service Change to account for such Bid Combined Tsc and Actual Combined Tsc changes, the Total Scheduled Operating Hours and Total Scheduled LRV Miles will be revised to account for the impacts of changes in Bid Combined Tsc and Actual Combined Tsc, taking into consideration any LRV Option previously exercised and other relevant prior actions by Owner, and Concessionaire shall direct such Minor Service Change hereunder. Any Scope Change Orders previously issued with respect to items (i)(4) or (i)(5) of the definition of Relief Event during prior periods will be superseded by the Minor Service Change or Scope Change Order issued under this Section 8.3.2.

If Concessionaire and Owner under the PPPA fail to reach agreement regarding the need for an Owner Change Order or on the terms of an Owner Change Order as described above, under the PPPA Owner may issue a unilateral Owner Change Order or direction to proceed and Concessionaire shall hereunder issue to O&M Contractor a corresponding Scope Change Order or Work Order, as applicable.

The Parties acknowledge that under the PPPA, the Operations Availability Deduction Factor (OADFn) calculated in Section 1.1 of Appendix B to Exhibit 4D of the PPPA will not be revised through any Owner Change Order issued under Section 8.3 of the PPPA, and as a result, it will not be revised hereunder through a Scope Change Order issued under Section 8.3.

If Owner under the PPPA exercises an LRV Option to address the impacts of changes between Bid Combined Tsc and Actual Combined Tsc (or between the previously determined Actual Combined Tsc and the newly determined Actual Combined Tsc), then, unless the Owner under the PPPA directs otherwise, Concessionaire will automatically be required under the PPPA to provide the prior Peak Period headways as of the date established for completion of the delivery and commissioning of the Option LRVs consistent with Section 12.2 of the PPPA. O&M Contractor will, on behalf of Concessionaire, provide such headways consistent with Section 12.2.

*We are satisfied that this presents a reasonable pass through of the Concessionaire’s obligations under the PPPA.*

### 4.5.10 Section 8.6: Fare Collection and Fare System

We have reviewed this section in the O&M Contract and are satisfied that a reasonable pass through of the Concessionaire obligations under the PPPA has been achieved.
4.5.11 Section 8.8.2: Asset Management Plan

Within one hundred twenty (120) days before the beginning of the first full calendar year of the O&M Period, O&M Contractor shall prepare and submit to Concessionaire for Concessionaire Review an Asset Management Plan in accordance with the requirements of this Section 8.8.2.1, Section 8.8.2.2 and Part 3, Section 6.1 of the Technical Provisions. As part of the Asset Management Plan, O&M Contractor shall state, by element, (a) the estimated Useful Life, (b) the estimated Residual Life, (c) a brief description of the type of O&M Renewal Work anticipated to be performed at the end of the element’s Residual Life, (d) a brief description of any O&M Renewal Work anticipated to be performed before the end of the element’s Residual Life, including reasons why this work should be performed at the proposed time, (e) the estimated cost in current dollars of such O&M Renewal Work and (f) the total estimated cost in current dollars of O&M Renewal Work in each of the years O&M Renewal Work is anticipated to be performed under the Asset Management Plan, (g) a description of any O&M Renewal Work performed in the prior twelve (12) months including the cost of such O&M Renewal Work and (h) a schedule for O&M Renewal Work to be performed during the coming year. As part of the Asset Management Plan, O&M Contractor shall also provide a listing and schedule for delivery of the O&M Spare LRV, those non-revenue service vehicles, spare parts, spare components, spare equipment, tools, materials, expendables and consumables necessary for operation and maintenance of the Project during the O&M Period that were not obtained at or prior to the PPPA RSA Date.

O&M Contractor shall estimate the Useful Life of each element within the Asset Management Plan based on (a) O&M Contractor’s reasonable expectations respecting the manner of use, levels and mix of traffic, environmental conditions, and wear and tear and (b) the assumption that, when subject to Routine Maintenance, the element will comply throughout its Useful Life with each applicable Performance Requirement. O&M Contractor shall estimate the Residual Life of each element within the Asset Management Plan based on its age and whether (i) the element has performed in service in the manner and with the levels and mix of traffic and wear and tear originally expected by O&M Contractor (ii) O&M Contractor has performed Routine Maintenance of the element, and (iii) the element has complied throughout its life with each applicable Performance Requirement.

Within one hundred twenty (120) days before the beginning of the second (2nd) full calendar year of the O&M Period and each subsequent calendar year, O&M Contractor shall prepare and submit to Concessionaire for Concessionaire Review (subject to Section 5.1.6) either (a) a revised Asset Management Plan or (b) the then-existing Asset Management Plan accompanied by a statement that O&M Contractor intends to continue its existing plan for O&M Renewal Work in effect without revision (in either case, referred to as the "updated O&M Renewal Work"). Revisions may reflect past experience, then-existing conditions, the factors described in Section 8.8.2.2, changes in estimated costs of O&M Renewal Work, changes in technology, changes in O&M Contractor’s planned means and methods of performing O&M Renewal Work, and other relevant factors. The updated Asset Management Plan shall show the revisions, if any, to the prior Asset Management Plan and include an explanation of reasons for revisions. If no revisions are proposed, O&M Contractor shall include an explanation of the reasons no revisions are necessary. The Parties agree that the Asset Management Plan for the tenth (10th) calendar year of the
O&M Term and each subsequent fifth (5th) calendar year thereafter shall be subject to the approval of the LTA (or other independent technical firm as may be required under the TIFIA Loan documents).

If requested by Owner pursuant to Section 8.8.2.4 of the PPPA, O&M Contractor shall promptly meet and confer with Owner and Concessionaire to review and discuss the original or updated Asset Management Plan. If requested by the Lenders, O&M Contractor shall also meet with the Lenders and Concessionaire to review and discuss any such Asset Management Plan.

Within thirty (30) days after receiving the original or any updated Asset Management Plan, Concessionaire shall conduct Concessionaire Review (subject to Section 5.1.6) and shall comment, make recommendations on (or approve or disapprove, if applicable) the original or updated Asset Management Plan or any of its elements. Concessionaire (and Owner under the PPPA) may base their respective comments, objections, recommendations (or disapproval if applicable) on whether the original or updated Asset Management Plan and underlying assumptions are reasonable, realistic and consistent with Good Industry Practice, Project experience and condition, applicable portions of the Contract Documents, Governmental Approvals and Laws. O&M Contractor acknowledges that Owner under the PPPA has the right to approve the original or any updated Asset Management Plan and if connection with such review and approval, Owner (through Concessionaire) requests certain comments to any Asset Management Plan, O&M Contractor shall, in consultation with Concessionaire, address such comments, subject to Sections 8.8.2.6 and 8.8.2.7.

O&M Contractor shall provide to Concessionaire, within twenty-five (25) days after receiving notice of comments, objections, recommendations or disapprovals from Owner (through Concessionaire), a revised original or updated Asset Management Plan rectifying such matters or, if it disagrees with Owner or Concessionaire, O&M Contractor is to submit a notice identifying each comment, objection, recommendation and disapproval that Owner or Concessionaire disputes and the grounds for dispute.

If O&M Contractor fails to provide notice within the time period specified in Section 8.8.2.6, it shall be deemed to have accepted the comments, objections, recommendations (or disapproval if applicable) and the original or updated Asset Management Plan, as applicable, shall thereupon be deemed revised to incorporate the comments and recommendations and to rectify the objections or disapproval. After timely delivery of any such notice, Concessionaire and O&M Contractor shall endeavor in good faith to reach agreement as to the matters listed in the notice. If no agreement is reached as to any such matter within thirty (30) days after O&M Contractor delivers its notice, the Dispute may be subject to resolution under the Dispute Resolution Procedures.

The Parties acknowledge that under the PPPA, no later than five (5) calendar years before the end of the O&M Term or within a reasonable period before any Early Termination Date, Owner is to identify and determine the Handback Renewal Work Plan, as set forth in Section 8.13.1 of the PPPA. The Handback Renewal Work Plan will be developed by O&M Contractor under Section 8.13.1.

_We are satisfied that appropriate headroom has been included between the Asset Management Plan delivery requirements in the PPPA and those set out in the O&M Contract._
4.5.12 Section 8.13: Handback Requirements

O&M Contractor will perform all Services required by the PPPA (or otherwise by this Agreement) in connection with the Handback Requirements (including Section 8.13 of the PPPA), including conducting handback inspections and performing all Renewal Work required to be performed during the final five (5) calendar years of the O&M Term (the "O&M Handback Renewal Work Period") based on the inspections and analysis under the Handback Requirements (the "O&M Handback Renewal Work"). No later than one hundred twenty (120) days prior to the date that is five (5) calendar years before the end of the O&M Term or within a reasonable period before any early termination date of this Agreement, O&M Contractor shall prepare and submit, for Concessionaire Review and subsequent submittal to the Owner as required by the PPPA, the initial plan for the performance of the O&M Handback Renewal Work, meeting the requirements of the PPPA (including Section 8.13.1.1 thereof) and this Agreement (the "O&M Handback Renewal Work Plan"), which shall include a budget setting forth the projected costs of performing the O&M Handback Renewal Work (the O&M Handback Renewal Work Budget) and schedule therefor (the "O&M Handback Renewal Work Schedule"). The O&M Handback Renewal Work Plan shall be a separate document from, but complementary to, the Asset Management Plan. Under the PPPA, Concessionaire (in consultation with O&M Contractor) and Owner are to jointly (a) identify the Renewal Work required for the Project to be in the condition and meet all of the requirements for Residual Life at the conclusion of the Term specified in the Handback Requirements and (b) determine the schedule (and Concessionaire’s estimated budget) for the performance, Owner inspection and Concessionaire completion of all such Renewal Work. O&M Contractor shall incorporate all such information and schedule into the Handback Renewal Work Plan. No later than one hundred twenty (120) days before the beginning of each subsequent calendar year of the O&M Handback Renewal Work Period, O&M Contractor shall provide to Concessionaire, for Concessionaire Review and subsequent submittal to the Owner as required by the PPPA, an updated O&M Handback Renewal Work Plan meeting the requirements of the PPPA and this Agreement. Following delivery of the update, the Parties shall meet to discuss whether any changes should be made to the scope or schedule for performance of the O&M Renewal Work and shall discuss the same with Owner (to the extent Owner permits O&M Contractor’s participation).

Subject to Section 8.13.3.2, all O&M Handback Renewal Work shall be completed no later than the earlier of (a) three (3) months before the expiration of the O&M Term and (b) the early termination date of this Agreement.

The Handback Requirements and the O&M Handback Renewal Work Plan shall incorporate the following criteria:

- The main civil and structural works and other System elements shall not exhibit any undue signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification and to support reliable service operations for a period of three (3) years beyond the end of the O&M Term;

- Limited life and "wear and tear" components of the System elements have been replaced by O&M Contractor during the O&M Period in accordance with Good Industry Practice as and when they failed,
wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities;

- Major electrical and mechanical components or other System elements (excluding the LRVs) have been repaired, refurbished, or replaced by O&M Contractor as appropriate if their then condition indicates that they are unlikely to support reliable service operations (without recourse to major repair) for a period of three (3) years beyond the end of the O&M Term; and

- Each LRV and its components, whether original or replacement equipment, have been, and continues to be, maintained in accordance with the original equipment manufacturers' recommendations, subject to reasonable modification of maintenance practices, up until the end of the O&M Term.

**Handback Inspections**

The Parties (and Owner under the PPPA) shall conduct inspections of the Project at the times and according to the terms and procedures specified in the Handback Requirements, for the purposes of:

- Determining and verifying the condition of all elements and their Residual Lives;


- Revising and updating the Asset Management Plan to incorporate such adjustments;

- Determining the O&M Renewal Work required to be performed and completed before the O&M Termination Date, based on the Handback Requirements for Residual Life at the conclusion of the O&M Term, the foregoing adjustments and the foregoing changes to the Asset Management Plan; and

- Verifying that such O&M Renewal Work has been properly performed and completed in accordance with the Handback Requirements.

**O&M Renewal Work under Handback Requirements**

O&M Contractor shall diligently perform and complete all O&M Renewal Work required to be performed and completed before the O&M Termination Date, based on the required adjustments and changes to the Asset Management Plan resulting from the inspections and analysis under the Handback Requirements.

In the event of an early termination of this Agreement, this Section 8.13 shall apply to the extent of any O&M Renewal Work required to be performed and completed before the early termination date of this Agreement, based on the required adjustments and changes to the Asset Management Plan resulting from the inspections and analysis under the Handback Requirements.
O&M Contractor acknowledges that it prepared the estimate of O&M Handback Renewal Work costs which Concessionaire included in Exhibit O-6 of the Proposal, and, without waiving any rights it may have to additional compensation as set forth in this Agreement, if the costs of performing the O&M Handback Renewal Work exceed such estimate, O&M Contractor shall nevertheless be responsible for performing the same, including paying the excess costs thereof.

Additional Handback Requirements; Owner Right to Self-Perform and Recover Costs

On or before the date of Handback, and as a condition to acceptance of Handback by Concessionaire and Owner, O&M Contractor shall, and shall cause its Subcontractors to, deliver all specialized equipment used in operations and maintenance of the System, which, in each case, shall be mechanically, electrically and structurally sound, as applicable, and ready for and capable of being operated, and otherwise used safely, in the normal course of business by Owner after Handback.

If, before or at the end of the O&M Term, Owner under the PPPA determines that that the Project does not comply with any Handback Requirement, or O&M Renewal Work is not timely or properly performed, then, in addition to Concessionaire’s rights under the Contract Documents and Owner’s rights under the PPPA Contract Documents, Concessionaire (or Owner under the PPPA) shall have the right to perform such O&M Handback Renewal Work itself and O&M Contractor shall be liable for the Concessionaire’s Recoverable Costs thereof (in addition to the Owner’s Recoverable Costs, as applicable). In recovering such amounts, Concessionaire may, and without duplication of any amounts withheld by Concessionaire or paid by O&M Contractor or other remedies of Concessionaire, (a) reduce any O&M Monthly Availability Payment then due and owing from Concessionaire to O&M Contractor, (b) invoice O&M Contractor for such amount, as a lump-sum payment, (c) set off such amount against any other amount then due and owing from Concessionaire to O&M Contractor, (d) draw against funds withheld from the applicable O&M Monthly Availability Payments, or against the handback letter of credit, as set forth in Section 8.14.5, (e) require funds in the reserve account to be used to pay for required O&M Handback Renewal Work as set forth in Section 8.14, or (f) any combination of the foregoing; provided, that, with respect to the recovery of Owner’s Recoverable Costs, Concessionaire shall exercise any of the foregoing remedies or a combination thereof that corresponds to Owner’s election under Section 8.13.4.2 of the PPPA.

Handback Requirements Holdback

After the schedule for Renewal Work to meet Handback Requirements is approved by Owner under the PPPA, if Owner determines in accordance with Section 8.14.1 of the PPPA that the budgeted costs for such Renewal Work included in the Availability Payments are not sufficient to cover the cost of such Renewal Work and the shortfall is not covered by amounts held in a Project handback reserve account, Owner has the right under Section 8.14.2 of the PPPA to withhold sufficient funds from future Availability Payments to cover any remaining deficit after accounting for funds in the reserve account, and Concessionaire will be entitled to make the corresponding withholdings from the O&M Monthly Availability Payments due to O&M Contractor.
Each month following finalization of the schedule for Renewal Work to meet Handback Requirements, Owner is to assess under the PPPA whether to pay out to Concessionaire amounts withheld from Availability Payments based on (a) a review of progress of the Renewal Work, (b) updated estimates regarding the cost of Renewal Work remaining to be performed, and (c) a determination as to whether the sum of the remaining budget for Renewal Work included in the Availability Payments and amounts in the handback reserve account is sufficient to cover the cost of such Renewal Work.

If under the PPPA Owner is withholding excess funds, Owner is required to promptly pay the excess amount to Concessionaire, and subject to Sections 2.7.1 and 2.7.3, after the receipt thereof, Concessionaire shall pay the same over to O&M Contractor. If under the PPPA Owner is not holding sufficient funds to cover the revised deficit amount, Owner has the right to continue to withhold additional funds from Availability Payments until it has withheld an amount sufficient to cover the entire deficit (subject to the limitations set forth in Section 8.14.4 of the PPPA), and Concessionaire will be entitled to make the corresponding withholdings from the O&M Monthly Availability Payments due to O&M Contractor. Without limiting Concessionaire’s and O&M Contractor’s rights and remedies set forth in the other provisions of this Agreement (and Owner’s rights under the PPPA), if at any time the sum of (a) all amounts in the reserve account, together with any letter of credit if provided by O&M Contractor as described in Section 8.14.5) and (b) the budgeted costs for the O&M Handback Renewal Work included in the O&M Monthly Availability Payments, exceeds the projected costs of performing the remaining O&M Handback Renewal Work, as contained in the O&M Handback Renewal Work Plan (including all amendments), all such excess amounts (including interest) shall be paid to O&M Contractor (and, if there are no sufficient funds in the reserve account, Concessionaire shall allow the appropriate reduction of any such letter of credit, to the extent permitted by Owner under the PPPA).

In lieu of Concessionaire’s withholding of the O&M Monthly Availability Payments as described in this Section 8.14, O&M Contractor shall be entitled to provide a letter of credit as described in Section 8.14.5 of the PPPA to secure its obligation to perform the O&M Handback Renewal Work and thereby receive the O&M Monthly Availability Payments without any withholding based on the deficit, to the extent permitted by Owner. Any such letter of credit shall be in form reasonably acceptable to Concessionaire (and Owner, if applicable), in an amount equal to one hundred percent (100%) of the deficit and shall remain in effect until the subsequent assessment shows that there is no deficit (with incremental reductions in the amount of the letter of credit reflecting any reductions in the deficit, to the extent permitted by Owner). The form of such letter of credit shall be subject to the same requirements with respect to the issuer and presentment as the Concessionaire O&M Letter of Credit. In all cases the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering the letter of credit shall be borne by O&M Contractor. If the letter of credit is not renewed at least thirty (30) days prior to expiration, Owner has the right under the PPPA to withhold payments as described in this Section 8.14, including the right to withhold “catch-up” payments without regard to the limitations described in Section 8.14.2 of the PPPA, until the total amount withheld by Owner is at the same level that Owner would otherwise have held as of such date, as though Concessionaire had not elected to provide security for its obligation to perform Renewal Work under the PPPA, and Concessionaire will be entitled to make the corresponding withholdings from the O&M Monthly Availability Payments due to O&M Contractor.
We are satisfied that appropriate headroom has been included between the Handback Renewal Plan delivery requirements in the PPPA and those set out in the O&M Contract. We are satisfied that appropriate pass down of the Concessionaire’s obligations under the PPPA has been achieved.

4.5.13 Section 11.2: Concessionaire O&M Letter of Credit

Subject to the requirements of Section 11.2.3, O&M Contractor shall provide to Concessionaire, no later than sixty (60) days before the scheduled PPPA RSA Date (and thirty (30) days prior to each Contract Year thereafter), one or more Concessionaire O&M Letter of Credit in an aggregate amount equal to fifty percent (50%) of the sum of (i) the "O&M Contractor Operating Annual Turnover," calculated as the then-current (indexed) O&M Monthly Availability Payments payable to O&M Contractor for the relevant Contract Year, but excluding the O&M Lifecycle Payments and the Concessionaire Costs, and (ii) the average annual O&M Lifecycle Payments; in each case disregarding any deductions, withholdings or downward adjustments permitted under this Agreement.

If, at any time O&M Contractor is obligated to maintain, or cause to be maintained, a Concessionaire O&M Letter of Credit, O&M Contractor fails to renew or replace, or cause to be removed or replaced, Concessionaire O&M Letter of Credit in the required amount by the date that is thirty (30) days before its stated expiry date, Concessionaire shall be entitled to draw on the full available amount of such outstanding Concessionaire Construction Security up to the required amount of the replacement security, which draw shall be held by Concessionaire as replacement security until one or more replacement Concessionaire O&M Letter of Credit are provided or are applied for any reason for which a Concessionaire O&M Letter of Credit may be applied.

In addition, in the event (a) the issuer of a Concessionaire O&M Letter of Credit shall fail to be a Qualified Issuer, within fifteen (15) days after becoming aware O&M Contractor shall provide one or more substitute Concessionaire O&M Letter of Credit from an issuer other than the bank that has been downgraded or failed to meet other required criteria, or (b) the issuer of any Concessionaire O&M Letter or Credit shall fail to honor the beneficiary’s proper request to draw on an outstanding Concessionaire Construction Letter of Credit, then within five (5) Business Days thereafter O&M Contractor shall provide a substitute Concessionaire O&M Letter of Credit from an issuer other than the bank that has failed to honor the outstanding Concessionaire O&M Letter of Credit; provided, that if Concessionaire does not receive a replacement Concessionaire O&M Letter of Credit from an issuer within the time required herein, Concessionaire shall be entitled to draw on the full available amount of the Concessionaire O&M Letter of Credit which draw shall be held by Concessionaire as replacement security until other replacement Concessionaire O&M Letter of Credit is provided or is applied for any reason for which the Concessionaire O&M Letter of Credit may be applied.

Any time Concessionaire is entitled under this Agreement to draw on a Concessionaire O&M Letter of Credit, Concessionaire shall be entitled, in its sole discretion, to draw on and use proceeds from one or more of the Concessionaire O&M Letters of Credit in any order; provided, that, if a draw on a Concessionaire O&M Letter of Credit is dishonored for any reason, then Concessionaire shall have the right to draw on one or more of the other Concessionaire O&M Letters of Credit for the amount that was dishonored.
Concessionaire’s rights with respect to the Concessionaire O&M Letter of Credit are in addition to its rights under the O&M Guaranties, and Concessionaire may proceed under either of the O&M Guaranties or the Concessionaire O&M Letter of Credit, or both, but without duplication of recovery.

The costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering any Concessionaire O&M Letter(s) of Credit (or the Payment Bonds and the Performance Security, if applicable) shall be borne by O&M Contractor.

4.5.14 Section 11.4: O&M Guaranties

Subject to the requirements of Section 11.2.3, O&M Contractor shall cause each of the O&M Guarantors to execute and deliver to Concessionaire an O&M Guaranty on or before Financial Close. O&M Guaranties shall meet the requirements of Sections 11.4.1(b) and 11.4.2 of the PPPA and shall be enforceable by Owner as a transferee beneficiary under the circumstances set forth in Sections 11.4.2 and 11.4.3 of the PPPA as described in Sections 11.4.2 and 11.4.3. Concurrently with the issuance of each of the O&M Guaranties, O&M Contractor shall provide to Concessionaire a duplicate original thereof to allow Concessionaire to deliver such duplicate original to Owner in compliance with Section 11.4.1(ii) of the PPPA.

Owner’s rights as a transfer beneficiary are exercisable pursuant to the PPPA if, subject to Section 11.4.3 of the PPPA and the Direct Agreement, Owner determines that (a) O&M Contractor has breached or failed to perform any obligations under this Agreement, (b) such breach has caused, or with the passage of time reasonably may cause, a Concessionaire Default under the PPPA or, if such Concessionaire Default has occurred, the applicable cure period has expired without full and complete cure and (c) Concessionaire or the Collateral Agent has failed to call upon or otherwise enforce all of the O&M Guaranties for the purpose of causing the performance of such obligations by or on behalf of O&M Contractor within ten (10) days after Owner delivers notice of such breach or expected breach to Concessionaire under the PPPA and the Collateral Agent and the Cure Period (as such term is defined in the Direct Agreement) has expired.

So long as Concessionaire or a Lender is diligently pursuing remedies under a O&M Guaranty, Owner has agreed under the PPPA to forbear from exercising its right to become a beneficiary under Section 11.4.1(b) of the PPPA; provided, however, that if the Concessionaire Default under the PPPA giving rise to exercise remedies under any such O&M Guaranty remains uncured at the end of the cure period thereunder, Owner’s obligation to forbear from exercising remedies as a guaranteed party ceases. The foregoing does not obviate any agreement by Owner to forbear from exercising its rights and remedies contained in a Direct Agreement.

We confirm that this is in accordance with the provisions included in the O&M Heads of Terms at Bid submission and considered acceptable for the Project.

4.5.15 Section 12.1: Exercise of LRV Option

O&M Contractor shall, on behalf of Concessionaire, fulfill such Concessionaire’s obligations with respect to PPPA LRV Options set forth in Article 12 of the PPPA, as described in this Article 12 but only with respect
to those PPPA Option LRVs ordered by Owner under the PPPA after the date that is thirty (30) months before the Guaranteed DB RSA Date under the DB Contract (such date, as of the date of Owner’s exercise of the first LRV Option) (such PPPA LRV Options for which O&M Contractor is responsible pursuant to the preceding sentence are referred to under this Agreement as the “LRV Options,” and LRVs procured pursuant to such LRV Options are referred to hereunder as the “Option LRVs”).

*We have reviewed this section of the O&M contract and are satisfied that an appropriate transfer of the Concessionaire’s obligations under the PPPA has been achieved.*

### 4.5.16 Section 13: Payments to the O&M Contractor

Concessionaire’s payments to O&M Contractor under the O&M Contract under this Agreement shall consist of:

- the Pre-O&M Commencement Services Fee (defined below); and
- the O&M Monthly Availability Payments (defined below).

#### 4.5.16.1 Pre-O&M Commencement Services Fee

A fee payable by Concessionaire to O&M Contractor during the Design-Build Period as compensation for the O&M Contractor’s performance of the Pre-O&M Commencement Services (the “Pre-O&M Commencement Services Fee”), to be paid monthly, based on agreed payment dates as set forth in Exhibit 5B to the O&M Contract.

#### 4.5.16.2 O&M Monthly Availability Payments

Commencing from the O&M Commencement Date and continuing throughout the O&M Term, Concessionaire shall make the monthly payments to O&M Contractor for the Services in arrears for the prior Contract Month as set forth in Exhibit 5B hereto, (the “O&M Monthly Availability Payments”) consisting of the following components, each corresponding to the applicable component of the Monthly Availability Payments under the PPPA for the relevant Contract Month:

- operating payments corresponding to the operational portion of the Monthly Availability Payments under the PPPA but not including Concessionaire's costs, if any, as set forth on Exhibit 5B (the “Concessionaire Costs”);
- maintenance payments corresponding to the maintenance portion of the Monthly Availability Payments under the PPPA;
- insurance payments corresponding to the ‘Insurance Payments’ set forth in Section 5 of Appendix A of Exhibit 4D of the PPPA, as may be adjusted under Section 11 of the PPPA, with respect to the insurance coverage required to be obtained by the O&M Contractor under this Agreement; and
• lifecycle payments corresponding to the Lifecycle Payments under the PPPA but excluding the Special Lifecycle Payments, with respect to the O&M Renewal Work and the O&M Handback Renewal Work, subject to the provisions set forth in the remainder of this Section 13.3 (collectively, the "O&M Lifecycle Payments");

each subject to (i) the corresponding escalation adjustments and adjustments based on changes in the Service Level made to the corresponding components of the Monthly Availability Payment under the PPPA and (ii) the same withholdings and deductions from, and adjustments to, the Monthly Availability Payments under the PPPA as described in this Section 13.

Except to the extent expressly provided otherwise in this Agreement, O&M Contractor shall be entitled to the full benefit of the provisions of Exhibit 4D of the PPPA to the extent applicable to the Services.

The Parties acknowledge that Concessionaire may under the PPPA request a review of the Payment Mechanism with Owner in accordance with Exhibit 4D, Part D, Section 2 of the PPPA or otherwise initiate discussions with Owner regarding the Payment Mechanism. The Parties agree that Concessionaire shall request such review or initiate such discussions under the PPPA if O&M Contractor requests and Concessionaire agrees with such request, or if Concessionaire wishes to do so and O&M Contractor agrees (in either case, a Party’s agreement shall not to be unreasonably withheld or delayed). O&M Contractor shall participate in such reviews and/or discussions as permitted by Owner under the PPPA.

In the event Owner delivers notice to Concessionaire regarding proposed revisions to the Activity Noncompliance Occurrence Table in accordance with Exhibit 4D, Part D, Section 1.3 of the PPPA, Concessionaire shall promptly provide such notice to O&M Contractor. O&M Contractor shall have twelve (12) days following receipt of such notice to deliver comments to Concessionaire regarding the Activity Noncompliance Occurrence Table, which comments Concessionaire shall promptly provide to Owner. Concessionaire shall promptly provide to O&M Contractor any revised Activity Noncompliance Occurrence Table following Concessionaire’s receipt of the same from Owner under the PPPA.

Subject to the other provisions of this Section 13.3, all O&M Lifecycle Payments shall be paid to O&M Contractor no later than thirty (30) days after Concessionaire’s receipt of a corresponding Lifecycle Payment from Owner.

Concessionaire shall establish and fund a reserve account with Lifecycle Payments received by Concessionaire from Owner under the PPPA until the balance of the reserve account equals the deficit amount reflecting the difference between (i) the sum of (a) the scheduled O&M Lifecycle Payments and (b) the amount already in the reserve account, and (ii) the projected remaining cost of the O&M Renewal Work and the O&M Handback Renewal Work (the "O&M Renewal Work Deficit"), as determined by the LTA (or other independent technical firm as required under the TIFIA Loan documents) based on a look-forward analysis (which analysis the LTA (or such other independent technical firm) shall conduct commencing on the 10th anniversary of the RSA Date and annually thereafter until the end of the O&M Term); provided, that Concessionaire will not be responsible for funding any additional amounts into reserve account to cover such O&M Renewal Work Deficit and the O&M Contractor shall be responsible
therefor (or, alternatively, in lieu of any such funding, O&M Contractor may provide a letter of credit in the amount of such balance which would be otherwise required from a bank acceptable to the Lenders, in which event no such funding by Concessionaire or O&M Contractor shall be required (and any amounts already contained in the reserve account shall be paid to O&M Contractor)). Concessionaire shall withdraw funds from the reserve account to make the O&M Lifecycle Payments to the O&M Contractor, subject to the terms and conditions of this Agreement. For the avoidance of doubt, no amounts shall be required to be retained in any such reserve account, unless, and only to the extent, required to cover an O&M Renewal Work Deficit which is the responsibility of O&M Contractor and for which O&M Contractor has not provided a letter of credit.

Each O&M Monthly Availability Payment is derived from the applicable Monthly Availability Payment due from Owner to Concessionaire under the PPPA. Commencing in the Contract Month following the Contract Month in which the O&M Commencement Date occurs, O&M Contractor shall submit to Concessionaire a monthly invoice no later than five (5) days after the end of the Contract Month for which the payment is requested. All invoices required to be provided under this Agreement shall be complete and correct and shall contain all information and the supporting documentation required by this Agreement, the PPPA and the Project Debt documents with respect to the Services, including the following:

- each request must state the amount and calculation of the O&M Monthly Availability Payment due, including the amount of each O&M Monthly Availability Payment component and calculation of the Deduction(s) for all applicable Noncompliance Events for the prior month (if any) in accordance with Exhibit 4D of the PPPA;

- any invoices that include compensation for Construction Work included in the Services shall also include certified payroll, certification regarding payment to Subcontractors performing such Services and other backup documentation equivalent to that required for “Progress Payments” under Section 13.1 of the PPPA;

- the invoice for the final O&M Monthly Availability Payment for any given Contract Year must be accompanied by an attached report containing information that Owner and Concessionaire can use to verify the O&M Monthly Availability Payments and any adjustments for all applicable Noncompliance Events for such Contract Year. Such attached report shall include:
  - The calculation of the actual Availability Payment earned during such Contract Year using the methodology in Exhibit 4D to the PPPA;
  - A description of any Noncompliance Events, including the date and time of occurrence and duration;
  - Any adjustments to reflect previous over-payments and/or under-payments;
  - A detailed calculation of any interest payable with respect to any amounts owed; and
- Any other amount due and payable from one Party to the other Party under this Agreement, including deductions Concessionaire is entitled to make under the Contract Document; and

- the invoice shall include the contract number, O&M Contractor’s Federal Tax Identification Number; information regarding the payee sufficient to allow payment to be made, and the name and address of the proper invoice recipient.

We are satisfied that generally the payment provisions are appropriate for the Project.

4.5.17 Section 13.3.5: Withholdings, Deductions and Adjustments

Without duplication of any other amounts withheld by Concessionaire, paid by O&M Contractor or recovered from the proceeds of the business interruption insurance, or other remedies of the Concessionaire, and subject to limitation as provided below in Section 13, to the extent Owner withholds or make a deduction from, or a downward adjustment to, the Monthly Availability Payments or other amounts owed by Owner to Concessionaire under the PPPA:

- (i) as Deductions, (ii) as energy deductions arising pursuant to the energy painshare/gainshare, (iii) as downward Quarterly Volume Adjustments or (iv) for increased Oversight during the O&M Period; in each case of items (i)-(iv), other than those attributable to Concessionaire; or

- otherwise for reasons attributable to O&M Contractor or any of its Subcontractors;

then Concessionaire shall be entitled to withhold or make a deduction from, or make a downward adjustment to, any payment otherwise due to O&M Contractor until the aggregate amount of such withholding, deduction or downward adjustment equals the aggregate amount of such Owner withholding, deduction or downward adjustment at the time it would have been paid by Owner had the withholding, deduction or downward adjustment not been made.

Notwithstanding the foregoing, or anything in this Agreement to the contrary, in no event shall any such withholdings, deductions or downward adjustments made by Concessionaire to payments to O&M Contractor, that are due to the occurrence of any Grace Period Event and correspond to Deductions applied by Owner made under Section 15.5.2(d) of the PPPA and OTP Factors allocated under Section 15.5.6 of the PPPA, reduce the O&M Monthly Availability Payment due to O&M Contractor below such portion thereof corresponding to the Partial Service Payment under the PPPA (and the foregoing O&M Contractor’s rights shall be subject to the same limitations and relief as applicable to Concessionaire under Section 15.5 of the PPPA).

These provisions are considered to be reasonable for the Project. The O&M Contractor, working with the DB Contractor, has established usage for all elements of the System and have established an estimate of kilowatt hours to be used. Since the Owner has taken electrical rate risk, the energy painshare/gainshare is reasonable and the risk is considered low.
4.5.18 Section 14.1.4: LRV Option; Service Changes

Owner’s exercise of LRV Option A and the subsequent notice thereof by Concessionaire to O&M Contractor shall be considered direction to O&M Contractor to prepare a draft Scope Change Order adding supply of additional LRVs as specified in the LRV Option Notice for the LRV Option Price, adjusted to account for escalation as provided in this Agreement, and to prepare a draft Scope Change Order as described in Section 12.1.3. It shall also be considered direction to start Services to the extent specified in the LRV Option Notice, regardless of the status of the Scope Change Order. Escalation of the LRV Option Price shall be based on:

- 25% of the percentage change between (i) an average of the previous 12 months of monthly index values to be determined by reference to the most recently published Escalation Index 1 monthly index value as of the Proposal Date and (ii) an average of the previous 12 months of index values to be determined by reference to the most recently published Escalation Index 1 monthly index value as of the Business Day immediately preceding the date on which the LRV Option is exercised,

- 25% of the percentage change between (i) an average of the previous 12 months of monthly index values to be determined by reference to the most recently published Escalation Index 3 monthly index value as of the Proposal Date and (ii) an average of the previous 12 months of the index values to be determined by reference to the most recently published Escalation Index 3 monthly index value as of the Business Day immediately preceding the date on which the LRV Option is exercised, and

- 50% of the percentage change between (i) an average of the previous 12 months of monthly index values to be determined by reference to the most recently published Escalation Index 4 monthly index value as of the Proposal Date and (ii) an average of the previous 12 months of the index values to be determined by reference to the most recently published Escalation Index 4 monthly index value as of the Business Day immediately preceding the date on which the LRV Option is exercised.

The Parties acknowledge that a change from Service Level 2 to Service Level 3 will require performance of certain additional Services relating to the OMF as described in Exhibit 17 to the PPPA (in the section of the Proposal entitled “Design and Construction Technical Solutions”). Accordingly, in connection with direction by Owner to Concessionaire under the PPPA to change to Service Level 3, Concessionaire shall so direct O&M Contractor hereunder, and Concessionaire (with O&M Contractor’s participation) and Owner are, under the PPPA to negotiate a Change Order specifying the price, delivery schedule and scope of such additional Services and the Parties shall negotiate a corresponding Scope Change Order under this Agreement. The schedule established by such Scope Change Order shall be consistent with the schedule for delivery of additional LRVs as described in Section 12.4.

If it becomes apparent that demand warrants implementation of service providing greater Peak Period capacity than is required for Service Level 3, the Parties (and Owner under the PPPA) shall consult regarding changes that would be required to meet demand and enter into negotiations regarding a Scope Change Order to implement such changes and provide additional compensation to O&M Contractor. Any change to service providing greater Peak Period capacity than is required for Service Level 3 shall require
mutual agreement of the Parties and Owner under the PPPA. Section 8.2 identifies certain other circumstances under which a Scope Change Order is required for service changes.

A Modification establishing a Service Level with higher Peak Period capacity than Service Level 3 or implementing direction issued by Owner under Section 12.4 of the PPPA and in turn a Scope Change Order issued by Concessionaire under Section 12.4 shall include revised commitments regarding maximum power usage for Service Level 3, replacing the commitments in Attachment 2 to Appendix E of Exhibit 4D to the PPPA.

If Owner exercises LRV Option 14.1.4.5 A under the PPPA and DB Contractor is responsible for the delivery of such additional LRVs under the DB Contract, O&M Contractor shall, subject to Sections 2.7.1 and 2.7.3, be entitled to claim a Scope Change Order hereunder if such Owner’s exercise will require performance of additional Services or other adjustments to the rights and obligations of the O&M Contractor under this Agreement. Concessionaire, when negotiating an Owner Change Order under the PPPA as it relates to the DB Contractor’s supply of the LRV due to Owner’s exercise of LRV Option A, shall also take into account such O&M Contractor’s claim and shall, following Owner’s issuance of such Owner Change under the PPPA, issue to O&M Contractor a Scope Change Order under Article 14 corresponding to the relevant portion of such Owner Change Order related to O&M Contractor’s claim.

We have reviewed this section of the O&M contract and are satisfied that an appropriate transfer of the Concessionaire’s obligations under the PPPA has been achieved.

4.5.19 Section 16: Activity Noncompliance occurrences, Noncompliance events and Noncompliance points

We have reviewed this section of the O&M contract and are satisfied that an appropriate transfer of the Concessionaire’s obligations under the PPPA has been achieved.

4.5.20 Section 17.1.1: O&M Contractor Default

Subject to Section 15.5.10 of the O&M Contract, O&M Contractor shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each, an “O&M Contractor Default”). We have listed below only those relating to Noncompliance.

- (a) O&M Contractor receives a total of 13,908 or more Noncompliance Points over the course of three (3) consecutive Payment Periods (determined on a rolling basis);

- (b) O&M Contractor receives a total of 19,392 or more Noncompliance Points over the course of six (6) consecutive Payment Periods (determined on a rolling basis);

- (c) O&M Contractor receives a total of 25,290 or more Noncompliance Points over the course of twelve (12) consecutive Payment Periods (determined on a rolling basis).
We are satisfied that the above represents reasonable headroom between the PPPA default thresholds and the O&M Contract default thresholds.

4.5.21 Section 17.2.4: Step-in rights

In the event that O&M Contractor is assessed (a) 3,600 Noncompliance Points for Operations Availability Noncompliance Events in any one Payment Period, or (b) 1920 Noncompliance Points for Activity Noncompliance Events in any one Payment Period, or (c) a combination of 7,200 Noncompliance Points for any Noncompliance Events over the course of three consecutive Payment Periods (determined on a rolling basis). In addition, this Section 17.2.4 as it relates to Concessionaire’s right to step in also applies in the event that O&M Contractor is assessed: (a) 3420 Noncompliance Points for Operations Availability Noncompliance Events in any one Payment Period, or (b) 1824 Noncompliance Points for Activity Noncompliance Events in any one Payment Period, or (c) a combination of 6840 Noncompliance Points for any Noncompliance Events over the course of three consecutive Payment Periods (determined on a rolling basis). In any such event, the term “cure” as used in this Section 17.2.4 shall be construed to include “response” and “rectification” and the term “cure period” shall be construed to include “Response Time” and “Rectification Time.”

4.5.22 Section 17.6: Limitation on Liability

Limitation of the O&M Contractor’s liability under the O&M Contract shall be as follows:

- without a termination of the O&M Contract, the O&M Contractor’s total aggregate liability shall not, in any Contract Year, exceed an amount equal to 75% of the O&M Contractor Operating Annual Turnover (but no more than 150% of the O&M Contractor Operating Annual Turnover in the aggregate in any three (3) consecutive Contract Years), in each case excluding the Concessionaire Costs;

- on termination of the O&M Contract, the O&M Contractor’s total aggregate liability shall not exceed an amount equal to 200% of the (i) O&M Contractor Operating Annual Turnover and (ii) the average annual Lifecycle payment, as adjusted to reflect any changes in the O&M Monthly Availability Payments resulting from changes in the scope of the Services effected in accordance with the terms of the O&M Contract and excluding Concessionaire Costs;

provided, that the foregoing limitations shall not apply to or include:

- the proceeds of insurance, not to exceed amounts required to be maintained by O&M Contractor in accordance with the terms of the O&M Contract;

- costs, liabilities or obligations that arise from the gross negligence, willful misconduct, criminal conduct, intentional disregard of laws, or actual fraud of O&M Contractor, any of its Subcontractors or any other person for whom O&M Contractor is legally responsible;

- costs, liabilities or obligations that arise from the O&M Contractor’s abandonment of the Services or from the O&M Contractor’s or the Guarantor’s bankruptcy or insolvency;
costs, liabilities or obligations that arise from any liens, encumbrances or other security interests on the Project arising from or in connection with the performance of the Services, except to the extent due to Concessionaire’s unexcused failure to pay amounts owing to O&M Contractor under the O&M Contract;

costs, liabilities or obligations that arise from the failure of O&M Contractor to pass to Owner good title to any component of the Work provided by the O&M Contractor as part of the Services free and clear of any charge, lien, encumbrance or other security interest, except to the extent due to Concessionaire’s unexcused failure to pay amounts owing to O&M Contractor under the O&M Contract;

O&M Contractor’s indemnity obligations in respect of claims by third parties;

costs, liabilities and obligations arising from the O&M Contractor’s failure to comply with environmental laws and other obligations under the O&M Contract in respect of Hazardous Materials and environmental matters;

if Concessionaire steps into any Subcontract entered into by O&M Contractor and assumes rights and obligations of O&M Contractor thereunder, any amounts due and owing under such Subcontract for work or services rendered prior to the assignment of such Subcontract to Concessionaire, and other costs arising from O&M Contractor’s liability for its obligations accruing under such Subcontract prior to the date of assignment;

amounts paid by O&M Contractor to Concessionaire that are subsequently recovered from DB Contractor under the Interface Agreement;

O&M Contractor’s indemnity obligations to DB Contractor under the Interface Agreement for: (a) all damages arising out of losses attributable to O&M Contractor to the extent covered by the proceeds of insurance required to be maintained by O&M Contractor under the this Agreement; and (b) all losses arising out of fraud, criminal conduct, intentional misconduct, gross negligence, recklessness, bad faith, strict liability or violations of law on the part of O&M Contractor without regard for insurance coverage;

amounts paid or reimbursed by the O&M Contractor to the DB Contractor under the Interface Agreement for costs incurred or paid by the DB Contractor to perform the Pre-Commencement O&M Services as a result of a breach by the O&M Contractor of its obligations to perform the Pre-O&M Commencement Services required to be performed by the O&M Contractor under the O&M Contract;

except, in each case, to the extent proven to have been caused by the Concessionaire.

We are satisfied that the non-termination default limitation of O&M Contractor Operating Annual Turnover is reasonable. We are satisfied that the termination liability cap is reasonable for the Project.
We have reviewed the O&M Contract Amended and Restated Version dated 14th June 2016. Other than as noted we are satisfied that the drafting reflects a reasonable transfer of risk from the PPPA and associated documents.

We are satisfied that the LCs and guaranties proposed are suitable for the Project.

We are satisfied that the non-termination default limitation of O&M Contractor Operating Annual Turnover is reasonable. We are satisfied that the termination liability cap is reasonable for the Project.

4.6 Term Sheet

We have received a copy of the Bond Term Sheet dated 8th December 2015. We confirm that the references to performance security and events of default relate to the appropriate documentation in the DB and O&M Heads of Terms and the P3 Agreement respectively. We have no further comments on the document.

4.7 Interface Agreement

We have received a copy of the Interface Agreement Execution Version, 7th April 2016. We have commented below by exception, identifying those areas that we consider are of note or should be brought to the attention of the Lenders.

4.7.1 Interface during Design Build period

The DB Contractor shall grant to authorized personnel of the O&M Contractor such access to the Project ROW and the DB Work as is reasonable under the circumstances for the purposes of carrying out the O&M Contractor’s obligations under the O&M Contract or this Agreement to be undertaken prior to the achievement of DB Revenue Service Availability. The O&M Contractor shall use (and shall cause its subcontractors to use) reasonable efforts to avoid any material impairment, interference or disruption to the DB Work, and shall comply with the DB Contractor’s safety and other rules and regulations for conduct of personnel performing DB Work.

The O&M Contractor has provided to the DB Contractor an initial draft of the O&M Contractor’s mobilization program, setting forth the activities, timing and use of material and infrastructure in connection with the O&M Contractor’s mobilization (the “Mobilization Program”). The O&M Contractor acknowledges that the DB Contractor may rely on the Mobilization Program for the purpose of preparation of the updated Initial Baseline Schedule.

Each of DB Contractor and O&M Contractor shall coordinate its respective efforts in the commissioning, verification, start-up and testing of the Project and its component systems (including the LRVs) in
accordance with the agreed organization of testing and commissioning works as set out in the Initial Baseline Schedule, including rectifying any failures or deficiencies that arise therefrom, with the cost and expense of any such rectification, as between the Contractors, to be borne by DB Contractor unless the failure or deficiency was directly caused by the acts or omissions of O&M Contractor.

Subject to the resolution of any related dispute between the Contractors: (a) the O&M Contractor shall reimburse the DB Contractor for (1) all delay liquidated damages and other amounts paid by the DB Contractor to or on behalf of Concessionaire under the DB Contract to the extent caused by any failure by the O&M Contractor to perform its obligations as required under the O&M Contract or this Agreement which resulted in an unexcused delay in the achievement of DB Revenue Service Availability or DB Final Completion, and (2) subject to the limits specified below, any direct unavoidable costs incurred by the DB Contractor to the extent caused by any failure of O&M Contractor to perform its obligations as required under the O&M Contract or this Agreement related to the achievement of DB Revenue Service Availability or DB Final Completion; and (b) the DB Contractor shall reimburse the O&M Contractor for increases in the O&M Contractor’s direct unavoidable costs to the extent that such increases result from (1) the Project as designed and constructed by the DB Contractor not complying with the Base Design (subject to any modifications to the Base Design to which O&M Contractor agreed or to which O&M Contractor failed to provide feedback, and to any modifications required under the DB Contract or resulting from a Relief Event or Force Majeure Event, Concessionaire-Caused Delay, Concessionaire DB Work Suspension, or a Work Order), or (2) subject to the limits specified below, any failure by the DB Contractor to perform its obligations as required under the DB Contract or this Agreement to the extent such failure has caused an unexcused delay in the achievement of DB Revenue Service Availability beyond the Guaranteed DB RSA Date (or, if earlier, the Planned DB RSA Date).

DB Contractor shall notify O&M Contractor, at a date that is ten (10) months prior to the anticipated start of Trial Running, of the then planned date for the submission of the Trial Running notice to Concessionaire, and the anticipated date for achievement of DB Revenue Service Availability the “Planned DB RSA Date,” which date, for the purposes of this Agreement, shall be subject to adjustment for Relief Events, Force Majeure Events, Concessionaire-Caused Delays, Concessionaire DB Work Suspensions, Work Orders and otherwise as permitted in the DB Contract (similarly to the adjustments to the Guaranteed DB RSA Date permitted under the DB Contract). If at any time DB Contractor forms a belief that DB Revenue Service Availability will occur later than the Guaranteed DB RSA Date (or, if earlier, the Planned DB RSA Date) due to the occurrence of a Relief Event, Force Majeure Event or otherwise, it shall promptly notify Concessionaire and O&M Contractor thereof and as soon as practicable thereafter notify Concessionaire and O&M Contractor of the expected length of the delay. Promptly after the receipt of such notice by O&M Contractor, O&M Contractor shall provide to DB Contractor and Concessionaire an updated Mobilization Program and its estimate of the anticipated differential costs associated therewith. DB Contractor shall advise Concessionaire and O&M Contractor any time it determines that the expected length of delay will differ materially from its previous estimate, and O&M Contractor shall adjust its anticipated differential cost estimate accordingly, if required.

Notwithstanding anything herein to the contrary, if the O&M Contractor fails to perform its obligations under the O&M Contract or this Agreement (including as detailed in Annex 1) during the Design-Build
Period and, as a result of such failure, the DB Contractor fails to achieve DB Revenue Service Availability by the Guaranteed DB RSA Date, the O&M Contractor’s obligation to indemnify and hold harmless the DB Contractor for any increased costs that the DB Contractor may suffer or incur as a result of such failure shall not exceed $24,200 for each day or part of a day that elapses between the Guaranteed DB RSA Date and the DB RSA Date and the aggregate liability of the O&M Contractor to the DB Contractor in relation to such indemnity will be limited to $4,356,000.

For the avoidance of doubt, the caps on O&M Contractor’s liability as specified herein shall in no event apply to any liability of O&M Contractor (1) for delay liquidated damages paid by the DB Contractor to or on behalf of the Concessionaire under the DB Contract, or (2) for reasonable DB Contractor costs associated with satisfaction by DB Contractor of conditions to DB Revenue Service Availability which are the responsibility of O&M Contractor under the O&M Contract but for which DB Contractor undertook certain obligations as provided in the DB Contract.

Notwithstanding anything herein to the contrary, if DB Contractor fails to achieve DB Revenue Service Availability by the Guaranteed DB RSA Date (or, if sooner, the Planned DB RSA Date), the DB Contractor’s obligation to indemnify and hold harmless the O&M Contractor for any increased costs or losses that the O&M Contractor may suffer or incur as a result of such failure shall not exceed:

- $12,600 for each day or part of a day that elapses between the Guaranteed DB RSA Date (or, if earlier, the Planned DB RSA Date) and the DB RSA Date in the event that the DB Contractor gives the O&M Contractor at least nineteen (19) months prior written notice of the anticipated delay;
- $16,500 for each day or part of a day that elapses between the Guaranteed DB RSA Date (or, if earlier, the Planned DB RSA Date) and the DB RSA Date in the event that the DB Contractor gives the O&M Contractor at least twelve (12) months prior written notice of the anticipated delay;
- $32,300.00 for each day or part of a day that elapses between the Guaranteed DB RSA Date (or, if earlier, the Planned DB RSA Date) and the DB RSA Date in the event that DB Contractor gives O&M Contractor at least six (6) months prior written notice of the anticipated delay;
- $44,000.00 for each day or part of a day that elapses between the Guaranteed DB RSA Date (or, if earlier, the Planned DB RSA Date) and the DB RSA Date in the event that DB Contractor gives O&M Contractor at least three (3) months prior written notice of the anticipated delay;
- $53,100.00 for each day or part of a day that elapses (e) between the Guaranteed DB RSA Date (or, if earlier, the Planned DB RSA Date) and the DB RSA Date in the event that DB Contractor gives O&M Contractor less than three (3) months prior written notice of the anticipated delay; and
- the aggregate liability of the DB Contractor to the O&M Contractor in relation to such indemnity will be limited to $9,558,000.

We are satisfied that these provisions are reasonable for the Project.
4.7.2 Interface during O&M Period

The O&M Contractor shall grant to authorized personnel of DB Contractor such access to the Project ROW and the Project as is reasonable under the circumstances for the purposes of carrying out the DB Contractor’s obligations under the DB Contract or this Agreement with respect to achievement of DB Final Completion and performance of its warranty and punch list obligations. The DB Contractor shall use (and shall cause its subcontractors to use) reasonable efforts to avoid any material impairment, interference or disruption to the carrying out of the O&M Work, and shall comply with the O&M Contractor’s safety and other rules and regulations for conduct of personnel performing Services.

Until the end of the Warranty Period (as defined under the DB Contract), upon discovering a defect or deficiency in the DB Contractor’s Work which the DB Contractor is required to correct or remedy under the DB Contract, or a condition that could reasonably likely be or become such a defect or deficiency, the O&M Contractor, performing the work itself or through a subcontractor, shall be entitled promptly, after notice to the DB Contractor to the extent reasonably possible, to correct or otherwise remedy the defect or deficiency at the DB Contractor’s sole cost only if and to the extent the condition creates an emergency resulting in an immediate need and serious threat to public health, safety, security or the environment or will have an immediate and direct material financial impact to the O&M Contractor. To the extent that the defect or deficiency does not create such an emergency, and after giving reasonable prior notice to DB Contractor, the DB Contractor has not promptly commenced and diligently pursued correction of the defect or deficiency to the extent reasonably possible, and the O&M Contractor has reason to believe that the failure of the DB Contractor or the responsible subcontractor to make the correction or repair may have an impact on the O&M Contractor’s ability to perform the O&M Work, or may imminently lead to a Noncompliance Events or the accrual of Noncompliance Points as a result of such defect or deficiency, then the O&M Contractor may remedy the defect or deficiency at the DB Contractor’s sole cost. Any dispute as to a defect or deficiency, including disputes as to the extent of the DB Contractor’s liability due to its assertion that the Warranty claim arose due to the failure of the O&M Contractor to properly operate and maintain the Project, or the reasonableness of the costs incurred by O&M Contractor, will be resolved in accordance with dispute resolution procedures provided in this Agreement.

Other than the correction of defects or deficiencies during the Warranty Period and the correction of latent defects following the end of the Warranty Period, all as expressly provided in the DB Contract, DB Contractor shall have no responsibility or liability to the O&M Contractor with respect to defects or deficiencies in the DB Work after the DB RSA Date.

We are satisfied that these provisions are reasonable for the Project.

4.8 Financial Model

We have reviewed the Financial Model dated 14th June 2016 and confirm that the DB Contract Price and the O&M Monthly Availability Payments are included as per the Execution Versions of the DB Contract and O&M Contract respectively.
5 Performance Security

5.1 DB CONTRACTOR Performance Security

In summary, the DB CONTRACTOR Performance Security is as follows:

- guaranties from each of Fluor Corporation, Lane Industries, Inc. and Traylor Bros., Inc. (the “Guarantors”), each guaranteeing all of the DB Contractor’s obligations arising under the DB Contract, with a liability cap of 35%, with a sub-cap of fifty six million six hundred thirty thousand three hundred and eight one U.S. Dollars ($56,635,381) for Liquidated Damages

- one or more standby letters of credit (the "Concessionaire Construction Security") in an initial aggregate amount equal to 50% of potential (a) RSA Delay LDs payable up to the Guaranteed DB Long Stop Date and (b) Final Completion Delay LDs payable up to the DB Final Completion Deadline, which amount will be reflected in an amendment to this Agreement entered into by the Parties prior to Financial Close, to secure performance of its obligations under the DB Contract to the Concessionaire; provided, that the initial stated aggregate amount of the Concessionaire Construction Letter(s) of Credit:

  shall be increased to an aggregate amount equal to 100% of potential (i) RSA Delay LDs payable up to the Guaranteed DB Long Stop Date and (ii) Final Completion Delay LDs payable up to the DB Final Completion Deadline, which amount will be reflected in an amendment to this Agreement entered into by the Parties prior to Financial Close (the "Step-Up Amount") if at any time prior to the DB RSA Date (but no sooner than three (3) years after commencement of the Construction Work) a look forward analysis conducted by the LTA shows that DB Revenue Service Availability is likely to occur more than sixty (60) days after the Guaranteed DB RSA Date;

- A Performance Bond equal to 55% of the Contract Price

- A Payment Bond equal to 55% of the Contract Price

*We are generally satisfied with the performance security proposed. We are currently reviewing the liability cap and will comment further when the Liquidated Damages numbers have been provided.*

5.2 Cashflow

We have shown the cashflow for the Project as included in the Financial Model in the graph below.
As indicated on the graph, circa 50% of the spend profile occurs in 2018 and 2019. At the beginning of 2018, circa 31% of the contract sum will have been expended. By the end of 2019, circa 80% will have been expended. In our analysis below, we therefore expect the greatest termination liabilities to be incurred during this time.

5.3 Generic Implications of Termination

In order to assist in evaluating the performance support being provided, we have identified below some generic implications related to DB CONTRACTOR default. This analysis assumes complete replacement of the DB CONTRACTOR but not the sub-contracts, which we assume would be kept whole until a new DB contractor was engaged. In order to identify the potential impact of the Vehicle Sub-Contractor defaulting, resulting in replacement, we have also shown potential liabilities resulting from this. It should be noted that Fluor is wrapping the liabilities in all default scenarios.

5.3.1 Availability of replacement contractors

The P3 market in the USA is now established and there are several companies involved in this form of procurement. With regard to a design-build contractor availability, there are a number of contractors in Maryland and the surrounding States who have the size and capability to undertake the Project. Specifically, there are 3 consortia other than PLTP short-listed for the Project, all of which have pre-
qualified to undertake and complete the Project. We therefore consider the ability to find a replacement contractor in the event of default should not be difficult.

In addition, the DB CONTRACTOR is comprised of 3 companies, each of whom has good experience in elements of LRT projects. In the event of a single member of the DB CONTRACTOR failing, we are satisfied that the remaining 2 parties could complete their works, meaning that the work to be completed by an incoming contractor would be reduced.

**Vehicle Subcontract**

We consider the availability of LRV suppliers to step-in to the CAF subcontract should CAF default during the design and construction phase to be reasonable. There were suppliers included in each of the other 3 bidding teams, who will be familiar with the Project and we consider would have the capability and desire to step-in to the contract, given their time and resource in bidding the Project previously.

When compared to projects where the LRV is supplied under a separate contract outside the PPPA, the coupling of the LRV Contract to the DB Contract and with a team where the LRV Supplier is also a part of the OMJV, as on this Project, provides multiple benefits. Project risks associated with the LRV delivery, is offset by the integrated delivery, implementation and maintenance regime of the DB CONTRACTOR and OMJV teams.

5.3.2 **Financial implications**

The financial implications are variable depending upon the circumstances necessitating replacement and the contract terms applicable. The principal elements which will incur costs are:

- the effects of delay (construction contract price escalation, new contractor mobilization costs)
- contractual recompense (supply chain claims, client claims)
- pricing differentials (difference between the original and the replacement contractor’s prices for the works) and process management costs (fees) associated with the replacement exercise
- re-tendering costs, including any additional design works as a result of defective work
- premium to accelerate schedule to achieve completion prior to Longstop Date
- funding requirements

It is not possible to put exact figures to each of the above individually, as each default scenario is generally bespoke. Turner & Townsend were involved with 2 DB Contractor default scenarios in the UK PPP market. These events resulted in additional costs between 10% and 30% of the incomplete contract sum at the time of default and were dependent on the time of default, the type of development and excluding legal costs. These examples were not related to LRT infrastructure and so we have taken this in
to account in our analysis, specifically by separating out the Vehicles. We are not aware of a DB Contractor default in the North American P3 market at this time.

5.4 Construction Management Arrangement

It is our understanding that the DB CONTRACTOR will self-perform circa 45% of the works with certain specialty work subcontracted out. The largest sub-trade value is for the vehicles, which amounts to circa 11% of the construction contract sum. We have indicated in the scenarios below the potential impact the default of the Vehicles Sub-Contractor would have, leading to a DB CONTRACTOR default but not termination.

5.5 Potential Termination Scenarios

5.5.1 Scenario 1 – Default at Financial Close (June 2016)

Should default occur at Financial Close, the resultant costs would largely be associated with the fees required to procure a new design-build contractor and reassign the already procured sub-trades to the new design-build contractor. At Financial Close, we would expect the time required for this to be less as a result of the fact that the physical works on site would not have commenced and so time associated with cost in place remeasures etc would not be required. We would estimate a time of 1-2 months to reprocure a contractor at this time but note that if the remaining two DB CONTRACTOR partners were to undertake the contract in the event of only one DB CONTRACTOR partner failing, this time would be minimal. Assuming a total replacement of the DB CONTRACTOR, there would be costs associated with either accelerating the Project to eliminate this delay, or with LDs following a delay to the Substantial Completion Date. We would expect minimal price increase to the construction costs, as the Project would have been recently bid and we would expect that the incoming DB CONTRACTOR would also submit a competitive price.

It is important to note that in this scenario the immediate costs associated with a default would relate to fees associated with re-procurement. Any uplift in pricing or delay damages costs would be incurred either monthly across the cashflow or at the end of the contract once the Revenue Service Availability (RSA) Date has passed.

Vehicle Subcontract

If the Vehicles Sub-Contractor were to default at Financial Close, we would expect the impact in time to be circa 2-3 months. The design rights for the vehicles would be held by the DB CONTRACTOR and so the time would be for procuring an alternative supplier to take on the contract.

5.5.2 Scenario 2 – Default at 65% cost to complete (March-April 2018)

This scenario would be substantially the same as Scenario 1, but could involve a longer delay, as it is possible the Project would be in delay prior to the default occurring and a remeasure of the works completed to establish the scope for an incoming contractor would be required. We would estimate a time
of 2 months to reprocure a contractor at this time but note that if the remaining two DB CONTRACTOR partners were to undertake the contract in the event of only one DB CONTRACTOR partner failing, this time would be minimal. There would likely be an uplift on the construction costs to complete, the amount being dependent on the reason for the default.

It is important to note that in this scenario the immediate costs associated with a default would relate to fees associated with re-procurement and potential costs associated with sub-trade payments. Any uplift in pricing or delay damages costs would be incurred either monthly across the cashflow or at the end of the contract once the RSA Date has passed.

**Vehicle Subcontract**

If the Vehicles Sub-Contractor were to default at this time, we would expect the impact in time to be circa 3-4 months. The design rights for the vehicles would be held by the DB CONTRACTOR and so the time would be for procuring an alternative supplier to take on the contract. In addition to procurement time, there would also be time required as a result of the fact that manufacturing of the vehicles would have commenced and the transfer of this work to a new subcontractor would be required.

### 5.5.3 Scenario 3 – Default at 40% cost to complete (March 2019)

In this scenario, the increased costs would likely be highest due to:

- Procurement costs for a new Design-Build Contractor and reassigning any already procured sub-trades to the new Design-Build Contractor
- Acceleration costs, as we would assume that the Project is in substantial delay prior to default (e.g. 6 months) and there would be additional delay while a new Design-Build Contractor is procured.
- LDs for the delayed period
- Dependent on the cause of default, there could be costs associated with repairing / redoing substandard work.
- If the Design-Build Contractor has defaulted due to the default of a number of sub-trades or a major subtrade, there could be additional costs associated with procuring new sub-trades and this could include an increased construction cost for the incoming sub-trades.

We would estimate a time of 3 months to reprocure a contractor at this time but note that if the remaining two DB CONTRACTOR partners were to undertake the contract in the event of only one DB CONTRACTOR partner failing, this time would be reduced.

It is important to note that in this scenario the immediate costs associated with a default would relate to fees associated with re-procurement and potential costs associated with sub-trade payments, to keep
them engaged on the Project. Any uplift in pricing or delay damages costs would be incurred either monthly across the cashflow or at the end of the contract once the RSA Date has passed.

**Vehicle Subcontract**

If the Vehicle Subcontractor were to default at this time, we would expect the impact in time to be circa 6 months. The design IP would remain with the DB CONTRACTOR and we anticipate the re-procurement time would be focussed on negotiating the take-over of vehicle manufacturing from CAF.

**5.5.4 Scenario 4 – Default at 20% cost to complete (December 2019)**

In this scenario, we would expect the origin of costs and impact to be similar to Scenario 3 but on a smaller scale with the main uplift in costs due to acceleration costs for completing the final works prior to a fixed date and in any case prior to the Long Stop Date. We would estimate a time of 3 months to reprocure a contractor at this time but note that if the remaining two DB CONTRACTOR partners were to undertake the contract in the event of only one DB CONTRACTOR partner failing, this time would be reduced.

Dependent on the cause of default, there could be costs associated with repairing / redoing substandard work. There could also be increased costs associated with procuring the final trades due to the knowledge that the Project is in difficulties and lack of interest in sub-trades to perform.

It is important to note that in this scenario the immediate costs associated with a default would relate to fees associated with re-procurement and potential costs associated with sub-trade payments. Any uplift in pricing or delay damages costs would be incurred either monthly across the cashflow or at the end of the contract once the RSA Date has passed.

**Vehicle Subcontractor**

If the Vehicle Subcontractor were to default at this time, we would expect the impact in time to be circa 6 months. The design IP would remain with the DB CONTRACTOR and we anticipate the re-procurement time would be focussed on negotiating the take-over of vehicle manufacturing from CAF.
5.6 Sensitivity analysis

5.6.1 DB CONTRACTOR default and replacement

We have shown below our sensitivity analysis for the DB CONTRACTOR default and replacement, assuming the sub-contractors remain whole. It should be noted that these scenarios demonstrate a worst case estimate of liabilities.

<table>
<thead>
<tr>
<th></th>
<th>Scenario 1</th>
<th>Scenario 2</th>
<th>Scenario 3</th>
<th>Scenario 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Financial Close</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Cost to complete</strong></td>
<td>2,009,873,600</td>
<td>1,318,408,650</td>
<td>777,572,070</td>
<td>502,468,400</td>
</tr>
<tr>
<td><strong>Estimated fees (excluding Legal fees)</strong></td>
<td>500,000</td>
<td>1,500,000</td>
<td>2,500,000</td>
<td>3,000,000</td>
</tr>
<tr>
<td><strong>Premium assumed for incoming Main Contractor (estimated 45% of Contract Sum)</strong></td>
<td>3% 27,133,294</td>
<td>15% 88,992,584</td>
<td>30% 104,972,229</td>
<td>25% 56,527,695</td>
</tr>
<tr>
<td><strong>Premium assumed for Principal Sub-Contractor (Vehicles - 11%)</strong></td>
<td>5% 11,482,890</td>
<td>10% 14,927,757</td>
<td>15% 17,224,335</td>
<td>15% 8,612,168</td>
</tr>
<tr>
<td><strong>Premium assumed for remaining sub-trades (estimated 44% of Contract Sum)</strong></td>
<td>0% 0  5% 29,004,990</td>
<td>10% 34,213,171</td>
<td>10% 22,108,610</td>
<td></td>
</tr>
<tr>
<td><strong>Construction Phase deductions estimate</strong></td>
<td>0 540,000</td>
<td>810,000</td>
<td>1,080,000</td>
<td></td>
</tr>
<tr>
<td><strong>Delay LD’s in months for re-procurement</strong></td>
<td>1 6,191,830</td>
<td>2 12,383,659</td>
<td>3 18,575,489</td>
<td>3 18,575,489</td>
</tr>
<tr>
<td><strong>Delay LD’s in months relating to poor performance</strong></td>
<td>0 0 2 12,383,659</td>
<td>6 37,150,978</td>
<td>9 55,726,466</td>
<td></td>
</tr>
<tr>
<td><strong>Total potential liability</strong></td>
<td>45,308,013</td>
<td>159,732,650</td>
<td>215,446,202</td>
<td>165,630,427</td>
</tr>
<tr>
<td><strong>Performance Security</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Letter of Credit - 50% of LDs stepping up to 100% of LDs</strong></td>
<td>28,317,691</td>
<td>28,317,691</td>
<td>28,317,691</td>
<td>56,635,381</td>
</tr>
<tr>
<td><strong>Performance Bond - 55% of contract price</strong></td>
<td>1,105,430,480</td>
<td>1,105,430,480</td>
<td>1,105,430,480</td>
<td>1,105,430,480</td>
</tr>
<tr>
<td><strong>Payment Bond - 55% of contract price</strong></td>
<td>1,105,430,480</td>
<td>1,105,430,480</td>
<td>1,105,430,480</td>
<td>1,105,430,480</td>
</tr>
<tr>
<td><strong>Capped liability at 35% of Contract Sum</strong></td>
<td>703,455,760</td>
<td>703,455,760</td>
<td>703,455,760</td>
<td>703,455,760</td>
</tr>
<tr>
<td><strong>Total potential liability as % of Liability Cap</strong></td>
<td>6% 23% 31% 24%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Due to the unpredictability of legal fees, which are dependent on the scenario leading to default and can vary considerably depending on unknown factors, our analysis only includes fees for SPV costs, finance costs, technical advisors, insurance advisors and others depending on the root cause of the default.

The above scenarios demonstrate that the liability cap and performance bonding in place is sufficient to cover estimated potential liabilities in all scenarios.
5.6.2 Vehicle Supplier default and replacement

We have shown below the bespoke scenario where the vehicle sub-contractor defaults and is replaced. We have assumed that the DB CONTRACTOR and the remaining Sub-Contractors remain in place. We have included potential cost impacts to both the DB CONTRACTOR and remaining Sub-Contractors as a result of disruption caused by the Vehicle Sub-Contractor default.

We note that all liabilities associated with Vehicle Sub-Contractor default are being wrapped by Fluor. It should be noted that the scenarios demonstrate a worst case estimate of liabilities.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Scenario 1</th>
<th>Scenario 2</th>
<th>Scenario 3</th>
<th>Scenario 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Close</td>
<td>229,657,800</td>
<td>149,277,570</td>
<td>114,828,900</td>
<td>57,414,450</td>
</tr>
<tr>
<td>65% cost to complete</td>
<td>114,828,900</td>
<td>75,000</td>
<td>1,250,000</td>
<td>1,000,000</td>
</tr>
<tr>
<td>50% cost to complete</td>
<td>57,414,450</td>
<td>35,000</td>
<td>62,500,000</td>
<td>50%</td>
</tr>
<tr>
<td>25% cost to complete</td>
<td>28,707,225</td>
<td>17,500,000</td>
<td>23,750,000</td>
<td>57,414,450</td>
</tr>
<tr>
<td>Premium assumed for incoming Vehicle Supplier</td>
<td>11,482,890</td>
<td>35%</td>
<td>52,247,150</td>
<td>50%</td>
</tr>
<tr>
<td>Costs associated with DBJV disruption</td>
<td>3,000,000</td>
<td>10,000,000</td>
<td>15,000,000</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Costs associated with remaining sub-trades disruption</td>
<td>0</td>
<td>5,000,000</td>
<td>7,500,000</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Delay LD's in months relating to procurement</td>
<td>3</td>
<td>18,575,489</td>
<td>24,767,318</td>
<td>37,150,978</td>
</tr>
<tr>
<td>Total potential liability</td>
<td>33,408,379</td>
<td>92,764,468</td>
<td>118,315,428</td>
<td>68,375,313</td>
</tr>
</tbody>
</table>

Due to the unpredictability of legal fees, which are dependent on the scenario leading to default and can vary considerably depending on unknown factors, our analysis only includes fees for SPV costs, finance costs, technical advisors, insurance advisors and others depending on the root cause of the default.

5.7 Letter of Credit

The following should be noted in considering an appropriate LC value:

- Ability to cover RSA Delay LDs in the event of non-termination default that results in delay to the RSA Date.

- Immediate liabilities that arise in the event of a DB CONTRACTOR default leading to termination. These include SPV costs, finance costs, reprocurement costs and fees. In addition, it is prudent to allow for a month of cashflow to sub-trades, in order to keep them engaged and mobilized on site as appropriate, with the assumption that the defaulting Contractor may not have made the final payments to the sub-trades.
• Delay costs, sized in accordance with the daily LD value, for any period of time after the contract RSA Date and before a payout from the Performance and/or Payment Bond can be received. For the purposes of this assessment, we assume that it would take 12 months after default to receive payment from Bond security.

• Uplift in monthly cashflow payments until such time as monies can be received from Bond security.

• Headroom created in the cumulative capped cashflow under the DB Agreement by the fact that a reduced level or zero funds will have been drawn between the time of default and the time of engagement of a new Contractor.

We confirm that the LC will cover RSA Delay LDs and Final Completion Delay LDs in the event of non-termination default resulting in delay to the RSA Date and/or Final Completion Date.

In our analysis above, Scenario 3 provides the worst case. Taking this scenario, the potential liabilities in the first 12 months after a default leading to termination can be summarized as follows:

• The estimated fees are assumed as $2,500,000.

• The potential uplift is estimated at circa $156m for the remaining works period. In Scenario 3 we have used the cashflow to determine that termination occurs in March 2019 of the schedule and that there are therefore 37 months remaining on the contract schedule. We have assumed that there will be a period of 3 months with minimal expenditure while a new DB Contractor is procured and thereafter, there will be a steep curve as the new DB Contractor requires immediate cashflow to mobilize (assumed $15m) and accelerates the Project to minimize any further delay. We have assumed that the remaining uplift of $141m is spread over the remaining 37 months for remobilization and acceleration costs. This equates to circa $3,810,810 per month.

The Letter of Credit will provide $28,317,691 in immediate liquid support. However, we also assume that prior to the default, the works will be behind the Financial Model cashflow by as much as $100m, providing an additional source of immediate liquidity. The total liability in the first 12 months after default is estimated to be circa $15m for immediate mobilization cashflow + $3,810,810 x 12 months + $2,500,000 for fees = $63,229,730. The Letter of Credit is sufficient to cover 45% of the potential liabilities for the first 12 months after termination.

On this Project, where the monthly cashflow in the months leading to Scenario 3 is circa $40,000,000, it is expected that the additional cashflow headroom derived from the expected construction delay would provide sufficient buffer to cover the majority of the construction price uplift during the first 12 months after default.

The Letter of Credit is sufficient to cover RSA Delay LDs and/or Final Completion Delay LDs. In addition, when taken with the cashflow headroom derived from the anticipated delay in the worst case scenario, it is expected that there will be sufficient liquid security to cover the immediate liabilities prior to the Performance Bond paying out.
We have reviewed the DB Contract Performance Security package and we are satisfied that it is appropriate for the Project.

5.8 O&M Contractor Analysis

Summary of the Performance Security

The performance security to be provided by the O&M Contractor is summarized as follows:

- one or more standby letters of credit substantially in the form attached as Annex 4 hereto (the “Concessionaire O&M Security”), in an aggregate amount equal to 50% of the “O&M Contractor Operating Annual Turnover,” calculated as the then-current (indexed) O&M Monthly Availability Payments payable to O&M Contractor for the relevant Contract Year but excluding the O&M Lifecycle Payments, and disregarding any deductions, withholdings or downward adjustments permitted hereunder; and

- a guarantee from Fluor Corporation, Alternate Concepts, Inc. and CAF, S.A. (the "Guarantors"), guaranteeing all of the O&M Contractor’s obligations arising under the O&M Contract.

Generic Implication of termination

In order to assist in evaluating the performance support being provided in the O&M Contract, we have identified below some generic implications related to O&M Contractor default during the Operational Term. We would note that we are not aware of any instances of O&M Contractor default in the North American P3 market at this time. As with the DB Contractor analysis, we have broken out potential liabilities associated with Vehicle Supplier default and replacement.

Availability

As with the CJV analysis, P3 is an established form of O&M service delivery in North America. There are several Service Providers in the USA market who are active in Maryland and have the capacity and capability to deliver the services for this contract. We therefore consider it should not be onerous to find an alternative O&M Contractor with the capability to deliver the service obligations on this contract.

Time

Although there are several time variables relating to the procurement requirements involved in replacing an O&M Contractor, we estimate that it could take circa 4-6 months to re-procure an O&M Contractor with an additional 8-10 weeks for the new O&M Contractor to mobilize. During this time, the Concessionaire would be required to manage the delivery of services to the Project, either with short term contracts or using the incumbent supply chain. Costs associated with this are for the account of the defaulting sub-contractor, up to their liability cap.
Financial Implications

To assess the financial implications of replacing the O&M Contractor, the following variables need to be considered:

- Re-procurement Costs
- Premium applied by incoming O&M Contractor
- Backlog Maintenance costs

Re-procurement Costs

The total cost of procuring a replacement O&M Contractor will be variable depending on the circumstances under which the existing provider is terminated and the rates applied by legal, financial and technical advisors, as well as the time commitment from the Concessionaire. It is anticipated that procurement costs would form a relatively small part of the overall costs but would need to be financed immediately.

Premium applied by incoming O&M Provider

Again the circumstances under which a new O&M Contractor is appointed will dictate the level of any premium to the pricing of Maintenance and Life Cycle Works. For example, if termination occurred early in the concession period, it could be anticipated that a pricing premium would be small. On the other hand, if the maintenance and renewal obligations had been underperformed for a period of time, thereby leading to a termination of the existing O&M Contractor, there may be a greater premium applied due to the unknown implications of this poor service performance.

Backlog Maintenance costs

It is possible that poor performance of a defaulting O&M Contractor will lead to backlog maintenance works being required immediately, to avoid excessive deductions under the Payment Mechanism. Although the protocols in place for inspection and approval of maintenance and renewal works should limit this exposure, it is a cost that needs to be considered in the calculation of potential liabilities associated with default.

Conclusion

Our experience is there have been very few replacements of O&M Contractors for default scenarios in the 15-20 years that P3 has been in the operational phase around the globe. Analysis suggests that a range of 5-15% uplift of the annual Base O&M fee and remaining life cycle renewal costs for the remainder of the concession at the time of termination can be modelled as a potential liability in a default scenario. Advisors fees and potential backlog maintenance also need to be added to these liabilities. For the replacement of the Vehicle Supplier we estimate that liabilities could be between 7.5-25% of the Vehicle O&M fee and remaining life cycle costs.
Scenario Testing

We have shown below our sensitivity analysis for the O&M Contractor default and replacement. We have also included a separate analysis for vehicle supplier default and replacement. It should be noted that the scenarios demonstrate a worst case estimate of liabilities.

<table>
<thead>
<tr>
<th>Liability - Termination</th>
<th>Scenario 1</th>
<th>Scenario 2</th>
<th>Scenario 3</th>
<th>Scenario 4</th>
<th>Scenario 5</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Excluding Vehicles</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>O&amp;M Annual Service</td>
<td>$33,878,370</td>
<td>$33,878,370</td>
<td>$33,878,370</td>
<td>$33,878,370</td>
<td>$33,878,370</td>
</tr>
<tr>
<td>Payment (un-indexed)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Lifecycle</td>
<td>$139,465,413</td>
<td>$122,678,823</td>
<td>$94,450,312</td>
<td>$45,470,694</td>
<td>$22,109,783</td>
</tr>
<tr>
<td>Backlog Maintenance</td>
<td>$500,000</td>
<td>$1,000,000</td>
<td>$1,500,000</td>
<td>$2,000,000</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Estimated Deductions</td>
<td>$500,000</td>
<td>$750,000</td>
<td>$1,250,000</td>
<td>$1,250,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Uplift in Costs by incoming O&amp;M Contractor</td>
<td>2.5%</td>
<td>5%</td>
<td>7.5%</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>$24,660,616</td>
<td>$40,012,311</td>
<td>$45,196,939</td>
<td>$38,425,439</td>
<td>$28,725,245</td>
</tr>
<tr>
<td>Estimated professional fees</td>
<td>$500,000</td>
<td>$750,000</td>
<td>$1,000,000</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td><strong>Total Potential Additional Cost - excluding vehicles</strong></td>
<td>26,160,616</td>
<td>42,512,311</td>
<td>48,946,939</td>
<td>43,175,439</td>
<td>33,725,245</td>
</tr>
<tr>
<td><strong>Vehicles</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>O&amp;M Annual Service</td>
<td>2,497,618</td>
<td>2,497,618</td>
<td>2,497,618</td>
<td>2,497,618</td>
<td>2,497,618</td>
</tr>
<tr>
<td>Payment (un-indexed)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Lifecycle</td>
<td>38,927,091</td>
<td>33,628,503</td>
<td>18,344,525</td>
<td>14,839,866</td>
<td>9,846,970</td>
</tr>
<tr>
<td>Backlog Maintenance</td>
<td>200,000</td>
<td>400,000</td>
<td>750,000</td>
<td>1,000,000</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Estimated Deductions</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
<td>Included</td>
</tr>
<tr>
<td>Uplift in Costs by incoming Vehicle Supplier</td>
<td>$0</td>
<td>7.5%</td>
<td>10%</td>
<td>15%</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>$6,268,565</td>
<td>$5,580,880</td>
<td>$5,972,407</td>
<td>$5,583,765</td>
<td></td>
</tr>
<tr>
<td>Estimated professional fees</td>
<td>250,000</td>
<td>400,000</td>
<td>500,000</td>
<td>500,000</td>
<td>500,000</td>
</tr>
<tr>
<td><strong>Total Potential Additional Cost - vehicles</strong></td>
<td>450,000</td>
<td>7,068,565</td>
<td>6,830,880</td>
<td>7,472,407</td>
<td>7,083,765</td>
</tr>
<tr>
<td><strong>Total Potential Additional Cost - combined</strong></td>
<td>26,610,616</td>
<td>49,580,876</td>
<td>55,777,819</td>
<td>50,647,846</td>
<td>40,809,010</td>
</tr>
</tbody>
</table>

Due to the unpredictability of legal fees, which are dependent on the scenario leading to default and can vary considerably depending on unknown factors, our analysis only includes fees for SPV costs, finance costs, technical advisors, insurance advisors and others depending on the root cause of the default.
5.9 Conclusion

We have reviewed the performance security provided under the O&M Contract. Our analysis of the potential liabilities that could arise from the default of the O&M Contractor, including vehicle supplier, shows that the liability cap and liquid security proposed is reasonable for the Project.
6 Payment Mechanism Review

We have reviewed Exhibit 4D – Payment Mechanism, to the PPPA. We have identified below by exception the areas of the mechanism which may present a risk to the Consortium and therefore the Lenders and also confirmed where we consider the drafting to be acceptable and on market.

6.1 Structure of the Mechanism

The structure of the payment mechanism follows a recognized form whereby a monthly payment is made to the Consortium for performance of the services in accordance with the criteria set out in the output specification, with adjustments made in respect of any deductions arising out of a failure to meet these requirements.

The monthly Availability Payment is calculated by:

- Adding:
  - The general portion of the Monthly Availability Payment for the relevant Contract Month;
  - The operational portion of the Monthly Availability Payment for the relevant Contract Month, adjusted for escalation;
  - The maintenance portion of the Monthly Availability Payment for the relevant Contract Month, adjusted for escalation;
  - Insurance payment for the relevant Contract Month;
  - Lifecycle Payment for the relevant Contract Month

- Subtracting:
  - Sum of all Deductions for the relevant Contract Month for Operations Availability Noncompliance Events and Activity Noncompliance Events

- Adjustments for:
  - Electricity Painshare/Gainshare
  - Quarterly Volume Adjustment if applicable.
If this calculation results in a negative payment, the Monthly Availability Payment for that Contract Months shall be deemed to be zero, but any Quarterly Volume Adjustments will be carried over to the next payment period until the entire amount has been recovered by the Owner.

The structure of the mechanism is considered to be well understood in the market and reflects what we would expect to see for a LRT P3 project.

6.2 Quarterly Volume Adjustment

A quarterly Volume Adjustment comprised of quarterly Operating Volume Adjustment and an quarterly Maintenance Volume Adjustment shall be determined and applied to the Availability Payment to account for variations in Total Scheduled Operating Hours (TSOH) and Total Scheduled LRV Miles (TSVM) relative to the Total Baseline Operating Hours (TBOH) and Total Baseline LRV Miles (TBVM) in each 3 contract month period. The Quarterly Volume Adjustment will only reflect changes in the amount of service requested by Owner. Total Scheduled Operating Hours and Total Scheduled LRV Miles include Special Event Service and Minor Service Changes. Major Service Changes will not be directed through a Quarterly Volume Adjustment under this section.

6.2.1 Total Baseline Operating Hours and Total Baseline LRV Miles

Table 1 in Exhibit 4D - Payment Mechanism is for the TBOH and TBVM for each Service Level. Every 3 Contract Months, the TSOH and TSVM are compared to the TBOH and TBVM and:

- If Special Event Service Support Staff have been requested by the Owner in the previous 3-Contract Month period then the Quarterly Operating Volume Adjustment will be calculated, and the Special Event Support Service Staff adjustments will be included.

- If the TSOH are greater than 100.1% and less than 105% or less than 99.9% and greater than 95% of the Total Baseline Operating Hours during the 3-Contract Month period then the Concessionaire shall calculate the Quarterly Operating Volume Adjustment.

- If the TSVM are greater than 100.1% and less than 105% or less than 99.9% and greater than 95% of the Total Baseline Vehicle Miles during the 3-Contract Month period then the Concessionaire shall calculate the Quarterly Maintenance Volume Adjustment.

- If the TSOH and TSVM are greater than 105% or less than 95% of the TBOH and TBVM respectively, than an adjustment will be made to the Availability Payments by Change Order upon demand of either Party.

6.2.2 Calculation of Quarterly Volume Adjustment

The Quarterly Volume Adjustment is the sum of the Quarterly Operating Volume Adjustment and the Quarterly Maintenance Volume Adjustment.
The Quarterly Operating Volume Adjustment (AOVA) is calculated as follows:

\[ QOVA = (TSOH - TBOH) \times VOLO \times ESVO + (SESS \times SESH \times ESVO) \]

TSOH: means the total Scheduled Operating Hours during the relevant 3 Contract Month period.

TBOH: means the Total Baseline Operating Hours for the Service Level in effect during the relevant 3 Contract Month period.

VOLO: Operating Volume Adjustment unit price per operating hour for the Service Level in effect during the relevant 3-Contract Month period as provided in Section 3 of Appendix A to Exhibit 4D – Payment Mechanism.

ESVO: means the VOLO Escalation Factor applicable to the relevant Contract Year

SESS: means the cost per hour of Special Event Service Support Staff

SESH: means the total 3-Contract Month period Special Event Service Support Staff hours

The Quarterly Maintenance Volume Adjustment (QOVA) is calculated as follows:

\[ QMVA = (TSVM - TBVM) \times VOLM \times ESVM \]

TSVM: means the Total Scheduled LRV Miles during the relevant 3-Contract Month Period

TBVM: means the Total Baseline LRV Miles for the Service Level in effect during the relevant 3-Contract Month period

VOLM: means the Maintenance Volume Adjustment unit price for LRV mile in effect during the relevant 3 Contract Month period.

ESVM: means the VOLM Escalation Factor applicable to the relevant Contract Year

Every 3 months, the Concessionaire shall submit a report detailing the calculation of the Quarterly Volume Adjustment for the Owner to review and approve within the 10 days following the end of each 3-Contract Month period. The Payment Mechanism sets out the details for submitting and approving the report and the Adjustment.

*In our opinion, this process and calculation of the Quarterly Volume Adjustment is considered to be reasonable and suitable for this Project.*
6.3 Calculation of Monthly Lifecycle Payment

The Monthly Lifecycle Payment is calculated as the sum of the Non LRV Lifecycle Payment for that Contract Month and the Total LRV Lifecycle Payment both subject to escalation.

The Total LRV Lifecycle Payment is calculated as the sum of the Initial LRV Lifecycle Payment plus the Additional LRV Lifecycle Payment.

The Initial LRV Lifecycle Payment will be as per the scheduled payment in Appendix A Table 4.2 column C unless the actual cumulative Initial Fleet LRV Miles for the Contract Month is greater than the Scheduled Cumulative Initial Fleet LRV Miles, then the Concessionaire also has the right to receive the Initial LRV Lifecycle Payment for the following month. For each subsequent month, the Concessionaire will receive the Initial LRV Lifecycle Payment when the Actual Cumulative Initial Fleet LRV Miles is greater than the Scheduled Cumulative Initial Fleet LRV Miles in Appendix A table 4.2 column B.

The additional LRV Lifecycle Payment is calculated based on the values in Appendix A table 4.4, where a greater payment is also allowed if the Actual Cumulative Additional Fleet LRV Miles for the Contract Month is greater than the Scheduled Cumulative Additional Fleet LRV Miles. The additional costs are also set out in Appendix A, table 4.4.

If there is a change order and the number of LRV’s are greater than the number required to deliver the Service, then the owner shall either:

- Agree that all the LRV’s may be utilized by the Concessionaire to deliver the new Service Level, or
- That the Service Level is moving from Service Level 3 to Service Level 2 and the Additional Lifecycle Payment to those LRVs will no longer apply
- That the Service level is moving from Service Level 2 to Service Level 1 and the Initial Lifecycle Payment will be adjusted accordingly.
- That some other number of LRVs may be utilized by Concessionaire to deliver the new Service Level in which case the calculation of the Lifecycle Payment will be agreed by a Change Order.

*This is a reasonable approach for calculating the Lifecycle Payment.*

6.4 Escalation

Escalation is calculated taking into account Escalation Factors for Maintenance, Operations, LRV Lifecycle, Non-LRV Lifecycle, VOLO, VOLS and General Escalation.

*This is a detailed method for calculating escalation. We have confirmed with the Consortium that the methodology is understood by them and how it will apply.*
6.5 Changes in the Service Level and Partial Years

The payment mechanism details how changes in the Service Level and in partial years is dealt with.

*The drafting is clear and is considered to be suitable for this project.*

6.6 Deductions

Upon the occurrence of any Operations Availability Noncompliance Event or Activity Noncompliance Event, the Owner shall be entitled to make a deduction from the relevant Monthly Availability Payment. The aggregate of all Deductions shall be the Un-adjusted Monthly Availability Payment for that month.

Deductions shall be the sum of the Operations Availability Deductions and the Noncompliance Event Deductions.

During the first 3 months of the period directly after the Revenue Service Availability Date, the amount of any Operations Availability Deductions and Deductions with respect to Activity Noncompliance Events occurring in the provision of any O&M Work shall be doubled.

*Notwithstanding there will be a testing and commissioning period prior to start of Revenue Service period, the O&M Contractor will minimize noncompliance during this period. The O&M Contractor has made allowances in their risk contingencies.*

6.6.1 Availability Deductions

These will be calculated by multiplying the Operations Availability Deduction Factor to the sum of the general, operational and maintenance portions of the Availability Payment (including escalation).

The Operations Availability Deduction Factors are set out in Schedule B of Exhibit 4D – Payment Mechanism.

*We have undertaken a sensitivity analysis of the availability component of the payment mechanism in the sections below.*

6.6.2 Activity Noncompliance Events

Where an Activity Noncompliance Event has a Response or a Rectification Time, an Activity Noncompliance Event shall only occur if the Event in question has not been responded to within the applicable Response Time or rectified within the applicable Rectification Time. A deduction will be levied for each subsequent period of time equal to the Rectification Time in which the Activity Noncompliance Event is not rectified. Where the Activity Noncompliance Event has no Response or Rectification Time, an Activity Noncompliance Event shall occur upon the occurrence of the Event in question.
If on any single day during a Contract Month, the Daily Operational Performance Factor for that day is less than 80% than a deduction of $25,000 will be levied.

*This is a typical method for calculating Deductions for Availability and Activity Noncompliance Deductions and is considered to be suitable for this project.*

### 6.7 Noncompliance Points

Noncompliance Points shall be allocated for Operations Availability Noncompliance events and Activity Noncompliance Events which occur during the O&M Period. These are identified in Appendix C to Exhibit 4D – Payment Mechanism. The Activity Noncompliance Points are shown in the table in section 6.4.2.

Noncompliance Points for Operations Availability Noncompliance are as shown in the table below:

<table>
<thead>
<tr>
<th>MOPF (Monthly Operations Performance Factor)</th>
<th>Noncompliance Points</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.960 and above</td>
<td>0</td>
<td>Monthly</td>
</tr>
<tr>
<td>0.950 to 0.959</td>
<td>120</td>
<td></td>
</tr>
<tr>
<td>0.940 to 0.949</td>
<td>360</td>
<td></td>
</tr>
</tbody>
</table>
We have commented further on the level of noncompliance points in our Payment Mechanism Sensitivity Analysis below.

### 6.8 Monthly Operations Performance Factor

The Monthly Operations Performance Factor (MOPF) is calculated at 100% less the ratio of sum of all Non-Conformance Factors for the month to the total number of trips in the month.

The Non-Conformance Factors are calculated according to the table in Appendix D to Exhibit 4D – Payment Mechanism. These are dependent on how late a train is into the station whether it leaves the station early (i.e. assessing times between trains), whether the train has one or more LRVs missing, whether a train does not reach the ending terminal station and whether it does not depart from the starting terminal.

If multiple Non-Conformance Events occur during that Trains scheduled Trip, multiple Non-Conformance Factors may be applied. The maximum number of Non-Conformance Factors for any scheduled Train Trip is 2.5.

This is considered a reasonable mechanism for calculating Operations Performance.

### 6.9 Energy Pain-share / Gain-share

The Owner will retain the risk of changes in electricity prices during the O&M Period in order to mitigate owner commodity price risk for the Project.

A pain-share / gain-share approach will be used to promote energy-efficient solutions during the O&M period. This will be based on the Concessionaires commitment regarding maximum power usage for Service Levels 1 through 3 during each month of the O&M period separately identifying annual volume consumption for Traction Power and Electricity for Other Uses.

If the Concessionaires actual electricity consumption for any given year is less than the adjusted maximum power usage commitment amount for either Traction Power or Electricity for Other Uses,
Concessionaire will be entitled to a bonus payment for energy efficiency for the relevant power usage commitment. The bonus payment will be equal to the lesser of a) Owners relevant average rate for electricity consumption that year for that power type and b) 130% of the relevant rate for electricity multiplied by 70% of the electricity volume consumption savings. Owner will pay Concessionaire 1/12 of the annual energy bonus payment in each of the 12 months following Owner’s receipt of the annual Electrical Power Usage Report.

The inverse will apply if the Concessionaires actual electricity consumption for any given year is higher than the adjusted maximum power usage commitment amount for either Traction Power or Electricity for Other Uses, the Owner will make an energy efficiency deduction from the Concessionaire's Availability Payments. The deduction will be equal to the lesser of a) Owner’s relevant average rate for electricity consumption for that power type for that year and b) 130% of the relevant rate for electricity multiplied by 70% of the additional electricity consumption amount. Owner will subtract 1/12 of the annual energy efficiency deduction from the APs in each of the 12 months following Owner receipt of the annual Electrical Power Usage Report.

This is a typical structure for a Pain-share / Gain-share mechanism.

6.10 Sensitivity Analysis

We have carried out an analysis to test the sensitivity of the payment mechanism. We test this by modeling the deductions component of the payment mechanism for activity noncompliance and operations availability.

To model the activity noncompliance we have used various Performance criterion that have been identified in tables 2.2 thru 2.7 to speculate the total number of noncompliance points. With this speculative number we then calculate the total noncompliance as per Exhibit 4D Appendix B and Appendix C. We have simulated this using a Monte Carlo simulation, modelling the criterions with a triangular based distribution and by running 10,000 iterations. For operations availability we test by modelling scenarios based on the Exhibit 4D, Appendix D – Table 1, to calculate the total number of nonconformance factors that may be accrued on a day. The sensitivity analysis has been discussed in more detail below.

6.10.1 Activity Noncompliance Event Deductions

We have generated three scenarios to test the sensitivities of activity noncompliance on monthly payments as outlined below. In testing these scenarios we have made the following assumptions:

- that the noncompliance events are assessed as a result of response time and rectification time failing to be met
- the total noncompliance points are cumulative of any or all performance criterion that is identified in Section 2.2
A Monte Carlo simulation technique has been adopted to estimate the probability distribution of the deduction. Each performance criterion was simulated with 10,000 iterations using a triangular distribution or a uniform distribution, which are two of the most commonly used distribution estimation techniques in risk assessment.

Scenario 1 - Good performance

Of the performance criterions that are assessed, we assume that the probability of an event not being cured for all types of Service Noncompliance (SNC) and Quality Noncompliance (QNC) (each minor, medium or major) is low. The table below presents the range of monthly deductions assessed under this scenario. It should be noted that we expect the O&M Contractor to operate at a very good or good level of performance.

<table>
<thead>
<tr>
<th>Range</th>
<th>Monthly Deductions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum</td>
<td>$1000</td>
</tr>
<tr>
<td>Mean</td>
<td>$255</td>
</tr>
<tr>
<td>Standard Deviation</td>
<td>$183</td>
</tr>
<tr>
<td>90th Percentile Range</td>
<td>$0 - $500</td>
</tr>
</tbody>
</table>
Scenario 2 - Average performance

Of the performance criterions that are assessed we assume that:

- for all QNC (minor, medium or major) probability of not being cured is low
- for all SNC (minor, medium or major) probability of not being cured is medium

The table below presents the range of monthly deduction assessed under this scenario.

<table>
<thead>
<tr>
<th>Range</th>
<th>Monthly Deductions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum</td>
<td>$28,250</td>
</tr>
<tr>
<td>Mean</td>
<td>$5,761</td>
</tr>
<tr>
<td>Standard Deviation</td>
<td>$4,190</td>
</tr>
<tr>
<td>90th Percentile Range</td>
<td>$1,250 - $13,000</td>
</tr>
</tbody>
</table>
Scenario 3 - Poor performance

Of the performance criterions that are assessed we assume that:

- for all QNC (minor, medium or major) probability of not being cured is low
- for all SNC (minor, medium or major) probability of not being cured is high

The table below presents the range of monthly deduction assessed under this scenario.

<table>
<thead>
<tr>
<th>Range</th>
<th>Monthly Deductions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum</td>
<td>$84,250</td>
</tr>
<tr>
<td>Mean</td>
<td>$41,208</td>
</tr>
<tr>
<td>Standard Deviation</td>
<td>$10,624</td>
</tr>
<tr>
<td>90th Percentile Range</td>
<td>$24,500 - $59,500</td>
</tr>
</tbody>
</table>
6.10.2 Operations Availability Deduction

We have generated three scenarios to test the sensitivities of the operations availability deductions on monthly payments as outlined below. In testing these scenarios we have made the following assumptions:

- we have assumed that a typical contract month will be of 30 days with 22 working days and 8 weekend days (Saturday and Sunday)
- the total number of trips scheduled in a week is calculated based on the service level hours and headways as noted in Exhibit 3.1 and are based on a Service level 1 operation
- we have used an average annual service payment of $133,500,000, which assumes average annual cost in nominal dollars across the service period for a Service level 1 operation
- we have modelled the deduction for only the first month of operation (n=1)
- we have assumed an escalation factor of 1 for the purposes of modelling
- we have assumed that Eastbound and Westbound direction of operation is independent of each other, and therefore the sensitivities noted below are reflective of one direction of operation
Scenario 1 – Good performance

The table below shows the total number of nonconformance factors that may be accrued on a day based on the Exhibit 4D, Appendix D – Table 1. We note that we expect the O&M Contractor to operate at a Very Good or Good level of performance. Assume that under a Good performance scenario the following event occurs in a day:

- during any period when the headway is 10 minutes or less we observe 6 un-sequenced trains – frequent periods in a day

<table>
<thead>
<tr>
<th>Event</th>
<th>Total NCF accrued</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Un-sequenced train – frequent periods</td>
<td>6x0.8 = 4.8 (per day)</td>
</tr>
<tr>
<td>Total NCF per day</td>
<td>4.8</td>
</tr>
<tr>
<td>Total NCF₁ per month</td>
<td>4.8x30 =144</td>
</tr>
</tbody>
</table>

Based on the monthly TRPn and monthly NCF calculated above, the total monthly operations availability deductions are shown in the table below:

<table>
<thead>
<tr>
<th>Inputs (monthly)</th>
<th>Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOPF₁</td>
<td>1- (144/3002) = 0.952</td>
</tr>
<tr>
<td>OADF₁ (corresponding to the MOPF₁)</td>
<td>0.5%</td>
</tr>
<tr>
<td>OAD₁ (for the first month of operation)</td>
<td>133,500,000/12x(0.5/100) = $55,625</td>
</tr>
</tbody>
</table>

Scenario 2 – Average Performance

The table below shows the total number of nonconformance factors that may be accrued on a day based on the Exhibit 4D, Appendix D – Table 1. Assume that under an Average Performance scenario the following events occur in a day:
- during any period when the headway is 10 minutes or less we observe 4 un-sequenced trains – frequent periods in a day
- during any period when the headway is more than 10 minutes we observe 4 late trains – infrequent periods in a day

<table>
<thead>
<tr>
<th>Event</th>
<th>Total NCF accrued</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Un-sequenced train – frequent periods</td>
<td>4x0.8 = 3.2 (per day)</td>
</tr>
<tr>
<td>4 Early departures – infrequent periods</td>
<td>4x0.8 = 3.2 (per day)</td>
</tr>
<tr>
<td>Total NCF per day</td>
<td>3.2+3.2 = 6.4</td>
</tr>
<tr>
<td><strong>Total NCF_1 per month</strong></td>
<td><strong>6.4x30 = 192</strong></td>
</tr>
</tbody>
</table>

Based on the monthly TRP\_n and monthly NCF calculated above the total monthly operations availability deductions are shown in the table below:

<table>
<thead>
<tr>
<th>Inputs (monthly)</th>
<th>Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOPF_1</td>
<td>1- (192/3002) = 0.936</td>
</tr>
<tr>
<td>OADF_1 (corresponding to the MOPF_1)</td>
<td>3%</td>
</tr>
<tr>
<td>OAD_1 (for the first month of operation)</td>
<td>133,500,000/12x(3/100) = $333,750</td>
</tr>
</tbody>
</table>

Scenario 3 – Poor Performance

The table below shows the total number of nonconformance factors that may be accrued on a day based on the Exhibit 4D, Appendix D – Table 1. Assume that in a Poor Performance scenario the following events occur:

- the concessionaire incurs a delay or a service interruption on the line and the rectification and restoration of the normal service takes more than the stipulated time as approved in the operating plan, and as per Exhibit 4D, Appendix D – Table 1 item 6 this may lead to accrual of NCF as described below (A):
  - 1 incomplete trip if the train has to be taken off the service under the nonconforming scenario mentioned above
  - 2 trains have to depart early to make up for the service delay on the line
- 6 additional trains are delayed on the line as a result leading to un-sequenced trains – frequent periods
- this event described above happens 3 times in a month
- in addition the following events occur (B):
  - during any period when the headway is 10 minutes or less we observe 4 un-sequenced trains – frequent periods in a day
  - during any period when the headway is more than 10 minutes we observe 4 late trains – infrequent periods in a day

<table>
<thead>
<tr>
<th>Event</th>
<th>Total NCF accrued</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A)</td>
<td></td>
</tr>
<tr>
<td>1 incomplete trip</td>
<td>1x2.5 = 2.5 (per event)</td>
</tr>
<tr>
<td>6 Un-sequenced train – frequent periods</td>
<td>6x0.08 = 4.8 (per event)</td>
</tr>
<tr>
<td>2 Early departures – infrequent periods</td>
<td>2x1.3 = 2.6 (per event)</td>
</tr>
<tr>
<td>Total NCF per day</td>
<td>2.5+4.8+2.6 = 9.9</td>
</tr>
<tr>
<td><strong>Sub Total NCF_1 per month</strong></td>
<td><strong>9.9x3 = 29.7</strong></td>
</tr>
<tr>
<td>(B)</td>
<td></td>
</tr>
<tr>
<td>4 Un-sequenced train – frequent periods</td>
<td>4x0.8 = 3.2 (per day)</td>
</tr>
<tr>
<td>4 Early departures – infrequent periods</td>
<td>4x0.8 = 3.2 (per day)</td>
</tr>
<tr>
<td>Total NCF per day</td>
<td>3.2+3.2 = 6.4</td>
</tr>
<tr>
<td><strong>Total NCF_1 per month</strong></td>
<td><strong>6.4x30 = 192</strong></td>
</tr>
<tr>
<td><strong>TOTAL (A + B) NCF_1 per month</strong></td>
<td><strong>192+29.7 = 221.7</strong></td>
</tr>
</tbody>
</table>

Based on the monthly TRP\(n\) and monthly NCF calculated above the total monthly operations availability deductions are shown in the table below:

<table>
<thead>
<tr>
<th>Inputs (monthly)</th>
<th>Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOPF_1</td>
<td>1- (221.7/3002) = 0.926</td>
</tr>
<tr>
<td>OADF_1 (corresponding to the MOPF_1)</td>
<td>5%</td>
</tr>
<tr>
<td>OAD_1 (for the first month of operation)</td>
<td>133,500,000/12x(5/100) = $556,250</td>
</tr>
</tbody>
</table>
### 6.11 Triggers in the PPPA

#### 6.11.1 Increased oversight, testing and inspection

<table>
<thead>
<tr>
<th>Non Compliance Triggers</th>
<th>PPPA Failure points (over three consecutive payment periods determined on a rolling basis)</th>
<th>Scenario 1 - Approximate number of Noncompliance points (per month x3)</th>
<th>Scenario 2 - Approximate number of Noncompliance points (per month x3)</th>
<th>Scenario 3 - Approximate number of Noncompliance points (per month x3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity non compliance</td>
<td>960</td>
<td>301x3 = 903</td>
<td>488x3 = 1,464</td>
<td>800x3 = 2,400</td>
</tr>
<tr>
<td>Availability non compliance</td>
<td>2,400</td>
<td>120x3 = 360</td>
<td>720x3 = 2,160</td>
<td>1200x3 = 3,600</td>
</tr>
</tbody>
</table>

The approximate number of non-compliance points that are presented in the table above are for the scenarios that have been presented in the sensitivity analysis above. Further, the calculation also reflects the straight line projection of the monthly accrual to arrive at the quarterly estimate which represents a conservative scenario. We note that Scenario 1 considers a Good Performance level and we expect the O&M Contractor to operate at a Very Good or Good level of performance.

#### 6.11.2 Concessionaire Default

<table>
<thead>
<tr>
<th>Non Compliance Triggers</th>
<th>PPPA Failure points</th>
<th>Scenario 1 - Approximate number of Noncompliance points</th>
<th>Scenario 2 - Approximate number of Noncompliance points</th>
<th>Scenario 3 - Approximate number of Noncompliance points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three consecutive payment period</td>
<td>14,640</td>
<td>(301x3) + (120x3) = 1,263</td>
<td>(488x3) + (720x3) = 3,624</td>
<td>(800x3) + (1200x3) = 6,000</td>
</tr>
<tr>
<td>Six consecutive payment periods</td>
<td>24,240</td>
<td>(301x6) + (120x6) = 2,526</td>
<td>(488x6) + (720x6) = 7,248</td>
<td>(800x6) + (1200x6) = 12,000</td>
</tr>
<tr>
<td>12 consecutive payment periods</td>
<td>33,720</td>
<td>(301x12) + (120x12) = 5,052</td>
<td>(488x12) + (720x12) = 14,496</td>
<td>(800x12) + (1200x12) = 24,000</td>
</tr>
</tbody>
</table>

The approximate number of non-compliance points that are presented in the table above are for the scenarios that have been presented in the sensitivity analysis above. Further, the calculation also reflects the straight line projection of the monthly accrual to arrive at the quarterly, six monthly and yearly estimate which represents a conservative scenario. We note that Scenario 1 considers a Good Performance level and we expect the O&M Contractor to operate at a Very Good or Good level of performance.
### 6.11.3 Owner Step-in Rights

<table>
<thead>
<tr>
<th>Non Compliance Triggers</th>
<th>PPPA Failure points (in any one payment period)</th>
<th>Scenario 1 - Approximate number of Noncompliance points (per month)</th>
<th>Scenario 2 - Approximate number of Noncompliance points (per month)</th>
<th>Scenario 3 - Approximate number of Noncompliance points (per month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity non compliance</td>
<td>1,920</td>
<td>301</td>
<td>488</td>
<td>800</td>
</tr>
<tr>
<td>Availability non compliance</td>
<td>3,600</td>
<td>120</td>
<td>720</td>
<td>1,200</td>
</tr>
</tbody>
</table>

The approximate number of non-compliance points that are presented in the table above are for the three scenarios that have been presented in the sensitivity analysis above. We note that Scenario 1 considers a Good Performance level and we expect the O&M Contractor to operate at a Very Good or Good level of performance.

### 6.12 Conclusion

Based on our review of the payment mechanism we are satisfied that the payment mechanism drafting is recognised in the P3 market and is considered to be suitable for this Project.

We have undertaken a sensitivity analysis of the payment mechanism and modelled various scenarios. We are satisfied that the thresholds in the PPPA are reasonable based on this sensitivity analysis.
7 Operations & Maintenance

7.1 Introduction

We have undertaken a review of Technical Provisions, Book 2 Part 3, Operations and Maintenance and commented on areas where we think O&M risk needs to be addressed and areas that are acceptable for projects of this type.

7.2 Section 1 - Project Management and Coordination

Concessionaire shall perform the O&M Work 24 hours per day, seven days a week in accordance with the Contract Documents. Owner may inspect or perform an operating performance analysis, condition assessment, or audit at any time in its reasonable discretion. Concessionaire shall make all appropriate personnel and records available to Owner at any time during the Term within 48 hours’ notice of a written request.

7.2.1 Section 1.1 - Operating Plan

Concessionaire shall submit the Operating Plan for Review and Approval according to the following schedule:

- Preliminary – 90 days after Financial Close;
- Intermediate – no less than 18 months prior to scheduled start of Trial Running;
- Final – six months prior to start of Trial Running with Owner’s obligation to Approve in accordance with Section 5.1.4 of the Agreement; and
- 90 days prior to the beginning of each Fiscal Year during the O&M Period.

The Operating Plan shall include at a minimum the following:

- table of contents identifying all subordinate Operating Plan documents, plans, and procedures; and
- summary of the changes made to the Operating Plan from the previously approved Operating Plan;
- description of the Concessionaire’s approach to operating Revenue Service, including the delivery of Normal Service, Special Event Service operations (as described in Part 3, Section 3.1.4 of the Technical Provisions), and response to Service Interruptions;
- The description of operating Revenue Service during Normal Service shall provide:
  - eastbound and westbound terminal-to-terminal run times for Peak Periods and each Off-Peak Period;
- round trip times, including terminal turnaround/recovery times for Peak Period and each Off-Peak Period;

- directional operational string diagrams, showing speed profile (speed in miles per hour) on vertical axis and distance on the horizontal axis), Station-to-Station run times and average speeds, dwell time at each Station, average schedule recovery time at each Station (as applicable), time points (if any), and Terminal Station recovery/turnaround time for Peak Period and each Off-Peak Period. All time components shall be consistent with the requirements of Part 3, Section 3.15.1 of the Technical Provisions;

- description of the operating strategy to be used through the University of Maryland;

- assumptions regarding delay at each traffic signal; civil and other speed limits for each section of the alignment, acceleration and deceleration rates, dwell times at each Station, time points, and any other factors affecting the Operating Plan;

- a table or chart showing the traffic signal cycle phasing and timing and the traffic signal Preemption, traffic signal Priority or other signal treatment that is included in the terminal-to-terminal runs times for each signal traversed for peak and each Off-Peak Period;

- Train consist size (number of LRVs per Train) during the Peak and Off-Peak Periods, number of Trains/LRVs required to provide Peak Period service, Peak Period spare ratio, and total fleet size;

- factors that provide the vehicle seated and standing capacity (not to exceed AW2.00 loading) and the actual Operating Plan square foot per standee during the Peak Hour peak load line volume; and

- description of the methodology and techniques used to develop the Operating Plan, including any analyses of viability of runs times used in the Operating Plan and cost estimate.

- description of Concessionaire’s operations and maintenance organization including the organization hierarchy and functional organization

- description of the Concessionaire’s approach to maintenance of the Purple Line System, so as to minimize impacts to Revenue Service, Normal Service and Special Events; and

- the requirements specified in Sections 1.1.1 through 1.1.4 of this Section 1.1.

Additionally, the Operating Plan shall also include as an appendix the following:

- Rule Book

- Standard Operating Procedures (SOP)
Service plan
Operating manuals

In our opinion, the schedule and the requirements for the Operating Plan that have been identified are in accordance with what we would expect on a project of this type and nature.

7.2.2  Section 1.2 - Rail Fleet Management Plan

Concessionaire shall submit a Rail Fleet Management Plan for Review and Approval no later than 90 days after Financial Close. Concessionaire shall submit an updated Rail Fleet Management Plan for Review and Approval no later than six months prior to Revenue Service, and then 90 days prior to the start of each Fiscal Year during the O&M Period, including any changes in the quantity because of recommended Service Levels.

In our opinion, this is in accordance with what we would expect on a project of this type and nature.

7.2.3  Section 1.3 - Maintenance Plans

Concessionaire shall submit Maintenance Plans for Review and Approval according to the following schedule:

- preliminary – no less than 12 months prior to the start of Trial Running;
- final – no less than six months prior to start of Trial Running; and
- update – no later than 90 days prior to beginning of each Fiscal Year after start of Revenue Service.

Maintenance Plans shall include the following:

- Description of Concessionaire’s plan for all Maintenance Work during the O&M Period, including inspections, routine testing, routine maintenance, and managing unplanned failures including repairs;
- description of Concessionaire’s maintenance organization including the organization hierarchy and functional organization;
- maintenance manuals and procedures as set forth in Part 3, Section 1.5 of the Technical Provisions;
- Concessionaire’s self-monitoring processes, including a list of the procedures to be used for all activities associated with Maintenance Work;
- specific information regarding which Fixed Equipment, Fixed Facilities, Systems, and LRVs on which Maintenance Work is expected to be performed and how such information shall be used in the annual update of the Asset Management Plan;
• description of Concessionaire’s approach to obtaining all Governmental Approvals and Reviews and Approvals required for the Maintenance Work, including any revision, modification, amendment, supplement, renewal, or extension thereof;

• list with addresses and phone numbers for all maintenance facilities which will be used by concessionaire, including any off-site storage or maintenance facilities; and

• Maintenance Work activities planned for next 12 months, on a monthly basis.

The maintenance plans are for the following:

• Infrastructure maintenance plan
• Facilities maintenance plan
• Light rail vehicle maintenance plan
• Systems maintenance plan
• Environmental management plan

In our opinion, the schedule and the requirements for the maintenance plan that have been identified are in accordance with what we would expect on a project of this type and nature.

7.2.4 Section 1.8 - Meetings

Concessionaire shall submit a schedule of regular meetings with Owner for Review and Comment during the O&M Period according to the following schedule:

• preliminary – no less than 6 months prior to the start of Trial Running

• update – no later than three months prior to beginning of each Fiscal Year

7.2.5 Section 1.9 - Safety and Security Plan


7.2.6 Section 1.13 - Reports

Concessionaire shall prepare and submit reports to demonstrate that all aspects of Project performance relative to performance requirements have been satisfied. Reports shall comply with all reporting requirements of FTA. The Concessionaire shall develop and provide access to Owner on a real-time basis a database that will include:
- operations and dispatch statistics
- LRV statistics
- summary of maintenance activities during each day
- summary of trackwork and operational systems
- operator event log data
- Activity noncompliance occurrence and noncompliance event log; and
- Concessionaire’s Incident Response logs

With regards to the Concessionaire providing the Owner real time access to databases, there is no requirement for the O&M Contractor to interface with existing MDOT systems in doing so. The Consortium and O&M Contractor will provide the Owner access to the PLTP reporting systems through a firewalled portal and will provide reports in both electronic and hard copy formats.

Concessionaire shall submit for Review and Approval no later than 90 days before the scheduled start of Trial Running the following reports:

- Operations and Maintenance Daily Reports
- Monthly Performance Monitoring Reports
- Quarterly Performance Monitoring Reports
- Annual Performance Monitoring Reports

In our opinion, the performance monitoring reports that are identified in the O&M requirements are in accordance with what we would expect on a project of this type and nature. There is no requirement for O&M to interface with any existing MDOT systems. The Owner will be provided access to the PLTP reporting systems through a firewalled portal and will be provided reports in both electronic and hard copy formats.

7.3 Section 1.14 - Operations and Maintenance Quality

Concessionaire shall submit an Operations and Maintenance Quality Management Plan (OMQMP) for Review and Approval according to the following schedule:

- no later than 12 months before the scheduled start of Trial Running;
- before implementation of any revisions to the OMQMP; and
• 90 days prior to the beginning of each Fiscal Year during the O&M Period.

Concessionaire shall develop a comprehensive program of scheduled and unscheduled audits to verify by examination and evaluation of objective evidence that applicable elements of the quality program are suitable and have been developed, documented, and effectively implemented in accordance with the Contract Documents.

*In our opinion, the requirements identified in the OMQMP are in accordance with what we would expect on a project of this type and nature.*

### 7.4 Section 2 - Activity Noncompliance Occurrences

Concessionaire shall perform the O&M Work on the Project including any Project elements that are installed by Concessionaire outside the Project ROW beginning on Revenue Service Availability until the end of the Term, in accordance with the requirements of the Contract Documents.

The Project shall be monitored, operated, and maintained 24 hours per day, seven days per week in accordance with the Contract Documents. Concessionaire shall comply with the most recent versions of the Specifications, Standards, Manuals, and Guidelines, including, but not limited to, those provided in Book 3 Codes and Standards and all other Contract Documents.

*In our opinion, the performance requirements as outlined in the O&M section is in accordance with what we would expect on a project of this type and nature.*

#### 7.4.1 Section 2.1 - Activity Noncompliance Occurrences and Activity Noncompliance Events

Activity Noncompliance Points and associated financial deductions will be assessed for such Noncompliance Events in accordance with the Contract Documents and in particular Section 16 and Exhibit 4D of the Agreement.

Such Noncompliance Events will be assessed as described below:

- failure to timely respond (if applicable) to an Activity Noncompliance Occurrence within the Response Time will result in an Activity Noncompliance Event being assessed;

- failure to timely rectify an Activity Noncompliance Occurrence within the Rectification Time will result in an Activity Noncompliance Event being assessed; and

- continuing failure to timely rectify an Activity Noncompliance Occurrence following the expiration of a Rectification Time or Application (Maximum Exposure) Time (as applicable) within any further Application (Maximum Exposure) Time will result in an Activity Noncompliance Event being assessed.

Response Time and Rectification Time begin simultaneously at the time any member of the Concessionaire’s personnel becomes aware of the Noncompliance and run concurrently; not sequentially.
Any event that could trigger multiple Activity Noncompliance Events will only be assessed against the single such Noncompliance Event that is most specific to the event.

Noncompliance Points and Deductions for Activity Noncompliance Occurrences associated with compliance with an Approved plan (e.g. Item #26 – Concessionaire shall comply with the Operating Plan) will only be assessed up to two Activity Noncompliance Events for that plan on any given Day, irrespective of the number of individual Activity Noncompliance Occurrences greater than two with different requirements of that Approved plan that may occur on that day. Also, a noncompliance that actually occurred with an Approved plan will continue to be assessed each Day until all Activity Noncompliance Occurrences with all the requirements of the Approved plan have been corrected.

If Concessionaire fails to respond and rectify an Activity Noncompliance Occurrence, Noncompliance Points and Deductions associated with applicable Activity Noncompliance Events will simultaneously accumulate for both the failure to Respond and the failure to Rectify the same Activity Noncompliance Occurrence.

*We have reviewed the procedure for assessing noncompliance events as set forward by the performance criterion and have commented on the sensitivities of the performance measures in Section 6 of the report.*

### 7.4.2 Section 2.2 – Activity Noncompliance Occurrence

A list of criterion for performance has been identified Section 2.2 to 2.7 that has been categorized under the following:

- Management Plans, Manuals, Policies, Procedures, and Reports
- Operations Activity Noncompliance Occurrence
- Cleaning Activity Noncompliance Occurrence
- Maintenance Activity Noncompliance Occurrence
  - Infrastructure
  - Facilities
    - Station and Station Facilities
    - Landscaping
    - LRV’s
  - Systems
  - Fire Detection and Alarm Systems
• Security Systems
• Fire Detection and Alarm System
• Stray Current/Corrosion Control Systems
• Fare Collection System
• EMI

• Asset Management Activity Noncompliance Occurrence
• Handback Activity Noncompliance Occurrence

In our opinion, the performance criterion as outlined in the O&M section is in accordance with what we would expect on a project of this type and nature.

7.5  Section 3 - Operations

7.5.1  Section 3.1 - Normal Service

Normal Service is defined using Headways, service periods and service link load capacity. For all measurement of time for Headways, departures, and arrivals, the Master Clock Time System in accordance with Part 2B, Section 16 of the Technical Provisions.

If insufficient LRVs are available to provide scheduled Train lengths (e.g., only a one car Train is available although a two-car Train is required to provide service link load capacity), the Concessionaire shall provide Short Train service.

We have reviewed the criterion set under normal service conditions and in our opinion this is in accordance with what we would expect on a project of this type and nature.

7.5.2  Section 3.2 - Alternate Service

Conditions for Alternate Service will be in the event of a Non-Concessionaire Caused Disruption, Relief Event, or Force Majeure Event. Concessionaire shall provide Normal Service to Stations outside the Service Interruption area to the extent possible without compromising safety.

Concessionaire shall provide Alternate Service in response to Planned Service Interruptions and Unplanned Service Interruptions to the extent that Normal Service cannot be maintained.

Planned Service Interruptions: when they occur at the request of the Concessionaire, Alternate Service shall include Alternate Train Service and Alternate Bus Service as most appropriate for the specific conditions of each Service Interruption. The form of Alternate Service used for a Planned Service Interruption requested by the Concessionaire shall minimize negative impacts to Users.
When Planned Service Interruptions occur at the request of the Owner, Alternate Service shall include Alternate Train Service only.

**Unplanned Service Interruption**: when they occur as a result of Non-Concessionaire Caused Disruption, Relief Event or Force Majeure Event, Alternate Service shall include Alternate Train Service only and shall minimize negative impacts and delays for the maximum number of Users.

When an Unplanned Service Interruption occurs that is not the result of Non-Concessionaire Caused Disruption, Relief Event or Force Majeure Event, Alternate Service shall include Alternate Train Service and Alternate Bus Service as most appropriate for the specific conditions of each Service Interruption.

Alternate Service shall provide the same frequency of service as Normal Service, shall serve all Stations, and shall provide sufficient capacity to meet passenger demand.

*As per our discussion with the Consortium, we understand that the criterion set for planned and unplanned service interruptions that may occur as a result of non-concessionaire caused disruption as set in the O&M in conjunction with PPPA Exhibit 1 are well understood.*

**7.5.3 Section 3.5 - Service Characteristics**

Concessionaire shall operate Trains in accordance with the Operating Plan.

All Trains shall stop at all Stations with a dwell time sufficient for all passengers to safely board or alight as desired.

Service level hours are from 05:00 until 00:00 on a weekday (Monday – Friday) and from 07:00 until 00:00 on Saturday and Sunday – Holidays. Maximum Service Level Headways range from 5 minutes to 15 minutes for service levels 1, 2 or 3 on weekdays (Monday – Friday). On Saturday and Sunday – Holidays they are either 10 minute or 15 minute for service levels 1, 2 or 3.

*For a project of this type and nature, revenue service operating hours and the headways are common as they have been identified.*

**7.5.4 Section 3.6 - Service Changes**

Concessionaire, if directed by Owner, shall make Minor Services Changes to the Train Service specified in Part 3 Section 3.3 of the Technical Provisions. Timetables for Minor Service Changes shall be adjusted not more than three times per year. In order to be considered Minor Service Changes, Minor Service Changes cannot require Concessionaire to purchase additional LRVs, require service to start earlier or end later each day, or require shorter maximum Peak Period headways than the Service Level in effect.

Concessionaire, if directed by Owner, shall implement Major Service Changes. Major Service Changes result in the use of a different Service Level. It is understood that Major Service Changes may require additional LRVs. Any such change shall be made in accordance with Section 14.1 of the Agreement. Such
change may include direction to Concessionaire whether to utilize all LRVs currently in service, decommission LRVs, or re-commission previously decommissioned LRVs.

As per our discussion with the Consortium, we understand that conditions that may require a service level change are well understood.

### 7.5.5 Section 3.14 - Special Event Service

When the Owner requests that the Concessionaire provide Special Event Service, up to 3 times per year the Owner may require Concessionaire to start Revenue Service at a time earlier than the Early Period start time identified in Exhibit 3.1 and/or continue Revenue Service until a time later than the Late Period end time identified in Exhibit 3.1.

We have reviewed the special event scenarios as outlined in the O&M section in conjunction with Exhibit 1 of the PPPA. As per our discussion with the Consortium we understand that the Consortium is satisfied with the O&M requirements of such special events.

### 7.6 Section 4- Cleaning

Concessionaire shall clean all public and internal Project facilities including Fixed Facilities, Fixed Equipment, and LRVs in accordance with the Cleaning Plans to satisfy all requirements of OSHA and MOSHA, and this Section of the Technical Provisions, while maintaining an attractive environment for Users and suitable working conditions for personnel. All cleaning activities shall be performed in accordance with the approved Environmental Management Plan.

<table>
<thead>
<tr>
<th>Category</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ice and Snow Removal</td>
<td>Snow accumulation shall be removed from Station Platforms, walkways, and Project parking lots before the accumulation is more than 1 inch, or within 4 hours of end of snow event for accumulation less than 1 inch.</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>7.7</td>
<td><strong>Section 5 - Maintenance</strong></td>
</tr>
<tr>
<td>7.7.1</td>
<td><strong>Section 5.1 - Infrastructure</strong></td>
</tr>
</tbody>
</table>

Infrastructure includes certain Project assets, including, but not limited to, alignment, drainage and drainage structures, bridges, retaining walls, track, utilities, tunnels, roadways, public roadways and roadway lighting.

*In our opinion, the cleaning requirements for various facilities as outlined in the O&M section is in accordance for a project of this type and nature.*
7.7.1.1 Section 5.1.1 - Alignment

Concessionaire shall inspect the Project weekly and shall correct any observed deficiencies. Concessionaire shall keep the Project within the O&M limits clear of trash, litter, discarded track materials, discarded appliances, vegetation debris, and fallen trees. Drainage structures and ditches shall be kept free of obstructions which impede drainage flow. Upstream areas of bridges, culvert, and pipes at streams, creeks and rivers, shall be kept clear of debris, including trees and branches which will obstruct flow during storms with heavy rain fall. Drainage ditches, gutters, and pipes which carry rain water shall be free of materials which impede drainage and water flow.

Following discussions with the Consortium we understand that the Project is predominantly outside of any flood zone and there are not expected to be areas along the alignment that are prone to flooding.

Concessionaire shall perform inspection and maintenance of Storm Water Facilities (SWF) and shall perform operational inspections for each SWF within one year of completion of its construction and at a minimum interval of three years following initial inspection.

7.7.1.2 Section 5.1.2 - Structures

Concessionaire shall inspect all bridges, aerial structures, parking structures, and tunnels on a maximum 24-month cycle and all retaining walls, noise walls, substations, buildings, culverts, small structures, catenary poles, and associated foundations on a maximum 48-month cycle.

7.7.1.3 Section 5.1.3 - Track

Concessionaire shall inspect track and track system to meet FRA track inspection standards. Track shall be maintained to Class IV FRA Track Safety Standards.

7.7.1.4 Section 5.1.4 - Pavement

Concessionaire shall maintain flexible pavements and ridged pavements at an acceptable condition and level of safety for use, and meet all other technical requirements for flexible pavements and ridged pavements set forth in the Contract Documents. Concessionaire shall determine the Pavement Condition Index (PCI) of all flexible pavements once every five years after Final Completion. The PCI shall be determined using the method required in ASTM D 6433.

In our opinion, the maintenance requirements for various infrastructure assets as outlined in the O&M section is in accordance for a project of this type and nature.

7.7.2 Section 5.2 - Facilities

Section 5.2.1 - Facilities include buildings, Stations, parking lots, storage yards, shop buildings, landscaping, and MEP systems. Concessionaire shall maintain facilities to meet requirements for Stations and Station facilities, landscaping, yards, and MEP.
7.7.2.1  Station & Station Facilities

Painted surfaces in station and station facilities shall be repainted not less than once every five years, and chipped or rusted surfaces corrected within two months of detection.

Station lighting fixtures and lighting shall be fully functional and working. Burned-out lamps shall be replaced within 48 hours of detection by Concessionaire.

Damage due to vandalism shall be repaired within 24 hours of detection except for damage which requires materials that are not available within the 24-hour period, in which case those items shall be ordered and repaired as soon as practicable.

News boxes, stickers, posters, and other items placed by others without permission from Concessionaire or Owner shall be removed within 48 hours of detection.

7.7.2.1.1  Section 5.2.1.1 - Elevators & Escalators

A minimum of one elevator shall be in service at all times at every Platform. Each escalator shall provide 93% availability at each Station when it is scheduled to be open to Users. Elevators shall provide 98% availability for the Purple Line System when the Purple Line System is scheduled to be open to Users as measured on an annual average basis.

7.7.2.2  Section 5.2.2 - Landscaping

During the growing season turf shall be mowed such that height shall be maintained not to exceed 4 inches. Edge trimming shall be performed at lawn perimeters and tree wells; weeds shall be removed from plant saucers and mulched beds every three weeks. Shrubs shall be pruned as required and trees pruned on a five-year cycle. Dead, damaged, or ailing trees, shrubs, and ground cover shall be replaced within either the current planting season, or the following planting season when identified for replacement outside a planting season.

Vegetation management along the alignment shall be evaluated during an annual walk-through. Dead trees, hazard trees, overhanging branches, and invasive plants shall be removed immediately following the walk-through inspection. During the fall season of the year, fallen leaves shall be removed weekly or more often should they cause slippery conditions on Platforms and walkways.

7.7.2.3  Section 5.2.3 - Yards and Maintenance Facilities

Concessionaire shall maintain yards and yard sites such that they provide a neat appearance with outside bulk materials stored neatly and safely organized. All lighting shall be fully functional. Oil and oil products shall be stored so that overflow onto site is not present. Concessionaire shall obtain and comply with an MDE-issued oil operations permit as required. Site drainage shall be unobstructed. Roadways and pavement shall be free of ruts and irregularities.
7.7.2.4  Section 5.2.4 - Signs, Pavement Markings and Lighting

Signs shall be maintained by Concessionaire at an acceptable level of safety for the traveling public to meet all technical requirements for signage set forth in Part 2B, Section 5.7 of the Technical Provisions. The Concessionaire shall:

- repair all damaged overhead signs and sign structures that pose imminent risk to the public within 1 day;
- repair or replace all damaged but functional and legible overhead signs and sign structures within 90 days;
- repair or replace all non-functional or non-legible warning signs within 2 days; and
- repair or replace all other signs, including posts that are damaged or missing within 10 days.

In our opinion, the maintenance requirements for various facilities as outlined in the O&M section is in accordance for a project of this type and nature.

7.7.3  Section 5.3 - Light Rail Vehicles (LRVs)

Concessionaire shall perform all LRV maintenance activities, including daily inspections, running repair, preventive maintenance, heavy repair, and Renewal Work.

7.7.4  Section 5.4 - Systems

Concessionaire shall maintain all original system functionality and safety throughout the O&M Period. System elements consist of:

- traffic signal systems;
- train control systems;
- traction power systems;
- overhead contact system (OCS);
- public communications systems;
- control and monitoring systems;
- fire and security systems;
- fire protection systems;
- stray current/corrosion systems;
- fare system; and
- electromagnetic interference.

In our opinion, the maintenance requirements for various facilities as outlined in the O&M section is in accordance for a project of this type and nature.

7.8 Section 6 – Asset Management

7.8.1 Section 6.1 – Asset Management Program

The asset management program shall include all assets in the O&M Limits as set forth in Part 1, Section 7 of the Technical Provisions for which Concessionaire is responsible for maintenance. The asset rehabilitation, overhaul, and replacement process, including resulting Renewal Work, shall be based on the condition and performance assessments for each asset.

In our opinion, the Asset Management program outlined in the O&M section is in accordance for a project of this type and nature.

7.9 Section 7 - Handback

7.9.1 Section 7.1 - Residual Life of Project Assets

The Residual Life of Project assets at the conclusion of the O&M Period shall be the greater of:

- the remaining Useful Life of each asset had it been maintained in a State of Good Repair;
- 10 years for trackwork cross ties; or
- no less than three years after the end of the Term assuming that regular maintenance consistent with Concessionaire’s Maintenance Plans continues after completion of the Handback requirements.

Any asset rehabilitation, overhaul, or replacement scheduled to occur in the three-year period following handback shall be accelerated to occur before the handback such that no asset rehabilitation, overhaul, or replacement will be required during that period as determined by Concessionaire’s Asset Management Plan.

We have reviewed the Asset Management plan that has set forth various requirements for asset rehabilitation, overhaul and replacement process and in our opinion, we are satisfied with accelerated handback, should any asset require rehabilitation, overhaul, or replacement to occur in the three-year period following handback.
7.9.2 Section 7.2 - Handback Renewal Work Plan

The Handback Renewal Work Plan shall be a supplement to the Asset Management Plan. Concessionaire shall submit the Handback Renewal Work Plan for Review and Approval according to the following schedule:

- 60 months prior to the end of the Term; and
- every 12 months thereafter.

At a minimum, the Handback Renewal Work Plan shall include:

- additional asset actions required to meet the condition of no asset rehabilitation, overhaul, or replacement being performed in the three-year period immediately following Handback;
- plan for the transition of operation and maintenance responsibilities to Owner;
- procedure for acceptance of the Project elements by Owner; and
- procedure for training Owner on operations and maintenance of Project elements

_In our opinion, requirements as outlined in the handback renewal work plan is in accordance for project of this type and nature._

7.9.3 Section 7.3 - Turnover of Replacement Parts

At the end of the Term and prior to Owner’s Review and Approval of Concessionaire’s final Request for Availability Payment, Concessionaire shall transfer to Owner all replacement parts, supplies, and materials which it has in its inventory and possession for purposes of operations and maintenance of the Project.

Concessionaire shall submit a Replacement Parts Inventory list for Information 90 days prior to the end of the Term.

7.9.4 Section 7.4 - Turnover of Operations and Maintenance Equipment and Documents

At the end of the Term and prior to Owner’s Review and Approval of Concessionaire’s final Request for Availability Concessionaire shall transfer to Owner all operations and maintenance equipment and materials which it has in its inventory and possession for purposes of operations and maintenance of Project.

Concessionaire shall submit an Operations and Maintenance Equipment Inventory list for Information 90 days prior to the end of the Term.

_In our opinion, the turnover of replacement parts and of operations and maintenance equipment as outlined in the O&M section is in accordance for project of this type and nature._

_In our opinion the drafting of the Operations and Maintenance requirements is in line with our expectations for a P3 project for such nature._
7.10  Operations proposal commentary

We have undertaken a review of the Consortium’s Operations proposal. The commentary below is undertaken on a “by exception” basis in the individual sections below.

7.10.1  Operating Plan

The Consortium has developed an operating plan that will reflect the combined effectiveness and performance of a number of specific elements, including O&M organization, service plans covering normal service, special events and service interruption, rule book, standard operating procedures and operation manuals. The operating plan will go thru an evolution as indicated in the flowchart below.

A detailed analysis and evaluation of the following has been undertaken in developing the operating plan.

- Terminal-to-terminal run times
- Round trip times and service plan
- Speed profiles
- UMD operating strategy
- Traffic signal delays and traffic signal phasing
- Fleet size
• Peak hour passenger load capacity
• Service plans for special events and for service interruptions
• Approach to maximizing reliability

Operator training involves a 6-8 week curriculum ending in a written and a verbal exam and a supervised ride check before issuing a license and certification or operator. Testing and certification programs will be developed. Employees will be certified to operate an LRV on the Purple Line system only after successfully passing all exams and performance demonstrations, and successfully passing a final check ride with a Field Supervisor, the Deputy Operations Manager or the Operations Manager.

We believe the operating plan proposed is adequate and does not pose undue risk to the project.

7.10.2 Abnormal operating requirements

When normal operations will be affected by abnormal events such as home football games at the University of Maryland, local arts festivals, scheduled maintenance required by a third party, and occasional extreme weather conditions, the Consortium has developed operating requirements to address such events. Operational abnormalities can also occur as the result of unexpected in-system problems such as a signal failure, downed overhead contact wire, or a disabled LRV. The Consortium will be prepared for such occurrences. Advance planning and managed execution are the key ingredients for successfully avoiding or, at least, minimizing service delays and associated passenger inconvenience. Events that are anticipated to cause abnormal operations include University of Maryland events, Regional events, Extreme weather, Programmed maintenance and other unplanned situations.

We understand from our discussion with the Consortium that such abnormal operations are well understood and that the Consortium has procedural approaches which will address challenges in maintaining normal operations. As noted in the PPPA, the Consortium will develop a Rule Book to the Operation Plan and Timetable that will include procedures for normal, abnormal and emergency operations. Further we also understand that should ridership demand due to such abnormal event at any time during the concession period exceed Service Level 3, a change order will be initiated with the Owner as per the PPPA. We believe the abnormal operating plan proposed is adequate and does not pose undue risk to the project.

7.10.3 Emergency preparedness activities

The Consortium’s approach to emergency preparedness is founded on a series of plans that will guide on how to respond internally to emergencies, coordinate with third party emergency responders and communicate with all affected parties. A detailed evaluation of the following aspects have been made that has been incorporated in the proposal:

• Advance planning for emergencies
• Purple Line Transit Operators internal roles and responsibilities
• Coordination with others that include local emergency responders, counties, University of Maryland, federal agencies, MTA and MTA police and other third parties
• Responding to an emergency
• Emergency equipment
• Debriefing, critique and reporting after events

7.10.4 Balancing multiple uses

The Purple Line alignment offers operating challenges in several shared areas along the Purple Line corridor, where train service interacts with vehicular traffic, pedestrians, and cyclists. In order to successfully manage this challenge, it is imperative that elements of design features work seamlessly with operational practices to maximize safety and reliability. The Consortium will develop both a General Operational Approach to meeting safety and reliability goals in the Purple Line corridor mixed-use areas, and specific Supplemental Approaches and guidelines for targeted areas. The Purple Line Operator’s Rule Book and a separate SOP will address the rules for safe operation in multiple use areas. The interactions of multiple uses, pedestrians, bikes, traffic signal operation and transit signal priority with the train operations on different locations that are listed under this section, pose operational challenges.

The Consortium has developed solutions to addressing these challenges. We are satisfied that the proposed strategies are adequate.

7.10.5 Safety

The Consortium has developed a detailed proposal towards safety. The Consortium’s Safety and Security Program will incorporate all the requirements, goals, and criteria set forth in MTA’s System Safety Program Plan (SSPP) and System Security and Emergency Preparedness Plan (SSEPP). Safety and Security Program will be organized and implemented by an interwoven set of key Safety and Security programs and plans. Safety & Security Management Plan, along with the System Safety Plan and Site Security Plan, will define the specific approaches, project organization, controls, schedule, and dedicated resources PLTP will implement to maximize safety and security in all stages of the Project. These plans along with the other key elements described in the proposal will form the comprehensive Safety and Security Program, ultimately leading to Purple Line Safety Certification and commencement of Revenue Service.

We have undertaken a review of the Consortium’s proposal that has been developed to address various operational requirements as identified in the PPPA and associated documents. The Consortium’s approach is detailed and includes operating strategies for normal, abnormal (such as special events etc.), emergency activities, balancing multiple uses and safety. In our opinion this is a thoughtful approach to developing an operating strategy for a project of such nature.
### 7.11 O&M Costs

We have received, on 1st April 2016, the following summary of O&M Costs.

<table>
<thead>
<tr>
<th>Service item</th>
<th>Total cost</th>
<th>Annual cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operations</td>
<td>$426,852,973</td>
<td>$14,228,432</td>
</tr>
<tr>
<td>Maintenance – made up of the following</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alignment</td>
<td>$12,206,940</td>
<td>$406,898</td>
</tr>
<tr>
<td>Structures &amp; Tunnel</td>
<td>$9,244,860</td>
<td>$308,162</td>
</tr>
<tr>
<td>Track</td>
<td>$36,170,019</td>
<td>$1,205,667</td>
</tr>
<tr>
<td>Roadway &amp; Pavements</td>
<td>$3,732,405</td>
<td>$124,414</td>
</tr>
<tr>
<td>Stations</td>
<td>$12,382,104</td>
<td>$412,737</td>
</tr>
<tr>
<td>OMF &amp; Yards</td>
<td>$5,523,535</td>
<td>$184,118</td>
</tr>
<tr>
<td>Vehicles</td>
<td>$74,928,546</td>
<td>$2,497,618</td>
</tr>
<tr>
<td>Systems</td>
<td>$127,123,420</td>
<td>$4,237,447</td>
</tr>
<tr>
<td>Cleaning</td>
<td>$33,786,039</td>
<td>$1,126,201</td>
</tr>
<tr>
<td>Safety/Utilities/Other (Indirects)</td>
<td>$192,715,455</td>
<td>$6,423,848</td>
</tr>
<tr>
<td><strong>Total Maintenance costs</strong></td>
<td><strong>$507,813,323</strong></td>
<td><strong>$16,927,111</strong></td>
</tr>
<tr>
<td>Insurance and Indirect costs</td>
<td>$156,613,350</td>
<td>$5,220,445</td>
</tr>
<tr>
<td><strong>TOTAL COSTS</strong></td>
<td><strong>$1,091,279,646</strong></td>
<td><strong>$36,375,988</strong></td>
</tr>
</tbody>
</table>
We have undertaken a review of the costs presented and developed our own assessment of costs for the system to test our benchmark range. Our own estimate of the system O&M Costs was within 5% of the provided figures, which sit within our benchmark as follows:

![O&M Benchmark Graph]

Our benchmark has been developed from a selection of 6 systems, normalized to the East Coast of the US and set at 2015$.

*Following our review of the O&M annual costs we are satisfied that they are reasonable for the Project.*
8 Lifecycle Review

8.1 Life Cycle costs

We have received the following life cycle costs dated 1st April 2016.

<table>
<thead>
<tr>
<th>Item</th>
<th>Total cost</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure</td>
<td>$2,107,886</td>
<td>1.49%</td>
</tr>
<tr>
<td>Track</td>
<td>$28,315,338</td>
<td>19.96%</td>
</tr>
<tr>
<td>IT</td>
<td>$6,716,670</td>
<td>4.74%</td>
</tr>
<tr>
<td>Non-Revenue Vehicle/Equipment</td>
<td>$3,074,060</td>
<td>2.17%</td>
</tr>
<tr>
<td>Stations</td>
<td>$440,450</td>
<td>0.31%</td>
</tr>
<tr>
<td>Facilities (OMF &amp; Yards)</td>
<td>$4,677,606</td>
<td>3.30%</td>
</tr>
<tr>
<td>Light Rail Vehicles</td>
<td>$38,927,091</td>
<td>27.45%</td>
</tr>
<tr>
<td>Systems</td>
<td>$57,566,080</td>
<td>40.59%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$141,825,108</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

We have undertaken a review of the costs presented and developed our own assessment of costs for the system to test our benchmark range. Our own estimate of the system Lifecycle Costs was 14-16% higher than the provided figures. This is as a result of allocation of costs between O&M annual expenditure and cyclical Life Cycle replacement expenditure.

We have reviewed the O&M and Life Cycle costs for the Project, dated 1st April 2016. The annual O&M costs are $36,375,988 and are within our benchmark range for a system of this type. The Life Cycle costs are $8,864,069/mile and are slightly below our benchmark range.

The Life Cycle costs for the Maintenance & Storage facilities related to fire protection systems and non-revenue vehicle and equipment replacement are being carried in the Systems cost line as opposed to the
OMF cost line. We have established that the labour cost for vehicle life cycle works is carried in the Operations cost line for the annual O&M costs, as opposed to the LRV cost line in the Life cycle costs. We understand that annual maintenance will be undertaken with a view to reducing life cycle expenditure and our analysis supports this.

*Having reviewed the combined overall costs for the annual O&M works and the Life Cycle works, we are satisfied that the total costs are reasonable for the Project.*

Taking account of these allocations, the Life Cycle costs compare to our benchmark as follows:
8.2 Life cycle profile

The life cycle expenditure profile is as follows:

The life cycle profile illustrates an expenditure pattern that is consistent with our expectations for a system of this type. The following are of note:

- The year 9 expenditure represents Systems, LRV and OMF works
- The year 12 expenditure represents Systems and OMF works
- Between years 13 and 16 there is a program of works to the LRVs
- Between years 15 and 21 there is a program of works to the track
- The spike in year 18 includes significant Systems work
- Year 20 expenditure also includes Infrastructure, Facilities and Systems works
- Years 24 and 27 expenditure represents Systems and OMF works
- Years 27-30 have specific refresh works to the LRVs

We note that there has been an element of ‘smoothing’ of expenditure by spreading activities over several years. This is quite typical of a P3 life cycle model.
8.3 Maintenance, Rehabilitation and Handback proposal

We have undertaken a review of the Consortium’s Maintenance, Rehabilitation and Handback proposal. The commentary below is undertaken on a “by exception” basis in the sections below.

8.3.1 Maintenance Procedures

The Consortium has developed a maintenance procedure that has been highlighted in the proposal and that will develop based on the inputs from the system, design, installation, testing and commissioning. The activities will be based on the following sequence:

- An initial Rail Fleet Management Plan will be submitted 90 days after Financial Close.

- Preliminary Maintenance Plans – covering Infrastructure, Facilities, LRVs and Systems maintenance – will be developed during the Design period, incorporating the details of the final Purple Line System designs and the results of simulations, which come out the Systems Reliability Analysis, and submitted no less than 12 months prior to the start of Trial Running.

- As system design/installation efforts are completed, the preliminary plans and manuals summarized in Book 2 Part 3 Section 1.17 will be updated and produced as Final, no less than six months prior to the start of Trial Running. At that point, the Final Plans will be conformed to other plans and procedures being developed for the revenue service period.

- These documents will be updated based on the results of system integration tests, and the verification, testing, acceptance, and commissioning process together with the initial results of the System Demonstration Tests, Trial Running, and the initial maintainability tests. They will also be adjusted to reflect knowledge gained as a result of any system maintenance activities that are conducted between installation and the start of Revenue Service.

- As Revenue Service commences, continuous monitoring will be conducted to measure the performance of the system. The results will be included in subsequent updates and continuously evaluated.
The maintenance and the asset management plan will evolve over the life of the project as depicted in the chart below.

The Concessionaire has developed the proposal to address the various requirements of the PPPA as discussed above. The details of the proposal includes the following:

- Required resources for maintenance
- Specialized maintenance requirements
- Supply and management of maintenance spare parts
- Routine maintenance of vehicles, trackwork, stations and structures
- Traffic management during routine maintenance
- Inspection and testing of elements and rectification of defects
- System used for maintenance of records

In our opinion the Consortium’s proposal has addressed the various areas of maintenance that includes aspects of the Project that are related to parts and machinery such as the rolling stock itself, considered the specialized requirements, addressed the requirement of labor and resources, management of on-street conditions and system. In our opinion this is thoughtful approach to addressing maintenance for LRT project of such nature.
8.3.2 Operations and Maintenance Facilities

The Consortium has prepared the proposal such that the Glenridge site will be the main maintenance facility and the Lyttonsville site will be utilized for LRV storage, minor maintenance and operation activities. Detailed analysis has been done to determine the optimal split of vehicles in the two yards to respond to service needs and deliver maximum reliability, allow for operational flexibility, optimize the spatial requirement, and support all primary and secondary maintenance activity. The two facilities have been optimized with the following overarching goals in mind:

- A more efficient environment where all major maintenance occurs allowing a concentration of resources
- Maintenance activities and office activities separated within two distinctive areas of the one facility rather than separated across two sites
- Delivery of major materials to a single location

![Glenridge Entrance Side](image1)

![Glenridge Entrance Door](image2)

![Glenridge Rear Side](image3)

![Glenridge Rear Entrances](image4)
8.3.3  Capital Asset Replacement

The Consortium’s proposal for asset management has been developed such that the asset management plan continuously tracks the rolling stock, infrastructure, systems, and wayside and facility equipment to maintain up-to-date information about each asset. A whole life view of the project assets has been taken. The chart below depicts the overall approach to the asset management and replacement program.

Attention has been given to charting processes for developing and executing the asset management plan, for processes employed during capital asset replacement to mitigate impacts on service reliability, for resources, for need for specialized equipment, and to overall managing a staged construction relating to capital asset replacement. In our opinion this is a thoughtful approach to addressing capital asset replacement requirements for an infrastructure project of such nature.

8.3.4  Handback

The Consortium’s proposal has been developed with recognizing the importance of returning the Project to the Owner at the end of the term in State of Good Repair and in accordance with the Technical Provisions. In particular, the Residual Life of the assets at the conclusion of the O&M period shall be the greater of:

- The remaining Useful Life of each asset had it been maintained in a State of Good Repair
- 10 years for trackwork cross ties, or
No less than three years after the end of the Term, if regular maintenance consistent with PLTO’s Maintenance Plan were to continue after Handback.

Furthermore, any asset rehabilitation, overhaul, or replacement that is scheduled to occur in the three years following Handback will be accelerated to occur before Handback. A Handback Renewal Work Plan will be developed 60 months prior to the end of the Term and updated every 12 months. The Handback Renewal Work Plan will detail PLTO’s approach to the three-year accelerated Handback, and will include acceptance procedures and an Owner Training and Transition Plan to deliver a seamless transfer of O&M responsibilities from PLTO to the Owner at the end of the Term.
8.4 Conclusion

We have undertaken a review of the life cycle costs, dated 1st April 2016. We have developed our own assessment of costs for the system to test our benchmark range. Our own estimate of the system Lifecycle Costs was 14-16% higher than the provided figures. This is as a result of allocation of costs between O&M annual expenditure and cyclical Life Cycle replacement expenditure.

The annual O&M costs are $36,375,988 and are within our benchmark range for a system of this type. The Life Cycle costs are $8,864,069/mile and are slightly below our benchmark range.

The Life Cycle costs for the Maintenance & Storage facilities related to fire protection systems and non-revenue vehicle and equipment replacement are being carried in the Systems cost line as opposed to the OMF cost line. We have established that the labour cost for vehicle life cycle works is carried in the Operations cost line for the annual O&M costs, as opposed to the LRV cost line in the Life cycle costs. We understand that annual maintenance will be undertaken with a view to reducing life cycle expenditure and our analysis supports this. Having reviewed the combined overall costs for the annual O&M works and the Life Cycle works, we are satisfied that the total costs are reasonable for the Project.

We have undertaken a review of the Consortium’s proposal that has been developed to address various maintenance, rehabilitation and handback requirements as identified in the PPPA. The Consortium’s approach is detailed and includes strategies for asset management that will evolve over the life of the Project and the various assets. The asset Handback Renewal Work Plan includes activities such as determining residual life at handback, maintenance, repair, reconstruction, rehabilitation, overhaul and replacement of project assets, handback schedule development and owner training and transition. In our opinion this is a thoughtful approach to handback for a project of such nature.
9 Construction Schedule

9.1 Introduction

A detailed initial baseline construction schedule, dated 31st May 2016 has been provided. The principal schedule activities are as follows:

- Technical Proposal Submittal: 17-Nov-15
- Financial Proposal Submittal: 08-Dec-15
- MDOT Announce Preferred Proponent: 15-Jan-16
- Commercial Close: 07-Apr-16
- Financial Close: 17-Jun-16
- Notice to Proceed (non-construction work): 21-Jun-16
- Project Management Offices Available: 16-Aug-16
- Project Start Construction: 31-Oct-16
- Project Construction Office Available: 16-Aug-16
- PLTP Issue Notice of Readiness to Commence Revenue Service: 07-Mar-22
- Independent Engineer Issues Report on Revenue Service Achieved: 09-Mar-22
- Independent Engineer Issue Certificate Of Revenue Service Availability: 11-Mar-22
- PLTP Commencement of Revenue Service: 11-Mar-22
- Owner Issue Certificate of Final Completion: 14-Sep-22

9.2 Durations

We have identified the principal activities within the schedule and their durations in the table below. The construction sequencing is subdivided into 8 project segments with work progressing in each segment concurrently. The segments are themselves divided in to 3 areas, with Area 1 and Area 3 set either side of Area 2, which is dedicated to the tunnel section of the line and the station at Manchester. Each segment has multiple activities and construction elements within it, including design, utilities, bridges, structures, stations, guideway/track, systems and commissioning.
<table>
<thead>
<tr>
<th>Activity</th>
<th>Start Date</th>
<th>Finish Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Close</td>
<td></td>
<td>17th June 2016</td>
</tr>
<tr>
<td>Submissions Approvals/Comments (MTA/MDOT)</td>
<td>27th May 2016</td>
<td>17th August 2021</td>
</tr>
<tr>
<td>Design Review (MTA/MDOT)</td>
<td>22nd September 2016</td>
<td>26th September 2017</td>
</tr>
<tr>
<td>Contract Submittals (PLTP)</td>
<td>7th April 2016</td>
<td>27th July 2021</td>
</tr>
<tr>
<td>Permits (PLTP)</td>
<td>2nd May 2016</td>
<td>13th June 2018</td>
</tr>
<tr>
<td>Design ¹ (PLTP)</td>
<td>21st June 2016</td>
<td>18th October 2017</td>
</tr>
<tr>
<td>Procurement ² (PLTP)</td>
<td>8th April 2016</td>
<td>12th August 2020</td>
</tr>
<tr>
<td>Testing/Commissioning ³ (PLTP)</td>
<td>24th May 2019</td>
<td>4th March 2022</td>
</tr>
</tbody>
</table>

**Area Wide Breakdown**

**Area 1**

- Segment 1 - Sta 100+00 to 320+36
  - Start Date: 10th April 2016
  - Finish Date: 31st March 2021
- Segment 2 - Lyttonville Yard
  - Start Date: 17th June 2016
  - Finish Date: 25th February 2020
- Segment 3 - Sta 320+36 to Sta 408+00
  - Start Date: 20th June 2016
  - Finish Date: 27th October 2020

**Area 2**

- Segment 4 - Sta 408+00 to 429+05 - Tunnels
  - Start Date: 20th June 2016
  - Finish Date: 22nd June 2020
We are satisfied that the overall durations identified for each segment, when taking account of the location and scope of works required, are reasonable to complete the works in accordance with the Project requirements.
9.3 Construction Sequencing

The construction sequencing for each element identified above follows good industry practice, demonstrates good schedule logic and is as we would expect to see. There is a large volume of activity being undertaken concurrently in multiple locations. This allows the DB CONTRACTOR to expedite the works and has the benefit of knowledge transfer across locations. We are satisfied that the DB CONTRACTOR has included for the resources and construction management personnel to adhere to the schedule dates identified.

The works in each segment are preceded by MTA providing ROW parcels to the Concessionaire, as well as design commentary and approvals covering each element of the works identified above. The scheduled dates for ROW parcels to be provided are set out in Exhibit 9 to the PPPA. From our review it appears that the construction schedule has been appropriately sequenced to take account of the anticipated dates for ROW parcels to be delivered by MTA. We note that failure of MTA to provide the ROW parcels in accordance with Exhibit 9 would be a Relief Event.

*We have reviewed the construction sequencing and schedule logic and are satisfied that it follows good industry practice for a project of this type. We note the resource requirements as a result of the multiple location concurrent sequence of works and are satisfied that the DB CONTRACTOR has included for the resources and construction management personnel required.*

9.4 Critical Path

A critical path is clearly identified on the schedule.

The critical path for the Project starts with Commercial close, runs through Segment 4 tunnel design package, SEM tunnel, east cut & cover tunnel section, system and track completion in the tunnel, local testing & commissioning, system Integration testing, system demonstration testing, revenue service demonstration testing leading to Revenue Service Availability

We have received the following statement of float within the schedule from the DB CONTRACTOR:

Segment 1 – has 35 days of float through the segment 1 bridges, embankment work, track installation and system testing. The remainder of Segment 1 has 56 days of float through construction and local testing, leading to System Wide Integration Testing.

Segment 2 – the Lyttonville Yard. This has a float value of 150 days through construction and local testing leading to System Wide Integration Testing.

Segment 3 – Has a float of 39 days through Wayne St construction and testing activities and another 53 days through the Silver Spring Transit Center aerial bridge and station work.

Segment 4 – on the critical path.
Segment 5 – Has a float of 9 days which is a result of the project critical path identified above. Next lowest path is through alignment construction on University and Piney Branch.

Segment 6 - Has a float value of 48 days through construction and local testing leading to System Wide Integration Testing.

Segment 7 – Has 32 days of float through the Test Track portion of the segment with the remainder of the segment at 68 to 82 days of float through construction and local testing leading to System Wide Integration Testing.

Segment 8 – The Glenridge Yard and has a float value of 87 days. It is required to support the initial running and testing of the LRVs along the Test Track Area.

From our review of the schedule we consider the above is a reasonable representation of the float days available. We note that the PPPA states that any float identified in the schedule is accepted by both MTA and the Concessionaire to be shared (i.e. it is available to be used by either party in mitigating delays). The construction schedule has been produced using a 5 day working week, with shifts of 8 hours per day. This gives the opportunity to extend working hours and use weekend days to mitigate any delays, subject to approval from MTA. We also note the allowance of 60 weather days per year, which can be regarded as conservative, thereby allowing additional contingency in the schedule to mitigate delays.

9.5 Design Development

The time allowed for engineering design development and approval is extensive and we are satisfied that it is sufficient for the Project. The detail related to design development and approvals is as we would expect to see and will allow planning of documentation flow through the early construction period, to assist in avoiding any delays in construction progress.

9.6 Winter working

The DB CONTRACTOR have indicated that they have applied a winter working schedule to their approach, which will prohibit certain works from occurring during winter months. This is good practice but will need to be managed during the construction phase, as bad winter weather can use up float quickly and therefore have a direct impact on the Scheduled Substantial Completion Date. The DB Contractor has confirmed that there are 60 weather days per year included in the schedule, which we consider to be a conservative allowance.

9.7 Project close out

Each of the segments of work have dedicated testing and commissioning activities identified in the schedule. In addition to this, there are also dedicated activities relating to the testing and commissioning of the Vehicles, test track integration and acceptance testing and systems integration and acceptance testing. Following these activities, the trial running of the system is undertaken, culminating in the Revenue Service demonstration and final approval to commence revenue service. The testing and
commissioning period for the full system is comparable to other LRT projects. In addition, a 2.1 mile section of the alignment adjacent to the Glenridge Yard will be completed early, tested and commissioned as an operating system to provide an opportunity to incorporate any lessons learned into the full system testing and commissioning program.

This is considered good practice and should assist in streamlining the testing and commissioning process.

9.8 Conclusion

We have reviewed the construction schedule dated 31st May 2016. We consider that the schedule has been well developed with good logic applied across the activities. We are satisfied that the overall durations included across the 8 segments of work are reasonable to complete the Project in line with the Project document requirements.

We have received a summary statement of schedule float from the DB CONTRACTOR. The DB CONTRACTOR have confirmed that a minimum of 5% float (106 days) will be included in the schedule. The construction schedule has been produced using a 5 day working week, with shifts of 8 hours per day. This gives the opportunity to extend working hours and use weekend days to mitigate any delays, subject to approval from MTA. We also note the allowance of 60 weather days per year, which can be regarded as conservative, thereby allowing additional contingency in the schedule to mitigate delays. The Project will receive a Limited Notice to Proceed to facilitate early start of works.
10 Construction Cost Review

10.1 Total costs

The following table shows the construction cost summary submitted with the bid on 8th December 2016.

<table>
<thead>
<tr>
<th>Element</th>
<th>Cost</th>
<th>% of total cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobilization</td>
<td>$100,647,000</td>
<td>4.9%</td>
</tr>
<tr>
<td>Guideway and Track</td>
<td>$281,544,000</td>
<td>13.7%</td>
</tr>
<tr>
<td>Stations, Stops, Terminals</td>
<td>$155,029,000</td>
<td>7.5%</td>
</tr>
<tr>
<td>Support facilities – Yards, Shops, Admin buildings</td>
<td>$95,588,000</td>
<td>4.7%</td>
</tr>
<tr>
<td>Sitework and special conditions</td>
<td>$588,367,000</td>
<td>28.7%</td>
</tr>
<tr>
<td>Systems</td>
<td>$259,078,000</td>
<td>12.6%</td>
</tr>
<tr>
<td>Vehicles, including spares</td>
<td>$248,001,000</td>
<td>12.1%</td>
</tr>
<tr>
<td><strong>Total Direct Costs</strong></td>
<td><strong>$1,728,254,000</strong></td>
<td><strong>84.2%</strong></td>
</tr>
<tr>
<td>Design costs, project management, permits, surveys</td>
<td>$236,331,000</td>
<td>11.5%</td>
</tr>
<tr>
<td>Integration and testing</td>
<td>$5,129,000</td>
<td>0.2%</td>
</tr>
<tr>
<td>O&amp;M preparation and start-up</td>
<td>$12,859,000</td>
<td>0.6%</td>
</tr>
<tr>
<td>Insurances</td>
<td>$40,468,000</td>
<td>2.0%</td>
</tr>
<tr>
<td>Allowances</td>
<td>$31,635,000</td>
<td>1.5%</td>
</tr>
<tr>
<td><strong>Total Indirect Costs</strong></td>
<td><strong>$326,422,000</strong></td>
<td><strong>15.8%</strong></td>
</tr>
<tr>
<td><strong>TOTAL COST</strong></td>
<td><strong>$2,054,676,000</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
Subsequent to the award of Preferred Proponent, there have been various amendments agreed to which have resulted in a saving to the construction contract price. These are identified in the table below.

<table>
<thead>
<tr>
<th>Amendment item</th>
<th>Amendment value (US$)</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terrorism Premium Adjust</td>
<td>(230,000)</td>
<td></td>
</tr>
<tr>
<td>LRV Tax</td>
<td>(11,653,200)</td>
<td>Sales Tax adjustment</td>
</tr>
<tr>
<td>P.G. County Tipping Fee Waiver</td>
<td>(969,000)</td>
<td>See Section 12.14.3</td>
</tr>
<tr>
<td>Montgomery County Tipping Fee Waiver</td>
<td>(1,963,000)</td>
<td>See Section 12.14.3</td>
</tr>
<tr>
<td>SSTC Sta. ATC</td>
<td>(16,000,000)</td>
<td>See Section 12.14.1</td>
</tr>
<tr>
<td>Select Borrow ilo #57 Stone</td>
<td>(13,987,200)</td>
<td>See Section 12.14.2</td>
</tr>
<tr>
<td><strong>TOTAL ADJUSTMENT</strong></td>
<td><strong>(44,802,400)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>REVISED CONTRACT PRICE</strong></td>
<td><strong>2,009,873,600</strong></td>
<td></td>
</tr>
</tbody>
</table>

*We have reviewed the above items with the DB CONTRACTOR and consider the adjustments made are reasonable for the change in scope identified.*

### 10.2 Benchmark review

We have calculated a benchmark to show how the Purple Line total cost compares to other projects that we have selected as part of the benchmark analysis. We have chosen 6 systems for the benchmark analysis, all of which are light rail projects. All of the data has been normalized to 2015$ and East Coast of US location. We have excluded the LRV costs from the benchmark as these costs are bespoke to each system.
The above graph shows that the Purple Line project sits within our benchmark range. We have undertaken a review of all the costs provided and have built our own estimate of direct costs for the system. Our estimate of direct costs was within 5% of the costs provided, excluding vehicles. Our estimate of indirect costs was within 3% of the costs provided. We consider the direct costs are reasonable for the Project.

We have undertaken a review of the vehicle costs and although it is not possible to benchmark LRVs due to bespoke system requirements, we are satisfied that the costs are reasonable for the Project.

10.3 Indirect costs

We have reviewed the indirect costs and make the following comments:

- Design costs and professional services costs at 11.5% of total costs are in line with our expected benchmark of 9-14%.
- It is considered good practice to include separate costs for integration and testing.
- Allowances include items for Art in Transit, Control of odor, dust, noise and vibration, erosion and sediment control, cleaning and communications.

We consider the indirect costs include items in line with good practice for these projects and represent a reasonable overall proportion of the total costs.
10.4 Conclusion

We have reviewed the construction cost summary, dated 1st December 2015, which was submitted with the bid on 8th December 2015. We have also reviewed amendments made to the construction cost since the award of preferred proponent. The amendments have provided savings to the construction cost, resulting in a revised contract price of $2,009,873,600. We have calculated a benchmark to show how the Purple Line total cost compares to other projects that we have selected as part of the benchmark analysis. All of the projects chosen for the benchmark analysis are light rail projects and all of the data has been normalized to 2015$ and East Coast of US location. The Purple Line project sits within our benchmark range. Following our review of the costs provided we consider the direct costs, indirect costs and vehicle costs are reasonable for the Project.
11 Geotechnical and Environmental Reports

11.1 Introduction

The Final Environmental Impact Statement (FEIS) for the Purple Line was published in the Federal Register on September 6, 2013. A National Environmental Policy Act (NEPA) Record of Decision (ROD) for the Project was signed by FTA on March 19, 2014 and published in the Federal Register on March 31, 2014. It will be the Concessionaire’s responsibility to assure that the Project conforms to the FEIS.

The proposed Purple Line alignment contains sections that are at grade, on elevated structures and in tunnel. In addition the Project requires the construction of new bridges and/or renovation of existing bridges. To make sure the existing spans meet the 75 year design life requirements of AASHTO LRFD Bridge Design Specifications (referenced in Book 2, Part 2B Section 3.1 of the RFP), a preliminary load rating analysis of the existing spans was performed by the DB CONTRACTOR. Design life is defined by AASHTO as the “period of time on which the statistical derivation of transient loads is based: 75 years for these specifications.” If a structure rates satisfactorily then by definition it meets the statistical derivation of transient loads, hence a 75 year design life. The existing spans produced a load rating greater than 1, concluding the minimum 75 year design life requirement is met. In all cases it will be the responsibility of the Concessionaire to perform the geotechnical analysis and design necessary to make sure that all facilities are constructed in a safe manner and that all facilities are compatible with all codes and sound engineering practices.

11.2 Environmental reports

The Concessionaire must make sure all ROD commitments are considered and addressed in the proposal and proposal bid. The general approach to the project is that the environmental items that were identified in the FEIS and ROD are being carried by the Owner. However, any new deviation or change that could lead to re-analysis, update to the ROD, associated mitigation costs, property acquisition costs and its schedule impacts are to be borne by the Concessionaire. The RFP is very specific that the Limit of Disturbance (LOD), Project Right of Way (ROW) and environmental mitigation must stay within the ROD, (Book 2 Part 1 Section 2). Any additional requirements outside the ROD will require that all cost and schedule risk be borne by the Concessionaire.

Some of the prior planning level agreements and understandings that are to be expected from the ROD have not been clearly stated in the RFP. The Memorandum of Agreement (MOA) with various agencies, referenced in Book 2 Part 1 Sections 8 and 9, are still in draft form and are not dated in the RFP. The Concessionaire will need to make sure that the MOAs are finalized and signed prior to Financial Close to reduce/control their risk.

The environmental information made available is satisfactory to allow design to progress within the ROD and FEIS stipulations. Any deviation from this is borne by the Concessionaire. At this time we are not aware of any deviation from the stipulations included in the ROD and FEIS within the Concessionaire’s design approach and none are anticipated in the current design.
In our discussions with the Consortium we understand that a case was brought before the courts to stop the Project due to the presence of Hay Amphipods. The case was dismissed as the environmentalists found no evidence of the amphipods. A second species has recently been identified, the Northern Long Eared Bat. The Consortium have discussed the impacts with specialists on the team and are aware of possible impacts if they encounter them as work restrictions. The Contract provides relief if endangered species are encountered.

The Owner’s environmental review showed that there were some sites that have the possibility of contamination. There is a possibility of encountering contamination at the Glenridge Yard based on its current use combined with the depth of excavation needed. There are also some corrosive soils along the corridor. We understand from our discussion with the Consortium however, that these risks are well understood and that the design has accounted for this. There is a limited amount of exposed steel in areas with aggressive soil. There is dewatering required at the Plymouth tunnel that will require a dewatering permit from the State. This dewatering is not expected to encounter contamination or hazardous materials as the site has been used primarily for residential purposes.

We are satisfied that the Consortium has considered these areas and is prepared to address them during design and construction stage of the Project.

The Owner has provided pay items including estimated quantities for hazardous material remediation – Form O-4 provides the pricing schedule, descriptions and scope. Specifically for soil contamination, the pay items address hydrocarbon contaminated soil, hydrocarbon contaminated groundwater, PCB-containing material, radioactive material, utility derived asbestos pipe, and lead-containing material. Except for a quantity of hydrocarbon contaminated groundwater, all contaminated/hazardous materials will be hauled to approved off-site disposal areas. On-site remediation of a quantity of hydrocarbon contaminated groundwater is called for. The Consortium have received proposals for the supply of equipment required to perform the on-site processing of the groundwater.

These strategies seem adequate at this stage of the proposal to manage any risk and we are satisfied with the approach that has been taken. We can confirm that an allowance has been included in the construction costs for the removal of hazardous materials.

11.3 Geotechnical reports

Book 2 Part 2A Section 4 Geotechnical; Subsection 4.3 details the Owner provided subsurface data (SPT, PMT, ATV, GDR, GBR, GBER and GIR), provided as reference documents in Book 5- Engineering Data.

In the development of the design the Consortium have taken into account the borings provided by the Owner as well as information from their design team that has experience in the region to develop foundation plans. From west to east the geologic conditions are:

In Bethesda just west of Wisconsin Avenue, the underlying bedrock is biotite monzogranite and lesser granodiorite. These are crystalline igneous rocks.
From Wisconsin Avenue to Rock Creek, the underlying bedrock is medium-grained sedimentary mélange with a quartzofeldspatic matrix, and augens (eye-shaped grains) of quartz. It also includes fragments of phyllonite, metagraywacke, migmatite, serpentinite, amphibolites, and actinolite.

From Rock Creek to the northern bend in the Purple Line the underlying bedrock is tonalite. Tonalite is also called quartz diorite. Generally containing hornblende, oligoclase or andesine, and pyroxene, diorite is an igneous rock that is intermediate in composition between acidic and basic igneous rocks. The tonalite is sheared and foliated. In Rock Creek the surficial deposit is Quaternary-age alluvium. Rock Creek is on top of the Rock Creek shear zone in the bedrock. Quartz bodies are abundant along the Rock Creek shear zone.

From the northern bend of the alignment to the intersection of University Boulevard and Carroll Avenue (and through the Silver Spring vicinity) the underlying bedrock is medium- to coarse-grained, foliated sedimentary mélange with a quartzofeldspatic matrix, quartz augens, and fragments of metaarenite (metamorphosed sandstone), biotite schist, actinolite schist, and amphibolite. This is the area the tunnel will be constructed in.

The Purple Line crosses the eastern edge of the Piedmont Plateau near the intersection of University Boulevard and Carroll Avenue, which is close to the Montgomery County-Prince George’s County boundary consists of the older part of the Potomac Group of sediments, which was deposited by streams in the Cretaceous Period. This area contains fine white, pink or yellow sand, large round pebbles, and thin lenses of white or iron-stained clay and kaolin. The depth of these deposits is approximately 100-feet.

From the College Park/Riverdale area to the eastern end of the Purple Line (east of Kenilworth Avenue) the conditions contain dark gray massive clay with lignitized wood and saurian bones, overlain by maroon clay and varicolored sand and clay. The regional thickness of the Patapsco Formation and Arundel Clay is approximately 300 feet.

The soil information provided for the Project and specifically for the tunnel section is extensive. The Owner conducted what is considered to be a thorough geotechnical and environmental review along the corridor. The geotechnical investigation was provided to the design team and used to determine the foundations and approach to soils along the corridor. The Consortium’s approach to understanding the Geotechnical conditions as noted above appears well understood and we are satisfied that a fulsome strategy has been developed to address issues during construction.

11.4 Right of Way Fit and Impacts

It is our understanding that the MOAs are finalized based on technical and staff level agreements between the Owner and the respective external agencies or entities. The final executed MOAs are expected to be in place after the formal approvals from the respective boards or legislative bodies. The Concessionaire is using the current draft and its contents for the development of the proposal.

The general review of the Concessionaire's proposal indicates that it meets the intent of the RFP and other requirements. The list of Innovations identified in Section 3.8 and other changes proposed should be
closely reviewed by the Design team to identify variances or deviations from Specifications and their potential impact either on ROD or public perception and acceptance of the Project. This is necessary to evaluate the risk.

11.5 Conclusion

The environmental data and the geotechnical data supplied in the RFP documents are considered adequate for the Concessionaire to prepare a design and construction management solution able to meet the PPPA requirements.
12 Design Review

12.1 Introduction

The Purple Line is a proposed 16.2-mile transit service located north and northeast of Washington, DC, inside the I-95/I-495 Capital Beltway. The “Purple Line corridor” includes five major activity centers: Bethesda, Silver Spring, Takoma/Langley Park, College Park, and New Carrollton. The Federal Transit Administration (FTA) is the lead federal agency for this Project, and the Maryland Transit Administration (MTA) plus the Maryland Department of Transportation (MDOT) are collectively the “Owner”. The P3 Agreement provides that the Concessionaire shall finance, develop, design, construct, equip and supply Light Rail Vehicles (LRV) for, and operate and maintain, the Purple Line Light Rail Project through an availability payment concession.

The Technical Provisions contained in Book 2 Part 2 of the RFP define the functional and operational requirements of the Purple Line. These cover all aspects of the Project including alignment, track, vehicles, systems and operations and maintenance. It will be the Concessionaire’s responsibility to design, construct and operate a system which meets all of the Owner’s functional and operational requirements and complies with all applicable codes and sound engineering principles.

12.2 Output Specification commentary

Many areas of the RFP, due to specific language, impose risk that must be borne by the Concessionaire. A few examples that should be understood by the Concessionaire are provided below.

- Section 6.3.4 of the PPPA requires the Concessionaire to “…obtain all Governmental Approvals required for the Project and the Work, other than the Owner-Provided Approvals, and shall bear the risk of any delay in obtaining such approvals as well as the risk of conditions imposed on performance of the Work by such approvals.” We are satisfied that the Concessionaire has sufficient understanding of the requirements and schedules required to obtain the necessary approvals and permits.

- Section 7.6.2.6 of the PPPA requires the Concessionaire to be responsible for “proper completion of the Utility Work required for the Project, in accordance with the Contract Documents, regardless of the nature or provisions of the Utility Agreements and regardless of whether Concessionaire or its Contractors, or the Utility Owner or its contractors, is performing the Utility Work.” This creates schedule risk since the Utility Owners and their contractors will not be under the Concessionaire’s control. The Concessionaire has been given the ability to self-perform the majority of the utility relocation work using utility company approved contractors. This will help in controlling the schedule and mitigating delay of utility work.

- Some of the Owner’s Third Party Agreements and Utility Agreements are still in draft form and subject to change. While this places some risk on the Concessionaire, current versions of all the agreements have been provided as reference documents and Book 2 Part 1 Sections 8 and 9 list the portions of each agreement that will be the Concessionaire’s responsibility.
The Operational Readiness section of Book 2 Part 2C identifies the requirements and activities to be performed by the Concessionaire to the satisfaction of the Owner prior to the start of Revenue Service. As with any large capital project, the definition of handover can be a point of consternation on both sides. The Concessionaire must be intimately familiar with the Operational Readiness requirements, particularly the requirements of the ‘Readiness for Trial Running’ and ‘Trial Running’ sections. The Concessionaire’s methods of verifying these requirements should be well defined and accepted by the Owner well in advance of the anticipated start of Train Running to make sure any disagreements in how the requirements will be validated can be addressed.

The Constructability Report PE is based on a project plan prior to when the current P3 was selected, and is based on definition of 11 separate construction areas. The Concessionaire should review the adequacy of the report based on the Project’s segmentation and approach.

12.3 Reference Drawings

The project’s prior phase has obtained a ROD from FTA dated March 19, 2014 based on FEIS dated August 28, 2013, with some modifications/adjustments listed in Appendix F of the ROD. These are referred to in Exhibit 8 of the PPPA and are considered key items for “Owner Provided Approvals”. The PPPA, Section 1.4 and several other sections are specific about the limits of Owner’s responsibility for the Reference Documents provided within the PPPA, however, there appears to be language to allow certain and specific use of these Reference Documents for the baseline.

The PPPA anticipates and acknowledges that some level of reliance on prior information (FEIS, PE and ROD) is inherent, and expected. Section 1.4.2 of the PPPA describes the limitation as to when a particular reference document will be considered baseline (if directly referenced in the Contract).

*This is considered to be an appropriate position for the Project. The DB CONTRACTOR is ultimately responsible for the design and construction of the Project in accordance with the PPPA requirements and must achieve this with appropriate reliance on reference materials provided.*

12.4 Right of Way

Section 7.5.2 of the PPPA requires the Concessionaire to identify “… any property that it believes should be added to the Project ROW or is required for Utility Easements …” which the “Concessionaire shall be responsible for all costs and expenses incurred by Owner in connection with acquisition of Additional Properties other than property required for Utility Easements” and, with respect to Utility Easements, “Concessionaire shall be responsible for its costs incurred under Section 7.5.2.1 and for 50% of the aggregate of all other costs and expenses incurred with respect to the acquisition of such properties”. The Alignment sections of Book 2 Part 1 are very specific to the Limits of Disturbance (LOD), Project ROW and environmental mitigation to stay within the ROD. Any additional ROD requirement outside ROD, EIS and Preliminary Engineering Report, will be a cost and schedule risk to the Concessionaire.

*Further to discussions with the Consortium we confirm that their proposal does not envisage Additional Properties being acquired for Utility Easements.*
There are some functional requirements in Book 2 Part 2B that could subject the Concessionaire to additional risk in regards to the Right of Way. One example is:

- The Existing Utility Structure requirements in Section 20.4.2.3.2 describe the possible need for the Concessionaire to provide stray current monitoring facilities at Utility crossings within the LRT system and for structures proximal and parallel to the Project ROW. The need for these test facilities is determined by the Utility Owners and creates risk (in the form of unexpected Work) for the Concessionaire.

*The Consortium has looked into all of the relocations that are planned for the Project and have taken into account the depth of placement, type of facility, subsurface conditions, and surrounding work. This analysis was performed to make sure that they would not need any additional ROW for utility placement.*

### 12.5 Permitting and Approvals

There are areas in the PPPA and the Technical Provisions that transfers the risk of obtaining the necessary Federal, State, and local permits and approvals from the Owner to the Concessionaire. A few examples are provided below.

- The transfer of responsibility to the Concessionaire is outlined in Section 6.3 of the PPPA that requires the Concessionaire to assume complete responsibility for obtaining any and all required ‘Government Approvals’ necessary to construct the Purple Line. While not explicitly stated, it appears that this section is meant to include Construction and Building Permits, and all Code inspections. Note that this is reinforced by the first three bullets of Book 2 Part 2A Section 5.2.2. We note that Exhibit 8 to the PPPA details the Government Approvals to be provided.

- The requirements in Book 2 Part 2A Section 5.3.1 c highlights the risk to the Concessionaire by requiring the Concessionaire to "... identify which actions require additional environmental study and approval re-evaluation, amendment, or modification", and Section 5.3.2 that requires the Concessionaire to "obtain all Governmental Approvals, other than Owner-Provided Approvals, necessary to complete the Work". Given the number of local jurisdictions and utilities owners the project interfaces with, these two requirements leave it open-ended as to the approvals required and the level of effort and time needed to complete the process. For example, PEPCO is not under the Concessionaire’s control and the poor performance of PEPCO could create additional risk. The utility MOAs address time frames for review and performance of utility company work as well as allow the Concessionaire to self-perform the majority of the utility work.

- The PPPA Section 6.3.7 requires the Concessionaire to conduct “all necessary environmental studies” and obtain "all necessary Governmental Approvals other than Owner-Provided Approvals". This is reinforced by Book 2 Part 2 Section 5.4 Comprehensive Environmental Protection Program (CEPP). This could be open-ended since it is not known or stated if the FEIS prepared and submitted by the Owner will be sufficient in regards to Environmental Approvals.
The PPPA Section 7.5.2 'Additional Properties' states that if the Concessionaire’s design requires any properties in addition to those already identified to be purchased in the Reference or Contract Documents, then the Concessionaire must bear all costs associated with the purchase of the 'Additional Properties'. This is reinforced by Book 2 Part 2 Section 27.2. This has the implication that the Concessionaire must be sure that their proposed System design can be constructed within the limits of the properties identified in the Contract Documents.

MTA has initiated, but not finalized, several Memorandums of Agreement (MOAs) with Third Parties that have a significant stake in the Project. The availability and timing of certain approvals and permits are critical to maintaining the Project schedule and defining the Third Party requirements that must be incorporated. In particular, Sections 2.2.1.2 and 2.2.1.3 of the proposal note certain Third Party reviews that will require longer review periods including the U.S. Army Corp of Engineers, CSXT railroad, and utility owners.

These timeframes have been incorporated into the Consortium’s Initial Baseline Schedule. The Consortium’s plan for addressing environmental management is well defined in Section 2.6 of the proposal. The Consortium intends to keep construction within the Limits of Disturbance (LOD) evaluated in the FEIS and does not anticipate that a Supplemental EIS will be required. The Consortium acknowledges that permitting delays and/or additional compensatory mitigation requirements are a risk and has considered these situations in the proposal.

Section 2.1.9 of the proposal outlines the Consortium’s Risk Management Plan. This is a common approach to risk management in the transit industry and helps focus attention on the risks with the greatest impact on cost and schedule. Some major risks are listed at a high level including probability and impact assessment and mitigation strategies.

We are satisfied the Consortium has a defined, standard approach to identifying and tracking project risks.

Section 2.1.1.3 of the proposal discusses the Consortium’s Third Party Coordination Work Plan. It currently does not provide much detail on the process, structure, timeline or management philosophy the Consortium plans to use. Given the large number of stakeholders involved in the Project and the MOAs initiated by MTA, the Consortium should be able to better define how they intend to manage Third Party coordination. Similarly, Section 2.1.1.4 discusses the Consortium’s Utility Coordination Work Plan. It does provide some detail on how the Consortium intends to manage utility coordination. Successful management of this coordination is essential to reducing the schedule risk associated with it.

We are aware the Consortium has had one-on-one meetings with many of the Third Parties. We are satisfied the Consortium has conducted sufficient up-front coordination with the Third Parties and has sufficient understanding of the Third Party requirements and schedules required to obtain the necessary approvals and permits.

The work to construct the Purple Line will require the Consortium to be in the right of way of both CSX and WMATA at several locations. The Consortium will not be allowed to interfere with their operations
without coordination and approval of the outages. In our discussions with the Consortium we understand that the following permits from railroads:

- Railroad access (Amtrak, CSX)
- Railroad permit for adjacent construction (WMATA).

*These aspects have been considered in the sequencing and scheduling of the work. We are satisfied with this approach.*

### 12.6 Design proposals commentary

The review of the Concessionaire’s October 2015 proposal indicates that it meets the intent of the RFP and have been adequately addressed in the proposal. We expect the design will be developed to an average of 30% DD by Financial Close. Some design related issues have been noted from the proposal and they have been identified in the individual sections below.

#### 12.6.1 Overview of the LRV and Systems

The project incorporates the following major systems:

- The Light Rail Vehicle (LRV)
- The Train Control System (TCS)
- The Traction Power System (TPS)
- The Communication System (CS)

##### 12.6.1.1 Light Rail Vehicle (LRV)

The LRV is required to meet the performance requirements of the RFP, provide the passenger capacity specified and to operate within the clearance envelope and on the track geometry. The 5-Module, 136 ft Vehicle being proposed by the Consortium is based upon the 3-Module vehicle CAF supplied for Houston, but is customized and configured to meet the MTA/MDOT requirements. The materials, structure and equipment planned for the 5-Module Purple Line Vehicle is largely identical to the materials, structure and equipment on the service-proven 3-Module Houston vehicle.

The articulated steel vehicle is an electrically propelled unit consisting of five car bodies joined with four articulations to form a single operating unit. The 80% low floor LRV rests on four trucks. There are 12 passenger doorways per vehicle located in the low floor area.

*The Consortium has performed analysis showing the LRV fits within the profile and track geometry. The Consortium has also shown that the LRV meets the functional and performance requirements of the RFP and that it complies with the provisions of the Buy America Act. As the Consortium is an experienced*
integrator of similar LRTs we believe the proposed LRV design is adequate and complete and does not pose undue risk to the Project.

12.6.1.2 Train Control System (TCS)

The proposed TCS is composed of the following systems:

- Automatic Train Protection (ATP)
- Grade Crossing Warning (GCW)
- Cross-Street Warning (CSW)
- Traffic Signal Pre-Emption Indication (TSI)
- Railroad Worker Secondary Warning (RWW)
- Train to Wayside Communications (TWC)
- Yard Train Control (YTC)

Those seven systems provide the full range of functionality required by the RFP. The systems will be implemented based on proven fixed block signaling principals and utilizing existing equipment.

We believe the proposed TCS design is adequate and complete and does not pose undue risk to the Project.

12.6.1.3 Traction Power System (TPS)

The TPS comprises the following main subsystems and components:

- Traction Power Substations (TSS)
- Traction AC Power Supply (TAC)
- Traction DC Power Feeders (TPF)

The TPS design follows standard North American practices with the exception of the DC Feeder voltage which is 1500 Volts rather than the North American standard of 750 Volts. While 1500 Volts is not standard in North America, it is widely used in Europe, South America and Asia. Some recent systems are now adopting 1500 Volts on a case by case basis, examples of which include Sound Transit LRT, Seattle; O-Train LRT, Ottawa; South Shore/NICTD Commuter, Chicago; and Metra Electric Commuter, Chicago. Greater than 750 DC is anticipated in the National Electrical Safety Code (NEC).
We believe the TPS design proposed by the Consortium is complete and adequate and does not pose undue risk to the Project.

12.6.1.4 Communication System (CS)

The communications system comprises the following nine main subsystems and components:

- Communications infrastructure backbone
- Passenger station local area network
- Radio system
- Passenger information system
- Telephone system
- Wi-Fi/Wi-Max
- LRV communication system
- Automatic vehicle location system
- Master clock time system

The design proposed by the Consortium for each of the systems is both complete and adequate and does not pose undue risk to the Project.

12.6.2 Completeness and Adequacy of Design

The Concessionaire, as part of this proposal, is required to show concept level design that is expected to provide a level of confidence about the Concessionaire’s capabilities and be detailed enough to identify potential solutions and the risks undertaken by the various parties. The previous proposal attempted to provide such information. However there were narratives and sections that were generic and appeared to be restating the requirements rather than presenting a feasible solution or concept plan options. These appear to have been corrected in the current version as shown by the examples listed below:

12.6.2.1 LRV Structural Standards

The proposal states the Purple Line vehicle will conform to the requirements of ASME RT-1 Safety Standard for Structural Requirements for Light Rail Vehicles. This is standard practice for LRV structural design for U.S. systems.
12.6.2.2 System Capacity and Performance Issues

The proposal previously assumed station dwells of 20 seconds at all stations except for the two terminal stations. This dwell time may be too short during peak periods depending on the number of passengers deboarding and boarding. The 5-module vehicle, although larger, has six doors per side compared to the four doors per side on the 3-module vehicle, which may help ease the pressure on boarding times.

The proposal assumes six minute dwell times at the terminal stations. Since longer dwell times may be required at the intermediate station platforms, the Concessionaire should consider lengthening dwells at the intermediate stations to provide more time for passengers to deboard and board, and a shorter dwell time at the terminal stations.

12.6.2.3 CCTV

The PPPA requires 100% CCTV camera coverage of the passenger areas within the vehicles. The Concessionaire’s design includes cameras to view the vehicle interior areas, although there are two small areas at each end of the car that may not be covered.

The PPPA requires the capability to download stored CCTV images from vehicles to wayside via a Wi-Fi network. The Concessionaire’s design document includes a brief discussion of the proposed Wi-Fi network and associated functionality required.

Volume II Book 2 Sections 12.3.4 and 12.4.18 require the vehicles to have a CCTV monitor located in the Operator’s cab. This capability is not described in the current proposal. The Concessionaire’s design should include a description of this CCTV monitor in the CCTV portion of Section 3.2.7.7.

12.6.2.4 OCS Contact Wire Icing

Since Volume II Book 2 Section 15.3 requires the Overhead Catenary System to function properly in prevailing climatic conditions, the Concessionaire should consider including a discussion of how icing on the contact wire will be mitigated or eliminated.

12.6.3 Proposed Alignment and System Design Changes

Section 3.3.1.1 ‘Track Alignment’ describe some proposed modifications to the alignment. This seems to be an open ended risk since it is not known to what extent the offered pphpd capacity, operating fleet, and overall reliability of the system are contingent on acceptance of these proposed changes. However, the proposed modifications appear to be reasonable and have minimal effect on vehicle performance.

12.6.4 Underground Utilities

Proposal Section 2.1.2.4 ‘Utility Coordination Plan’ includes a description of how the Concessionaire will obtain and manage information regarding underground utilities prior to construction activities (As-Builts, site investigations, etc.) to minimize the potential to damage to these utilities.
12.6.5 Disposal of Hazardous Waste

Proposal Section 2.6 ‘Environmental Management’ includes a description of how hazardous waste, if any, will be handled.

12.6.6 Structures

As described in Section 3.6.1.3 ‘Approach to Limiting Dust, Noise and Vibrations’ a blasting consultant has been hired to help define the blasting methodology.

Although the Concessionaire enumerates the ground support classifications in Section 3.6.1.4 ‘Approach to Addressing Geotechnical Issues’, a conceptual cross section for each type of ground support classification could be developed to help convey the pros and cons of their application.

Section 3.6.2.3 describes the Concessionaire’s design approach for bridges including a table summarizing the proposed bridge designs. This information in conjunction with the bridge drawings appear to provide adequate information about the proposed designs.

We have discussed with the Consortium the complexity of construction of some of the structures that are involved in the construction at various locations and have enumerated the approach taken below:

- The design of the project utilizes several different girder types. They vary from steel plate, cast-in-place, and bulb-t derivatives. In our discussions with the Consortium we understand that none of these bridge types are considered complex and that the location of some of the bridges does increase the complexity for erection.

- A second factor that increases the complexity is the tight confines for placement of cranes to perform the work. The Consortium have looked at the effort considering both of these factors and arrived at a constructible solution. The LRT and pedestrian bridges at Rock Creek present some challenges, including trucking to the site for the LRT and for both bridges the placement of the girders as there is restrictions to where they can pick from to limit impacts to the park.

- The bridge at Kenilworth and the East-West Expressway is a curved bridge which transects the intersection. The Consortium have anticipated local detours for the erection of this bridge which should simplify the construction.

- Of the aerial stations the SSTC is the most complex but from a vertical construction standpoint we understand that it is relatively straightforward. The Consortium analyzed the bridge at this location and also looked at the picks to determine crane placement and looked at the order of the construction to eliminate conflicts. Addendum 4 from the Owner simplified this station due to the elimination of the ornate canopy previously required.

- Chevy Chase Lakes and Riverdale are the other two “aerial” stations but both are now a standard platform on an MSE wall embankment.
The Bethesda station is below grade but is being constructed in the envelope of an existing trail running beneath the Apex and Air Rights buildings. The complex activity here is the excavation to the Red Line Lobby level. The Consortium have analyzed this excavation and submitted an ATC that provides an alternative approach as it mitigates the impacts from a grade beam that supports a portion of the Apex building.

The Manchester Place station is not considered complex as it is constructed in a simple excavation with a parking deck constructed over it.

12.7 Integration of Service and Operational Demands

The successful bidder is to propose a combination of equipment, systems, procedures and personnel that will provide a level of service which meets the operational requirements of the PPPA. The equipment proposed has the necessary reliability to meet the operational requirements. The operation and maintenance procedures and the organization proposed indicate that the Concessionaire is capable of operating the railroad to deliver the required service.

12.8 Rail Design

The Concessionaire’s proposed track alignment and trackwork designs are detailed in Sections 3.3 and 3.4 respectively. The designs appear to be appropriate and consistent with the PPPA. The Concessionaire is proposing some alignment and special trackwork refinements compared to the reference design as follows:

- Refinement of some special trackwork types
- Reduction of vertical grade at five stations
- Changing two stations from side platform stations to center platform stations

The alignment and special trackwork refinements appear reasonable and should not introduce risk to the Project. Changing the platform configuration of the two stations was previously proposed to MTA during the industry review process.

12.9 Compliance of Design to Specification Requirements and Regulations

The review of the Concessionaire’s proposal indicates that it meets the intent of the PPPA and other requirements within. The list of ATCs identified in Section 3.8 should be closely reviewed by the Concessionaire to identify any variances or deviations from the PPPA and their potential impact either on ROD or public perception and acceptance of the Project.

We have discussed this with the DB CONTRACTOR and are satisfied that this due diligence is being applied to all ATCs.
Many areas of the proposal note that the preliminary design work provided in the reference design will be used as a basis for the team’s work. Section 2.2.1.2 ‘Managing Submittals and Reviews’ discusses a Contract Data Requirement List (CDRL) that will be used to tie submittals to the Project schedule. Section 2.1.9 discusses a Design Quality Plan that will make sure the design complies with the contract requirements. Also, Section 2.7.5.1 discusses a Verification Cross Reference Matrix (VCRM) that will be used for tracking test procedures and reports.

12.10 Similar Project and Prior Use

The Concessionaire has assembled mature and capable partners for the Purple Line LRT. Focusing on the key firms on the design and delivery side, Fluor Enterprises, Inc. is a leading contractor that brings experience from completing large scale infrastructure projects of similar nature and size, including a recent Commuter Rail Line in Denver, Co. Atkins NA is a recognized design firm and championed the design efforts on the Phoenix LRT, Portland Streetcar, and other international rail transit projects. The system supplier is CAF who is proposing a substantially similar 70% low floor LRV that is currently being commissioned for the Houston LRV program and built in Elmira, NY.

The program requirements of the Purple Line LRT are not materially different from these other domestic LRT and streetcar projects that were delivered using similar national codes, standards and guidelines.

12.11 Design Constraints

The Project has design constraints imposed by Third Parties, both directly and indirectly. The MTA has already undertaken coordination with stakeholders to define these constraints and incorporate them in their preliminary design and RFP documents. Several of the design constraints relate to Right of Way (ROW) requirements. For example, the MTA developed preliminary designs for the LRT and CCT bridges that cross Rock Creek and included these design requirements in the RFP. The Concessionaire appears to be addressing these and other bridge requirements appropriately.

In some cases, the Concessionaire is proposing betterments to the preliminary designs, but the team notes they are prepared to embrace the designs exactly as detailed in the RFP if the betterments are not accepted. Another example of Third Party requirements related to the ROW will be those of the CSXT railroad. The proposal acknowledges that the system will be designed and constructed in compliance with the CSXT Public Project Manual. The design will also be subject to review and approval by the FRA. CSXT and the FRA have standards for incorporating non-FRA regulated transit systems into a shared use corridor. The design constraints imposed by CSXT may also satisfy FRA requirements, but it is possible the FRA will impose additional constraints related to separation of the two ROWs.

12.12 Adequacy of Traffic Management Plans

The Concessionaire’s approach to traffic management is detailed in Sections 2.1.2.2 and 3.7. Both sections include detailed descriptions of the Concessionaire’s construction sequencing plans for the major segments of the alignment. Their approach is largely consistent with what is envisioned in the RFP, with
the notable differences being the reduction in the number of traffic control phases required for some segments.

The Consortium understands that development of the traffic management plan will be a large effort on this Project. The corridor is congested and there are several AHJs along the corridor that will comment on the TMP. The majority of the corridor has been designed so that they can build it in two phases and limiting the impacts on the public as well as workers. It should be mentioned as part of the Owner’s quest for savings they have proposed several revisions to the TMP and the associated restrictions which they took on board. *We are satisfied with the approach that has been taken.*

**12.13 Proposed ITS plans**

The previous proposal did not have ITS plans with dynamic signage or dynamic traffic control systems. The current proposal includes Section 5.2 Traffic Monitoring and Management ITS which describes systems conforming to accepted practice.

**12.14 Alternative Technical Concepts (ATCs)**

There are 9 ATCs that were proposed by the DB CONTRACTOR in their proposal, which have been accepted by the Owner since the award of the Preferred Proponent. We have given a brief summary of each below.

- **ATC 2: Spray-Applied Waterproofing Membrane.** This solution replaces sheet waterproofing membrane in the mined section of the Plymouth Tunnel with a spray applied waterproofing membrane (SAWM). SAWM, in conjunction with the initial and secondary linings, meets the water infiltration criteria as specified in the RFP.

- **ATC 4: Reconfigure Annapolis Road/Glenridge Station.** This solution changes the Annapolis Road/Glenridge Station platform configuration from side- to center-type. This ATC offers benefits in station operations, capacity, platform crowding and access. This also simplifies maintenance, reduces signage, fare vending machines and other station appurtenances.

- **ATC 5: Reconfigure Beacon Heights Station.** This solution changes the Beacon Heights Station platform configuration from side- to center-type. This ATC offers benefits in station operations, capacity, platform crowding and access. This also simplifies maintenance, reduces signage, fare vending machines and other station appurtenances.

- **ATC 17: Bethesda South Station Entrance Reconfiguration.** This solution reconfigures and improves constructability of the Purple Line Lobby Level and deep shaft connector to the WMATA Red Line Bethesda Station. This ATC offers benefits in improving public access and egress, improved geometry of the station, improvement in location of non-public spaces and improvement in constructability of works.

- **ATC 18: Bethesda Station Ventilation Optimization.** This solution replaces Bethesda Station’s emergency smoke management system of axial fans and dampers with jet fans. The jet fans will be
Purple Line Transit Partners
Purple Line LRT, Maryland

installed to the east of the east end of the platform to maintain a clean look for the waiting passengers. This ATC provides benefit by eliminating the need for extensive system of ventilation ductwork, fans, shafts, and motorized dampers. It also helps address Montgomery County preferences by eliminating the large surface ventilation structure, fan room and associated building services adjacent to Elm Street and Elm Street Park.

- **ATC 20**: New Carrollton Station Reconfiguration. This solution allows Pedestrians to use a central pedestrian plaza for access between stations, bus bays, and Kiss & Ride. This ATC provides Metrobus and Kiss & Ride to have a separate entrances as required by WMATA. It also provides benefit by existing pedestrian bridge, tunnel access, elevators, escalators and stairs not being impacted.

- **ATC 21**: Baltimore-Washington Parkway Bridge. This solution eliminates demolition and reconstruction of the existing northbound and southbound bridge spans of Baltimore-Washington (BW) Parkway over Riverdale Road. This ATC provides benefit by reducing work over active roadways and assists with accelerated bridge construction.

- **ATC 24**: Bethesda Station Platform Reconfiguration. This solution reconfigures the Bethesda Station platform, provides additional terminal tail track length, modifies track geometry and adjusts a retaining wall.

- **ATC 27**: Permanent Retaining Walls with Timber Lagging. This solution replaces the horizontal sheet piling and precast concrete lagging with mixed hardwood timber lagging. This ATC allows for the use of industry standard construction methods, lighter weight materials, and requires less equipment.

_All of the above ATCs are approved by the Owner. These ATCs are incorporated in to the design and construction solution, all cost and schedule implications during construction have been accounted for by the DB CONTRACTOR._

We have provided below a summary of the other principal technical changes requested by the Owner since the award of Preferred Proponent.

12.14.1 **Silver Spring Transit Centre (SSTC)**

We have reviewed the requirements set forth with the proposed changes. SSTC Purple Line station has been moved to the North East side of the Transit Centre. This has removed some of the construction challenges of the original station location and has resulted in a cost saving of $16,000,000 to the submitted bid price. We have discussed the change with the DB CONTRACTOR and are satisfied that the scope change has not materially changed the risk profile of the Project. We confirm that the construction logistics have been simplified to a certain extent. Additionally, with respect to the technical changes we note the following:

- train crossing at the junction of Ramsey Avenue and Bonifant Street will navigate via the curve of the track through the junction. This will likely require that traffic be stopped on both roads whenever a train enters or exits the station. We noted that the specification requires the Concessionaire to
develop a new traffic signal with preemption for that junction but does not talk about the need to simultaneously stop traffic.

*We have discussed this with the DB CONTRACTOR and note that that design takes into account that the two traffic streams will be held while the LRV navigates the curve through the Ramsey/Bonifant intersection. Both of these roads have low volumes so the expectation is there will not be an impact to traffic operations from queueing, only the delay from the LRV.*

- the platform area in the station has a slight grade and it slopes toward the above reference junction. To prevent a potentially dangerous roll out into the junction, the Automatic Train Control system or the vehicle control system need to be set to have brake applied whenever the vehicle is stopped and traction power is not being applied.

*The DB CONTRACTOR will make sure that the Automatic Train Control system and vehicle systems will be designed to include failsafe’s which will prevent a potentially dangerous roll out into the junction in the instance of the loss of traction power. These failsafe’s will be fully tested during system integration.*

12.14.2 **Backfill Provisions**

This change identifies that select Backfill material may be used for MSE walls whose “Anticipated Owner” is identified as MTA in Exhibit 3.11 in Book 2, Part 2B, Section 3 of the Technical Provisions (the “Backfill Uses”). Select backfill material shall meet the requirements set out in the Specification (collectively, the “Backfill Requirements”) in this provision.

*We have discussed this with the DB CONTRACTOR and note that the Owner has requested that the DB CONTRACTOR attempt to use cut material from Project excavations where deemed appropriate, in lieu of the #57 stone included in the bid. The DB CONTRACTOR is to determine with the Owner’s Engineer if the cut material is appropriate to use as fill. The DB CONTRACTOR is under no obligation to use a minimum quantity of material as fill. We are satisfied that this change has not materially changed the risk profile of the Project.*

12.14.3 **Landfill Provisions**

The Landfill requirements for Montgomery County and Prince George’s County have been discussed. The Montgomery County Landfill site is the Gude Drive Landfill site in Rockville Maryland, the Prince George’s County site is the Brown Station Road Landfill in Upper Malboro Maryland.

*The Owner has negotiated a waiver of tipping fees for material from the Project at the Prince George and Montgomery County landfill sites. We are satisfied that this change has not materially changed the risk profile of the Project.*
12.15 Miscellaneous Changes to Technical Provisions

We have listed below miscellaneous technical changes that have been identified by the Owner since the award of the Preferred Proponent.

- Sustained Peak Load. Technical Provisions, Part 2, Section 3.3.2
- Total Trip Run Time. Technical Provisions, Part 3, Section 3.15
- Limits of Maintenance for Roadways. Technical Provisions, Part 1, Section 7
- Wayne Avenue Posted Speed Limit. Technical Provisions, Part 2, Section 1.4.1
- WMATA Review Period. Technical Provisions, Part 1, Section 8.7
- WMATA Warranty. Technical Provisions, Part 1, Section 8.7
- Routine Maintenance and Repair of Montgomery County and Prince George’s County Roadways. Technical Provision, Part 1, Section 8.3 and Section 8.4
- Bridge Inspections and Routine Maintenance of County owned Bridges, Technical Provisions, Part 1, Section 8.3 and Section 8.4
- CSX Flaggers / Notification Requirement. Technical Provision, Part 1, Section 8.6
- University of Maryland, Building 212, P3 Agreement, Exhibit 9

The above noted changes to the Technical Provisions have been identified by the Owner. These changes are relatively minor in nature and have no resultant change to the submitted bid price. We have discussed the changes with the DB CONTRACTOR and are satisfied that this has not materially changed the risk profile of the Project.

12.16 Conclusion

The Output Specifications and PPPA obligations transfer technical risks to the Concessionaire, in the most part as would be expected under a P3 procurement for this type of project. There are some areas where specific focus should be applied in the development of the design solutions, to avoid undue risk being taken on. Specifically, keeping within the ROD stipulations will be critical in avoiding additional risks associated with approvals.

The Consortium has performed analysis showing the LRV model the Consortium plans to use for the Project fits within the profile and track geometry. The Consortium has also shown that the LRV meets the functional and performance requirements of the PPPA and that it complies with the provisions of the Buy America Act. As the Consortium is an experienced...
The review of the Concessionaire’s proposal indicates that it meets the intent of the PPPA and other requirements within. The list of ATCs identified in Section 3.8 have been reviewed by the Owner to identify any variances or deviations from the PPPA and their potential impact either on ROD or public perception and acceptance of the Project. All of the ATCs proposed in the bid submission have been accepted by the Owner.
13 Equator Principles

13.1 Introduction

The Equator Principles Financial Institutions (EPFIs) have adopted the Equator Principles in order to make sure that Projects that they finance and advise on are developed in a manner that is socially responsible and reflects sound environmental management practices. The Consortium acknowledges that compliance with the Equator Principles is a typical requirement of lenders and as such is committed to following them.

We have considered the Project within its context and assessed the environmental and social impacts and have commented on each of the principles below.

13.2 Principle 1 – Review and Categorization

When a Project is proposed for financing, the EPFI will, as part of its internal environmental and social review and due diligence, categorize it based on the magnitude of its potential environmental and social risks and impacts. Such screening is based on the environmental and social categorization process of the International Finance Corporation (IFC).

Using categorization, the EPFI’s environmental and social due diligence is commensurate with the nature, scale and stage of the Project, and with the level of environmental and social risks and impacts. The categories are:

**Category A** – Projects with potential significant adverse environmental and social risks and/or impacts that are diverse, irreversible or unprecedented;

**Category B** – Projects with potential limited adverse environmental and social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures; and

**Category C** – Projects with minimal or no adverse environmental and social risks and/or impacts.

*We have reviewed the environmental and social impacts of this Project on the surrounding area and considering the Project in this context, we can opine that the Project will be delivered in accordance with Equator Principles and conclude that the project falls under Category B. The application of the Equator Principles is subjective and other institutions may consider this Project deserves a different categorization.*

13.3 Principle 2 – Social and Environmental Assessment

For all Category A and Category B Projects, the EPFI will require the borrower to conduct an Assessment process to address, to the EPFI’s satisfaction, the relevant environmental and social risks and impacts of the proposed Project. The Assessment Documentation should propose measures to minimize, mitigate, and offset adverse impacts in a manner relevant and appropriate to the nature and scale of the proposed Project.
This Project is being constructed in an OECD country, where the applicable environmental and social laws are generally in accordance with the Equator Principles. The permits and planning process within the USA is intended to minimize any environmental impacts on the surrounding area and also considers the local residents and any impact the development may have on them.

We are satisfied that the FEIS and ROD process on the Project has been completed and that the Consortium’s proposals take account of the environmental assessments provided.

13.4 Principle 3 – Applicable Social and Environmental Standards

The Assessment process should, in the first instance, address compliance with relevant host country laws, regulations and permits that pertain to environmental and social issues.

The Project is being constructed in accordance with American standards. These are specified in detail within the Technical Provisions. This is in accordance with what we would expect of a modern OECD construction project.

13.5 Principle 4 – Environmental and Social Management System and Equator Principles Action Plan

For all Category A and Category B Projects, the EPFI will require the borrower to develop or maintain an Environmental and Social Management System (ESMS).

Further, an Environmental and Social Management Plan (ESMP) will be prepared by the borrower to address issues raised in the Assessment process and incorporate actions required to comply with the applicable standards. Where the applicable standards are not met to the EPFI’s satisfaction, the borrower and the EPFI will agree an Equator Principles Action Plan (AP). The Equator Principles AP is intended to outline gaps and commitments to meet EPFI requirements in line with the applicable standards.

In our opinion, an Action Plan and Management System has been adequately developed as part of the Consortium’s bid proposal. Any environmental concerns will be addressed through the planning and permitting process and will be dealt with under the applicable American laws. The Construction Management Plan has been developed to minimize impact on the environment and social environment.

13.6 Principle 5 – Stakeholder Engagement

For all Category A and Category B Projects, the EPFI will require the borrower to demonstrate effective Stakeholder Engagement as an ongoing process in a structured and culturally appropriate manner with Affected Communities and, where relevant, Other Stakeholders. For Projects with potentially significant adverse impacts on Affected Communities, the borrower will conduct an Informed Consultation and Participation process. The borrower will tailor its consultation process to: the risks and impacts of the Project; the Project’s phase of development; the language preferences of the Affected Communities; their decision-making processes; and the needs of disadvantaged and vulnerable groups. This process should be free from external manipulation, interference, coercion and intimidation.
We are satisfied that appropriate Stakeholder engagement has been incorporated in to the Consortium’s proposals.

13.7 Principle 6 – Grievance Mechanism

For all Category A and, as appropriate, Category B Projects, the EPFI will require the borrower, as part of the ESMS, to establish a grievance mechanism designed to receive and facilitate resolution of concerns and grievances about the Project’s environmental and social performance.

We are satisfied that appropriate measures are included in the Consortium’s proposals to manage this requirement, should it be required.

13.8 Principle 7 – Independent Review

For all Category A and, as appropriate, Category B Projects, an Independent Environmental and Social Consultant, not directly associated with the borrower, will carry out an Independent Review of the Assessment Documentation including the ESMPs, the ESMS, and the Stakeholder Engagement process documentation in order to assist the EPFI’s due diligence, and assess Equator Principles compliance.

Should this principle be applied, this will be addressed between the parties.

13.9 Principle 8 – Covenants

An important strength of the Equator Principles is the incorporation of covenants linked to compliance.

For all Projects, the borrower will covenant in the financing documentation to comply with all relevant host country environmental and social laws, regulations and permits in all material respects.

This principle is covered within the Finance Documents.

13.10 Principle 9 – Independent Monitoring and Reporting

To assess Project compliance with the Equator Principles and ensure ongoing monitoring and reporting after Financial Close and over the life of the loan, the EPFI will, for all Category A and, as appropriate, Category B Projects, require the appointment of an Independent Environmental and Social Consultant, or require that the borrower retain qualified and experienced external experts to verify its monitoring information which would be shared with the EPFI.

Should this principle be applied, this will be addressed at the time.

13.11 Principle 10 – Reporting and Transparency

The following borrower reporting requirements are in addition to the disclosure requirements in Principle 5.
For all Category A and, as appropriate, Category B Projects:

- The borrower will ensure that, at a minimum, a summary of the ESIA is accessible and available online.

- The borrower will publicly report GHG emission levels (combined Scope 1 and Scope 2 Emissions) during the operational phase for Projects emitting over 100,000 tonnes of CO2 equivalent annually.

*We are satisfied that the reporting system included within the Consortium’s proposals will meet this requirement if required.*

The EPFI will report publicly, at least annually, on transactions that have reached Financial Close and on its Equator Principles implementation processes and experience, taking into account appropriate confidentiality considerations.

*This is a lender requirement.*

**13.12 Conclusion**

*Having considered the Project in this context, we can opine that the Project will be delivered in accordance with Equator Principles and conclude that the Project falls under Category B. The evaluation of the Project against the Equator Principles is a subjective exercise and the classification of individual projects will depend on an individual organizations view of each principle. Other organizations may evaluate the project differently.*
Appendix 1 – Information Reviewed

- Public-Private Partnership Agreement, Execution Version as amended, including Exhibits 1 through 16; and the following documents to the Public-Private Partnership Agreement Execution Version:
  - Technical Provisions (Book 2) Part 1, Scope of Work
  - Technical Provisions (Book 2) Part 2, Design Build Requirements
  - Technical Provisions (Book 2) Part 3, Operations and Maintenance
  - Codes and Standards (Book 3)
  - Contract Drawings (Book 4)
  - Engineering Data (Book 5)
- Deviations from requirements of the Technical Provisions approved by Owner in accordance with the Instructions to Proposers as identified in Section 1 thru 7 of Exhibit 2; which includes ATCs, SSTC Backfill, Landfill, TPSS locations provisions
- Design-Build Contract, Amended and Restated Version, dated 14th June, 2016
- Operations and Maintenance Contract, Amended and Restated Version, dated 14th June, 2016
- Interface Agreement, Execution Version dated April 7, 2016
- PLTP Initial Baseline Schedule dated 31st May 2016
- PLTP Limited Notice to Proceed Schedule dated Mar 24, 2016
- PLTC Cash Flow Analysis, Revised per Reallocations thru Feb 15, 2016 Final Rev 09
- PLTP O&M and Lifecycle costs dated April 1, 2016
- PLTP Financial Model, dated 14th June 2016
- PLTP Proposal Write-ups (Gold Team Review – Sections 1,2,3,4 and 5)
- PLTP Purple Line Transit System design drawings for the proposed technical solution
- Relevant project experience for Consortium members and their capability statements
- Statement of Qualifications presented to MDOT and MTA
- Reference Documents provided by the Owner
CONTINUING DISCLOSURE AGREEMENT (CONTRACTING AUTHORITY)

This Continuing Disclosure Agreement, dated June 17, 2016 (this “Agreement”), is executed and delivered by the Maryland Department of Transportation (the “Owner”) for the benefit of the holders and beneficial owners of the $100,000,000 Maryland Economic Development Corporation (“Issuer”) Private Activity Revenue Bonds (RSA), Series 2016A (Purple Line Light Rail Project) (Green Bonds) (the “2016A Bonds”), $23,320,000 Maryland Economic Development Corporation Private Activity Revenue Bonds (FCP), Series 2016B (Purple Line Light Rail Project) (Green Bonds) (the “2016B Bonds”), $27,480,000 Maryland Economic Development Corporation Private Activity Revenue Bonds (SLP), Series 2016C (Purple Line Light Rail Project) (Green Bonds) (the “2016C Bonds”), and $162,235,000 Maryland Economic Development Corporation Private Activity Revenue Bonds (AP), Series 2016D (Purple Line Light Rail Project) (Green Bonds) (the “2016D Bonds” and, collectively with the 2016A Bonds, the 2016B Bonds and the 2016C Bonds, the “Series 2016 Bonds”). The Series 2016 Bonds are being issued pursuant to a resolution adopted by the Issuer on January 27, 2014, as supplemented by the Supplemental Resolution adopted by the Issuer on April 18, 2016 and the Indenture (defined below). The proceeds of the Series 2016 Bonds will be loaned to the Company (defined below) pursuant to the terms of the Series 2016 Loan Agreement (defined below) for the purposes of paying a portion of the costs of the Project.

This Agreement is being executed and delivered to assist the Participating Underwriters (defined below) in complying with the Rule (defined below). The Owner’s obligations hereunder shall be limited to those required by this written undertaking pursuant to the Rule. The Owner acknowledges that it has been informed by the Participating Underwriters that they could not purchase the Series 2016 Bonds unless they reasonably determine that the Owner, among others, has agreed to provide continuing disclosure for the Series 2016 Bonds in accordance with the Rule (as defined herein) as set forth in this Agreement.

NOW, THEREFORE, in consideration of the purchase of the Series 2016 Bonds by the Participating Underwriters, the Owner agrees as follows:

Section 1. Definitions. In addition to the definitions set forth in the Indenture, the Series 2016 Loan Agreement and the Collateral Agency Agreement (as defined in the Series 2016 Loan Agreement) or parenthetically defined herein, which apply to any capitalized terms used in this Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Bond Counsel” has the meaning set forth in the Indenture.

“Business Day” means any day that is not a Saturday, Sunday or other day on which banks located in New York City or Maryland are required or authorized by law or executive order to close.

“Company” means Purple Line Transit Partners, LLC, a Delaware limited liability company.
“Fiscal Year” means the consecutive 12-month period starting on July 1 and ending on June 30.

“Indenture” means the Indenture of Trust, dated as of June 1, 2016, between the Issuer and U.S. Bank National Association, as trustee.

“Listed Event” means any of the events listed in Section 3(a) of this Agreement, or collectively, “Listed Events”.

“MSRB” or “the MSRB” means the Municipal Securities Rulemaking Board. MSRB’s required method of filing is electronically via its Electronic Municipal Market Access (EMMA) system available on MSRB’s Internet Web Site.

“MSRB’s Internet Web Site” means http://emma.msrb.org.

“Official Statement” means the final Official Statement dated June 14, 2016, together with any supplements thereto, delivered in connection with the original issuance and sale of the Series 2016 Bonds.

“Owner” means, for purposes of this Agreement, the Maryland Department of Transportation.

“Participating Underwriter” means any original underwriter of the Series 2016 Bonds required to comply with the Rule in connection with an offering of the Series 2016 Bonds.

“Preliminary Official Statement” means the preliminary Official Statement dated June 2, 2016, together with any supplements thereto, delivered in connection with the original issuance and sale of the Series 2016 Bonds.

“Rule” means Rule 15c2-12(b)(5) under the Securities Exchange Act of 1934, as amended.

“SEC” means the U.S. Securities and Exchange Commission.

“Series 2016 Bond” means each bond of the Maryland Economic Development Corporation Private Activity Revenue Bonds (RSA), Series 2016A (Purple Line Light Rail Project) (Green Bonds) (the “2016A Bonds”), Maryland Economic Development Corporation Private Activity Revenue Bonds (FCP), Series 2016B (Purple Line Light Rail Project) (Green Bonds) (the “2016B Bonds”), Maryland Economic Development Corporation Private Activity Revenue Bonds (SLP), Series 2016C (Purple Line Light Rail Project) (Green Bonds) (the “2016C Bonds”), and Maryland Economic Development Corporation Private Activity Revenue Bonds (AP), Series 2016D (Purple Line Light Rail Project) (Green Bonds), or collectively, the “Series 2016 Bonds.”

“Series 2016 Loan Agreement” means the Series 2016 Loan Agreement, dated as of June 1, 2016, between the Issuer and the Company, in its capacity as the Borrower under the Series Loan Agreement.
Section 2. Provision of Reports and Notices

(a) (i) The Owner shall provide to the MSRB audited financial statements of the Owner within two hundred and seventy five (275) days after the end of each Fiscal Year of the Owner, commencing with the Fiscal Year ending June 30, 2016. In the event that audited financial statements of the Owner are unavailable within 275 days after the end of the Fiscal Year of Owner, commencing with Fiscal Year ending June 30, 2016, the Owner will provide to the MSRB unaudited financial statements within said time period and shall provide to the MSRB, within five (5) days after audited financial statements are available, the audited financial statements of the Owner. All financial statements of the Owner required to be provided hereunder shall be prepared in accordance with generally accepted accounting principles, except as otherwise disclosed in the notes thereto or in the Official Statement.

(ii) The Owner shall, within ten (10) days after execution and delivery of the Full Funding Grant Agreement related to the Federal Transit Administration New Starts funds allocated to the Project, file a notice with the MSRB stating that the Full Funding Grant Agreement has been fully executed and delivered and the related funds are available thereunder for the Project in accordance with the terms of the Full Funding Grant Agreement.

(b) The audited financial statements required to be provided pursuant to subsection (a) above may be incorporated by reference from other documents, including official statements, preliminary and final, of debt issues of the Owner, which are available to the public on MSRB’s Internet Web Site or filed with SEC. The Owner shall in a written notice provided to the MSRB within the time frames set forth in subsection (a) above clearly identify each such document incorporated by reference.

(c) If the Owner is unable to provide to the MSRB its audited financial statements by the date required in accordance with Section 2(a)(i) above or the notice referred to in subsection 2(b) above by the dates required in Section 2(a)(i), the Owner shall send a notice to MSRB of such failure.

(d) The Owner shall determine each year prior to the date for providing the audited financial statements pursuant to Section 2(a)(i) above the appropriate electronic format prescribed by MSRB.

(e) If the Fiscal Year end of the Owner changes, the Owner shall give prompt notice of such change in the same manner as for any Listed Event listed under Section 3(a) hereof.

Section 3. Reporting of Listed Events.

(a) The Owner shall provide or cause to be provided, in a timely manner, but not later than ten (10) Business Days after the occurrence of the event, to the MSRB notice of any of the following events with respect to the Series 2016 Bonds (each, a “Listed Event”, and collectively, the “Listed Events”):

(i) Bankruptcy Event, insolvency, receivership or similar event of the Owner; and
(ii) the consummation of a merger, consolidation, or acquisition involving the Owner or the sale of all or substantially all of the assets of the Owner, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

provided that, for the purposes of the event identified in (i) of this section, the event is considered to occur when any of the following occurs: The appointment of a receiver, fiscal agent or similar officer for the Owner in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Owner, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Owner.

Section 4. Identifying Information. All documents provided to MSRB pursuant to this Agreement shall be accompanied by identifying information as prescribed by MSRB.

Section 5. Termination of Reporting Obligation. The Owner’s obligations under this Agreement shall terminate upon the earliest of: (a) the date of legal defeasance, prior redemption or payment in full of all of the Series 2016 Bonds; (b) the date that the Owner shall no longer constitute an “Obligated Person” within the meaning of the Rule; or (c) the date on which those portions of the Rule which require this written Agreement are held to be invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Series 2016 Bonds, which determination shall be evidenced in writing by Bond Counsel. If such termination occurs prior to the final maturity of the Series 2016 Bonds, the Owner shall give notice of such termination in the same manner as for a Listed Event under Section 3(a) hereof.

Section 6. Amendment; Waiver. Notwithstanding any other provision of this Agreement, the Owner may amend this Agreement and any provision of this Agreement may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Section 2 or Section 3(a) hereof, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Series 2016 Bonds, or type of business conducted, which change shall be evidenced in writing by Bond Counsel;

(b) the agreements herein, as proposed to be amended or waived, would, in the opinion of the Bond Counsel, have complied with the requirements of the Rule at the time of the primary offering of the Series 2016 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver (i) is approved by the Bondholders and Beneficial Owners in the manner provided in the Indenture in connection with Supplemental Indentures requiring consent of the Bondholders and Beneficial Owners, or (ii) does not, in the
opinion of Bond Counsel, materially impair the interests of the Bondholders and Beneficial Owners.

If the annual financial statements are amended, the amended annual financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of financial information being provided.

If an amendment is made to the Agreement specifying the accounting principles to be followed in preparing financial statements, the annual financial statements for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the Owner to meet its obligations. To the extent reasonably feasible, the comparison shall provide quantitative examples of material differences that would be expected in particular financial statement line items. A notice of the change in the accounting principles shall be sent to MSRB as provided in Section 3(a).

Section 7. Additional Information. Nothing in this Agreement shall be deemed to prevent the Owner from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other notice of occurrence of a Listed Event, in addition to the notices already required by this Agreement. If the Owner chooses to include any information in any such dissemination or notice of occurrence of a Listed Event in addition to the notices specifically required by this Agreement, the Owner shall have no obligation under this Agreement to update such information or include such information in any future dissemination or notice of occurrence of a Listed Event.

Section 8. Default/Limitation of Forum. If the Owner fails to comply with any of its covenants or obligations specified in this Agreement, any Bondholder or Beneficial Owner of the Series 2016 Bonds then Outstanding shall give Owner at least 45 days prior written notice at the address set forth below of any claimed failure by the Owner to perform its obligations and covenants under this Agreement. Owner shall be given 45 days to remedy any such claimed failure. Subject to the immediately preceding sentence of this Section 8, in the event of a failure of the Owner to comply with any provision of this Agreement, any Bondholder or Beneficial Owner may take such actions as may be necessary and appropriate to enforce the provisions of this Agreement by an action seeking specific performance by court order, to cause the Owner to comply with its obligations under this Agreement. Any suit or other proceeding seeking redress with regard to any claimed failure by the Owner to perform its obligations hereunder must be filed in the Circuit Court for Anne Arundel County, Maryland. A default under this Agreement shall not be deemed on its own to be an event of default under the Indenture or the Series 2016 Loan Agreement, and the sole remedy under this Agreement in the event of any failure of the Owner to comply with this Agreement shall be an action to compel performance. Written notice to the Owner shall be given to the Secretary of Transportation, 7201 Corporate Center Drive, Hanover, MD 21076, with a copy to the Director, Office of Finance, Maryland Department of Transportation, 7201 Corporate Center Drive, Hanover, MD 21076, or at such other alternate address as may be specified by the Owner with disclosures made pursuant to Section 2 or 3 hereof.
Section 9. Dissemination Agent. The Owner may from time to time appoint or engage a dissemination agent to assist it in carrying out its obligations under this Agreement and may discharge any such dissemination agent with or without appointing a successor dissemination agent. If the Owner appoints a dissemination agent, Owner shall forthwith give notice thereof to MSRB, but in no event, no later than five (5) days after the appointment of such new dissemination agent. It is understood and agreed that any information that any dissemination agent appointed by the Owner may be instructed to file with MSRB, except as may be otherwise expressly provided for herein, shall be prepared and provided to it by the Owner. Any dissemination agent appointed hereunder shall not be responsible in any manner for the content of any notice or report prepared by the Owner.

Section 10. Beneficiaries. This Agreement shall inure solely to the benefit of the Owner, the Participating Underwriters, and the Bondholders and Beneficial Owners, and shall create no rights in any other person or entity.

Section 11. Recordkeeping. The Owner agrees that it shall maintain records of all annual financial information, operating data and disclosures of Listed Events, including the content of such disclosures, the dates of such filings and the entities with whom such disclosures were filed.

Section 12. Governing Law. This Agreement shall be governed by the laws of the State of Maryland; provided that, to the extent that the U.S. Securities and Exchange Commission shall promulgate a rule or regulation relating to the subject matter hereof, this Agreement shall, to the extent permitted, be interpreted and construed in a manner consistent therewith.

Section 13. Owner Not Liable for Payment of the Series 2016 Bonds. The Owner’s delivery of this Agreement is, as stated hereinabove, solely to assist the Participating Underwriters in complying with the Rule, and is not to be construed as indicating or implying that the Owner is liable in any way or to any extent for the payment of the principal of, premium, if any, and interest on the Series 2016 Bonds. The Series 2016 Bonds are special, limited obligations of the Issuer payable solely from the moneys pledged therefor under the Indenture, and the issuance thereof does not create, directly, indirectly or contingently, a legal, moral or other obligation of (1) the Owner, or (2) the State of Maryland or of any governmental unit, or (3) the Issuer to levy or to pledge any tax or to make an appropriation to pay such amounts. Neither the Owner nor the State of Maryland nor any State governmental unit or political subdivision shall be obligated to pay the principal, premium, if any, or interest on the Series 2016 Bonds. Neither the full faith and credit nor the taxing power of the State or of any State governmental unit or political subdivision is pledged to the payment of the Series 2016 Bonds. Neither the Owner nor the Issuer has any taxing power.
IN WITNESS WHEREOF, the Owner has caused this Continuing Disclosure Agreement to be executed and delivered, all as of the date first above written.

MARYLAND DEPARTMENT OF TRANSPORTATION

By: _______________________
Name: Pete K. Rahn
Title: Secretary of Transportation
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APPENDIX J-2

CONTINUING DISCLOSURE AGREEMENT (COMPANY)

This Continuing Disclosure Agreement, dated June 17, 2016 (this "Agreement"), is between Purple Line Transit Partners LLC, a Delaware limited liability company (the "Company") and U.S. Bank National Association, a national banking association organized and existing under and by virtue of the laws of the United States of America, as dissemination agent, for the benefit of the holders and beneficial owners of the $100,000,000 Maryland Economic Development Corporation Private Activity Revenue Bonds (RSA), Series 2016A (Purple Line Light Rail Project) (Green Bonds) (the “2016A Bonds”), $23,320,000 Maryland Economic Development Corporation Private Activity Revenue Bonds (FCP), Series 2016B (Purple Line Light Rail Project) (Green Bonds) (the “2016B Bonds”), $27,480,000 Maryland Economic Development Corporation Private Activity Revenue Bonds (SLP), Series 2016C (Purple Line Light Rail Project) (Green Bonds) (the “2016C Bonds”), and $162,235,000 Maryland Economic Development Corporation Private Activity Revenue Bonds (AP), Series 2016D (Purple Line Light Rail Project) (Green Bonds) (the “2016D Bonds” and, collectively with the 2016A Bonds, the 2016B Bonds and the 2016C Bonds, the “Series 2016 Bonds”), under the circumstances summarized in the following recitals:

A. The Company will receive the net proceeds of the Series 2016 Bonds pursuant to the Series 2016 Loan Agreement (as defined herein) and will use such proceeds in the development and construction of the Project that is the subject of the Public-Private Agreement (as defined herein).

B. The Company recognizes that the Participating Underwriters (as defined herein) of the Series 2016 Bonds intend to sell and deliver the Series 2016 Bonds to others and that the Participating Underwriters (as defined herein) could not purchase the Series 2016 Bonds unless they reasonably determine that the Company has agreed to provide continuing disclosure for the Series 2016 Bonds in accordance with the Rule (as defined herein) as set forth in this Agreement.

NOW, THEREFORE, in consideration of the purchase of the Series 2016 Bonds by the Participating Underwriters, the Company agrees as follows:

Section 1. Definitions. In addition to the definitions set forth in the Indenture, the Series 2016 Loan Agreement and the Collateral Agency Agreement (as defined in the Series 2016 Loan Agreement) or parenthetically defined herein, which apply to any capitalized terms used in this Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Bond Counsel” has the meaning set forth in the Indenture.

“Business Day” means any day that is not a Saturday, Sunday or other day on which banks located in New York City or Baltimore, Maryland are required or authorized by law or executive order to close.

“Company Reporting Documents” means the documents set forth in Section 2(a) of this Agreement.
“Contracting Authority” means the State of Maryland acting by and through the Maryland Department of Transportation and the Maryland Transit Authority.

“Dissemination Agent” means U.S. Bank National Association, in its capacity as Dissemination Agent, or any successor Dissemination Agent designated in accordance with this Agreement.

“Fiscal Year” means the consecutive 12-month period starting on January 1 and ending on December 31.

“Indenture” means the Indenture of Trust, dated as of June 1, 2016, between the Issuer and U.S. Bank National Association, as trustee.

“Issuer” means the Maryland Economic Development Corporation.

“Listed Event” means any of the events listed in Section 3(a) of this Agreement, or collectively, “Listed Events”.

“MSRB” means the Municipal Securities Rulemaking Board. MSRB’s required method of filing is electronically via its Electronic Municipal Market Access (EMMA) system available on MSRB’s Internet Web Site.

“MSRB’s Internet Web Site” means http://emma.msrb.org.

“Notice” has the meaning set forth in Section 2(d) of this Agreement.

“Official Statement” means the final Official Statement dated June 14, 2016, together with any supplements thereto, delivered in connection with the original issuance and sale of the Series 2016 Bonds.

“Participating Underwriter” means any original underwriter of the Series 2016 Bonds required to comply with the Rule in connection with an offering of the Series 2016 Bonds.

“Preliminary Official Statement” means the Preliminary Official Statement dated June 2, 2016, together with any supplements thereto, delivered in connection with the original issuance and sale of the Series 2016 Bonds.

“Public-Private Agreement” means the Public-Private Partnership Agreement dated as of April 7, 2016, between the State of Maryland, acting by and through the Maryland Department of Transportation and the Maryland Transit Authority and the Company, as the same may be amended from time to time.

“Rule” means Rule 15c2-12(b)(5) under the Securities Exchange Act of 1934, as amended.

“SEC” means the U.S. Securities and Exchange Commission.
“Series 2016 Loan Agreement” means the Series 2016 Loan Agreement, dated as of June 1, 2016, between the Issuer and the Company, in its capacity as the Borrower under the Series 2016 Loan Agreement.

“Series 2016 Bond” means each bond of the Maryland Economic Development Corporation Private Activity Revenue Bonds (RSA), Series 2016A (Purple Line Light Rail Project), Maryland Economic Development Corporation Private Activity Revenue Bonds (FCP), Series 2016B (Purple Line Light Rail Project), Maryland Economic Development Corporation Private Activity Revenue Bonds (SLP), Series 2016C (Purple Line Light Rail Project), and Maryland Economic Development Corporation Private Activity Revenue Bonds (AP), Series 2016D (Purple Line Light Rail Project) or collectively, the “Series 2016 Bonds.”

“Trustee” means, U.S. Bank National Association, in its capacity as trustee under the Indenture, or any successor thereto.

Section 2. Provision of Reports

(a) The Company shall promptly (or within the time specified) provide to the Dissemination Agent:

(i) (A) audited financial statements of the Company prepared in accordance with GAAP within one hundred and twenty (120) days after the end of each Fiscal Year of the Company beginning with Fiscal Year 2017, unless any such audited financial statements shall not be available by such time, in which case the unaudited financial statements shall be provided and the audited financial statements of the Company shall be delivered when available and (B) unaudited financial statements of the Company within sixty (60) days after the end of the first, second and third fiscal quarters of the Company, beginning with the fiscal quarter ending September 30, 2016;

(ii) simultaneously with delivery of the financial statements in clause (i) above, if an Event of Default has occurred and is continuing, a certificate of the Company stating that an Event of Default has occurred and is continuing under the Series 2016 Loan Agreement;

(iii) an annual operating budget for each Fiscal Year, beginning with Fiscal Year 2017, within ten (10) days following acceptance thereof by the Company’s management, but in no event later than fifteen (15) days prior to the commencement of such Fiscal Year;

(iv) prior to the RSA Date, on a monthly basis, beginning with the month of July, 2016, a construction progress report of the Borrower: (a) providing an assessment of the overall construction progress of the D&C Work since the date of the last report (or, with respect to the first such report, since the date of this Agreement) and setting forth a reasonable estimate as to the completion date for the applicable D&C Work, and (b) providing a reasonably detailed description of any material delays encountered or anticipated in connection with such D&C Work, and a reasonably detailed description of the proposed course of action with respect to such delay, such report to be provided on or before twenty-eight (28) days after the end of each month;
(v) prior to the RSA Date, on or before twenty-eight (28) days after the end of each fiscal quarter, starting with the fiscal quarter ending September 30, 2016, a summary provided by the Company of the monthly progress reports issued by the Lenders’ Technical Advisor for each month of such fiscal quarter;

(vi) not later than sixty (60) days after the end of each fiscal quarter of the Company following the RSA Date, a report showing (a) the operating data for the Project for the previous fiscal quarter, including total Project Revenues, total O&M Expenditures and total Renewal Expenditures incurred, and (b) the variances for such period between the actual Project Revenues, actual O&M Expenditures and actual Renewal Expenditures incurred, and the projected Project Revenues, budgeted O&M Expenditures and budgeted Renewal Expenditures respectively for the same period as set forth in the annual operating budget, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more;

(vii) details of litigation in respect of the Company pending or, to the knowledge of the Company, threatened in writing by or before any arbitrator or Governmental Authority in which (a) the claim against the Company exceeds $10 million, net of any amounts covered by insurance or (b) a remedy requested in the litigation is the permanent stoppage or delay of completion of the Project beyond the Long Stop Date;

(viii) details of any penalties or damages paid by the Company under the Material Project Contracts in excess of $10 million in the aggregate per Material Project Contract;

(ix) details of any “event of default” or “Event of Default” (or its equivalent) as defined or used in, or termination with respect to, any Material Project Contract and copies of all written notices of default delivered to the Company with respect to any Material Project Contract;

(x) copies of any notice of any insurance claims in excess of $10 million;

(xi) copies of any notice of the occurrence of a Force Majeure Event or Relief Event under the Public-Private Agreement or any written claim for any similar event or occurrence under the Design-Build Contract;

(xii) any certificates certifying achievement of Revenue Service Availability (including specifically the number of days that the actual RSA Date is prior to the RSA Deadline (without giving effect to any extension thereof under the Public-Private Agreement), if such eventuality occurs, and the date the 2016D Bonds shall be subject to mandatory redemption pursuant to Section 4.5(c)(vi) of the Indenture) or Final Completion;

(xiii) in the event any letter of credit issuer of a then-effective Equity Letter of Credit is downgraded such that such issuer is no longer an Acceptable LC Bank, notice of the final resolution thereof (for the avoidance of doubt, whether such Equity Letter of
Credit is drawn or replaced) pursuant to the terms of the Equity Contribution Agreement; and

(xiv) copies of any written claim or notice of (a) violation in respect of any violation of Environmental Law or (b) any new or not previously disclosed historical release of Hazardous Materials that, in either case of clauses (a) or (b), would reasonably be expected to cause or does cause a Material Adverse Effect.

(b) The Company Reporting Documents may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided below. The Company shall include with each submission of the Company Reporting Documents to the Dissemination Agent a written representation addressed to the Dissemination Agent to the effect that such documents are the Company Reporting Documents required by this Agreement and that they comply with the requirements of this Section 2 and Section 6.01 of the Series 2016 Loan Agreement. Any of all of the items required to be provided pursuant to subsection (a) (other than clause (i) thereof) above may be incorporated by reference from other documents, including official statements, preliminary and final, of debt issues of the Company, which are available to the public on MSRB’s Internet Web Site or filed with SEC. The Company shall clearly identify each such document incorporated by reference.

(c) The Dissemination Agent shall provide: the audited financial statements of the Company and all other reports, information, documents and notices required to be provided by the Company under Section 2(a) of this Agreement, to MSRB in electronic format as prescribed by MSRB within five (5) Business Days after the receipt of the audited financial statements of the Company and/or reports, information, documents and notices from the Company.

(d) If the Company does not provide to the Dissemination Agent its audited financial statements by the date required in accordance with Section 2(a)(i) above or the other reports, information, documents and notices by the dates required in Section 2(a), the Dissemination Agent shall send a notice to MSRB, substantially in the form attached herein as Exhibit A (a “Notice”). If the Dissemination Agent has notice from the Company, regarding the Company’s failure to provide any of the reports, information, documents and notices required in subsection (a) above, the Dissemination Agent shall send a Notice to MSRB.

(e) The Dissemination Agent shall:

(i) determine each year prior to the date for providing the audited financial statements of the Company pursuant to Section 2(a)(i) above the appropriate electronic format prescribed by MSRB; and

(ii) provide evidence to the Company (which evidence may be in the form of a confirmation email from MSRB) that the audited financial statements of the Company required to be provided pursuant to Section 2(a)(i) above, and any other notices, reports, documents or information required to be provided pursuant to Section 2(a) above, have been provided to MSRB pursuant to this Agreement, stating the date it was provided and listing all the entities to which it was provided.
(f) If the Fiscal Year end of the Company changes, the Company shall give prompt notice of such change in the same manner as for any Listed Event listed under Section 3(a) hereof.

Section 3. Reporting of Listed Events.

(a) The Company shall provide or cause to be provided by the Dissemination Agent, in a timely manner, but not later than ten (10) Business Days after the occurrence of the event, notice to MSRB, of any of the following events with respect to the Series 2016 Bonds (each, a “Listed Event”, and collectively, the “Listed Events”). The Dissemination Agent shall promptly provide to the MSRB any notice received by the Dissemination Agent pursuant to this Section 3, as instructed by the Company,

(i) principal and interest payment delinquencies;

(ii) non-payment related defaults, if material;

(iii) unscheduled draws on debt service reserves reflecting financial difficulties;

(iv) unscheduled draws on credit enhancements reflecting financial difficulties;

(v) substitution of credit or liquidity providers, or their failure to perform;

(vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notice of Proposed Issue (as defined in IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Series 2016 Bonds, or other material events affecting the tax status of the Series 2016 Bonds;

(vii) modifications to rights of the Bondholders and Beneficial Owners, if material;

(viii) Bond calls, if material, and tender offers;

(ix) defeasances;

(x) release, substitution or sale of property securing repayment of the Series 2016 Bonds, if material;

(xi) rating changes;

(xii) bankruptcy, insolvency, receivership or similar event of the Company;

(xiii) the consummation of a merger, consolidation, or acquisition involving the Company or the sale of all or substantially all of the assets of the Company, other than in the ordinary course of business, the entry into a definitive agreement to
undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(xiv) appointment of a successor or additional trustee or the change of name of a trustee under the Indenture, if material;

provided that, for the purposes of the event identified in (xii) of this section, the event is considered to occur when any of the following occurs: The appointment of a receiver, fiscal agent or similar officer for the Company in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Company, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Company.

(b) Whenever the Company obtains actual knowledge of the occurrence of a possible Listed Event, described in paragraphs (ii), (vii), (xiii) or (xiv) of subsection (a) of this Section, it shall determine if such event would be material under applicable Federal securities law. If the Company determines that knowledge of the occurrence of any such Listed Event would be material under applicable Federal securities law, the Company shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (a) of this Section.

(c) If the Company determines that the Listed Event would not be material under applicable Federal securities law, the Company shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (a) of this Section.

(d) Notwithstanding the foregoing provisions of this Section, notice of Listed Events described in paragraphs (viii) and (ix) of subsection (a) of this Section do not need to be given under this subsection any earlier than the notice (if any) of the underlying event is given to the affected Bondholders and Beneficial Owners pursuant to the Indenture.

Section 4. Identifying Information. All documents provided to MSRB pursuant to this Agreement shall be accompanied by identifying information as prescribed by MSRB.

Section 5. Termination of Reporting Obligation. The Company’s and the Dissemination Agent’s obligations under this Agreement shall terminate upon the earliest of: (a) the date of legal defeasance, prior redemption or payment in full of all of the Series 2016 Bonds; (b) the date that the Company shall no longer constitute an “Obligated Person” within the meaning of the Rule; or (c) the date on which those portions of the Rule which require this written Agreement are held to be invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Series 2016 Bonds, which determination shall be evidenced by the written opinion of Bond Counsel. If such termination occurs prior to the final maturity of the Series 2016 Bonds, the Company shall provide notice to the Dissemination Agent and give notice of or cause the Dissemination Agent
to give notice of such termination in the same manner as for a Listed Event under Section 3(a) hereof.

Section 6. Amendment; Waiver. Notwithstanding any other provision of this Agreement, the Company and the Dissemination Agent may amend this Agreement (and the Dissemination Agent shall agree to any amendment so requested by the Company to the extent that such amendment does not adversely affect the Dissemination Agent) and any provision of this Agreement may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Section 2 or Section 3(a) hereof, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Series 2016 Bonds, or type of business conducted, which change shall be evidenced by a written opinion of the Bond Counsel;

(b) the agreements herein, as proposed to be amended or waived, would, in the written opinion of the Bond Counsel, have complied with the requirements of the Rule at the time of the primary offering of the Series 2016 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver (i) is approved by the Bondholders and Beneficial Owners in the manner provided in the Indenture in connection with Supplemental Indentures requiring consent of the Bondholders and Beneficial Owners, or (ii) does not, in the opinion of Bond Counsel, materially impair the interests of the Bondholders and Beneficial Owners.

If the annual financial statements are amended or restated, the amended or restated annual financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of financial information being provided.

If an amendment is made to this Agreement specifying the accounting principles to be followed in preparing financial statements, the annual financial statements for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the Company to meet its obligations. To the extent reasonably feasible, the comparison shall provide quantitative examples of material differences that would be expected in particular financial statement line items. A notice of the change in the accounting principles shall be sent to MSRB as provided in Section 3(a).

Section 7. Additional Information.

(a) Nothing in this Agreement shall be deemed to prevent the Company from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any of the notices, information, documents or reports required by Sections 2(a) hereof or any notice
of occurrence of a Listed Event, in addition to the notices already required by this Agreement. If the Company chooses to include any information in any such dissemination or notice of occurrence of a Listed Event in addition to the notices specifically required by this Agreement, the Company shall have no obligation under this Agreement to update such information or include such information in any future dissemination or notice of occurrence of a Listed Event.

(b) Pursuant to this Section 7(b), the Company hereby agrees, until such time as proceeds of the Series 2016 Bonds have been fully allocated to the Project, to use its best efforts to post on its website (http://www.purplelinetransitpartners.com/default.htm) within one hundred and twenty (120) days after the end of each Fiscal Year a report detailing the amount of proceeds of the Series 2016 Bonds disbursed to the Project during the prior year and its expectations relating to the key environmental and social objectives of the Project as recommended by the Executive Committee of the Green Bonds Principles of the International Capital Markets Association. Failure to comply with this undertaking shall not be a default under this Agreement. The Dissemination Agent shall have no responsibility for the information posted under this Section 7(b) or any liability to any person, including any Bondholder of Beneficial Owners, with respect to any reports, notices or disclosures posted pursuant to this Section 7(b).

Section 8. Default. In the event of a failure of the Company or the Dissemination Agent to comply with any provision of this Agreement, any Bondholder or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Company or the Dissemination Agent to comply with its obligations under this Agreement. A default under this Agreement shall not be deemed on its own to be an event of default under the Indenture or the Series 2016 Loan Agreement (unless such default hereunder is also a specified event of default pursuant to the Indenture or the Series 2016 Loan Agreement), and the sole remedy under this Agreement in the event of any failure of the Company or the Dissemination Agent to comply with this Agreement shall be an action to compel performance. The Dissemination Agent shall have no power or duty to enforce this Agreement, nor shall the Dissemination Agent have any responsibility for the content of any report, disclosure or notice provided by the Company. The Dissemination Agent shall have no liability to any person, including any Bondholder or Beneficial Owner, with respect to any reports, notices or disclosures provided to it by the Company hereunder.

Section 9. Resignation or Removal of Dissemination Agent/Merger. The present or any future Dissemination Agent may resign at any time upon thirty (30) days’ prior written notice to the Company. The Company may remove the present or any future Dissemination Agent upon thirty (30) days’ prior written notice to the Dissemination Agent. Such resignation or removal shall take effect upon the appointment by the Company of a successor Dissemination Agent or upon execution by the Company of a written agreement in which the Company agrees to assume all of the obligations of the Dissemination Agent hereunder, but in no event earlier than 30 days after such written notice of resignation or removal has been given. If the Dissemination Agent also serves as the Trustee under the Indenture, the Dissemination Agent may resign or be removed under this Agreement without also resigning or being removed as Trustee under the Indenture. The new Dissemination Agent or the Company, as the case may be, shall forthwith give notice thereof to MSRB and the Trustee, but in no event, no later than five (5) days after the appointment of such new Dissemination Agent or the Company takes effect.
Any bank, corporation or association into which the Dissemination Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Dissemination Agent shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Dissemination Agent shall be the successor of the Dissemination Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding. The new entity, as the case may be, shall give notice thereof to MSRB and the Company within fifteen (15) days after the occurrence of such change.

Section 10. Compensation. As compensation for its services under this Agreement, the Dissemination Agent shall be compensated or reimbursed by the Company for its fees and expenses (including without limitation, legal fees and expenses) in performing the services specified under this Agreement in accordance with the schedule of fees the Dissemination Agent provided to the Company.

Section 11. Miscellaneous Provisions. It is understood and agreed that any information that the Dissemination Agent may be instructed to file with MSRB, except as may be otherwise expressly provided for herein, shall be prepared and provided to it by the Company. The fact that the Dissemination Agent or any affiliate thereof may have any fiduciary or banking relationship with the Company shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice from the Company.

In connection with its performance obligations hereunder, the Dissemination Agent shall be entitled to all of rights, privileges, protections, immunities and indemnities to which it is entitled as Trustee under the Indenture, which shall be incorporated herein mutatis mutandis.

The Dissemination Agent shall not be responsible for the content of any report or notice prepared by the Company. The Dissemination Agent shall have no duty to prepare any information report nor shall the Dissemination Agent be responsible for filing any report not provided to it by the Company in a timely manner and in a form suitable for filing. The Dissemination Agent shall not be obligated to enter into any amendment of this Disclosure Agreement that modifies or increases its duties or obligations hereunder. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Company agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the reasonable costs and expenses (including attorney’s fees) of defending against any claim of liability, but excluding losses, expenses or liabilities due to the Dissemination Agent’s gross negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the Company, the Bondholders, the Beneficial Owners or any other party. The obligations of the Company under this Section shall survive resignation or removal of the Dissemination Agent and payment in full of all of the Series 2016 Bonds.
Section 12. Beneficiaries. This Agreement shall inure solely to the benefit of the Company, the Dissemination Agent, the Participating Underwriters, and the Bondholders and Beneficial Owners, and shall create no rights in any other person or entity.

Section 13. Notices. Any notice or communication to or among any of the parties to this Agreement may be given as follows:

To the Company: Purple Line Transit Partners LLC
6811 Kenilworth Avenue, Suite 300
Riverdale, MD 20737
Attention: Aaron Epstein, Senior Director

To the Dissemination Agent: U.S. Bank National Association
1021 East Cary Street, Suite 1850
Richmond, VA 23219
Attention: Global Corporate Trust Services

Section 14. Governing Law. This Agreement shall be governed by the laws of the State of New York; provided that, to the extent that the U.S. Securities and Exchange Commission shall promulgate a rule or regulation relating to the subject matter hereof, this Agreement shall, to the extent permitted, be interpreted and construed in a manner consistent therewith.

[Signature Page
Follows]
IN WITNESS WHEREOF, the Company and the Dissemination Agent have caused this Continuing Disclosure Agreement to be executed in their respective names, all as of the date first above written.

PURPLE LINE TRANSIT PARTNERS LLC, as Borrower

By: ______________________________
Name: __________________________
Title: Authorized Representative
U.S. BANK NATIONAL ASSOCIATION,
as Dissemination Agent

By: __________________________________________
Name: ___________________________
Title:  Authorized Representative
APPENDIX K

BOOK-ENTRY ONLY SYSTEM

The information in this Appendix K concerning The Depository Trust Company, New York, New York (“DTC”) and DTC’s book-entry system has been obtained from DTC and the Bond Issuer takes no responsibility for the completeness or accuracy thereof. The Bond Issuer cannot and does not give any assurances that DTC, Direct Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Securities (as defined below), (b) certificates representing ownership interest in or other confirmation or ownership interest in the Securities, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Securities, or that they will so do on a timely basis, or that DTC, DTC Direct Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC Participants are on file with DTC.

The Depository Trust Company will act as securities depository for the 2016 Bonds (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate for the Securities will be issued for each maturity of the Securities, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com (this inactive textual reference is not a hyperlink, and this website is not incorporated herein). Nothing contained in such website is incorporated into this Official Statement.

Purchases of the Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Securities (“Beneficial Owner”) is in turn to be recorded on the Direct Participants’ and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct Participants or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct Participants and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.
To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Securities with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct Participants and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Indenture and the Senior Loan Agreement. For example, Beneficial Owners of the Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Securities unless authorized by a Direct Participant in accordance with DTC’s procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Bond Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co. consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceedings and distributions on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the Bond Issuer or the Trustee, on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Direct Participants and Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Direct Participant and Indirect Participant and not of DTC (nor its nominee), the Trustee, or the Bond Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds or distributions to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Bond Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct Participants and Indirect Participants.

NEITHER THE BOND ISSUER NOR THE COMPANY WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, INDIRECT PARTICIPANTS OR ANY BENEFICIAL OWNERS WITH RESPECT TO (I) THE ACCURACY OF RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT; (II) THE PAYMENTS BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THE BONDS; (III) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO HOLDERS UNDER THE INDENTURE; (IV) THE SELECTION BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE 2016 BONDS; (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER; OR (VI) ANY OTHER PROCEDURES OR OBLIGATIONS OF DTC, DIRECT PARTICIPANTS OR INDIRECT PARTICIPANTS UNDER THE BOOK-ENTRY SYSTEM.
DTC may discontinue providing its services as depository with respect to the Securities at any time by giving reasonable notice to the Bond Issuer or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, certificates for the Securities are required to be printed and delivered.

The Bond Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, certificates for the Securities will be printed and delivered to DTC.

The information in this Appendix K concerning DTC and DTC’s book-entry system has been obtained from sources that the Bond Issuer and the Company believe to be reliable, but neither the Bond Issuer nor the Company takes any responsibility for the accuracy thereof.

The Bond Issuer and the Company cannot and do not give any assurances that DTC will distribute to Direct Participants or Indirect Participants or that such Participants or others will distribute to the Beneficial Owners payments of principal, interest or premium, if any, on the 2016 Bonds paid or any redemption or other notices that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. Neither the Bond Issuer nor the Company is responsible or liable for the failure of DTC or any Direct Participant or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Securities or any error or delay relating thereto.

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APPENDIX L

FORM OF BOND COUNSEL OPINION

[Date of Closing]

Maryland Economic Development Corporation  U.S. Bank National Association
Baltimore, Maryland  Richmond, Virginia

J.P. Morgan Securities LLC  RBC Capital Markets, LLC
New York, New York 10179  New York, New York 10023

Re:  $313,035,000 Maryland Economic Development Corporation

Ladies and Gentlemen,

We have acted as bond counsel to the Maryland Economic Development Corporation (the “Issuer”) in connection with the issuance of $313,035,000 aggregate principal amount of Private Activity Revenue Bonds (RSA) Series 2016A, (FCP) Series 2016B, (SLP) Series 2016C and (AP) Series 2016D (Purple Line Light Rail Project) (Green Bonds) (collectively, the “Bonds”), pursuant to the provisions of the Section 10-101 to 10-132 inclusive of the Economic Development Article of the Annotated Code of Maryland, as amended (the “Act”) and a resolution adopted by the Issuer on January 27, 2014, as supplemented on April 18, 2016 (the “Resolution”). The Bonds are being issued under and secured by an Indenture of Trust dated as of June 1, 2016 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). Capitalized terms used but not defined herein have the meanings given to them in the Indenture.

The Bonds are being issued at the request of Purple Line Transit Partners LLC (the “Borrower”) to provide funds that will be used to finance a portion of the costs of a project (the “Project”) consisting of the financing, development, design, construction, equipment and supply of light rail vehicles for, and operation and maintenance of the approximately 16 mile light rail project extending from Bethesda in Montgomery County, Maryland to New Carrollton in Prince George’s County, Maryland, known as the Purple Line Rail Project pursuant to a Public-Private Agreement dated April 7, 2016 between the State of Maryland (the “State”), acting by and through the Maryland Department of Transportation (“MDOT”) and the Maryland Transit Administration (“MTA” and collectively with MDOT, the “Contracting Party”) and the Borrower, as modified pursuant to the Amended and Restated Financial Close Notice, dated May 23, 2016 by the Borrower and accepted and agreed to as of May 23, 2016 by the MTA, and as amended by the First Amendment to Public-Private Partnership Agreement dated as of June 14, 2016 by and between the Contracting Party and the Borrower (the “Public-Private Agreement”).

The proceeds of the Bonds are being loaned to the Borrower pursuant to a Series 2016 Loan Agreement dated as of June 1, 2016 (the “Loan Agreement”) between the Issuer and the Borrower.

Under the Loan Agreement, the Borrower is obligated to make payments in amounts sufficient to pay when due, among other things, the principal or redemption price of and interest on the Bonds. Under the Indenture, the Issuer has assigned certain of its interests under the Loan Agreement, including its right to receive the payments under the Loan Agreement in respect of the Bonds, to the Trustee for the benefit of the holders of the Bonds.
The Bonds are being issued to finance, in part, the cost of the Project constituting qualified highway or surface freight transfer facilities within the meaning of Sections 142(a)(15) and 142(m) of the Internal Revenue Code of 1986, as amended (the “Code”). The Code imposes various requirements pertaining to (a) the use of proceeds of exempt facilities bonds, (b) the maturity of and security for the Bonds, (c) the payment to the United States of certain amounts earned from investment of proceeds of the Bonds, (d) the procedure for issuance of the Bonds, (e) the total amount of private activity bonds issued to finance qualified highway or surface freight transfer facilities, and (f) filings with the Internal Revenue Service in respect of the Bonds. The Issuer and the Borrower have certified as to certain matters relating to the requirements of the Code on the date hereof, and the Issuer and the Borrower have covenant that the requirements of the Code will be met as long as the Bonds are outstanding. The excludability from gross income of the interest on the Bonds depends on and is subject to the accuracy of the certifications by the Issuer and the Borrower and to present and continuing compliance with the requirements of the Code. Failure to comply with these requirements could cause interest on the Bonds to be deemed not excludable from gross income as of the date hereof or as of some later date.

In our capacity as bond counsel, we have examined such law and such certified proceedings, certifications and other documents as we have deemed necessary to render this opinion. Regarding questions of fact material to our opinion, we have relied on representations of the Issuer and the Borrower contained in the Resolution, the Indenture and the Loan Agreement, the certified proceedings and other certifications of public officials furnished to us, and certifications, representations and other information furnished to us by or on behalf of the Issuer, the Borrower and others, including, without limitation, certifications contained in the Tax Certificate and Agreement of the Issuer and the Borrower dated the date hereof, without undertaking to verify the same by independent investigation. We have also examined an executed Bond, authenticated by the Trustee, and have assumed that all other Bonds have been similarly executed and authenticated. We have assumed the accuracy of the legal opinions of Orrick, Herrington & Sutcliffe LLP, counsel to the Borrower, dated the date hereof, as to the matters stated therein. We have relied upon the legal opinion of Miles & Stockbridge P.C., counsel to the Issuer, dated the date hereof, as to the matters stated therein.

Based on the foregoing, it is our opinion that, under existing law:

1. The Issuer is a validly created and existing body politic and corporate and is an instrumentality of the State of Maryland, with full power and authority under the Act to issue and sell the Bonds and to enter into and perform its obligations under the Indenture, the Loan Agreement and the Bonds.

2. The Loan Agreement and the Indenture have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditor’s rights generally and by the exercise of judicial discretion in accordance with general principles of equity.

3. The issuance and sale of the Bonds have been duly authorized by the Issuer. Based on the assumption as to execution and authentication set forth above, the Bonds have been duly executed and delivered by the Issuer and are legal, valid and binding special, limited obligations of the Issuer entitled to the benefit and security of the Indenture, except as the rights created thereunder and enforcement thereof may be limited by bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the
enforcement of creditor’s rights generally and by the exercise of judicial discretion an accordance with general principles of equity.

4. Interest on the Bonds is excludable from gross income for purposes of federal income taxation under existing laws as enacted and construed on the date hereof (except for interest on any Bond while held by a substantial user of the Project or a related person within the meaning of Section 147 of the Code). Interest on the Bonds is a preference item for purposes of determining individual and corporate federal alternative minimum tax. Also, interest on the Bonds held by certain foreign corporations may be subject to the branch profits tax imposed by the Code. We express no opinion regarding other federal tax consequences relating to ownership or disposition of, or the accrual or receipt of interest on, the Bonds.

5. By the terms of the Act, the Bonds and the interest payable thereon are forever exempt from all Maryland state and local taxes, but the terms of the Act do not expressly refer to estate or inheritance taxes, or to any other taxes not levied or assessed directly on the Bonds, the interest thereon, their transfer or the income therefrom.

The Bonds were offered at a premium (“original issue premium”) over their principal amount. For federal income tax purposes, original issue premium is amortizable periodically over the term of a Bond through reductions in the holder’s tax basis for the Bond for determining taxable gain or loss from sale or from redemption prior to maturity. Amortization of premium does not create a deductible expense or loss.

Ownership of the Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S Corporations and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Bonds. We express no opinion as to such consequences. Prospective purchasers of the Bonds should consult their own tax advisors as to such consequences.

We express no opinion as to the accuracy, completeness or sufficiency of, or any other matter related to, the Official Statement, dated June 14, 2016 or any other matter or other offering material relating to the Bonds.

THE BONDS AND INTEREST THEREON ARE LIMITED, SPECIAL OBLIGATIONS OF THE ISSUER, AND THE PRINCIPAL OR PURCHASE PRICE OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE PAYABLE SOLELY FROM, AND SECURED EXCLUSIVELY BY, THE TRUST ESTATE OR MONEYS TO BE RECEIVED IN CONNECTION WITH THE FINANCING AND REFINANCING OF THE PROJECT OR FROM ANY OTHER MONEYS MADE AVAILABLE TO THE ISSUER FOR SUCH PURPOSE (INCLUDING AMOUNTS PAID BY THE BORROWER PURSUANT TO THE RELEVANT FINANCE DOCUMENT), AND THE ISSUANCE OF THE BONDS SHALL NOT BE, DIRECTLY, INDIRECTLY OR CONTINGENTLY, A MORAL OR OTHER OBLIGATION OF THE STATE, THE CONTRACTING AUTHORITY OR ANY OTHER GOVERNMENT UNIT OR THE ISSUER TO LEVY OR PLEDGE ANY TAX OR TO MAKE AN APPROPRIATION TO PAY SUCH AMOUNTS, AND THE ISSUER SHALL NOT BE OBLIGATED TO PAY THE PRINCIPAL OR PURCHASE PRICE OF, REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THE BONDS EXCEPT FROM THE TRUST ESTATE OR MONEYS TO BE RECEIVED IN CONNECTION WITH THE FINANCING AND REFINANCING OF THE PROJECT OR FROM ANY OTHER MONEYS MADE AVAILABLE TO THE ISSUER FOR SUCH PURPOSE. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, THE CONTRACTING AUTHORITY OR ANY OTHER


Our engagement with respect to the Bonds has concluded with their issuance. We have not undertaken to determine or to inform any person whether any actions taken or not taken or events occurring or not occurring after the date of issuance of the Bonds may affect the tax status of interest on the Bonds, and we have no obligation to update this opinion as a result of changes in law or matters of fact that may be brought to our attention after the date hereof.

Very truly yours,
Opinion Paper
Second Party Opinion on Purple Line Project
Green Bonds

Purple Line Project, Maryland
Purple Line Transit Partners

making the difference
Purple Line Transit Partners
Purple Line Project, Maryland

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DOCUMENT1
1 Introduction

Turner & Townsend is a professional services organization that provides consultancy, delivery, operations and program management services to businesses that invest in, own and operate major assets. Turner & Townsend are a market-leading professional services company for capital programs, trusted to drive better business outcomes for our clients across the property, infrastructure and natural resources sectors. Currently responsible for global rail projects with a combined value of $250bn and operating in over 130 countries around the world, our teams work together to tackle projects collaboratively to a common set of high standards.

The Purple Line Project is planning to issue Green Bonds, and Turner & Townsend have been engaged to provide a second party opinion to assess the Project to be eligible for Green Bond investment against the four Green Bond Principles (GBP) where International Capital Market Association (ICMA) serves as the Secretariat. The GBP are voluntary process guidelines intended for broad use by the market that recommend transparency and disclosure, and promote integrity in the development of the Green Bond market. The Principles and the criterion guided by the requirements are described in the GBP guidelines.

2 Purple Line Project Background

The Purple Line is a 16-mile light 21-station light rail line (LRT) that will extend from Bethesda in Montgomery County to New Carrollton in Prince George's County. The LRT will operate mainly in dedicated or exclusive lanes, serving five major activity centers just north of Washington, DC: Bethesda, Silver Spring, Takoma-Langley Park, College Park/University of Maryland, and New Carrollton. The Washington DC region’s Metrorail system (Metrorail), operated by the Washington Metropolitan Area Transit Authority (WMATA), serves four of these major activity centers, while three of these centers are served by MARC, Maryland’s commuter rail system. Amtrak services along its Northeast Corridor connect at New Carrollton.

In addition to these five centers, there are another 16 Stations serving the residential communities, commercial districts, and institutional establishments between the major activity centers, including three Stations serving the University of Maryland. The Project is expected to attract over 60,000 daily boardings by 2030, with over one-third expected to use Metrorail and/or MARC services for some part of their trip, with the Project typically providing the access or egress connections.

Maryland Transit Administration (MTA) is the owner for the Project, with the support and close coordination of a team that includes the Washington Metropolitan Area Transit Authority, Montgomery and Prince George’s counties, the Maryland-National Capital Park and Planning Commission, State Highway Administration, and local municipalities in the project area.

3 Purple Line Project Green Bonds

The Purple Line Project is a sustainable mass transportation project. The Project has two key objectives that fulfils an environmental and a social purpose:

- Improve access to sustainable public transportation opportunities as an alternative to private vehicle use
- Promote transit-oriented development, revitalization of inner-suburban neighbourhoods and alternative modes of transportation and improved recreation.
Noted below are the four Green Bond Principles and a discussion on how the Project meets the requirements of these principles.

3.1 Use of Proceeds

The Project consists of the financing, development, design, construction, equipping, supply of light rail vehicles for, operation and maintenance of the LRT. The construction cost of the Project is circa $2 billion and the construction is expected to be completed by 2022. The Project generally consists of the following components, and the use of the proceeds from the Green Bonds will contribute towards a portion of the Project cost.

- Construction of 21 stations that includes 15 at-grade, 3 aerial – Connecticut Avenue, Silver Spring Transit Centre and Riverdale Park, 2 below grade - Bethesda and Manchester Place and 1 partial grade station - Silver Spring
- Structures including tunnel, aerial LRT structures, highway bridges and others
- Track work to provide overall tracks length for the Project
- Maintenance and storage facilities that includes yard and shop
- Traction power and traction power substations
- Systems integration for the Purple Line system
- Vehicles for the Purple Line system

As per GBP principle – Use of Proceeds, the utilization of these Green Bond proceeds are clearly identified. There are several broad categories for green projects as identified in the GBP, and the Purple Line Project can be classified under (a) energy efficiency and (b) clean transportation. The use of the proceeds as identified above aligns with the GBP principles.

3.2 Project Evaluation and Selection

The Project is the result of multi-year transportation planning efforts by the Maryland State Department of Transportation (MDOT), MTA, Montgomery County and Prince George’s County. The Project was the subject of extensive environmental study.

A Record of Decision (ROD) was issued on March 19, 2014 for the Project by the Federal Transit Administration (FTA). By issuance of the ROD, the FTA has determined that the requirements of the National Environmental Policy Act have been satisfied (NEPA). The FTA is the lead federal agency for the Project, while the Contracting Authority, MTA, is serving as the Project sponsor. The ROD applies to the Preferred Alternative described in the Final Environmental Impact Statement (FEIS) and Draft Section 4(f) Evaluation issued on September 6, 2013.

The Project will be delivered using a Public-Private Partnership (P3) model to design, build, finance, operate and maintain the Purple Line LRT.

As per GBP principle – Process for Project Evaluation and Selection, the assessment of the Project has been made with a high level of transparency. The process demonstrated above, which led to the issuance of the ROD, conforms to this principle.
3.3 Management of Proceeds

The proceeds of the Green Bonds will be tracked by the Company and the Trustee. So long as the Bonds remain outstanding, the balance of the proceeds will be reduced, by amounts disbursed for the Project. Pending such disbursement, the balance will be invested in cash or short-term, liquid money market instruments held as part of the Trust Estate.

As per GBP principle – Management of Proceeds, the net proceeds of the bonds are clearly demonstrated to be tracked by a formal process that is linked to the issuers lending. The investment operations in the process that has been identified above conforms to this principle.

3.4 Reporting

Until the proceeds of the Green Bonds have been fully allocated to the Project, the Company will publish updates on its website (http://www.purplelinetransitpartners.com/default.htm) annually, on the allocation of the net proceeds to the Project (anticipated to be live when the Project is under construction). The report will detail the amount disbursed to the Project and key expected environmental and social outcomes.

As per GBP principle – Reporting, use of qualitative and where feasible, quantitative performance indicators, are recommended to measure the expected environmental impact of the investments. GBP acknowledges that there is no established standard for impact reporting on Green Projects, therefore transparency is of particular value.

The Purple Line Project will develop, manage and execute an Energy Management Plan. This plan will comply with the project requirements, including the use of energy-efficient equipment, real-time monitoring, automated reporting, and the ranking of Project features by energy use to realize cost effective benefits. Through this process the qualitative and quantitative metrics will conform the use of the proceeds towards measuring the environmental impact from the project.

3.5 Key Findings and Conclusion

**Long Term Operational Benefits:** Purple Line Project offers long-term operational benefit on roadway intersections by the year 2040 for 52 key intersections (Source: Purple Line FEIS Document - Volume I, Chapter 3 – Transportation Effects), by making them more operationally efficient. A comparison between a No Build Alternative shows that there will be an improvement at most intersections and particularly along University Boulevard, River Road, and Veterans Parkway. An operational improvement means efficient use of the red-amber-green times at the intersections, leading to less stop time which, as a result, helps reduce emissions from the vehicles idling at the intersection.

**Regional Effects:** Purple Line Project offers a regional level benefit by prompting a shift in the mode of travel from private automobiles to public transit. This will reduce traffic congestion on regional roads and thereby have a positive impact on the environment by reducing greenhouse gas emissions.

**Reduction in Daily Vehicle Trips:** Purple Line Project will lead to lesser number of automobile vehicle trips when compared to a No Build Alternative in the metropolitan region. It is expected that by 2040, a total of 17,000 vehicle trips will be taken off the roads daily (Source: Purple Line FEIS Document - Volume I, Chapter 3 – Transportation Effects). This reduction aims to reduce congestion on regional roads and leads to a positive impact on the environment by reducing emissions.
Clean Mode of Transportation: The Purple Line, being a light rail system powered by electricity, is considered a clean mode of transportation. The project will deploy a traction power solution that aims to reduce the number of Traction Power Substations (TPSS) and thereby lead to less environmental impact.

LEED Certification for Operation and Maintenance Facility: Purple Line Project will achieve a Leadership in Energy and Environmental Design (LEED) silver for the Glenridge Operations and Maintenance Facility. In order to achieve LEED certification, the project will use an integrated design and construction process to optimize delivery of defined environmental goals both during the construction process and throughout the life of the facility.

Social and Economic Benefits: The Project is expected to generate an estimated 6,300 construction jobs and 27,000 permanent jobs, as well as connecting the 6,000 small businesses and 130,000 jobs within a half mile of the line (Source: Purple Line FEIS Document - Volume III, Technical Report: Economic Effects). There is a Disadvantaged Business Enterprise (DBE) goal of 26% for design services and 22% for construction work, and a goal of 33% (Source: Purple Line Project, Public-Private Partnership Agreement) of all construction work hours to be performed by Nationally Targeted Workers performed by personnel in mid and high skill levels.

Integration with Existing Facilities and Communities: The Purple Line Project provides intermodal connection to three adjacent transit facilities. At Silver Spring transit center the Purple Line delivers direct connection to three transit systems; the MTA local bus system, Washington Metropolitan Area Transit Authority (WMATA) and MARC commuter rail system. The Purple Line connects with the WMATA Red Line at this station and provides regional connectivity for commuters by connecting with the MARC regional commuter rail system.

In conclusion, the Purple Line Project aims to achieve several environmentally sustainable objectives that are discussed above and is in alignment with the 4 pillars of the GBP. It is therefore our opinion that the Green Bonds issued for the Purple Line Project will contribute to a positive impact on the environment.

Documents Reviewed

We have conducted a high level review of various documentation that forms background information to the Purple Line Project and information that has been provided on the proposed use of Green Bonds for the Project. Below is a list of some of the documents that were reviewed:

- Purple Line Project’s Final Environmental Impact Statement, 2013, Maryland Transit Administration
- Purple Line Project’s Record of Decision, 2014, Federal Transit Administration
- Maryland Transit Administration Annual Report, 2013, 2014, Maryland Transit Administration
- Maryland Department of Transportation Annual Report, 2014, Maryland Department of Transportation
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