

## **VOLUNTARY FILING – Consent, Process, Waiver and Forbearance Agreement**

December 18, 2020

On December 17, 2020, Purple Line Transit Partners LLC (the “Borrower”) entered into a consent, process, waiver and forbearance agreement (the “Forbearance Agreement”) with the Sponsors referred to therein and U.S. Bank National Association, in its capacity as Trustee, Intercreditor Agent and Collateral Agent (collectively, the “Agents”). Capitalized terms used in this announcement but not defined herein shall have the meanings set forth in the Forbearance Agreement, a copy of which is attached as Annex A hereto, and if not defined therein, shall have the meanings set forth in the Collateral Agency Agreement referred to therein.

Pursuant to the Forbearance Agreement, among other things, the Agents agreed to permit the Borrower to execute, deliver and perform its obligations under the Settlement Documentation with the Contracting Authority and the Design-Build Contractor in order to, *inter alia*, resolve certain claims and disputes. The Settlement Documentation was executed and delivered by such parties as of December 17, 2020, in the forms attached as Exhibit A to the Forbearance Agreement.

**ANNEX A**

Forbearance Agreement

Dated Dec 17, 2020

## **CONSENT, PROCESS, WAIVER AND FORBEARANCE AGREEMENT**

THIS CONSENT, PROCESS, WAIVER AND FORBEARANCE AGREEMENT (this “Agreement”), dated as of December 17, 2020, is made by and among Purple Line Transit Partners LLC, a Delaware limited liability company (the “Borrower”), U.S. Bank National Association, a national banking association, solely in its capacity as Collateral Agent (the “Collateral Agent”) appointed pursuant the Collateral Agency Agreement (defined herein), U.S. Bank National Association, a national banking association, solely in its capacity as Intercreditor Agent (the “Intercreditor Agent”) appointed pursuant to the Intercreditor Agreement (defined herein), U.S. Bank National Association, a national banking association, solely in its capacity as Trustee (the “Trustee”) appointed pursuant to the Indenture (defined herein), and Meridiam Infrastructure Purple Line, LLC, a Delaware limited liability company (“Meridiam”), Star America Purple Line, LLC, a Delaware limited liability company (“Star America”), and Fluor Enterprises, Inc., a California corporation (“Fluor” and, together with Meridiam and Star America, the “Sponsors”).

### **RECITALS**

A. Pursuant to that certain Indenture of Trust, dated as of June 1, 2016 (the “Indenture”), between the Maryland Economic Development Corporation, a body corporate and politic and an instrumentality of the State of Maryland, as Issuer (the “Issuer”), and the Trustee, the Issuer has authorized the issuance of Maryland Economic Development Corporation Private Activity Revenue Bonds, Series 2016A, 2016B, 2016C and 2016D (Purple Line Light Rail Project) (the “2016 Bonds”), and all rights and actions and claims under the Indenture may be prosecuted and enforced by the Trustee on behalf of the Owners of the 2016 Bonds.

B. Pursuant to the terms of a Series 2016 Loan Agreement, dated as of June 1, 2016 (the “Senior Loan Agreement”), between the Issuer and the Borrower, the proceeds from the sale of the 2016 Bonds were loaned to the Borrower.

C. Pursuant to that certain TIFIA Loan Agreement, dated as of June 14, 2016, between the Borrower and the United States Department of Transportation acting by and through the Federal Highway Administrator (the “TIFIA Lender”), the TIFIA Lender has agreed to make a loan to the Borrower on the terms and subject to the conditions set forth therein.

D. Pursuant to that certain Collateral Agency and Account Agreement, dated as of June 14, 2016 (the “Collateral Agency Agreement”) among the Borrower, the TIFIA Lender and U.S. Bank National Association, as Collateral Agent and Securities Intermediary, the Collateral Agent has been appointed as collateral agent by or on behalf of the parties named as “Secured Parties” thereunder to act on behalf, and for the benefit, of the Secured Parties with respect to the Collateral, subject to the terms and conditions of the Security Documents.

E. Pursuant to that certain Subordination and Intercreditor Agreement, dated as of June 17, 2016 (the “Intercreditor Agreement”), by and among the Intercreditor Agent, the Trustee, the TIFIA Lender, and the Collateral Agent, the Intercreditor Agent has been appointed as Intercreditor Agent on behalf of itself and the other Secured Parties.

F. The Borrower, the Sponsors and the Collateral Agent are party to that certain Equity Contribution Agreement, dated as of June 14, 2016 (the “Equity Contribution Agreement”).

G. The parties intend this Agreement to address certain issues concerning the matters contemplated in (1) the Settlement Agreement and Mutual Release, dated as of the date hereof (the “Settlement Agreement”), between the Contracting Authority (as defined in the Collateral Agency Agreement) and the Borrower, (2) the Second Amendment to Public-Private Partnership Agreement, dated as of the date hereof (the “Initial P3 Amendments”), between the Contracting Authority and the Borrower, and (3) the Mutual Release Agreement, dated as of the date hereof (the “Release Agreement” and, collectively with the Settlement Agreement and the Initial P3 Amendments, the “Settlement Documentation”), among the Contracting Authority, the Borrower and the Design-Build Contractor (as defined in the Collateral Agency Agreement).

NOW THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

Section 1.1. Definitions. All capitalized terms used herein but not otherwise defined herein shall have the respective meanings given to such terms in Exhibit A to the Collateral Agency Agreement or, if not defined therein, shall have the respective meanings given to such terms in the Settlement Agreement. Unless otherwise specified or clear from context, section references shall refer to sections in this Agreement. In addition, the terms set forth below shall have the following meanings:

- (a) “Agents” refers to the Collateral Agent, Intercreditor Agent and Trustee.
- (b) “Alleged Default” means any alleged Defaults or Events of Default arising from:
  - (i) any alleged termination of the Public-Private Agreement resulting from the delivery by Borrower of that certain “Notice of Unconditional Election to Terminate the PPPA” on June 23, 2020, and any related demobilization from, or cessation of prosecution of, the Work;
  - (ii) any alleged “Default Termination Event” under the Public-Private Agreement arising from the delivery by the Contracting Authority of that certain “Notice of Concessionaire Default” on June 24, 2020;
  - (iii) the termination of the Design-Build Contract, and any related demobilization from, or cessation of prosecution of, the Work contemplated thereby;
  - (iv) the amendment of the Design-Build Guarantees as described in Sections 1.5(c)(ii) and 1.5(d)(ii) hereof;
  - (v) the assignment to the Contracting Authority of the O&M Contract and O&M Guarantees, and any subsequent termination thereof by the Contracting Authority, or any other transaction contemplated by the AA Agreement;
  - (vi) the consummation of the transactions contemplated by the Settlement Documentation (including, without limitation, the execution and delivery of the Initial P3 Amendments and the suspension of the Borrower’s obligations in relation to (and

cessation of) the Work (including, without limitation, insurance-related obligations) contemplated by the Public-Private Agreement during the pendency of the Replacement DB Selection Period), subject to compliance with the terms of this Agreement and (for the avoidance of doubt) receipt of the consents required from the Trustee and/or Collateral Agent under the terms of the Settlement Documentation and this Agreement;

(vii) the contemplated transfer of the Equity Interests held by Fluor in the Borrower to any of the other Sponsors party hereto (or otherwise the redemption of such Equity Interests by the Borrower) in compliance with Section 1.10 hereof;

(viii) the releases in Section 1.5(d) hereof; and

(ix) the termination of the specified Security Documents and other instruments contemplated by (and in compliance with) Section 1.5(e) hereof.

For the avoidance of doubt, (A) the execution of this Agreement shall not be construed as (1) an admission that any Alleged Default did or did not give rise to a Default or Event of Default or (2) a waiver of any Alleged Default, and (B) the occurrence of a new Default or Event of Default under the Financing Documents or a newly revealed Default or Event of Default shall not constitute Alleged Defaults.

(c) “Bond Proceeds” means all proceeds from the issuance of the Bonds and any earnings thereon.

(d) “Equity Contribution Proceeds” means the proceeds of any Capital Contributions pursuant to the Equity Contribution Agreement, including, without limitation, the proceeds of any drawing upon any Equity Letter of Credit (or transfer from any Applicable Sponsor Cash Collateral Account).

(e) “Forbearance Period” means a period starting on the Settlement Effective Date and ending on the date of a Forbearance Termination Event.

(f) “Forbearance Termination Event” means the earlier of:

(i) the end of the Replacement DB Selection Period;

(ii) the filing of a proceeding by or against the Borrower or any Sponsor under any bankruptcy, insolvency, reorganization, receivership, moratorium or similar debtor relief law; or

(iii) an Agent delivers a notice to the Borrower terminating the Forbearance Period following the occurrence of any of the following events:

(A) the Borrower or any Sponsor breaches any of its obligations under this Agreement, without having cured the same within five (5) days of notice from any Agent;

(B) (1) the occurrence of a new Default or Event of Default under the Financing Documents (other than an Alleged Default) or the revelation of a previously unknown Default or Event of Default that, in the good faith judgement of the Trustee or Collateral Agent, impairs or threatens to impair the Collateral or otherwise compromises or impairs (or threatens to compromise or impair) the rights of the Secured Parties, (2) the Trustee, Intercreditor Agent or Collateral Agent requests that the Borrower take protective actions in response, and (3) the Borrower fails to timely take such protective actions or otherwise cure such Default or Event of Default; or

(C) (1) the Contracting Authority or another third party takes an action that, in the good faith judgement of the Trustee or Collateral Agent, impairs or threatens to impair the Collateral or otherwise compromises or impairs (or threatens to compromise or impair) the rights of the Secured Parties, (2) the Trustee, Intercreditor Agent or Collateral Agent requests that the Borrower take protective actions in response, and (3) the Borrower fails to timely take such protective actions.

(g) “Permitted Requisitions” means one or more Construction Requisition Certificates to be submitted by the Borrower on and after the Settlement Effective Date which

(i) does not request disbursement of any Bond Proceeds;

(ii) only requests disbursement of

(A) (1) the \$100 million of the monies actually deposited into the Contracting Authority Funding Sub-Account from monies received from the Contracting Authority constituting the Initial Amount for payment to the Design-Build Contractor; or (2) the \$150 million of the monies actually deposited into the Contracting Authority Funding Sub-Account from monies received from the Contracting Authority (if applicable in the event that the Contracting Authority does not pay such amounts directly to the Design-Build Contractor in connection with any PLTC Assignment, PLTC Direct Payment (each such term as defined below) or otherwise) constituting the Remainder Amount for payment to the Design-Build Contractor, in each case in accordance with the terms of the Settlement Documentation;

(B) [RESERVED]; and/or

(C) the monies actually deposited into the Equity Funding Sub-Account from the proceeds of Capital Contributions made in accordance with the Equity Contribution Agreement and, if applicable, the proceeds of any drawing upon any Equity Letter of Credit in accordance with Section 2.5.1 of the Equity Contribution Agreement and, in each case, applied solely for the purposes contemplated in Section 1.5(b)(iii) hereof;

(iii) contains a certification that all amounts being requisitioned in such Construction Requisition Certificate are being used for the purposes contemplated in

Section 1.5(b)(iii) hereof and specifies which of the categories listed in Section 1.5(b)(iii) the requisitioned funds will be used for, with a breakdown of the amounts allocable to each category if a single Construction Requisition Certificate requisitions funds for multiple purposes;

(iv) in the case of a Construction Requisition Certificate that requisitions amounts payable to the Design-Build Contractor as contemplated in Sections 1.5(b)(i) and (iii)(E) hereof, such Construction Requisition Certificate contains a certification that the Release Agreement shall become (or shall have already become) fully effective simultaneously with any such payment to the Design-Build Contractor;

(v) in the case of a Construction Requisition Certificate that would have, absent the waivers provided under Section 1.5(a) hereof, required a certification pursuant to Section 5.26(a)(i)(2)(B) of the Collateral Agency Agreement, such Construction Requisition Certificate contains a certification that, other than an Alleged Default, no Event of Default under the 2016 Loan Documents has occurred and is continuing (unless such disbursement will cure such Event of Default); provided that the certification required by this clause (v) shall not be required for Permitted Requisitions of the type described in Sections 1.5(b)(i) and 1.5(b)(iii)(E) hereof; and

(vi) in the case of the first Construction Requisition Certificate submitted after the Settlement Effective Date, such Construction Requisition Certificate contains a certification that the Settlement Effective Date has occurred.

(h) “Settlement Effective Date” means the date by which (i) the Settlement Agreement and the Initial P3 Amendments have been executed and delivered by the parties thereto and have become fully effective and the Effective Date (as defined in the Settlement Agreement) and the Effective Date and Second Amendment Effective Date (each such term as defined in the Initial P3 Amendments) shall have each occurred and (ii) the Release Agreement shall have been executed and delivered by the parties thereto with the sole remaining condition to effectiveness thereof being the condition to the effectiveness of the Release Agreement set forth in paragraph 2(d) of the Release Agreement (i.e., receipt by the Design-Build Contractor of certain amounts due and payable thereunder pursuant to paragraphs 2(a) and (b) thereof).

(i) “State” means the State of Maryland.

## Section 1.2. Forbearance.

(a) The Collateral Agent, the Intercreditor Agent and the Trustee (acting at the instruction of Owners of the 2016 Bonds) hereby agree that during the Forbearance Period they shall not declare or confirm the occurrence of any Default or Event of Default nor will they take any, or provide any direction to take any, Enforcement Action. For the avoidance of doubt, the foregoing shall not prevent the Collateral Agent, Intercreditor Agent or Trustee from sending letters to reserve rights and remedies so long as such letters do not declare or confirm the occurrence of a Default or Event of Default on the basis of any Alleged Default.

(b) The Borrower and each Sponsor agree that during the Forbearance Period it shall not take any actions to compromise or impair the Collateral or otherwise compromise or

impair the rights of the Secured Parties, nor shall it facilitate (or cooperate with) any such action by another person or entity (it being understood that the use of funds as contemplated herein and in accordance with the express terms hereof shall not constitute such actions).

Section 1.3. Future Use of Bond Proceeds. The Borrower agrees that during the Forbearance Period it shall not, without the prior written consent of the Trustee, submit any additional Construction Requisition Certificates requesting disbursement of any Bond Proceeds nor shall it otherwise cause, or seek to cause, the withdrawal, disbursement, transfer or other use of any Bond Proceeds at any point during the Forbearance Period; provided that the foregoing shall not prevent the disbursement of Bond Proceeds on deposit in the Operating Account as of the date hereof for payments permitted under Section 1.5(b)(iii)(A).

Section 1.4. Equity Contribution Proceeds. Unless otherwise consented in writing by the Trustee, the Borrower agrees that during the Forbearance Period the Borrower shall not submit any Construction Requisition Certificates requesting disbursement of any Equity Contribution Proceeds except as expressly contemplated in Section 1.5(b)(iii), nor shall it otherwise cause, or seek to cause, the withdrawal, disbursement, transfer or other use of any Equity Contribution Proceeds.

Section 1.5. Partial Waiver of Approved Construction Requisition Requirement; Consents and Releases.

(a) In consideration for the agreements of the Borrower and Sponsors in this Agreement, the Collateral Agent, the Intercreditor Agent and the Trustee (acting at the instruction of the Majority Holders) agree that during the Forbearance Period

(i) the Borrower shall be entitled (A) to deliver Permitted Requisitions and (B) to make the payments contemplated therein solely in accordance with Section 1.5(b) below; and

(ii) with respect to each Permitted Requisition:

(A) so long as the Release Agreement will become (or shall have already become) fully effective simultaneously with payment thereof, for the amounts contemplated in Sections 1.5(b)(i) hereof, the requirements of Sections 5.26(a)(i)(2)(B)-(D) and 5.26(a)(ii) of the Collateral Agency Agreement are waived and the Construction Requisition Certificate may be submitted on the same day as the proposed Construction Funds Transfer Date so long as (1) it is submitted prior to 12:00 P.M. (Eastern Time) and (2) the Borrower provides the Collateral Agent with written notice of the proposed Construction Funds Transfer Date at least three (3) Business Days in advance thereof;

(B) so long as the Release Agreement will become fully effective simultaneously with payment thereof, for the amounts contemplated in Sections 1.5(b)(iii)(E) hereof, the requirements of Section 5.26(a)(i)(2)(B) and (C) and 5.26(a)(ii) of the Collateral Agency Agreement are waived and the Construction Requisition Certificate may be submitted on the same day as the proposed Construction Funds Transfer Date so long as (1) it is submitted prior to



12:00 P.M. (Eastern Time) and (2) the Borrower provides the Collateral Agent with written notice of the proposed Construction Funds Transfer Date at least three (3) Business Days in advance thereof; and

(C) for the amounts contemplated in Sections 1.5(b)(iii)(A) through (D) hereof, the requirements of Sections 5.26(a)(i)(2)(B) and (C) and 5.26(a)(ii) of the Collateral Agency Agreement (in each case, if and to the extent otherwise applicable) are waived.

(b) The Borrower and the Sponsors agree that the Permitted Requisitions will be valid solely for purposes of disbursement during the Forbearance Period, in each case as contemplated in the applicable Permitted Requisitions, of

(i) the proceeds (A) of the \$100 million of the monies actually deposited into the Contracting Authority Funding Sub-Account from monies received from the Contracting Authority constituting the Initial Amount for payment to the Design-Build Contractor and (B) of the \$150 million of the monies actually deposited into the Contracting Authority Funding Sub-Account (if applicable in the event that the Contracting Authority does not pay such amounts directly to the Design-Build Contractor in connection with any PLTC Assignment, PLTC Direct Payment or otherwise) from monies received from the Contracting Authority constituting the Remainder Amount for payment to the Design-Build Contractor, in each case in accordance with the terms of the Settlement Documentation;

(ii) [RESERVED]; and

(iii) of Equity Contribution Proceeds from the Equity Funding Sub-Account for the purposes of payment of up to \$100 million of Project Costs constituting:

(A) up to \$15.5 million constituting (1) payment of ordinary course salaries and benefit-related expenses of the employees of (and secondees to) the Borrower that are due and payable in the ordinary course during the Forbearance Period, (2) legal expenses of the Borrower incurred during the Forbearance Period (or during November or December of 2020), (3) ordinary lease and insurance expenses of the Borrower and payments to consultants of the Borrower, in each case that are due and payable in the ordinary course during the Forbearance Period, (4) fees and expenses (including, without limitation, fees and expenses of counsel or other advisors) of the Trustee, Intercreditor Agent and Collateral Agent incurred during the Forbearance Period (or during November or December of 2020) and (5) payment of all costs relating to the Replacement DB Selection Process or New Financing Transactions (as agreed and budgeted with the Contracting Authority), including any stipend payable in respect of the same, in accordance with the terms of the Settlement Agreement;

(B) up to \$2.52 million constituting payment to the O&M Contractor of the Pre-O&M Service Commencement Fee for the months of July through September 2020 in accordance with the terms of the O&M Contract;

(C) up to \$50 million constituting payment of the Borrower's share of Interim Construction Costs in accordance with the terms of the Settlement Agreement for which the Contracting Authority has provided an invoice for Interim Construction Costs in accordance with the terms of the Settlement Agreement;

(D) up to \$15,651,750 to pay the March 31, 2021 and September 30, 2021 interest payments on the 2016 Bonds; and

(E) the proceeds of \$16.28 million of the monies constituting the Concessionaire Settlement Amount (as defined in the Release Agreement) for payment to the Design-Build Contractor for work completed in the months of June through September 2020 in accordance with the terms of the Release Agreement.

(c) In consideration for the agreements of the Borrower and Sponsors in this Agreement, the Collateral Agent, the Intercreditor Agent and the Trustee (acting at the instruction of the Majority Holders) agree that (i) the Borrower shall be permitted to execute, deliver and perform its obligations under the Settlement Documentation in the forms thereof attached as Exhibit A hereto, and (ii) that the Borrower and each Design-Build Guarantor shall be permitted to modify the definition of "Guaranteed Obligations" set forth in Section 1.01 of each Design-Build Guaranty, as contemplated by paragraph 16 of the Release Agreement. For the avoidance of doubt, the foregoing consent to performance by the Borrower of its obligations under the Settlement Documentation, is subject, where applicable, to the subsequent receipt by the Borrower of the consents from the Trustee and other Lenders (as defined in the Public-Private Agreement) provided for under the Settlement Documentation or this Agreement. The foregoing consent shall solely satisfy the consent required from the Trustee pursuant to paragraphs 2(a) and 3 of the Settlement Agreement and shall not satisfy any other consent requirement in the Settlement Documentation or hereunder.

(d) Except as expressly contemplated below, in consideration for the agreements of the Borrower and Sponsors in this Agreement, each of the Collateral Agent, the Intercreditor Agent and the Trustee (acting at the instruction of the Majority Holders), hereby, effective upon the satisfaction in full of all conditions to effectiveness of the Release Agreement, irrevocably releases, waives, and forever discharges the Design-Build Contractor, the Design-Build Guarantors (solely in their capacity as guarantors under the Design-Build Guarantees and providers of the DB Letters of Credit) and the sureties of the Design-Build Contractor in respect of the payment bond(s) and performance security provided under the Design-Build Contract, solely in their capacities as providers of such payment bonds and performance security, individually and collectively, including their officers, agents, employees, and contractors, from and against any and all claims, accounts, actions, agreements, bonds, bills, causes of action, charges, covenants, demands, disputes, controversies, complaints, liabilities, obligations, promises, damages, costs, invoices, expenses, losses, delays, amounts of time, money or other relief of any nature or kind whether disputed or undisputed, liquidated or unliquidated, known or unknown, foreseen or unforeseen, suspected or unsuspected occurring singly or in any combination, on account of, arising out of, or in connection with anything, cause, matter, transaction, act or omission of any nature whatsoever related to or arising from the Project, the Design-Build Contract, the above-described payment bonds and performance security, the proceeds of any draws upon the DB Letters of Credit, the Design-Build Direct Agreement, the

Design-Build Guaranties and each Design-Build Guaranty Consent and Agreement; provided that:

(i) this release shall not include the limited continuing obligations of the Design-Build Contractor expressly set forth in the Release Agreement;

(ii) each Design-Build Guaranty (and the related obligations of the Design-Build Guarantors thereunder and under each respective Design-Build Guaranty Consent and Agreement) shall remain in full force and effect, as modified as contemplated in Section 1.5(c)(ii), solely in respect of such obligations of the Design-Build Contractor under the Release Agreement;

(iii) such release and waiver shall not apply to any capacity that any of the released parties may serve in relation to the Project other than the capacities specified above. Without limiting the foregoing provisions of this clause (iii) and for the avoidance of doubt, such release and waiver shall not in any way modify any obligations under the Equity Contribution Agreement, the Equity Letters of Credit, the Pledge Agreements or under any O&M Performance Security Instruments (as defined in the TIFIA Loan Agreement); and

(iv) such release and waiver is subject to the provisions of paragraph 10 of the Release Agreement, the provisions of which are incorporated herein *mutatis mutandis*.

In each case, effective upon the satisfaction in full of all conditions to effectiveness of the Release Agreement, the Design-Build Contractor, the Design-Build Guarantors and the above-referenced sureties shall each be third party beneficiaries of this Section 1.5(d); the Design-Build Contractor and the Design-Build Guarantors shall each also be third party beneficiaries of Section 1.5(e); and the Design-Build Contractor shall also be a third party beneficiary of Sections 1.5(f) and (g) and the other provisions set forth herein specifically relating to the payment of the amounts contemplated by Section 1.5(b)(i), in each case with rights to rely upon and enforce the same (for the avoidance of doubt, subject to the acknowledgments and agreements of the Borrower and Sponsors in such sections and in Sections 1.6(h), 5 and 6 hereof), and such provisions shall not be amended in a manner adverse to such third party beneficiaries without their prior written consent.

(e) The Collateral Agent hereby agrees that as of the Settlement Effective Date and the satisfaction in full of all conditions to effectiveness of the Release Agreement, (i) it consents to the return of the payment bond(s) and performance security (including the DB Letters of Credit) from the Contracting Authority and/or the Borrower, as applicable, to the Design-Build Contractor and the Design-Build Guarantors, and the termination or cancellation thereof and of any dual obligee riders in respect thereof, and, to the extent in its possession, it will return any original dual obligee riders in respect thereof, (ii) each DB Letter of Credit Consent to Assignment shall be terminated, (iii) the Design-Build Direct Agreement shall be terminated, and (iv) that it shall take all reasonably necessary actions in furtherance of the foregoing; provided that any documentation executed or delivered by the Borrower in implementation of the foregoing shall be in form and substance reasonably acceptable to the Trustee and Collateral Agent.

(f) The Trustee and the Collateral Agent hereby acknowledge and agree that the amounts payable to the Design-Build Contractor as contemplated in Sections 1.5(b)(i) and (iii)(E) hereof are permitted to be paid in accordance with the terms hereof and the Settlement Documentation and, so long as (i) the Release Agreement shall become (or shall have already become) fully effective simultaneously with any such payment to the Design-Build Contractor and (ii) such amounts are requisitioned (solely to the extent applicable in the case of the payment contemplated by Section 1.5(b)(i)(B)) in accordance with Sections 1.5(a)(ii)(A) and (B), as applicable, it will not delay or interfere with the payment of such amounts to the Design-Build Contractor. Notwithstanding anything to the contrary herein, the amount contemplated in Section 1.5(b)(i)(B) shall be permitted to be paid to the Design-Build Contractor in accordance with the terms of the Settlement Documentation on or after the Settlement Effective Date without regard to whether the Remainder Amount is paid during the Forbearance Period or at any time thereafter as permitted by the terms of the Settlement Documentation so long as the Release Agreement shall become (or shall have already become) fully effective simultaneously with any such payment to the Design-Build Contractor.

(g) The Collateral Agent, the Intercreditor Agent and the Trustee (acting at the direction of the Majority Holders), effective upon the satisfaction in full of all conditions to effectiveness of the Release Agreement (i) approve of the assignment, pursuant to the Settlement Documentation, of the Borrower's rights to collect and retain the Remainder Amount under the Settlement Agreement (a "PLTC Assignment") or the direct payment of the Remainder Amount to the Design-Build Contractor (a "PLTC Direct Payment") pursuant to the terms of the Settlement Documentation, (ii) agree that any PLTC Assignment and the proceeds thereof or any PLTC Direct Payment shall be free and clear of the Security Interest of the Collateral Agent, the Intercreditor Agent and the Trustee, and (iii) agree that no Secured Party (or agent or representative acting on behalf of any Secured Party) shall have any right to claim an interest in, or rights to, any PLTC Assignment or the proceeds thereof or any PLTC Direct Payment. To the extent that the Remainder Amount is paid pursuant to Section 1.5(b)(i)(B), the Collateral Agent, the Intercreditor Agent and the Trustee (acting at the direction of the Majority Holders) (A) agree that the Remainder Amount shall be free and clear of the Security Interest of the Collateral Agent, the Intercreditor Agent and the Trustee, and (B) agree that no Secured Party (or agent or representative acting on behalf of any Secured Party) shall have any right to claim an interest in, or rights to, the Remainder Amount.

**Section 1.6. Invoice for Project Debt Termination Amount; Replacement DB Selection Process; New Financing Transactions; Termination of Public-Private Agreement.**

(a) The Borrower agrees that any written statement and supporting documentation it submits to the Contracting Authority concerning the Project Debt Termination Amount (as defined in the Public-Private Agreement) shall be reasonably acceptable to the Collateral Agent and the Trustee and that, within three (3) Business Days of a written request from the Trustee or Collateral Agent, the Borrower shall submit such written statement and/or supporting documentation to the Contracting Authority; provided that the Collateral Agent reasonably cooperates in the preparation of such written statement and supporting documentation. For the avoidance of doubt, this Agreement shall not prevent the Collateral Agent or other Secured Parties from submitting any such written statement and/or supporting documentation to the Contracting Authority or providing any instruction to do the same.

(b) Borrower agrees, in connection with the solicitation and selection of the Replacement DB Contractor and the New Financing Transactions and the negotiation of any documents related thereto (i) to provide the Agents and their counsel with regular updates, (ii) to consult with the Agents and their counsel, and (iii) to provide reasonably requested information in response to inquiries from Agents and their counsel. Borrower agrees to regularly provide the Agents and their counsel with drafts of all documents relating to the foregoing with sufficient time for Agents and their counsel to review and comment thereon.

(c) Borrower agrees that it shall not (i) select a Replacement DB Contractor, (ii) execute the Replacement DB Contract, (iii) consummate any New Financing Transactions, (iv) consent to any material amendments, supplements, waivers or other modifications to the Project Documents, Finance Documents, Security Documents, or Settlement Documentation, or (v) execute any documents in furtherance of, or related to the foregoing, in each case without the specific and prior written consent of the Trustee acting at the instruction of the Majority Holders in their sole discretion. For the avoidance of doubt, nothing in this Section 1.6(c) shall limit any rights of the Trustee or other Secured Parties under the Settlement Documentation or the Finance Documents (including, without limitation, the Security Documents).

(d) The Borrower acknowledges that in determining whether to provide any such consent, the Trustee and Majority Holders may engage in a review of the existing and revised proposed documentation and may consider the adequacy of sources of repayment and other security and the remedies of the Borrower, the Agents and the Owners the 2016 Bonds, the viability of the Project under the revised terms contemplated therein, the adequacy of performance security, projected debt service coverage, and any risks of a default on the 2016 Bonds or other legal or financial risks, and the Agents and/or the Majority Holders may, in their sole discretion, require certain amendments, security, rating agency confirmations, and legal, financial, or technical opinions, reports and certificates as a condition to providing any such consent.

(e) The Borrower hereby acknowledges that, in the event that the Public-Private Agreement is terminated in accordance with Section 7.16.4 thereof (as amended pursuant to the Initial P3 Amendments) and as contemplated in paragraph 20 of the Settlement Agreement, then the entire Termination Payment will be paid in accordance with the Settlement Documentation directly to the Termination Compensation Account maintained by the Collateral Agent under the Collateral Agency Agreement and used to redeem the Bonds in accordance with the terms of Section 4.5(c)(ii) of the Indenture and pay the fees and expenses of the Agents (including fees and expenses of counsel and other advisors) prior to being used for any other purpose.

(f) Upon any termination of the Public-Private Agreement, the Borrower shall, promptly upon the request of the Trustee or Collateral Agent, execute and deliver the necessary and appropriate documentation and take all other reasonably necessary or appropriate actions to:

(i) cause and facilitate the Contracting Authority wiring the required Termination Payment to the Termination Compensation Account and enforce against the Contracting Authority its obligation to do the same;



(ii) cause the transfer of an amount of Termination Compensation sufficient to redeem the 2016 Bonds in full in accordance with Section 4.5(c)(ii) of the Indenture (A) from the Termination Compensation Account to the Mandatory Prepayment Account pursuant to Sections 5.20(b) and 5.14(a)(ii) of the Collateral Agency Agreement, (B) from the Mandatory Prepayment Account to the PABs Mandatory Prepayment Sub-Account in accordance with Section 5.14(b) of the Collateral Agency Agreement, and (C) from the PABs Mandatory Prepayment Sub-Account to the Trustee for deposit into the Series 2016 Redemption Account in accordance with Section 5.14(b) of the Collateral Agency Agreement and Section 5.2 of the Indenture; and

(iii) to cause the payment in full of all unpaid fees and expenses of the Agents, including fees and expenses of counsel and other advisors.

(g) Borrower acknowledges and agrees that any termination of the Public-Private Agreement after the Settlement Effective Date shall constitute an immediate and automatic Event of Default pursuant to Section 8.01(j) of the Series 2016 Loan Agreement and Section 7.1(d) of the Indenture.

(h) Without limiting the foregoing provisions of this Section 1.6, the Borrower acknowledges and agrees that all of Borrower's right, title and interest in, to, and under the Settlement Documentation shall, except as otherwise provided in Section 1.5(g), without further action by the Borrower or any other Person, (i) be automatically and immediately assigned and pledged to, and subject to a perfected Security Interest in favor of, the Collateral Agent pursuant to the Security Agreement and (ii) constitute Collateral under the Security Agreement.

(i) The Borrower agrees that it shall not, without the consent of the Trustee, borrow any proceeds of the TIFIA Loan under the TIFIA Loan Agreement prior to the earlier of (i) the execution of the Replacement DB Contract and consummation of the New Financing Transactions with the consent of the Trustee (in accordance with Section 1.6(c) hereof) or (ii) the consummation of the redemptions and payments contemplated by Section 1.6(f) hereof; provided that such consent pursuant to this Section 1.6(i) shall not be unreasonably withheld, conditioned and/or delayed if such borrowing will not have an adverse effect on the interests of the Bondholders; provided, further, for the avoidance of doubt, nothing in this Section 1.6(i) shall limit any rights of the Trustee or other Secured Parties under the Settlement Documentation or the Finance Documents (including, without limitation, the Security Documents).

Section 1.7. Forbearance Period Project Costs. Other than to the extent expressly permitted under Section 1.5(b)(iii) hereof, the Borrower agrees that it shall not, without the prior written consent of the Trustee, submit any additional Construction Requisition Certificates requesting disbursement of any Bond Proceeds or Equity Contribution Proceeds, nor shall it otherwise cause, or seek to cause, the withdrawal, disbursement, transfer or other use of any Bond Proceeds or Equity Contribution Proceeds for Project Costs or other costs incurred due to work performed during or prior to the Forbearance Period or otherwise incurred during or prior to the Forbearance Period.

Section 1.8. Borrower Bankruptcy. In the event of the filing of a proceeding by or against the Borrower under any bankruptcy, insolvency, reorganization, receivership, moratorium

or similar debtor relief law, the Sponsors shall not, without the prior written consent of the Trustee, cause the Borrower to seek to access the Bond Proceeds or the Equity Contribution Proceeds.

Section 1.9. Indemnity. To the extent permitted by law, the Borrower hereby agrees to indemnify and hold U.S. Bank National Association, personally and as Trustee, Intercreditor Agent, and Collateral Agent (collectively, the “Bank Indemnitees”), and its directors, officers, agents, and employees (collectively with the Bank Indemnitees, the “Trustee Indemnitees”), harmless from and against any and all claims, liabilities, losses, damages, fines, penalties, and expenses, including reasonable and documented out of pocket, incidental expenses, legal fees and expenses, and the allocated costs and expenses of in-house counsel and legal staff that may be imposed on, incurred by, or asserted against, the Trustee Indemnitees or any of them in connection with or arising out of the Bank Indemnitees’ consideration of, entering into, and/or performance under this Agreement (including, for the avoidance of doubt, any amendment thereto); provided, however, the foregoing indemnification shall not apply to any liability caused by any Trustee Indemnitee’s negligence or willful misconduct. The Borrower agrees that this indemnification is granted to add to and supplement the indemnification given in the Finance Documents. For value received, including without limitation this Agreement, the Borrower, on behalf of itself and its successors, heirs, and assigns (collectively, the “Borrower Parties”), hereby absolutely, unconditionally and irrevocably releases, and forever discharges and acquits each and all of U.S. Bank National Association, both personally and as the Trustee, Intercreditor Agent and Collateral Agent for themselves and their respective successors, heirs, and assigns, and for their past and present officers, directors, affiliates, shareholders, agents, insurers, attorneys, and employees, and any Owner of 2016 Bonds providing any Bank Indemnitee with instruction to enter into this Agreement (or, for the avoidance of doubt, any amendment thereto), for themselves and their respective successors, heirs, and assigns, and for their past and present officers, directors, affiliates, shareholders, agents, insurers, attorneys, and employees (collectively, the “Trustee Parties”) from, and waives and relinquishes, any and all claims (including, without limitation, all counterclaims, crossclaims, defenses, rights of set-off and recoupment), actions, causes of action, acts and omissions, controversies, demands, suits, and other liabilities of every kind or nature whatsoever, both in law and in equity, known or unknown, which any Borrower Party has or ever had against the Trustee Parties prior to, through, and including the Settlement Effective Date, based upon or related to this Agreement (including, for the avoidance of doubt, any amendment thereto), the Indenture, the Bonds, or any other Finance Document. Each of the Borrower Parties agrees that this release is executed for the purpose of adding to and supplementing the indemnification also given herein.

Section 1.10. Certain Agreements Related to Fluor’s Withdrawal from the Borrower.

(a) The Borrower and Sponsors agree that Fluor’s withdrawal from the Borrower or the O&M Contractor (including any transfer of Equity Interests held by Fluor in the Borrower or otherwise the redemption of such Equity Interests) will be accomplished pursuant to documentation reasonably acceptable to the Trustee (and to the Collateral Agent) and in such a manner that (a) does not involve the assumption of any new liabilities on the part of Borrower, (b) at all times, 100% of the Equity Interests in the Borrower and all associated rights and property interests will be held by the other Sponsors party to this Agreement and subject to a perfected security interest and pledge in favor of the Collateral Agent pursuant to a pledge agreement in substantially the same form as the Pledge Agreements and any certificates or

instruments evidencing the same shall be delivered to the Collateral Agent in the manner contemplated by such pledge agreement, and (c) at all times either (i) Fluor's obligations under the Equity Contribution Agreement shall remain in full force and effect secured by an Equity Letter of Credit (and/or funds on deposit in the Fluor Sponsor Cash Collateral Account Sub-Account) in an aggregate amount at least equal to Fluor's Unused Capital Commitment (as defined in the Equity Contribution Agreement) or (ii) Fluor's obligations under the Equity Contribution Agreement (including, without limitation, its Unused Capital Commitment) shall be assumed in full by the other Sponsors party to this Agreement (and secured by one or more new Equity Letters of Credit (and/or new funds on deposit in the Applicable Sponsor Cash Collateral Account corresponding to such other Sponsors) in an aggregate amount at least equal to such assumed Unused Capital Commitment such that, for each such other Sponsor, the Equity Letters of Credit (and/or funds on deposit in the Applicable Sponsor Cash Collateral Account corresponding to such Sponsor) securing such Sponsor's increased Unused Capital Commitment (as a result of such assumption) shall be equal to the amount of such Sponsor's increased Unused Capital Commitment). For the avoidance of doubt, nothing in this Section 1.10 shall limit any rights of the Trustee or other Secured Parties under the Settlement Documentation or the Finance Documents (including, without limitation, the Security Documents).

(b) If, as contemplated by Section 6 of the Settlement Agreement, the Borrower enters into a replacement O&M Contract prior to the execution of the Replacement DB Contract and consummation of the New Financing Transactions, such replacement O&M Contract shall not result in any liabilities or obligations on the part of the Borrower until either (i) the Replacement DB Contract is executed and the New Financing Transactions are consummated with the consent of the Trustee (in accordance with Section 1.6(c) hereof) or (ii) the redemptions and payments contemplated by Section 1.6(f) hereof are consummated. For the avoidance of doubt, nothing in this Section 1.10(b) shall limit the rights of the Trustee or other Secured Parties under the Settlement Documentation or the Finance Documents (including, without limitation, the Security Documents).

Section 1.11. Fluor O&M Guaranty. Subject to the Release Agreement becoming fully effective in accordance with the terms thereof, the Collateral Agent agrees that from and following the date on which Fluor shall have irrevocably sold or transferred its equity interests in the O&M Contractor, the Collateral Agent shall not make any claim or demand against Fluor Corporation on the O&M Guaranty provided by Fluor Corporation. Fluor Corporation, in its capacity as O&M Guarantor under such O&M Guaranty, shall be a third party beneficiary of this Section 1.11, subject to the acknowledgments and agreements of the Borrower and Sponsors in Sections 5 and 6 hereof.

Section 2. Effective Date. This Agreement shall become effective on the later of (a) the date upon which the parties hereto shall have exchanged executed counterparts hereof and (b) the Settlement Effective Date.

Section 3. Fees and Interest Payments.

Section 3.1. The Borrower consents to, and agrees that it shall not challenge, the use of Bond Proceeds or other Collateral to pay reasonable and documented (such documentation being consistent with past practice) fees and expenses (including, without limitation, fees and expenses



of counsel or other advisors) that have been incurred, or may be incurred in the future, by the Trustee, the Intercreditor Agent, or the Collateral Agent in connection with, or arising out of or related to, (a) any allegations by the Borrower, the Design-Build Contractor or the Contracting Authority of a right to terminate the Public-Private Agreement or the Design-Build Contract or of any alleged defaults under any of the foregoing, (b) this Agreement and (c) the Settlement Documentation, and the matters contemplated therein, including without limitation, the selection of the Replacement DB Contractor, the New Financing Transactions, and the negotiation and review of the related documentation. The Borrower shall pay such reasonable and documented (such documentation being consistent with past practice) fees and expenses for work performed during the Forbearance Period (or during November or December of 2020) within ten (10) days of receipt of an invoice therefore. The Borrower shall make such payments first from the Operating Account, and, to the extent there are no funds available in the Operating Account, then from Equity Contribution Proceeds.

Section 3.2. The Borrower and the Sponsors agree that the March 31, 2021 and September 30, 2021 interest payments on the 2016 Bonds shall be funded from Equity Contribution Proceeds.

Section 3.3. The Borrower and Sponsors agree to take such actions as are necessary to cause the contribution by the Sponsors and disbursement by the Borrower of Equity Contribution Proceeds to make the payments contemplated by this Section 3.

Section 4. Non-Voting Secured Creditor. The Borrower hereby provides notice to the Intercreditor Agent that (a) no Borrower Bankruptcy Related Event has occurred, (b) the TIFIA Lender is therefore a Non-Voting Secured Creditor (as defined in the Intercreditor Agreement), (c) the principal amount of Secured Obligations held by the TIFIA Lender is \$0, and (d) the Borrower is not aware of any other Non-Voting Secured Creditors that hold any Senior Secured Obligations.

Section 5. Settlement Discussions. This Agreement is part of a proposed settlement of matters that could otherwise be the subject of litigation. Pursuant to Rule 408 of the Federal Rules of Evidence, any applicable state rules of evidence and any other applicable law, foreign or domestic, this Agreement, any approvals thereof or consents thereto, all negotiations relating thereto and any action or inaction pursuant to the terms hereof shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms. The Borrower agrees that the Trustee, Intercreditor Agent, Collateral Agent and other Secured Parties shall not be prejudiced by any delay during the Forbearance Period in taking any action or providing any instruction in respect of any Enforcement Action or in respect of the declaration or confirmation of the occurrence of any Default or Event of Default and it shall not assert any such delay as a defense to any such future action or instruction.

Section 6. No Waiver. The Borrower the Sponsors each acknowledge that other than as expressly agreed to herein, neither this Agreement, nor any action or inaction pursuant hereto shall be deemed to prevent, impair or limit the Secured Parties' respective rights and remedies, including, without limitation, the right to respectively to declare or confirm the existence of any Default or Event of Default, take any Enforcement Actions, or enforce full and strict performance of all of the terms of the Finance Documents, it being expressly understood and agreed that the

Secured Parties reserve such rights and remedies, and do not waive the Alleged Defaults or any other Default or Event of Default, or any of the respective Secured Parties' rights, which are available to the Secured Parties. This Agreement is hereby designated as a "Finance Document" in accordance with clause (o) of the definition of such term in the Collateral Agency Agreement.

Section 7. Sponsors Ratification of Borrower Agreements. The Sponsors ratify the agreements of the Borrower herein and shall not take any action, or cause or permit any of their affiliates to take any action, which the Borrower has agreed hereunder not to take.

Section 8. Notice. All notices, consents, waivers, requests and other communications hereunder shall be in writing and shall be deemed effectively given on the date sent by email if sent during normal business hours, and on the next Business Day if sent after normal business hours, unless the sender receives a bounce back or failure to deliver message notification. All such communications shall be sent to the party to be notified at the following address:

If to the Borrower:

[p.waart@meridiam.com](mailto:p.waart@meridiam.com)  
[Doran.Bosso@purplelinepartners.com](mailto:Doran.Bosso@purplelinepartners.com)

If to the Collateral Agent:

[stephanie.haysley@usbank.com](mailto:stephanie.haysley@usbank.com) and  
[christopher.gehman@usbank.com](mailto:christopher.gehman@usbank.com)

If to the Intercreditor Agent:

[stephanie.haysley@usbank.com](mailto:stephanie.haysley@usbank.com) and  
[christopher.gehman@usbank.com](mailto:christopher.gehman@usbank.com)

If to the Trustee:

[stephanie.haysley@usbank.com](mailto:stephanie.haysley@usbank.com) and  
[christopher.gehman@usbank.com](mailto:christopher.gehman@usbank.com)

If to Meridiam:

[J.Garvey@meridiam.com](mailto:J.Garvey@meridiam.com)  
[J.Dingle@meridiam.com](mailto:J.Dingle@meridiam.com) and  
[R.LIMOZIN@meridiam.com](mailto:R.LIMOZIN@meridiam.com)

If to Star America:

[mmelson@starinfrapartners.com](mailto:mmelson@starinfrapartners.com) and  
[kseidl@starinfrapartners.com](mailto:kseidl@starinfrapartners.com)

If to Fluor:

[Michael.Hatchell@fluor.com](mailto:Michael.Hatchell@fluor.com) and  
[George.Biediger@Fluor.com](mailto:George.Biediger@Fluor.com)

Section 9. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts (including by portable document format or .PDF), each of which shall be an original, but all of which together shall constitute one instrument. The words “execution”, “signed”, “signature”, “delivery” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10. Miscellaneous. The provisions of Sections 10.06 and 10.07 of the Collateral Agency Agreement are hereby incorporated herein *mutatis mutandis*.

Section 11. Disclosure. It is agreed that the Trustee may make such disclosure concerning this Agreement and the Settlement Documentation as it determines to be appropriate, including through a posting on EMMA. Borrower agrees that it shall post copies of this Agreement and the Settlement Documentation on EMMA (subject to any redactions that may be proposed by the Borrower, including commercially sensitive information, and agreed to by the Trustee, acting reasonably) on or prior to December 18, 2020 (or such other date as may be mutually agreed to by the Trustee and the Borrower, which agreement may be evidenced by an exchange of emails by counsels on their respective behalf).

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

**BORROWER:**

PURPLE LINE TRANSIT PARTNERS LLC

By: 

Name: Peter van der Waart van Gulik  
Title: Chief Executive Officer

**TRUSTEE:**

U.S. BANK NATIONAL ASSOCIATION, solely in its  
capacity as Trustee

By: 

Name: CHRISTOPHER H. GELMAN  
Title: VICE PRESIDENT

**COLLATERAL AGENT:**

U.S. BANK NATIONAL ASSOCIATION, solely in its  
capacity as Collateral Agent

By: 

Name: CHRISTOPHER H. GEMMA  
Title: VICE PRESIDENT


**INTERCREDITOR AGENT:**

U.S. BANK NATIONAL ASSOCIATION, solely in its  
capacity as Intercreditor Agent

By:   
Name: CHRISTOPHER H. GEMM  
Title: VICE PRESIDENT

**MERIDIAM:**

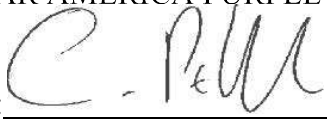
MERIDIAM INFRASTRUCTURE PURPLE LINE, LLC

By:  \_\_\_\_\_  
Name: Thierry DEAU  
Title: Director



**STAR AMERICA:**

STAR AMERICA PURPLE LINE, LLC

By:  \_\_\_\_\_  
Name: Christophe Petit  
Title: President

**FLUOR:**

FLUOR ENTERPRISES, INC.

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

Name: George Biediger

Title: Authorized Representative

**EXHIBIT A**

**Forms of Settlement Documentation**

*[See attached.]*

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (hereinafter, this “Settlement Agreement”), dated as of December \_\_\_, 2020 (the “Effective Date”), is entered into by and between Purple Line Transit Partners LLC, a Delaware limited liability company (“Concessionaire”), party of the first part; and the Maryland Transit Administration (“MTA”) and the Maryland Department of Transportation (“MDOT” and, together with MTA, the “Owner”), parties of the second part (Concessionaire, MTA and MDOT are each individually referred to herein as a “Party” and collectively referred to herein as the “Parties”). Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed thereto in the P3 Agreement referred to below.

### **RECITALS**

A. WHEREAS, a Public-Private Partnership Agreement, dated as of April 7, 2016 (as amended, supplemented and/or otherwise modified from time to time as of the date hereof, the “P3 Agreement”), was entered into by and between Owner and Concessionaire to finance, develop, design, construct, equip, supply light rail vehicles for, operate, and maintain the Purple Line light rail project (as further described therein, the “Purple Line” or the “Project”); and

B. WHEREAS, Concessionaire and Purple Line Transit Constructors, LLC, a Delaware limited liability company (“PLTC”), as design-build contractor, entered into an Amended and Restated Design-Build Contract, dated as of June 14, 2016 (as amended, supplemented and/or otherwise modified from time to time as of the date hereof, the “DB Contract”), for the design and construction of the Project (as further described therein, the “DB Work”); and

C. WHEREAS, Concessionaire and Purple Line Transit Operators, LLC, a Delaware limited liability company (“PLTO”), as operations and maintenance contractor, entered into an

Amended and Restated Operations and Maintenance Contract, dated as of June 14, 2016 (as amended, supplemented and/or otherwise modified from time to time as of the date hereof, the “O&M Contract”), for the performance of the Services (as defined in the O&M Contract), related to the operation and maintenance of the Project; and

D. WHEREAS, Concessionaire and L.S. Caldwell & Associates, Inc. (“LSC”) entered into a Consulting Services Agreement, dated as of August 19, 2016 (as amended, supplemented and/or otherwise modified from time to time as of the date hereof, the “Consulting Services Agreement”), for certain services contemplated therein; and

E. WHEREAS, PLTC, PLTO and CAF USA, Inc. (“CAF”) entered into a contract (Contract No. PLT4-C-133), dated as of June 17, 2016 (as amended, supplemented and/or otherwise modified from time to time as of the date hereof, the “LRV Supply Contract”), for the design, manufacture and supply of light rail vehicles for the Project; and

F. WHEREAS, pursuant to that certain Indenture of Trust, dated as of June 1, 2016 (the “Indenture”), between the Maryland Economic Development Corporation, a body corporate and politic and an instrumentality of the State of Maryland, as Issuer (the “Bond Issuer”), and U.S. Bank National Association, a national banking association, solely in its capacity as Trustee (the “Trustee”), the Bond Issuer has authorized the issuance of Maryland Economic Development Corporation Private Activity Revenue Bonds, Series 2016A, 2016B, 2016C and 2016D (Purple Line Light Rail Project) (the “Bonds”); and

G. WHEREAS, on August 3, 2016, the United States District Court for the District of Columbia issued a decision in *Friends of the Capital Crescent Trail v. Federal Transit Administration* (Case No. 1:14-cv-01471-RJL), which vacated the Federal Transit

Administration's Record of Decision (the "ROD") (hereinafter referred to as the "ROD Litigation"); and

H. WHEREAS, on July 19, 2017, the United States Court of Appeals for the District of Columbia Circuit reinstated the ROD; and

I. WHEREAS, Concessionaire initiated a Claim in accordance with Article 20 of the P3 Agreement's Dispute Resolution Procedures seeking a compensable time extension and financing costs caused by the ROD Litigation ("Claim 003"); and

J. WHEREAS, Concessionaire and Owner recognize that the vacatur of the ROD caused some delay in the construction of the Purple Line, but disagree as to the amount of delay and whether Concessionaire's own actions also caused concurrent delay on the Project; and

K. WHEREAS, Concessionaire also contends that MTA failed to acquire necessary rights-of-way ("ROW") (e.g., parcels, easements, and rights of entry) in a timely manner for design work necessary for the construction of the Purple Line; and

L. WHEREAS, Concessionaire initiated a Claim seeking a compensable time extension and financing costs associated with delays in ROW acquisition related to utility easements and other property rights ("Claim 004"); and

M. WHEREAS, Owner disputes that Concessionaire experienced the delay asserted under Claim 004 and further contends that certain ROW acquisition costs and delays are Concessionaire's responsibility under the P3 Agreement; and

N. WHEREAS, Concessionaire has, prior to the Effective Date of this Settlement Agreement, submitted to MTA a number of other Potential Change Order Notices ("PCOs"), Requests for Change Orders ("RCOs"), supplements to PCOs and RCOs ("Supplements"), Notices of Claims ("NOCs"), and Claims (all such PCOs, RCOs, Supplements, NOCs and Claims

existing as of the date hereof, including the aforementioned Claims 003 and 004, are hereinafter referred to as the “Change Order/Claim Matters”) in each case seeking compensable and non-compensable time extensions, financing costs, and other financial relief; and

O. WHEREAS, Owner disputes that Concessionaire is entitled to the compensable and non-compensable time extensions, financing costs, and other financial relief that Concessionaire seeks pursuant to these Change Order/Claim Matters; and

P. WHEREAS, Concessionaire provided a Notice of Unconditional Election to Terminate the P3 Agreement to Owner dated June 23, 2020 (the “Notice of Unconditional Termination”), claiming the existence of an Extended Delay resulting in 365 or more days of Critical Path delay; and

Q. WHEREAS, Owner disputes the existence of an Extended Delay and provided a Notice of Concessionaire Default to Concessionaire dated June 24, 2020 (the “Notice of Concessionaire Default”), claiming the existence of a Concessionaire Default as a result of the Notice of Unconditional Termination; and

R. WHEREAS, the validity of the Notice of Unconditional Termination is disputed by Owner and the validity of the Notice of Concessionaire Default is disputed by Concessionaire; and

S. WHEREAS, on August 10, 2020, Owner filed a complaint in the Circuit Court for Baltimore City (the “Court”) seeking, among other things, a preliminary injunction (the “P3 Litigation”) and obtained a temporary restraining order (“TRO”) enjoining and restraining Concessionaire from demobilizing and abandoning the Project until Concessionaire established that an Extended Delay of 365 or more days to the Critical Path due to Relief Events exists in accordance with the Dispute Resolution Procedures set forth in the P3 Agreement; and

T. WHEREAS, on September 10, 2020, the Court entered an order (the “September 10 Order”) denying Owner’s preliminary injunction and ordering the TRO to expire upon entry of the September 10 Order; and

U. WHEREAS, in light of the September 10 Order and the disputed notices referenced in paragraphs P, Q, and R above, and to preserve certain rights under the P3 Agreement or under applicable law, Owner entered into an Assignment and Assumption Agreement, dated as of September 28, 2020 (the “AA Agreement”), by and among Owner, Concessionaire, PLTC, PLTO, and CAF for the purpose of assigning, transferring, and conveying to Owner the Key Contracts and certain Subcontracts, permits, and real property rights (all as contemplated therein); and

V. WHEREAS, in light of the September 10 Order and the disputed notices referenced in paragraphs P, Q, and R above, and to preserve any and all rights under the P3 Agreement or under any applicable law, Owner issued a notice to Concessionaire on October 9, 2020, indicating Owner’s determination that a Liquid Market exists and its intent to remarket the P3 Agreement in accordance with Attachment 1 to Exhibit 13B of the P3 Agreement (“Notice of Remarket of P3 Agreement”); and

W. WHEREAS, on October 12, 2020, Concessionaire submitted a response to Owner’s Notice of Remarket of P3 Agreement, challenging Owner’s right to invoke the Resolicitation Process and contesting the existence of a Liquid Market for the Project; and

X. WHEREAS, on October 26, 2020, Concessionaire issued a Notice of Claim disputing Owner’s determination that a Liquid Market exists; and

Y. WHEREAS, the Parties wish to resolve, in accordance with the terms hereof, all Disputes pending between them, including (i) the Change Order/Claim Matters; (ii) the termination



of the DB Contract and the Contract Termination Costs, including amounts owing by Concessionaire to PLTC, and amounts owing by PLTC to its Subcontractors, in connection with the termination of the DB Contract (“PLTC Termination Costs”); (iii) the Notice of Unconditional Termination, the Notice of Concessionaire Default, and the Notice of Remarket of P3 Agreement (hereinafter collectively referred to as the “Disputed Notices”); and (iv) the P3 Litigation; and

Z. WHEREAS, the Parties understand and agree that resolving their disputes will require renegotiating the terms of the TIFIA Loan Agreement, dated June 14, 2016, and may require modification to the other existing Funding Agreements and Security Documents; and

AA. WHEREAS, the Parties understand and agree that resolving their disputes will require amendments to the P3 Agreement; and

BB. WHEREAS, the Parties understand that this Settlement Agreement and any amendments to the P3 Agreement necessary to effectuate the terms of this Settlement Agreement are subject to the approval of the Maryland Board of Public Works (“BPW”) and the Trustee, and may be subject to other approvals; and

CC. WHEREAS, the Parties are desirous of working together to complete the Purple Line in accordance with the terms of the P3 Agreement, as amended.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, Concessionaire, MTA and MDOT agree as follows:

1. The Parties acknowledge and agree that the above recitals are incorporated in and made a part of this Settlement Agreement.

2. The Parties shall, subject to the terms and conditions stated herein (including BPW approval and the approval of the Trustee acting on behalf of the holders of a majority in aggregate principal amount outstanding of the Bonds (the “Majority Holders”) (which shall occur prior to

the Effective Date)), (a) initially execute and deliver in accordance with paragraph 3, amendments to the P3 Agreement and, if applicable, the Technical Provisions (the “Initial P3 Amendments”) necessary to reflect and effectuate the terms and conditions of this Settlement Agreement set forth in paragraphs 3 through 5, 10 through 15, 18 through 20, 38 and 39; and (b) subsequently negotiate, execute and deliver further amendments to the P3 Agreement and, if applicable, the Technical Provisions (the “Subsequent P3 Amendments” and, together with the Initial P3 Amendments, the “P3 Amendments”), necessary to reflect and effectuate the terms and conditions of this Settlement Agreement set forth in paragraphs 11, 15(c), 21, 23 and 24, which Subsequent P3 Amendments shall be executed, delivered and effective as of the date of entry into the Replacement DB Contract (as defined below) and concurrent completion of the New Financing Transactions (as defined below).

3. Following approval of this Settlement Agreement by the BPW and the Trustee acting on behalf of the Majority Holders (which shall occur prior to the Effective Date), and the approval and execution and delivery of the mutually agreed upon Initial P3 Amendments setting forth the terms contemplated herein, this Settlement Agreement and the Initial P3 Amendments will be concurrently executed and delivered by the Parties. Upon such execution and delivery, this Settlement Agreement will be immediately effective as of the Effective Date set forth in the preamble, which Effective Date shall be the first business day immediately after this Settlement Agreement is approved by the BPW.

4. The Parties agree that, subject to the terms and conditions set forth in this Settlement Agreement and the Initial P3 Amendments, Concessionaire’s Notice of Unconditional Termination and Owner’s Notice of Concessionaire Default will be withdrawn as of the Effective Date and shall have no further force and effect, such that, *inter alia*, the P3 Agreement will

continue in full force and effect, subject to the terms and conditions of the Initial P3 Amendments, which will, among other things, suspend certain provisions of the P3 Agreement during the pendency of the Replacement DB Selection Period (as defined below).

5. The Parties further agree that commencing on the Effective Date, Concessionaire shall initiate, pursuant to agreed-upon procedures set forth in this Settlement Agreement and the Initial P3 Amendments, and in coordination with Owner, a solicitation process for the ultimate identification and selection of a replacement Design-Build Contractor (the “Replacement DB Contractor”). The terms of such solicitation process, timing thereof, and selection and evaluation criteria shall be as set forth in paragraphs 15 through 19 hereof and as otherwise contemplated in the Initial P3 Amendments (the “Replacement DB Selection Process”). Subject to the terms and conditions set forth in this Settlement Agreement and in the Initial P3 Amendments, the P3 Agreement (as amended pursuant to the Initial P3 Amendments) will continue in effect, including during the period beginning on the Effective Date and ending on the date of execution of the Replacement DB Contract or the nine-month anniversary following the Effective Date, whichever is earlier (the “Replacement DB Selection Period”) and until it terminates as set forth in paragraph 20 herein or in the Initial P3 Amendments.

6. Concessionaire agrees to provide, by no later than five (5) Business Days after the Effective Date, documentation evidencing (i) a binding agreement for the redemption or transfer of all of the equity interests held by Fluor Enterprises, Inc. (“Fluor”) in the Concessionaire, with any transferee of any such equity interests subject to the approval of Owner (except for the existing members of the Concessionaire (other than Fluor) which shall not require such approval), and (ii) any necessary replacement of any letters of credit provided by Fluor (as equity participant in the Concessionaire) to the Collateral Agent or obligation to fund any amounts required to be funded

by such letters of credit in connection with the Project. Such definitive documents shall require that such transaction be consummated no later than December 31, 2020. By no later than (i) the Effective Date, Concessionaire agrees to provide documentation (in form and substance reasonably satisfactory to Owner and Concessionaire) evidencing a binding term sheet ("Fluor PLTO Transfer Term Sheet") for the irrevocable transfer or redemption of all of the equity interests held by Fluor (or any affiliate thereof) in PLTO (the "Fluor PLTO Transfer"), and (ii) December 23, 2020, Concessionaire agrees to provide documentation (consistent with and implementing the terms of the Fluor PLTO Transfer Term Sheet) evidencing a definitive agreement for the Fluor PLTO Transfer (the "Definitive PLTO Agreement"), which shall require that such transfer or redemption shall be consummated no later than the end of the Replacement DB Selection Period, with the transferee of any such equity interests being subject to the approval of the Concessionaire, the Trustee acting on behalf of the Majority Holders and Owner. Owner and Concessionaire understand and agree that the Fluor PLTO Transfer Term Sheet and Definitive PLTO Agreement shall expressly provide that until the date of consummation of the Fluor PLTO Transfer, any and all matters related to the O&M Contract or the services provided thereunder shall be managed exclusively by CAF and Alternate Concepts, Inc. and that the Fluor member shall (i) no longer be actively managing PLTO and (ii) abstain from participating in any matters related to the O&M Contract or the services provided thereunder (other than in respect of matters related to increased risk to the O&M Guaranty (as defined in the O&M Contract) provided by Fluor Corporation), and that the consummation of the Fluor PLTO Transfer shall be subject only to the release of the O&M Guaranty provided by Fluor Corporation. For the avoidance of doubt, it is the intent of the Parties that Fluor (or any affiliate thereof) shall have no ownership, partnership, or any other interest of any kind in the Project after (i) with respect to Concessionaire,

December 31, 2020, and (ii) with respect to PLTO, the Fluor PLTO Transfer is consummated in accordance with the above (including in its capacity as an O&M Guarantor (as defined in the O&M Contract) under that certain O&M Guaranty that Fluor Corporation (or any affiliate thereof) is required to maintain prior to such date in accordance with the terms of the Project Debt documents of the Concessionaire or the Security Documents). For the avoidance of doubt, Owner and Concessionaire agree that the failure to provide the Fluor PLTO Transfer Term Sheet and Definitive PLTO Agreement by Fluor shall not constitute a breach by Concessionaire of the terms of this paragraph 6.

7. Owner agrees to pay and Concessionaire agrees to accept an aggregate lump-sum amount of Two Hundred Fifty Million Dollars (\$250,000,000.00) (the “Settlement Amount”) as the financial settlement to resolve and release the PLTC Termination Costs, Change Order/Claim Matters, Disputed Notices, P3 Litigation, and other matters as set forth in the mutual releases set forth below and in the PLTC releases in the form attached hereto as Annex I. Without prejudice to the lump-sum nature of the Settlement Amount, Owner shall have the same rights to request information in respect of any costs as set forth in the P3 Agreement.

8. Owner shall pay the Settlement Amount in accordance with the following schedule:

a. One Hundred Million Dollars (\$100,000,000.00) (the “Initial Amount”) shall be paid in immediately available funds to Concessionaire for payment to PLTC by no later than (i) December 31, 2020, but only in the event that the Fluor PLTO Transfer Term Sheet and the Definitive PLTO Agreement shall have been provided as contemplated in (and in compliance with) paragraph 6 above on or prior to December 23, 2020, or (ii) ten (10) Business Days after the earliest of (x) the date on which the Fluor PLTO Transfer Term Sheet or the Definitive PLTO Agreement shall have been provided, (y) the date on which the O&M Contract shall have been

terminated, and (z) February 15, 2021.

b. One Hundred and Fifty Million Dollars (\$150,000,000.00) (the “Remainder Amount”) shall be paid to an account of PLTC identified by Concessionaire for payment to PLTC (pursuant to Concessionaire’s written direction and relinquishment of all interests thereto and in accordance with the mutual release contemplated in Annex I) in immediately available funds by no later than the earlier of (i) the date on which definitive documents shall have been executed in connection with the New Financing Transactions (in the event that the Concessionaire shall have executed a Replacement DB Contract prior to the expiration of the Replacement DB Selection Period, in which case Concessionaire shall finance the payment of the Remainder Amount on such date) and (ii) the 12-month anniversary of the Effective Date (in the event that the Replacement DB Selection Period expires without a Replacement DB Contract). Owner hereby agrees that the Initial Amount and the Remainder Amount shall not be subject to setoff, reduction, abatement or any other diminishment for any reason.

9. Owner shall be responsible for any costs for off-site stored materials purchased for the Project under a contract with PLTC prior to September 28, 2020, provided that neither PLTC nor MTA have previously paid for such materials. Any such costs shall be paid directly by Owner to the applicable Subcontractors and Suppliers (as opposed to payment through Concessionaire and/or PLTC). All WGL, PEPCO and Verizon invoices for material costs (including costs referenced in MTA Document 2020.10.29.3793) shall be the separate obligation of MTA. Owner shall execute with PLTC a bill of sale (“Bill of Sale”) on or within five (5) business days after the Effective Date, which shall be at no additional cost to Owner and effective as of the date on which the Initial Amount is paid, for PLTC to transfer to Owner the permanent materials, maintenance materials/equipment, office furniture, IT Equipment, QC Laboratory and Field Equipment

identified in Exhibit A of such Bill of Sale.

10. Concessionaire shall be responsible for the release and payment of any retainage withheld from Contractors, Subcontractors and Suppliers (if applicable) by Concessionaire or PLTC in accordance with the process and documentation set forth in the Initial P3 Amendments.

11. The Parties hereby agree that, notwithstanding the withdrawal of the notices provided in paragraph 4 above, the AA Agreement will remain in full force and effect, and Owner shall manage the Project during the Replacement DB Selection Period, subject to the reassignment of Contracts, Subcontracts, permits, and real property rights contemplated in the AA Agreement upon selection of a Replacement DB Contractor and entry into a Replacement DB Contract as contemplated by paragraph 19 herein and in accordance with the Subsequent P3 Amendments.

12. During the Replacement DB Selection Period, Owner and Concessionaire hereby agree to pay all costs and expenses incurred by Owner with respect to the D&C Work for the Project (including any related insurance premiums, but, for the avoidance of doubt, excluding (i) Owner's staffing, other internal costs and costs of Owner's internal and external consultants and (ii) any costs associated with the Replacement DB Selection Process) (the "Interim Construction Costs") as follows:

a. at any time following the Effective Date and until the date on which Owner and Concessionaire select the Replacement DB Contractor, in accordance with the Replacement DB Selection Process described below, (the "Selection Date"), 50% for each of the Concessionaire and the Owner of such Interim Construction Costs; and

b. from and after (but not including) the Selection Date and until the earlier of (i) the end of the Replacement DB Selection Period and (ii) the date on which the Replacement DB Contract is executed in accordance with the Replacement DB Selection Process described

below and contemplated in the Initial P3 Amendments, 80% for the Concessionaire and 20% for the Owner, in each case, of the Interim Construction Costs; and

c. Concessionaire shall not be responsible to make payments on account of any such Interim Construction Costs in excess of \$50 million in the aggregate (all such costs shall be part of the sources and uses contemplated by the New Financing Transactions (as defined below)). Each of Owner and Concessionaire hereby acknowledge the importance of prioritizing the allocation of such Interim Construction Costs to D&C Work related to the MDE permits, utility and related ROW acquisitions, completion of (systems) design and obtaining any final consents from other third parties; provided, however, that Owner shall have the sole and final decision-making authority regarding such allocation and the D&C Work to be performed during the Replacement DB Selection Period. Owner shall provide a periodic status report to Concessionaire regarding the allocation of such costs to the D&C Work. The Owner shall invoice the Concessionaire, no more frequently than once a month, for its share of such Interim Construction Costs actually incurred and during the period contemplated in clause (a) above, for no more than \$10,000,000 per month and, during the period contemplated in clause (b) above, for no more than \$16,000,000 per month.

13. The rights and responsibilities, including in respect of any warranties or other potential liabilities, of the Parties during the Replacement DB Selection Period will be as set forth in the Initial P3 Amendments.

14. The Replacement DB Selection Process, including the solicitation process, timing thereof and selection and evaluation criteria, shall be similar to the Market Resolicitation Process set forth in Attachment 1 to Exhibit 13B of the P3 Agreement and as described below and contemplated in more detail in the Initial P3 Amendments (it being understood that Concessionaire



shall manage, direct and pay for such Replacement DB Selection Process in accordance with the terms set forth herein and in the Initial P3 Amendments). Such evaluation and selection criteria shall be focused on factors that may include, but not be limited to, capacity, capability, and rate structure, in each case as set forth in the Initial P3 Amendments.

15. Except as otherwise agreed between Owner and Concessionaire in the Initial P3 Amendments, the Replacement DB Selection Process shall contemplate an initial short listing of a few potential candidates for the role of the Replacement DB Contractor (the “Shortlisted Candidates”).

a. Once selected, the Shortlisted Candidates, in coordination with and subject to the final approval of Owner, shall undertake due diligence with respect to the Project.

b. The due diligence shall include the negotiation of a form Replacement DB Contract that is (i) drafted by Concessionaire, in form substantially similar to the existing DB Contract, including proposed scheduled dates for completion of the D&C Work and the risk allocation for previously completed D&C Work, such that the Replacement DB Contract will comply with the P3 Agreement, as amended pursuant to the P3 Amendments, and (ii) modified based on reasonable requests by the Owner, for the purpose of providing Concessionaire and Owner, by a date not later than six months (or such shorter period as agreed upon by the Parties and set forth in the Initial P3 Amendments) following the Effective Date, with a lump-sum fixed price for the completion of the D&C Work for the Project.

c. Following receipt of such prices from the Shortlisted Candidates, subject to the approval of the Lenders, the BPW, Owner and Concessionaire, the Replacement DB Contractor shall be selected to proceed with the finalization of the Replacement DB Contract (as defined below), which final contract shall be subject to the final approval of Owner and Concessionaire in

accordance with the terms herein, the P3 Agreement, and the Initial P3 Amendments. The revised Project Schedule for completion of the Project will be finalized in the Replacement DB Contract, with a portion of the Availability Payments commencing upon a milestone preceding the RSA Date of the Project selected by the Parties and set forth in the Subsequent P3 Amendments.

16. In the event that the lump-sum fixed price and the other terms and conditions related to such completion of the D&C Work (and related contractual provisions) are acceptable to Owner and Concessionaire, each in their sole discretion subject to commercially reasonable industry standards and the implied duty of good faith and fair dealing and to the approvals and consents required hereunder, Concessionaire shall enter into the contract with the Replacement DB Contractor for such purposes (which incorporates such agreed upon matters) (such contract, the “Replacement DB Contract”). Upon execution of the Replacement DB Contract (and concurrent closing of the New Financing Transactions (as defined below)), all responsibility for the Work on the Project (and associated contractual risks) under the P3 Agreement (as amended pursuant to the P3 Amendments) shall shift back to Concessionaire in full in accordance with the terms thereof.

17. All costs relating to the Replacement DB Selection Process (as agreed and budgeted with the Owner), including any stipend payable in respect of the same, shall be borne by Concessionaire (and shall be included as part of the sources and uses contemplated by the New Financing Transactions (as defined below)). Concessionaire shall provide a periodic status report to Owner regarding the amount and allocation of such costs to the Replacement DB Selection Process.

18. Any execution and delivery of the Replacement DB Contract shall be completed by no later than the date that is nine months following the Effective Date, unless the Replacement DB Selection Period is extended by mutual written agreement of the Parties (with, so long as any

Bonds are outstanding, the Trustee's consent thereto in accordance with paragraph 38).

19. Concurrently with the execution of the Replacement DB Contract, all Subcontracts, permits, and real property rights that were assigned pursuant to the AA Agreement to Owner from PLTC shall be assigned to the Replacement DB Contractor or otherwise terminated by Owner, as appropriate and agreed to in writing by Owner and Concessionaire. Subject to the change in membership (i.e., the removal of Fluor as a member of PLTO as contemplated in paragraph 6), the O&M Contract with PLTO shall be reassigned to Concessionaire (from Owner) and Concessionaire, PLTO and the new Replacement DB Contractor shall work in good faith to implement and execute a customary interface agreement. Concurrently with the execution of the Replacement DB Contract, the LRV Supply Contract shall be assigned from Owner to PLTO and/or the Replacement DB Contractor, as indicated by the Concessionaire. Concurrently with the execution of the Replacement DB Contract, the Consulting Services Agreement shall be assigned from Owner to Concessionaire, unless otherwise replaced or terminated prior to such date.

20. In the event that a Replacement DB Contract is not executed or the New Financing Transactions are not consummated in accordance with the terms hereof before the Replacement DB Selection Period expires (the "Termination Trigger Date"), the P3 Agreement shall automatically terminate (without any further notice or action) on the 60<sup>th</sup> day following the expiration of the Replacement DB Selection Period, unless within such 60-day period (i) a Replacement DB Contract has been executed and the New Financing Transactions have been consummated (and all required consents thereto as herein provided shall have been obtained), (ii) the Bonds have been redeemed and/or defeased in full in accordance with the terms of the Indenture, and Owner and Concessionaire agree to extend the Replacement DB Selection Period,

or (iii) Owner, Concessionaire and Trustee (acting on the direction of the Majority Holders) agree to extend the Replacement DB Selection Period. Following any such termination, Concessionaire, notwithstanding anything to the contrary in the P3 Agreement or any other Contract Document, shall be entitled to Termination Compensation equal to the sum of the Project Debt Termination Amount (as determined in accordance with the terms of the P3 Agreement as amended by the Initial P3 Amendments) and any Outstanding Committed Investment (in respect of the Outstanding Committed Investment, as evidenced by Concessionaire pursuant to documentation reasonably satisfactory to Owner) (the “Termination Payment”), subject to the terms and conditions of, and as more fully specified in, the Initial P3 Amendments. No Party shall seek any other costs in connection with such termination, except that this provision does not waive the right to any damages resulting from either Party’s breach of its obligations pursuant to this Settlement Agreement, subject to the penultimate sentence of this paragraph 20. Any such Termination Payment shall be paid no later than the deadline for the payment of the Remainder Amount specified in paragraph 8(b) and shall be paid by Owner to Concessionaire to an account designated by the Collateral Agent in a manner correlating to the account designation provisions of Section 5.3 of the Direct Agreement (but, for the avoidance of doubt, without a Lender Notice (as defined in the Direct Agreement) relating to an event of default being required). Notwithstanding anything to the contrary herein, the Direct Agreement, or any Contract Document, Owner’s obligation to make any such Termination Payment shall not be subject to any condition (other than the provision of any documentation expressly required by this paragraph 20, Section 7.16.4 of the P3 Agreement (as amended by the Initial P3 Amendment), or Section 6 of Exhibit 13B of the P3 Agreement (as amended by the Initial P3 Amendment)), reduction, right of set-off, abatement, any other diminishment, or any other defense; provided that the portion of such Termination Payment

in respect of the Outstanding Committed Investment shall be subject to any deduction required by the Tax-General Article of the Annotated Code of Maryland to settle any taxes due and payable by Concessionaire to the State of Maryland. The Parties agree that the P3 Agreement may not be terminated prior to the expiration of the Replacement DB Selection Period unless agreed to by the Owner, Concessionaire, and, to the extent the Bonds remain outstanding, the Trustee (acting at the direction of the Majority Holders) and after the expiration of the Replacement DB Selection Period, may terminate solely in accordance with the terms of this paragraph 20.

21. The aggregate outstanding principal amount of the Bonds in respect of the Project will remain outstanding, subject to any amendments contemplated and agreed to by Owner and Concessionaire in the Subsequent P3 Amendments or required by the Trustee or Majority Holders as a condition to the consent required to be obtained from the Trustee or Majority Holders with respect to the matters contemplated herein and in the P3 Amendments. If Concessionaire cannot obtain the consent from the Majority Holders or the Trustee, Concessionaire will use commercially reasonable efforts to obtain new financing in order to redeem and/or defease the Bonds as part of the New Financing Transactions (as defined below).

22. Concessionaire shall seek to restructure the TIFIA Loan in order to provide some of the incremental financing necessary to implement the matters contemplated herein and in the P3 Agreement (as amended) with respect to the Project, and any benefit resulting from the restructuring of the TIFIA Loan shall accrue to the benefit of Owner, subject to the minimum Equity IRR contemplated below. Concessionaire shall take all commercially reasonable efforts to optimize the TIFIA Loan to obtain the lowest overall cost and meet the needs of Concessionaire and Owner. Owner will provide reasonable assistance and support to the TIFIA Loan restructuring process. Concessionaire will prepare (or facilitate the preparation of) all documents for the TIFIA

Loan restructuring and provide same to Owner for review. The Parties agree that the TIFIA Loan does not and will not constitute indebtedness of the State of Maryland.

23. As part of the New Financing Transactions (as defined below), the Equity Members of Concessionaire (which will not include Fluor) will agree to provide incremental equity financing to fund some of the additional costs associated with the completion of the Project, as agreed in the Subsequent P3 Amendments (all such new, continued, restructured and/or amended financing, refinancing, and incremental financing, the Subsequent P3 Amendments and any other related amendments or supplements to existing documents are hereinafter referred to as, the “New Financing Transactions”). In addition, the New Financing Transactions are contemplated to also include incremental senior bond financing, which shall be reflected in the Subsequent P3 Amendments. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Concessionaire shall produce and deliver Financial Model Updates and Financial Modeling Data consistent with the requirements under Article 3 of the P3 Agreement (as amended pursuant to the Subsequent P3 Amendments) in connection with the foregoing.

24. The Subsequent P3 Amendments will set forth the necessary changes to be implemented regarding the Project Schedule, financing of increased costs (including increased costs attributable to the Replacement DB Contractor, construction, operation, maintenance and financing), and payments (including the Settlement Amounts and any necessary adjustments to the Availability Payments to give effect to the New Financing Transactions).

25. The implementation of the matters contemplated herein, including final selection

of the Replacement DB Contractor and the terms of the New Financing Transactions, will be subject to the written consent of the Lenders (including the Majority Holders (or the Trustee acting upon the instruction of the Majority Holders) and the TIFIA lender).

26. The consummation of the New Financing Transactions, the execution of the Replacement DB Contract and any final documentation giving effect to, or related to, any Replacement DB Contract or the New Financing Transactions shall be subject to the approval and written consent of the Lenders (including the Majority Holders (or the Trustee acting upon the instruction of the Majority Holders) and the TIFIA lender) at such time, in each case, in their sole respective discretion. In determining whether to provide such approval and consent, the Trustee (at the direction of the Majority Holders) may engage in a review of the existing and proposed revised and new documentation relating to the Project and the Bonds or any other matters that the Trustee (at the direction of the Majority Holders) may consider relevant or appropriate in its sole discretion.

27. Except for the Parties' obligations under this Settlement Agreement, as of the Effective Date, Concessionaire, on behalf of itself and its principals, member entities, parent entities, subsidiaries, agents, agencies, departments, Contractors, Subcontractors, Suppliers, predecessors, successors, affiliates and assigns, hereby irrevocably releases, waives, and forever discharges MTA, MDOT, and the State of Maryland, individually and collectively, including their respective agencies, government entities, officers, directors, agents, employees, representatives, consultants, contractors, successors, and assigns (as well as all persons or entities acting by, through, under or in concert with them or any of them), from and against any and all claims, accounts, actions, agreements, bonds, bills, causes of action, charges, covenants, demands, disputes, controversies, complaints, liabilities, obligations, promises, damages, costs, invoices,

expenses (including but not limited to attorneys' fees), losses, delays, amounts of time, money or other relief of any nature or kind, whether disputed or undisputed, liquidated or unliquidated, known or unknown, foreseen or unforeseen, suspected or unsuspected, occurring singly or in any combination, on account of, arising out of, or in connection with any cause, matter, transaction, act or omission of any nature whatsoever related to or arising from the Project, the DB Contract, the O&M Contract, the LRV Supply Contract, and/or the P3 Agreement, prior to September 28, 2020 (the "Cut-Off Date") (the "Concessionaire Release"). Except as expressly set forth herein, this Concessionaire Release shall include all claims and defenses that were asserted, can be asserted, or could have been asserted in the P3 Litigation in respect of such matters, including, without limitation, any claims for any alleged Extended Delay. Notwithstanding the above, Owner shall be responsible for any liability, obligation, or commitment arising out of any Assigned DB Subcontracts/Agreements (as defined in the AA Agreement), the O&M Contract, the LRV Supply Contract, the Consulting Services Contract, and/or the P3 Agreement to the extent that such liability, obligation or commitment (including as it relates to costs and expenses incurred for work performed, services rendered, and materials and supplies purchased) arises, including, without limitation, any obligation for work performed or costs incurred (including, for clarity, any amounts spent), on or after the Cut-Off Date.

28. Except for the Parties' obligations under this Settlement Agreement, as of the Effective Date, MTA, MDOT, and the State of Maryland, on behalf of themselves and their respective principals, member entities, parent entities, subsidiaries, agents, agencies, departments, Contractors, Subcontractors, Suppliers, predecessors, successors, affiliates and assigns, hereby irrevocably release, waive, and forever discharge Concessionaire, including its officers, directors, agents, employees, and Lenders from and against any and all claims, accounts, actions,



agreements, bonds, bills, causes of action, charges, covenants, demands, disputes, controversies, complaints, liabilities, obligations, promises, damages, costs, invoices, expenses (including but not limited to attorneys' fees), losses, delays, amount of time, money or other relief of any nature or kind, whether disputed or undisputed, liquidated or unliquidated, known or unknown, foreseen or unforeseen, suspected or unsuspected occurring singly or in any combination, on account of, arising out of, or in connection with any cause, matter, transaction, act or omission of any nature whatsoever related to or arising from the Project, the DB Contract, the O&M Contract, the LRV Supply Contract, the Consulting Services Contract, and/or the P3 Agreement prior to the Cut-Off Date (collectively, the "Owner Release"). Except as expressly set forth herein, this Owner Release shall include all claims and defenses that were asserted, can be asserted, or could have been asserted in the P3 Litigation, and includes, without limitation, any claim for any alleged abandonment, default, breach of contract, delay, negligence, and incomplete work or, subject to the immediately succeeding sentences, defective work. Notwithstanding the above, Concessionaire shall be responsible for any liability, obligation, or commitment arising out of any Assigned DB Subcontracts/Agreements (as defined in the AA Agreement), the O&M Contract, the LRV Supply Contract, the Consulting Services Contract, and/or the P3 Agreement to the extent that such liability, obligation or commitment (including as it relates to costs and expenses incurred for work performed, services rendered, and materials and supplies purchased) arises, including, without limitation, any obligation for work performed or costs incurred (including, for clarity, any amounts spent), prior to the Cut-Off Date. This Owner Release shall be without prejudice to Owner's rights to and under any warranties for Nonconforming Work or any liability for errors, omissions or defects in the Project or any failure to meet the quality standards set forth in the P3 Agreement or Technical Provisions, even though Owner may be aware of facts that are later

discovered to relate to such errors, omissions, or defects or failure to meet quality standards that are assumed by the Replacement DB Contractor pursuant to the terms of the Replacement DB Contract and the P3 Amendments.

29. Concessionaire shall obtain a release from PLTC as set forth in Annex I. The Concessionaire hereby confirms and acknowledges that such release also contemplates the obligation of PLTC to remain responsible for any payments and costs due and payable to any Contractors, Subcontractors and Suppliers of PLTC incurred prior to the Cut-Off Date as contemplated in Annex I. This Settlement Agreement shall not act as a release or preclude any claims which may arise from the enforcement of this Settlement Agreement.

30. In exchange for the mutual promises, representations, warranties, and other consideration set forth herein, the adequacy of which is hereby acknowledged, the Parties agree that they shall execute and file, within ten (10) days of receipt of payment by Concessionaire of the Initial Amount, a Stipulation and Order of Dismissal with Prejudice in the P3 Litigation.

31. Concessionaire has disclosed all material facts known to it forming the basis for the PLTC Termination Costs, Change Order/Claim Matters, and Disputed Notices as of September 28, 2020, and said disclosure has formed the basis of this Settlement Agreement. Concessionaire hereby waives the right to pursue any matters relating to issues that were known or should have been known prior to the Cut-Off Date in respect of the PLTC Termination Costs, Change Order/Claim Matters and Disputed Notices.

32. Concessionaire agrees that, upon execution of this Settlement Agreement, Concessionaire waives any right henceforth to assert a termination for Extended Delay as provided for in Section 19.2 of the P3 Agreement as it relates to the P3 Litigation, Disputed Notices, Change Order/Claim Matters and there exist no delays to the Critical Path as of the Effective Date for

purposes of Section 19.2.

33. Owner agrees to cooperate in assisting Concessionaire with securing the approval of any Lenders (including the TIFIA lender, the Trustee and Majority Holders), or other institutions so as to further effectuate the terms of this Settlement Agreement, the P3 Agreement and P3 Amendments, and the procurement and selection of the Replacement DB Contractor.

34. The availability of funds to Owner to make payments pursuant to this Settlement Agreement, including the Initial Amount, the Remainder Amount, and the Termination Payment, are subject to applicable law and appropriations by the Maryland General Assembly. Owner will use its best efforts and take all necessary actions to seek and obtain the authorization and appropriation of all necessary funds contemplated hereby and within the P3 Amendments, to comply with its payment obligations thereunder. Potential increases in Availability Payments, to the extent required in accordance with the terms of this Settlement Agreement, the P3 Agreement and the P3 Amendments, do not constitute (i) indebtedness of MDOT, MTA or the State of Maryland; or (ii) a pledge of the faith, credit, or taxing power of the State or any political subdivision thereof. This clause shall not be construed to preclude Concessionaire from exercising its remedies for Owner's failure to comply with its obligations hereunder.

35. Each Party shall bear its own legal and other out-of-pocket costs incurred to date in connection with (i) prosecuting or defending the disputes with respect to the PLTC Termination Costs, Change Order/Claim Matters, Disputed Notices, P3 Litigation, and other matters as well as (ii) the preparation of this Settlement Agreement and the preparation of the P3 Amendments.

36. Without prejudice to any of the provisions (and continued validity thereof) set forth in the P3 Agreement and the P3 Amendments, this Settlement Agreement constitutes the entire agreement between the Parties with respect to the matters set forth herein, and supersedes any prior

negotiations, agreements, and understandings with respect thereto. Any written or oral discussions conducted prior to the Effective Date shall not vary or alter the terms of this Settlement Agreement.

37. This Settlement Agreement is in compromise and settlement of the PLTC Termination Costs, Change Order/Claim Matters, Disputed Notices, and P3 Litigation. Nothing contained herein shall be construed as an admission, expression, or acknowledgment by any of the Parties of the validity of any fact, legal principle, claim, allegation or liability with regard to any person or entity and shall neither be admissible, nor have any precedential value, in the litigation or resolution of any other dispute.

38. Neither this Settlement Agreement, the P3 Agreement (including the Initial P3 Amendments) nor the releases contemplated by Annex I hereto shall be amended, supplemented or otherwise modified without the prior written consent of the Trustee (acting at the direction of the Majority Holders) unless (i) the Replacement DB Contract has been executed and the New Financing Transactions consummated as contemplated herein or (ii) the Bonds have been redeemed and/or defeased in full in accordance with the terms of the Indenture. The Collateral Agent, and to the extent the Bonds shall have not been redeemed and defeased in full in accordance with the terms of the Indenture, the Trustee and the Majority Holders are hereby recognized as express third party beneficiaries of this provision and all other provisions requiring their approval of amendments to this Settlement Agreement, the P3 Agreement, the Initial P3 Amendments, and any extension of the Replacement DB Selection Period.

39. Without limiting the foregoing provisions of this Settlement Agreement, Owner acknowledges and agrees that, consistent with its acknowledgement in Section 3.1 of the Direct Agreement regarding the pledge of Concessionaire's Interests pursuant to the terms and provisions of the Security Documents, all of Concessionaire's right, title and interest in and to the P3

Agreement and the P3 Amendments shall be pledged to the Collateral Agent pursuant to, and shall constitute “Collateral” under, and be subject to the terms of the existing Security Documents.

40. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of Maryland.

41. The provisions of the P3 Agreement related to jurisdiction and venue shall apply hereto and be incorporated herein by reference, *mutatis mutandis*.

42. The Parties have executed this Settlement Agreement on the advice of counsel, and the individuals signing below warrant and represent that they are authorized and empowered to execute this Settlement Agreement on behalf of the respective Parties.

43. This Settlement Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement. Electronic transmission in portable document format of any signed (or electronically signed) original document or retransmission of any signed electronic transmission in portable document format shall be deemed to have the same legal effect as delivery of an original.

44. The Parties will execute and deliver any and all documents and take any and all actions as may be reasonably necessary to effect the terms of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties agree to be bound by the terms and conditions set forth in this Settlement Agreement effective as of the Effective Date set forth herein.

[SIGNATURES ON THE NEXT PAGE]

WITNESS:

PURPLE LINE TRANSIT PARTNERS LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Peter van der Waart van Gulik (Date)  
Chief Executive Officer  
Purple Line Transit Partners LLC

Reviewed and Approved as to  
Form and Legal Sufficiency  
for the Concessionaire:

\_\_\_\_\_  
Tomer Pinkusiewicz  
Counsel

WITNESS:

MARYLAND TRANSIT ADMINISTRATION  
OF THE MARYLAND DEPARTMENT OF  
TRANSPORTATION

\_\_\_\_\_

By: \_\_\_\_\_  
Kevin B. Quinn (Date)  
Administrator

Reviewed and Approved as to  
Form and Legal Sufficiency for MTA:

\_\_\_\_\_  
Julie T. Sweeney  
Assistant Attorney General

WITNESS:

MARYLAND DEPARTMENT OF  
TRANSPORTATION

\_\_\_\_\_

By: \_\_\_\_\_  
Gregory Slater (Date)  
Secretary

Reviewed and Approved as to  
Form and Legal Sufficiency for MDOT:

\_\_\_\_\_  
Cheryl A.C. Brown-Whitfield  
Assistant Attorney General &  
Principal Counsel

APPROVED BY BOARD OF PUBLIC WORKS

Date: \_\_\_\_\_ Item No. \_\_\_\_\_

ANNEX I

**PLTC RELEASES**

*[See attached]*



## **MUTUAL RELEASE AGREEMENT**

This Mutual Release Agreement (this “Release Agreement”), dated as of December \_\_\_\_, 2020, is entered into by and among the Maryland Transit Administration (“MTA”) and the Maryland Department of Transportation (“MDOT” and, together with MTA, the “Owner”), Purple Line Transit Partners LLC, a Delaware limited liability company (“Concessionaire”), Purple Line Transit Constructors, LLC, a Delaware limited liability company (“PLTC”) (MTA, MDOT, Concessionaire, and PLTC are each individually referred to herein as a “Party” and collectively referred to herein as the “Parties”), and, in each case solely for purposes of paragraphs 4, 5, 15 and 16 hereof, (i) Fluor Corporation, a Delaware corporation (“Fluor Corp”), (ii) Webuild S.p.A. (formerly known as Salini Impregilo S.p.A.), an Italian corporation, and (iii) Traylor Bros., Inc., an Indiana corporation (collectively, the “DB Guarantors”). Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed thereto in the P3 Agreement or the Settlement Agreement referred to (and as defined) below, as appropriate.

## **RECITALS**

A. WHEREAS, a Public-Private Partnership Agreement, dated as of April 7, 2016 (as amended, supplemented and/or otherwise modified from time to time prior to the date hereof, the “P3 Agreement”), was entered into by and between Owner and Concessionaire to finance, develop, design, construct, equip, supply light rail vehicles for, operate, and maintain the Purple Line light rail project (as further described therein, the “Purple Line” or the “Project”); and

B. WHEREAS, Concessionaire and PLTC, as design-build contractor, entered into an Amended and Restated Design-Build Contract, dated as of June 14, 2016 (as amended, supplemented and/or otherwise modified from time to time as of the date of termination thereof,

the “DB Contract”), for the design and construction of the Project (as further described therein, the “DB Work”); and

C. WHEREAS, Concessionaire and Purple Line Transit Operators, LLC, a Delaware limited liability company (“PLTO”), as operations and maintenance contractor, entered into an Amended and Restated Operations and Maintenance Contract, dated as of June 14, 2016 (as amended, supplemented and/or otherwise modified from time to time as of the date hereof, the “O&M Contract”), for the performance of the Services (as defined in the O&M Contract), related to the operation and maintenance of the Project; and

D. WHEREAS, PLTC, PLTO and CAF USA, Inc. (“CAF”) entered into a contract (Contract No. PLT4-C-133), dated as of June 17, 2016 (as amended, supplemented and/or otherwise modified from time to time as of the date hereof, the “LRV Supply Contract”), for the design, manufacture and supply of light rail vehicles for the Project; and

E. WHEREAS, Concessionaire, prior to the date of this Release Agreement, submitted to MTA a number of Potential Change Order Notices (“PCOs”), Requests for Change Orders (“RCOs”), supplements to PCOs and RCOs (“Supplements”), Notices of Claims (“NOCs”), and Claims (all such PCOs, RCOs, Supplements, NOCs and Claims existing as of the date hereof, hereinafter, the “MTA/PLTP Matters”), in each case seeking compensable and non-compensable time extensions, financing costs, and other financial relief pursuant to the P3 Agreement; and

F. WHEREAS, Owner disputes that Concessionaire is entitled to the compensable and non-compensable time extensions, direct and indirect costs, financing costs, and other financial relief that Concessionaire seeks pursuant to these MTA/PLTP Matters; and

G. WHEREAS, PLTC, prior to the date of this Release Agreement, submitted to Concessionaire a number of PCOs, RCOs, Supplements, NOCs, and Claims (all such PCOs, RCOs, Supplements, NOCs and Claims existing as of the date hereof, hereafter, the “PLTC/PLTP Matters”) in each case seeking compensable and non-compensable time extensions, direct and indirect costs, and other financial relief pursuant to the DB Contract; and

H. WHEREAS, the events underlying the PLTC/PLTP Matters form the basis of some of the MTA/PLTP Matters; and

I. WHEREAS, PLTC issued to Concessionaire a Notice of Unconditional Election to Terminate the DB Contract dated May 1, 2020, asserting the existence of an Extended Delay of 365 days or more to the Critical Path, and demanded pursuant to the DB Contract that Concessionaire deliver to Owner a notice of unconditional election to terminate the P3 Agreement due to Extended Delay pursuant to Section 19.2.5 of the P3 Agreement; and

J. WHEREAS, Concessionaire (on the basis of such demand) provided a notice of unconditional election to terminate the P3 Agreement to Owner dated June 23, 2020 (the “Notice of Unconditional Termination”), asserting the existence of an Extended Delay resulting in 365 or more days of Critical Path delay; and

K. WHEREAS, Owner disputes the existence of an Extended Delay and provided a Notice of Concessionaire Default to Concessionaire dated June 24, 2020 (the “Notice of Concessionaire Default”), asserting the existence of a Concessionaire Default as a result of the Notice of Unconditional Termination; and

L. WHEREAS, the validity of the Notice of Unconditional Termination is disputed by Owner and the validity of the Notice of Concessionaire Default is disputed by Concessionaire; and

M. WHEREAS, on August 10, 2020, Owner filed a complaint in the Circuit Court for Baltimore City (the “Court”) seeking, among other things, a preliminary injunction (the “P3 Litigation”) and obtained a temporary restraining order (“TRO”) enjoining and restraining Concessionaire from demobilizing and abandoning the Project until Concessionaire established that an Extended Delay of 365 or more days to the Critical Path due to Relief Events exists in accordance with the Dispute Resolution Procedures set forth in the P3 Agreement; and

N. WHEREAS, on September 10, 2020, the Court entered an order (the “September 10 Order”) denying Owner’s preliminary injunction and ordering the TRO to expire upon entry of the September 10 Order; and

O. WHEREAS, in light of the September 10 Order and the MTA/PLTP Matters, and to preserve certain rights under the P3 Agreement or under any applicable law, Owner entered into the Assignment and Assumption Agreement, dated as of September 28, 2020 (the “AA Agreement”), by and among Owner, Concessionaire, PLTC, PLTO, and CAF for the purpose of assigning, transferring, and conveying to Owner the Key Contracts and certain Subcontracts and other agreements; and

P. WHEREAS, in light of the September 10 Order and the MTA/PLTP Matters, and to preserve any and all rights under the P3 Agreement or under any applicable law, Owner issued a notice to Concessionaire on October 9, 2020, indicating Owner’s determination that a Liquid Market exists and its intent to remarket the P3 Agreement in accordance with Attachment 1 to Exhibit 13B of the P3 Agreement (“Notice of Remarket of P3 Agreement”); and

Q. WHEREAS, on October 12, 2020, Concessionaire submitted a response to Owner’s Notice of Remarket of P3 Agreement, challenging Owner’s right to invoke the Resolicitation Process and contesting the existence of a Liquid Market for the Project; and

R. WHEREAS, on October 26, 2020, Concessionaire issued a Notice of Claim disputing Owner's determination that a Liquid Market exists; and

S. WHEREAS, Concessionaire and Owner have executed a Settlement Agreement and Mutual Release, dated as of the date hereof (the "Settlement Agreement"), resolving their current disputes, including in respect of (i) the termination of the DB Contract and the Contract Termination Costs related thereto, including amounts owing by Concessionaire to PLTC in connection with the termination of the DB Contract ("PLTC Termination Costs"); (ii) the MTA/PLTP Matters; (iii) the Notice of Unconditional Termination, the Notice of Concessionaire Default, and the Notice of Remarket of P3 Agreement (hereinafter collectively referred to as the "Disputed Notices"); and (iv) the P3 Litigation; and

T. WHEREAS, Concessionaire, PLTC and Owner desire to enter into this Release Agreement in order to settle any matters related to PLTC in respect of the Project, including, but not limited to, the PLTC Termination Costs as otherwise set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and in the Settlement Agreement, Concessionaire, PLTC, MTA and MDOT agree as follows:

1. The Parties acknowledge and agree that the above recitals are incorporated in and made a part of this Release Agreement.

2. Provided the Settlement Agreement becomes effective, Owner shall make a lump sum payment to Concessionaire and/or PLTC, payable in accordance with clauses (a) and (c) below, equal to \$250,000,000 (the "Owner Settlement Amount"), and Concessionaire will make a lump sum payment to PLTC, payable in accordance with clause (b) below, equal to \$16,280,000 (the "Concessionaire Settlement Amount") for an aggregate amount payable to PLTC of

\$266,280,000 (the “PLTC Settlement Amount”), as follows:

a. Owner will pay \$100,000,000 of the Owner Settlement Amount to Concessionaire for payment to PLTC no later than the date set forth in paragraph 8(a) of the Settlement Agreement, and Concessionaire shall ensure that said funds are paid to and/or received by PLTC immediately thereafter.

b. Concessionaire will pay the Concessionaire Settlement Amount to PLTC no later than concurrently with the payment to PLTC contemplated by clause (a) above.

c. Owner will pay, or cause to be paid, the remainder of the Owner Settlement Amount in the amount of \$150,000,000 (the “Remaining Owner Settlement Amount”) to an account identified for payment to PLTC (pursuant to Concessionaire’s written direction and in accordance with paragraph 8(b) of the Settlement Agreement), on the earlier of (i) the closing of the New Financing Transactions in respect of the Project, or (ii) the 12-month anniversary of the Effective Date of the Settlement Agreement (the “Settlement Effective Date”). Concessionaire hereby irrevocably, absolutely, and unconditionally assigns and relinquishes to PLTC, in consideration for the PLTC Mutual Release, free and clear of any and all liens, security interests, and other encumbrances, all of its right, title and interest in and to the Remaining Owner Settlement Amount. Concessionaire hereby irrevocably relinquishes any claim to the Remaining Owner Settlement Amount, shall indemnify and hold the State of Maryland harmless against any claim by Concessionaire or any member thereof that payment to PLTC was made incorrectly (so long as made as contemplated herein), and directs Owner to pay the Remaining Owner Settlement Amount to such account as identified by PLTC.

d. Receipt by PLTC of the full amounts specified as payable to it in clauses (a) and (b) above shall be a condition precedent to the effectiveness of (i) this Release Agreement (the

date of such receipt and effectiveness, the “Release Effective Date”) and (ii) any release by Concessionaire of its rights with respect to the MTA/PLTP Matters which are based upon the PLTC/PLTP Matters; provided, however, that, notwithstanding anything herein to the contrary, the obligation of PLTC contemplated in the last sentence of paragraph 13 shall become immediately effective on the Settlement Effective Date irrespective of such condition precedent.

3. The obligation for payment of the full PLTC Settlement Amount to PLTC is hereby confirmed by the Owner (as to the Owner Settlement Amount and subject to paragraph 2 above) and Concessionaire (as to the Concessionaire Settlement Amount). Payment of the full PLTC Settlement Amount is unconditional (but subject to and payable in accordance with the terms described in this Release Agreement and subject to paragraph 34 of the Settlement Agreement). Each of the Owner (with respect to the Owner Settlement Amount) and Concessionaire (with respect to the Concessionaire Settlement Amount and any other amounts to be paid by Concessionaire to PLTC hereunder), respectively, hereby agree that all amounts payable to PLTC hereunder shall not be subject to setoff, reduction, abatement or any other diminishment for any reason except as required under the Tax-General Article of the Annotated Code of Maryland. Without prejudice to the agreed amount and lump-sum nature of the PLTC Settlement Amount and their respective obligations to pay, each of Owner and Concessionaire shall have the same right to request reasonable information in respect of such costs incurred by PLTC in its performance under the DB Contract. All WGL, PEPCO and Verizon invoices for material costs (excluding costs referenced in MTA Document 2020.10.29.3793) are Owner’s obligation and are not included in the PLTC Settlement Amount as contemplated in paragraph 9 of the Settlement Agreement.

4. Except for the Parties’ obligations under this Release Agreement, as of the

Settlement Effective Date, MTA, MDOT, and the State of Maryland, on behalf of themselves and their respective principals, member entities, parent entities, subsidiaries, agents, agencies, departments, subcontractors, suppliers, predecessors, successors, affiliates and assigns (excluding PLTO, the LRV Supplier (as defined in the P3 Agreement), any supplier or subcontractor under any Assigned DB Subcontractor/Agreements (as defined in the AA Agreement), and the O&M Guarantors in relation to the O&M Contract), hereby irrevocably release, waive, and forever discharge PLTC (including its members and affiliates), the DB Guarantors (except, with respect to the DB Guarantors, as provided in paragraph 16 below), and (solely with respect to the Performance Security and, except as provided in paragraph 10 below, the Payment Bond (as referenced in Section 11.2 of the DB Contract)) the Sureties (as defined in the DB Contract), including all of their officers, agents, and employees, from and against any and all claims, accounts, actions, agreements, bonds, bills, causes of action, charges, covenants, demands, disputes, controversies, complaints, liabilities, obligations, promises, damages, costs, invoices, expenses, losses, delays, amount of time, money or other relief of any nature or kind, whether disputed or undisputed, liquidated or unliquidated, known or unknown, foreseen or unforeseen, suspected or unsuspected occurring singly or in any combination, on account of, arising out of, or in connection with any thing, cause, matter, transaction, act or omission of any nature whatsoever related to or arising from the Project, the DB Contract, the Payment Bond (except as provided in paragraph 10 below), the Performance Security, the DB Guaranties (as defined in the DB Contract) (except, with respect to the DB Guaranties, as provided in paragraph 16 below), the Interface Agreement, the LRV Supply Contract, and/or the P3 Agreement (collectively, the “Owner Mutual Release”). Except as expressly set forth herein, this Owner Mutual Release shall include all claims and defenses that were asserted, can be asserted, or could have been asserted in the P3 Litigation



and/or the MTA/PLTP Matters, and includes, without limitation, any claims for any alleged Extended Delay, abandonment, default, breach of contract, delay, negligence, and incomplete or defective work. As to PLTC, this Owner Mutual Release shall not include any of the obligations of PLTC specified in paragraphs 8 through 10 below.

5. Except for the Parties' obligations under this Release Agreement, Concessionaire, on behalf of itself and its respective principals, member entities, parent entities, subsidiaries, agents, agencies, departments, subcontractors, suppliers, predecessors, successors, affiliates and assigns (excluding PLTO and the O&M Guarantors in relation to the O&M Contract), hereby irrevocably releases, waives, and forever discharges PLTC (including its members and affiliates thereof), the DB Guarantors (except, with respect to the DB Guarantors, as provided in paragraph 16 below), and (solely with respect to the Performance Security and, except as provided in paragraph 10 below, the Payment Bond, in each case provided by PLTC) the Sureties, individually and collectively, including all of their officers, agents, employees, and contractors, from and against any and all claims, accounts, actions, agreements, bonds, bills, causes of action, charges, covenants, demands, disputes, controversies, complaints, liabilities, obligations, promises, damages, costs, invoices, expenses, losses, delays, amounts of time, money or other relief of any nature or kind whether disputed or undisputed, liquidated or unliquidated, known or unknown, foreseen or unforeseen, suspected or unsuspected occurring singly or in any combination, on account of, arising out of, or in connection with any thing, cause, matter, transaction, act or omission of any nature whatsoever related to or arising from the Project, the DB Contract, the Payment Bond (except as expressly set forth in paragraph 10 below), the Performance Security, the DB Guaranties (except, with respect to the DB Guaranties, as provided in paragraph 16 below), the Interface Agreement, the LRV Supply Contract, and/or the P3 Agreement, including, but not

limited to, the PLTC Termination Costs, and all MTA/PLTP Matters (collectively, the “Concessionaire Mutual Release”). Except as expressly set forth herein this Concessionaire Mutual Release shall include, without limitation, any claims for any alleged abandonment, default, breach of contract, delay, negligence and incomplete or defective work. This Concessionaire Mutual Release shall not include any obligations of PLTC specified in paragraphs 8 through 10 below. This Concessionaire Mutual Release shall not release any of the DB Guarantors or PLTC members (or their affiliates) in their capacity, if any, as members of Concessionaire or PLTO, and shall not in any way modify any obligations which may exist of any DB Guarantors or PLTC members (or their affiliates) under the Equity Contribution Agreement, the Equity Letters of Credit, the Pledge Agreements or in any way modify any obligations which may exist of any DB Guarantors or PLTC members (or their affiliates) under any O&M Performance Security Instruments (in each case as defined in the applicable Funding Agreements or Security Documents).

6. Except for the Parties’ obligations under this Release Agreement, PLTC, on behalf of itself and its respective principals, member entities, parent entities, subsidiaries, agents, agencies, departments, subcontractors, suppliers, predecessors, successors, affiliates and assigns, hereby irrevocably releases, waives, and forever discharges MTA, MDOT, the State of Maryland, and Concessionaire and Concessionaire’s Lenders, individually and collectively, including their officers, agents, employees, and contractors, from and against any and all claims, accounts, actions, agreements, bonds, bills, causes of action, charges, covenants, demands, disputes, controversies, complaints, liabilities, obligations, promises, damages, costs, invoices, expenses, losses, delays, amounts of time, money or other relief of any nature or kind whether disputed or undisputed, liquidated or unliquidated, known or unknown, foreseen or unforeseen, suspected or

unsuspected occurring singly or in any combination, on account of, arising out of, or in connection with any thing, cause, matter, transaction, act or omission of any nature whatsoever related to or arising from the Project, the DB Contract, the LRV Supply Contract, and/or the P3 Agreement, including, but not limited to, the PLTC Termination Costs, and all PLTC/PLTP Matters (collectively, the “PLTC Mutual Release”). This PLTC Mutual Release shall include, without limitation, any claims for any Extended Delay, alleged abandonment, default, breach of contract, delay, negligence, and incomplete or defective work as of the Release Effective Date and, as to Concessionaire, this PLTC Mutual Release shall include all claims and defenses that were asserted, can be asserted, or could have been asserted in the PLTC/PLTP Matters, and as to Concessionaire and Owner, includes, without limitation, any claims for any alleged Extended Delay, abandonment, default, breach of contract, delay, negligence, and incomplete or defective work (except as expressly contemplated herein, including, without limitation, paragraphs 3, 7, 14 and 15). For the avoidance of doubt, and without limitation, the Parties agree that the DB Contract and the Interface Agreement are terminated and of no further force or effect.

7. PLTC shall not be responsible for any liability, obligation, or commitment arising under any Assigned DB Subcontracts/Agreements (as defined in the AA Agreement) to the extent such liability, obligation, or commitment (including as it relates to costs and expenses incurred for work performed, services rendered, and materials and supplies purchased) arises on or after September 28, 2020 (the “Cut-Off Date”), including, without limitation, any obligation for payment for work performed or costs incurred (including, for clarity, any amounts spent) on or after the Cut-Off Date (the “Post-Assignment Obligations”). For the avoidance of doubt, Post-Assignment Obligations include, without limitation, (a) any and all claims for costs for stored materials purchased for the Project prior to the Cut-Off Date by any supplier or subcontractor

under any Assigned DB Subcontracts/Agreements, provided that neither PLTC nor MTA have previously paid for such materials; and (b) any and all costs incurred (including, for clarity, any amounts spent) by any supplier or subcontractor under any Assigned DB Subcontracts/Agreements on or after the Cut-Off Date related to alleged Relief Events, changes and/or claims which accrued or first arose before the Cut-Off Date. The Owner is responsible for all Post-Assignment Obligations. Without prejudice to paragraph 8 through 10 below, the Owner and Concessionaire hereby release (and solely in the case of Concessionaire, agrees to indemnify and hold harmless) PLTC, Fluor Enterprises, Inc. (“Fluor”), The Lane Construction Corporation, Traylor Bros., Inc., the DB Guarantors (except, with respect the DB Guarantors, as provided in paragraph 16 below), and (solely with respect to the Performance Security and, except as expressly set forth in paragraph 10 below, the Payment Bond) the Sureties for any claims which arise out of or relate to any Post-Assignment Obligations. To the extent that PLTC shall be required to pay any claimed amounts for claims which arise out of or relate to any Post-Assignment Obligations, PLTC shall notify Owner within 10 business days of its receipt of any such claim, and Owner shall reimburse PLTC for the same upon receipt of the appropriate documentation.

8. PLTC shall indemnify, defend and hold harmless the State Indemnified Parties and the Concessionaire Indemnified Parties (each such term as defined in the DB Contract) from and against any and all claims, losses, liabilities, response costs, costs and expenses, arising out of, relating to or resulting from costs incurred before the Cut-Off Date by subcontractors and suppliers under the Assigned DB Subcontracts/Agreements that were assigned by PLTC to Owner pursuant to the AA Agreement. Notwithstanding the foregoing, for the avoidance of doubt, this obligation of PLTC shall not include any Post-Assignment Obligations.

9. Notwithstanding anything to the contrary set forth herein, PLTC shall remain responsible for the cost of repair of any unidentified or unknown defects contained in installed and completed self-performed DB Work (including elements of DB Work) performed by PLTC's own forces that is first discovered within the one-year period commencing on the Cut-Off Date; provided that PLTC is notified, in writing, within 20 days of the discovery of any such defect, and given a reasonable opportunity to repair such defect, in which event PLTC shall be responsible for the repair and the cost of such repair, of any such defects or at its election, PLTC shall pay for any such costs of repair performed by a third party, so long as such costs are first approved by PLTC; provided, further, that PLTC will not be responsible for any items that were known prior to the Cut-Off Date and identified and recorded in the Project records constituting RFIs, FDCs, NDCs, NCRs/Quality Oversight Assessment Reports (QOAR), field reports, QC/QA reports, and official deficiency notices, whether or not a resolution has been provided or agreed upon; and provided, further, that PLTC will not be responsible for any work, material or equipment supplied by others (including subcontractors and suppliers), or any defects, cost or additional work that is the result of (i) any work not having been progressed to completion prior to termination of the DB Contract, (ii) any alterations or repairs conducted by others, or (iii) the Project not progressing and/or sitting idle including, but not limited to, ordinary course wear and tear, damage, erosion, settlement, rust, changes in camber, etc. For the avoidance of doubt, any obligation or liability under this paragraph 9 shall expire on the date which is one year from the Cut-Off Date.

10. For the avoidance of doubt, nothing herein is intended to release PLTC from its statutory or common law liability to Third Parties (not including Concessionaire, Lenders, the Collateral Agent or Owner) for personal injury or injury to real or personal property arising out of defects in the DB Work self-performed by PLTC. PLTC consents to being joined into any lawsuit

filed against Concessionaire and/or Owner in respect of the matters contemplated in the immediately preceding sentence. For the avoidance of doubt, nothing herein is intended to waive any claims any Subcontractors may have under the Payment Bond for amounts owed to such Subcontractor by PLTC arising prior to the Cut-Off Date, which, for clarity, does not include any Post-Assignment Obligations.

11. PLTC will not be responsible for and shall have no liability for any engineering or design, including any errors or omissions contained therein. Such responsibility shall reside and remain with the Engineer of Record. With respect to the E&O policy that was in place prior to termination of the DB Contract, PLTC represents that it remains in place as of the date hereof and the parties are in the process of attempting to transfer such policy to Marsh Canada for future administration on behalf of SNC-Lavalin, the parent company of Atkins North America, and PLTC will continue to reasonably cooperate with such efforts, and the premium for such policy has been paid through September 2022.

12. PLTC shall be responsible for the prompt release and payment of any retainage (if applicable) withheld from subcontractors by PLTC prior to the Release Effective Date and shall provide evidence to Concessionaire and Owner that all such retainage has been released in full.

13. The Parties will continue to work in good faith to demobilize and turn over the Project in accordance with the requirements of the P3 Agreement and the DB Contract, including, without limitation, the execution of a bill of sale, assignment of leases, and transfer of data and documents. PLTC shall cooperate with Owner and Concessionaire in respect of the procurement of a new Design-Build Contractor, in terms of the provision of information and assistance reasonably requested. PLTC shall provide to Owner all Project data and documents, including any data and documents in TraceCloud, in the possession of PLTC no later than (x) in respect of any

such Project data and documents requested in writing prior to the Settlement Effective Date, December 31, 2020, and (y) in respect of any Project data and documents requested on or after the Settlement Effective Date, no later than 15 business days after the written request therefor.

14. In exchange for the mutual promises, representations, warranties, and other consideration set forth herein, the adequacy of which is hereby acknowledged, PLTC hereby acknowledges that, in accordance with the Settlement Agreement, Owner and Concessionaire will execute and file, within 10 days of the Settlement Effective Date, a Stipulation and Order of Dismissal with Prejudice in the P3 Litigation, which will forever bar all claims raised in the P3 Litigation, except as otherwise expressly contemplated in the Settlement Agreement (or in this Release Agreement, as the case may be), prior to the Settlement Effective Date.

15. As of the Release Effective Date, Owner and Concessionaire shall release any claims they may have with respect to, and shall cause to be returned to PLTC and each DB Guarantor, as applicable, the Performance Security and the Concessionaire Construction Letter(s) of Credit (as defined in the DB Contract), and Concessionaire shall procure, in such a manner as will permit reliance by PLTC, the Sureties in respect of the Performance Security, and the DB Guarantors, (a) any necessary consent of the Collateral Agent in order to effectuate the termination of the DB Direct Agreement (as defined in the DB Contract), the Payment Bond, the Performance Security and the Concessionaire Construction Letter(s) of Credit; (b) releases from the Collateral Agent in favor of PLTC, applicable Sureties (solely in their capacities as providers of the Payment Bond and Performance Security), and the DB Guarantors (solely in their capacities as guarantors under the DB Guaranties, and except as provided in paragraph 16 below) of potential Lender claims in respect of the DB Contract, the Performance Security, the Payment Bond, the proceeds of the Concessionaire Construction Letter(s) of Credit, the DB Direct Agreement and the DB

Guaranties (except, with respect to the DB Guaranties, as provided in paragraph 16 below); and (c) the agreement of the Collateral Agent (on behalf of the Lenders) to permit (and not delay or interfere with) the payment of the PLTC Settlement Amount in accordance with the terms of this Release Agreement.

16. Each DB Guarantor and Concessionaire hereby acknowledges and agrees that the definition of “Guaranteed Obligations” set forth in Section 1.01 of each DB Guaranty shall be hereby be amended to be limited solely to the payment and performance obligations of PLTC under paragraphs 8 and 9 of this Release Agreement, and that Concessionaire shall procure the consent of the Collateral Agent to such modification under paragraph 3(f) of each related consent and agreement between the relevant DB Guarantor and the Collateral Agent in respect of each such DB Guaranty.

17. This Release Agreement shall not act as a release or preclude any claims which may arise from the enforcement of this Release Agreement.

18. This Release Agreement shall be interpreted and enforced in accordance with the Laws of the State of Maryland.

19. The provisions of Section 26.11 of P3 Agreement as in effect as of September 10, 2020 related to jurisdiction and venue shall apply hereto and be incorporated herein by reference, *mutatis mutandis*.

20. As between Owner and PLTC and Concessionaire and PLTC, this Release Agreement constitutes the entire agreement between the Parties with respect to the matters set forth herein (but without prejudice to the Settlement Agreement or any other related agreements between Owner and Concessionaire) supersedes any prior negotiations, agreements, and understandings with respect thereto. Any written or oral discussions conducted prior to the



execution of this Release Agreement shall not vary or alter the terms of this Release Agreement. Notwithstanding the foregoing, the AA Agreement shall survive, but, as among the Parties hereto, in the event of any conflict between the terms of the AA Agreement and this Release Agreement, the terms of this Release Agreement shall control.

21. This Release Agreement is in compromise and settlement of the PLTC Termination Costs, Disputed Matters, Disputed Notices, and P3 Litigation. Nothing contained herein shall be construed as an admission, expression, or acknowledgment by any of the Parties of the validity of any fact, legal principle, claim, allegation or liability with regard to any person or entity and shall not be admissible, nor have any precedential value, in the litigation or resolution of any other dispute.

22. PLTC and Concessionaire acknowledge and agree that all of Concessionaire's right, title, and interest in and to this Release Agreement (for clarity, excluding the PLTC Settlement Amount) shall be pledged to the Collateral Agent pursuant to, and shall constitute "Collateral" under, and be subject to the terms of, the existing Security Documents.

23. The Parties have executed this Release Agreement on the advice of counsel, and the individuals signing below warrant and represent that they are authorized and empowered to execute this Release Agreement on behalf of their respective Parties.

24. Owner and Concessionaire hereby confirm and agree that from and following the date on which Fluor shall have irrevocably sold or transferred its equity interests in PLTO, Owner and Concessionaire each shall not make any claim or demand against Fluor Corporation on the O&M Guarantee (as defined in the O&M Contract) issued by Fluor Corporation.

25. This Release Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

Electronic transmission in portable document format of any signed (or electronically signed) original document or retransmission of any signed electronic transmission in portable document format shall be deemed to have the same legal effect as delivery of an original.

26. As between Owner and Concessionaire, in the event of any inconsistency between the terms of the Settlement Agreement and this Release Agreement, the Settlement Agreement shall prevail.

27. For purposes this Release Agreement, the notices and documents required to be given under paragraphs 7 and 9 herein shall be in writing and shall be (i) delivered by email; or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested; or (iii) sent by overnight express carrier, addressed in each case as follows, or as otherwise designated by each Party:

**TO OWNER:**

Kevin B. Quinn, Jr.  
Administrator  
Maryland Transit Administration  
6 St. Paul Street  
Baltimore, Maryland 21202-1614  
Email: kquinn@mdot.maryland.gov

With a copy to:

Maryland Transit Administration  
Office of the Attorney General  
6 St. Paul Street, 12th Floor  
Baltimore, Maryland 21202  
Attention: Principal Counsel  
Email: jsweeney@mdot.maryland.gov

**TO PLTC:**

Purple Line Transit Constructors, LLC  
100 Fluor Daniel Drive  
Greenville, SC 29607-2762  
Attn: Kim Williams C106-NW  
Email: Scott.Risley@pltcllc.com

With a copy to:

Robert C. Chambers, Esq.  
Smith, Currie & Hancock, LLP  
2700 Marquis One Tower  
245 Peachtree Center Avenue, N.E.  
Atlanta, GA 30303-1227  
Email: RCChambers@smithcurrie.com

**TO CONCESSIONAIRE:**

Purple Line Transit Partners LLC  
6811 Kenilworth Avenue, Suite 601  
Riverdale, MD 20737  
Attn: Peter van der Waart van Gulik, CEO  
Doran Bosso, Deputy CEO  
Email: Peter.Waart@meridiam.com  
Doran.Bosso@purplelinepartners.com

With a copy to:

Tomer Pinkusiewicz  
Gibson Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Email: TPinkusiewicz@gibsondunn.com

IN WITNESS WHEREOF, the Parties agree to be bound by the terms and conditions set forth in this Release Agreement effective as of the Release Effective Date set forth herein.

[SIGNATURES ON THE NEXT PAGE]

WITNESS:

MARYLAND TRANSIT ADMINISTRATION  
OF THE MARYLAND DEPARTMENT OF  
TRANSPORTATION

\_\_\_\_\_

By: \_\_\_\_\_  
Kevin B. Quinn (Date)  
Administrator

Reviewed and Approved as to  
Form and Legal Sufficiency for MTA:

\_\_\_\_\_  
Julie T. Sweeney  
Assistant Attorney General

WITNESS:

MARYLAND DEPARTMENT OF  
TRANSPORTATION

\_\_\_\_\_

By: \_\_\_\_\_  
Gregory Slater (Date)  
Secretary

Reviewed and Approved as to  
Form and Legal Sufficiency for MDOT:

\_\_\_\_\_  
Cheryl A.C. Brown-Whitfield  
Assistant Attorney General  
Principal Counsel

APPROVED BY BOARD OF PUBLIC WORKS

Date: \_\_\_\_\_ Item No. \_\_\_\_\_

*[Mutual Release Agreement]*

WITNESS:

PURPLE LINE TRANSIT PARTNERS LLC

\_\_\_\_\_

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

Peter van der Waart van Gulik (Date)  
Chief Executive Officer  
Purple Line Transit Partners LLC

Reviewed and Approved as to  
Form and Legal Sufficiency  
for the Concessionaire:

\_\_\_\_\_  
Tomer Pinkusiewicz  
Counsel

*[Mutual Release Agreement]*

WITNESS:

PURPLE LINE TRANSIT CONSTRUCTORS, LLC

\_\_\_\_\_

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

Scott Risley

(Date)

President

Purple Line Transit Constructors, LLC

Reviewed and Approved as to  
Form and Legal Sufficiency  
for PLTC:

\_\_\_\_\_  
Robert Chambers  
Counsel

*[Mutual Release Agreement]*

Solely for purposes of paragraph 16 hereof:

WITNESS:

FLUOR CORPORATION

\_\_\_\_\_

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

Name:

Title:

Date:

*[Mutual Release Agreement]*

Solely for purposes of paragraph 16 hereof:

WITNESS:

WEBUILD S.P.A.

\_\_\_\_\_

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

Name:

Title:

Date:

*[Mutual Release Agreement]*



Solely for purposes of paragraph 16 hereof:

WITNESS:

TRAYLOR BROS., INC.

\_\_\_\_\_

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

Name:

Title:

Date:

*[Mutual Release Agreement]*

## SECOND AMENDMENT to PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

### PURPLE LINE PROJECT

This Second Amendment to Public-Private Partnership Agreement (this “**Second Amendment**”) is entered into and effective as of December \_\_\_, 2020 (the “**Second Amendment Effective Date**”) by THE STATE OF MARYLAND (the “**State**”) acting by and through the Maryland Department of Transportation (“**MDOT**”) and the Maryland Transit Administration (“**MTA**”) (collectively “**Owner**”), and PURPLE LINE TRANSIT PARTNERS LLC, a Delaware limited liability company (“**Concessionaire**” and, together with Owner, the “**Parties**”), with reference to the following facts:

A. Owner and Concessionaire entered into that certain Public-Private Partnership Agreement, dated as of April 7, 2016, as amended by the First Amendment dated June 14, 2016, (the “**Agreement**”), to finance, develop, design, construct, equip, supply light rail vehicles (“**LRVs**”) for, operate and maintain the Purple Line Light Rail Project (the “**Project**”) as a public-private partnership under §§ 10A-101 through 10A-402 and § 11-203(h) of the State Finance and Procurement Article of the Annotated Code of Maryland (the “**Act**”).

B. The Parties wish to amend the Agreement in accordance with that certain Settlement Agreement and Mutual Release, dated as of December \_\_\_, 2020 (the “**Settlement Agreement**”), between the Parties. The amendments made pursuant to this Second Amendment are the amendments contemplated by and referred to as the “Initial P3 Amendments” in the Settlement Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. Defined Terms. Capitalized terms used, but not defined, in this Second Amendment shall have the meanings ascribed in the Agreement.
2. Continuation of the Agreement. In accordance with paragraph 4 of the Settlement Agreement, as of the Second Amendment Effective Date, subject to the terms and conditions of the Settlement Agreement and this Second Amendment: (a) Concessionaire hereby withdraws its Notice of Unconditional Election to Terminate the Agreement delivered to Owner on June 23, 2020, and such Notice shall have no further force and effect; (b) Owner hereby withdraws its Notice of Concessionaire Default delivered to Concessionaire on June 24, 2020, and such Notice shall have no further force and effect; and (c) notwithstanding anything to the contrary, including without limitation Sections 19.2.5 and 19.2.8 of the Agreement, the Agreement shall continue in full force and effect.

Subject to the terms and conditions set forth in the Settlement Agreement and in this Second Amendment, the Agreement (as amended pursuant to this Second Amendment) will continue in effect, including during the Replacement DB Selection Period (as defined in the Settlement Agreement). At the expiration of the Replacement DB Selection Period (as such period may be extended in accordance with the terms of paragraph 18 of the Settlement Agreement), the Agreement will either continue in effect as amended pursuant to this Second Amendment and the Subsequent P3 Amendments or terminate in accordance with the terms of the Settlement Agreement and the Agreement (as amended pursuant to this Second Amendment).

3. Amendments to Agreement. The Agreement is revised as follows:

3.1 Amendments to Article 7. Article 7 of the Agreement is hereby amended by adding a new Section 7.16 as follows:

**“7.16 Replacement DB Selection Period.**

Commencing on the Second Amendment Effective Date, Concessionaire shall initiate, pursuant to the procedures set forth in the Settlement Agreement, Section 7.16.3 and Attachment 2 to Exhibit 13B, and in coordination with Owner, a solicitation process for the ultimate identification and selection of a replacement Design-Build Contractor (the “Replacement DB Contractor”). The terms of such solicitation process, timing thereof, and selection and evaluation criteria shall be as set forth in Section 7.16.3, Attachment 2 to Exhibit 13B, and paragraphs 15 through 19 of the Settlement Agreement (the “Replacement DB Selection Process”). During the Replacement DB Selection Period, Owner shall be entitled to promptly receive copies of and retain all material correspondence, documents and materials received by Concessionaire from potential and shortlisted candidates for the Replacement DB Contractor in connection with the Replacement DB Selection Process. If a Replacement DB Contractor is not selected by the Owner and Concessionaire during the Replacement DB Selection Period, Owner shall be entitled to receive promptly from Concessionaire copies of any correspondence, documents and materials related to the Replacement DB Selection Process that Owner reasonably requests.

**7.16.1 Suspension of Certain Obligations; Effect of AA Agreement**

During the pendency of the Replacement DB Selection Period and until such time as, whichever is earlier, (a) this Agreement is terminated in accordance with the terms of Section 7.16.4 or (b) a replacement Design-Build Contractor has been obtained, the Replacement DB Contract has been executed, the New Financing Transactions have been consummated (and all required consents thereto as provided in this Section 7.16 and the Settlement Agreement shall have been obtained), and the Subsequent P3 Amendments shall have become effective:

**7.16.1.1** Except as provided in this Section 7.16 and Attachment 2 to Exhibit 13B, or otherwise in the Second Amendment, all obligations of Concessionaire under this Agreement and the performance of the same (and all associated contractual risks allocated to Concessionaire) shall be suspended (effective retroactively back to September 28, 2020), including, without limitation, Concessionaire’s commitment to meet deadlines and its obligation to vigorously prosecute the D&C Work to completion. The Parties expressly agree that Concessionaire shall not be required to perform, or cause to be performed, any D&C Work during the Replacement DB Selection Period, and its sole obligation in relation to any Work shall be limited to the payment obligation contemplated in Section 7.16.2.

**7.16.1.2** Except as provided in this Section 7.16 and Attachment 2 to Exhibit 13B, or otherwise contemplated in this Second Amendment or the Settlement Agreement, all obligations of Owner to Concessionaire under this Agreement related to the D&C Work (other than those obligations set forth in this

Section 7.16 and Attachment 2 to Exhibit 13B, or otherwise in the Second Amendment) and the performance of the same shall be suspended.

**7.16.1.3** The AA Agreement will remain in full force and effect, and Owner shall manage the Project during the Replacement DB Selection Period, subject to the contemplated reassignment of the Assigned Key Contracts and Assigned DB Subcontracts/Agreements upon selection of a Replacement DB Contractor and entry into a Replacement DB Contract as contemplated by paragraph 19 of the Settlement Agreement and in accordance with Section 7.16.3.4.

**7.16.1.4** During the Replacement DB Selection Period, each Party's respective obligations under the Agreement will not be suspended with regard to Sections 2.2, 2.3.1 and 2.6, Article 3, Sections 4.1 through 4.4, and Articles 9, and 21 through 26, including any Exhibits (or relevant portions thereof) to the extent referenced in and relevant to the continued operative effect of such provisions, including the definitions of relevant terms set forth in Exhibit 1, in each case solely to the extent the foregoing provisions are relevant and applicable in the context of such Party's obligations with respect to the Replacement DB Selection Process contemplated by this Section 7.16 and Attachment 2 to Exhibit 13B, and for no other purpose. For the avoidance of doubt, (a) any breach of such provisions shall only entitle the non-breaching Party to a breach of contract claim and shall not be a basis for, nor give rise to, any right of termination of this Agreement, and (b) such provisions shall not in any way modify the provisions of Section 7.16.4 hereof or Section 6 of Exhibit 13B.

### **7.16.2 Interim Construction Costs**

During the Replacement DB Selection Period, Owner and Concessionaire shall each pay its allocated portion of the Interim Construction Costs in accordance with the terms of paragraph 12 of the Settlement Agreement. Concessionaire's allocated portion of the Interim Construction Costs shall be paid by Concessionaire to Owner within 30 days after receipt of an invoice from Owner for such Interim Construction Costs.

### **7.16.3 Replacement DB Selection Process**

Concessionaire shall manage, direct and pay for such Replacement DB Selection Process in accordance with the terms set forth in the Settlement Agreement, this Section 7.16.3, and Attachment 2 to Exhibit 13B. The Replacement DB Selection Process, including the solicitation process, timing thereof and selection and evaluation criteria, shall be as set forth or contemplated in Attachment 2 to Exhibit 13B. Such evaluation and selection criteria shall be focused on factors that may include capacity, capability, schedule, and rate structure, in each case as also set forth or contemplated in Attachment 2 to Exhibit 13B.

**7.16.3.1** The Replacement DB Selection Process shall contemplate an initial short listing of a few potential candidates for the role of the Replacement DB Contractor. The process for selection of such Shortlisted Candidates is set forth in Attachment 2 to Exhibit 13B. Once selected, the Shortlisted Candidates, in coordination with and subject to the final approval of Owner, will undertake due diligence with respect to the Project. Such due diligence shall include the negotiation of a form of Replacement DB Contract that shall be (a) drafted by

Concessionaire, in form substantially similar to the existing Design-Build Contract, including proposed scheduled dates for completion of the D&C Work, and the risk allocation for previously completed D&C Work, such that the Replacement DB Contract will comply with this Agreement, as amended pursuant to the Second Amendment and the Subsequent P3 Amendments, and (b) modified based on reasonable requests by Owner, for the purpose of providing Concessionaire and Owner, by a date not later than six months following the Second Amendment Effective Date, with a lump-sum fixed price for the completion of the D&C Work.

**7.16.3.2** Following receipt of proposals (including lump-sum fixed price proposals) from the Shortlisted Candidates, and subject to the approval of the Lenders, the Board of Public Works, Owner and Concessionaire, the Replacement DB Contractor shall be selected to proceed with the finalization of the Replacement DB Contract, which final contract shall be subject to the final approval of Owner, including the Board of Public Works, and Concessionaire in accordance with the terms of Section 7.16.3.3 and Attachment 2 to Exhibit 13B. The revised Project Schedule for completion of the Project will be finalized in the Replacement DB Contract, with a portion of the Availability Payments commencing upon a milestone preceding the modified RSA Date of the Project selected by the Parties and set forth in the Subsequent P3 Amendments.

**7.16.3.3** In the event that the lump-sum fixed price and the other terms and conditions related to such completion of the D&C Work (and related contractual provisions) are acceptable to Owner and Concessionaire, each in its sole discretion subject to commercially reasonable industry standards and the implied duty of good faith and fair dealing and to the approvals and consents required under this Agreement and the Settlement Agreement, Concessionaire shall enter into the contract with the Replacement DB Contractor for such purposes (which incorporates such agreed-upon matters) (such contract, the "Replacement DB Contract"). Upon execution of the Replacement DB Contract (and concurrent closing of the New Financing Transactions, in each case with the approvals and consents required under the Settlement Agreement), all responsibility for the Work on the Project (and associated contractual risks) under this Agreement, once amended pursuant to the Subsequent P3 Amendments, shall shift back to Concessionaire in full in accordance with the terms of the Settlement Agreement, this Agreement, as amended by the Second Amendment and the Subsequent P3 Amendments.

**7.16.3.4** Any execution and delivery of the Replacement DB Contract shall be completed by no later than the date that is nine months following the Second Amendment Effective Date, unless extended by mutual written agreement of the Parties (and, so long as any Bonds are outstanding, with the prior written consent of the Trustee (acting at the direction of the Majority Holders)). Concurrently with the execution of the Replacement DB Contract:

(a) The Assigned DB Subcontracts/Agreements that were assigned to Owner pursuant to the AA Agreement shall be assigned by Owner to the Replacement DB Contractor or otherwise terminated by Owner, as appropriate and agreed to in writing by Owner and Concessionaire;

(b) The Assigned O&M Contract shall be reassigned from Owner to Concessionaire (and Fluor, as contemplated in paragraph 6 of the Settlement Agreement, will no longer be a member of the O&M Contractor);

(c) Concessionaire shall work in good faith to implement and execute a customary interface agreement with the Replacement DB Contractor and the O&M Contractor;

(d) The LRV Supply Contract shall be assigned from Owner to the O&M Contractor and/or the Replacement DB Contractor, as indicated by Concessionaire; and

(e) The Consulting Services Agreement shall be assigned from Owner to Concessionaire unless otherwise replaced or terminated prior to such date.

#### **7.16.4 Termination**

In the event that a Replacement DB Contract is not executed or the New Financing Transactions are not consummated in accordance with the terms of this Section 7.16, Attachment 2 to Exhibit 13B and the Settlement Agreement before the Replacement DB Selection Period (as such period may be extended in accordance with the terms set forth in paragraph 18 of the Settlement Agreement) expires (the "Termination Trigger Date"), this Agreement shall automatically terminate (without any further notice or action) on the 60th day following the expiration of the Replacement DB Selection Period (as such period may be extended pursuant to the Settlement Agreement), unless within such 60-day period (a) a Replacement DB Contract shall have been executed and the New Financing Transactions shall have been consummated (and all required approvals and consents thereto as required under the Settlement Agreement and as provided in this Agreement shall have been obtained), (b) the Bonds have been redeemed and/or defeased in full in accordance with the terms of the Indenture, and Owner and Concessionaire agree to extend the Replacement DB Selection Period, or (c) Owner, Concessionaire and the Trustee (acting on the direction of the Majority Holders) agree in writing to extend the Replacement DB Selection Period. Following any such termination, Concessionaire, notwithstanding anything to the contrary in this Agreement or any other Contract Document, shall be entitled to Termination Compensation equal to the sum of the Project Debt Termination Amount and any Outstanding Committed Investment (in respect of the Outstanding Committed Investment, as evidenced by Concessionaire pursuant to documentation reasonably satisfactory to Owner) (the "Termination Payment"), subject to the terms and conditions of this Section 7.16.4 and Section 6 of Exhibit 13B. No Party shall seek any other costs in connection with such termination, except that this Section 7.16.4 does not waive the right to any damages resulting from either Party's breach of its obligations pursuant to this Section 7.16 or the Settlement Agreement, subject to the penultimate sentence of this Section 7.16.4. Any such Termination Payment shall be paid no later than the 12-month anniversary of the Second Amendment Effective Date and shall be paid by Owner to Concessionaire to an account designated by the Collateral Agent, provided that the Collateral Agent shall have provided to Owner the information (which information may be provided prior to the termination of this Agreement) specified in clauses (a), (b) and (c) of Section 5.3 of the Direct Agreement with respect to such account not less than 30 days prior to the date when payment is due. Notwithstanding anything to the contrary in this Agreement, the Settlement Agreement, the Direct Agreement or any Contract Document, Owner's obligation to make any such

Termination Payment shall not be subject to any condition (other than provision of any documentation expressly required in this Section 7.16.4 or Section 6 of Exhibit 13B), reduction, right of set-off, abatement, any other diminishment, or any other defense or condition; provided that any portion of such Termination Payment in respect of the Outstanding Committed Investment shall be subject to any deduction required by the Tax-General Article of the Annotated Code of Maryland to reflect any taxes due and payable by Concessionaire to the State. The Parties agree this Agreement may not be terminated prior to the expiration of the Replacement DB Selection Period unless agreed to by the Owner, Concessionaire and, to the extent the Bonds remain outstanding, the Trustee (acting at the direction of the Majority Holders), and, after the expiration of the Replacement DB Selection Period, may terminate solely in accordance with the terms of this Section 7.16.4 and Section 6 of Exhibit 13B.

#### **7.16.5 Retainage**

To the extent that Concessionaire or the Design-Build Contractor withheld any retainage from Contractors, Subcontractors or Suppliers for Construction Work performed on or prior to the Second Amendment Effective Date, Concessionaire shall (a) release all such retainage to the Design-Build Contractor within 30 days following the Second Amendment Effective Date, and (b) cause the Design-Build Contractor to release retainage, so as to enable release of retainage to each individual Contractor, Subcontractor and Supplier (if applicable). Concessionaire shall provide reasonably satisfactory evidence to Owner that all such retainage for Construction Work performed as of the Second Amendment Effective Date has been released in accordance with applicable Law, including 49 CFR 26.29.

#### **7.16.6 Warranties**

Since Owner will manage the Project during the Replacement DB Selection Period, Concessionaire shall not have any responsibility for warranties in respect of the D&C Work performed during such period, nor any potential liability in respect of the same, whether due to Defects, Nonconforming Work or otherwise. Concessionaire shall remain responsible for all Work performed prior to the Cut-Off Date (as defined in the Settlement Agreement) to the extent provided in the Settlement Agreement. Concessionaire shall remain responsible for all Work performed after the execution of the Replacement DB Contract with the Replacement DB Contractor as contemplated in paragraph 28 of the Settlement Agreement.

3.2 Amendments to Exhibit 1. The following definitions shall be added and incorporated into Exhibit 1 to the Agreement:

**“AA Agreement”** means that certain Assignment and Assumption Agreement, dated as of September 28, 2020, by and among Owner, Concessionaire, the Design-Build Contractor, the O&M Contractor, and the LRV Supplier, for the purpose of assigning, transferring, and conveying to Owner the Assigned Key Contracts and the Assigned DB Subcontracts/Agreements.

**“Assigned DB Subcontracts/Agreements”** has the meaning given to such term in the AA Agreement.

**“Assigned Key Contracts”** means, collectively, the Assigned O&M Contract, the

Consulting Services Agreement and the Assigned LRV Supply Contract.

**“Assigned O&M Contract”** means the Amended and Restated Operations and Maintenance Contract, dated as of June 14, 2016 (as amended, supplemented and/or otherwise modified), for the Services as defined in such contract that was assigned to Owner pursuant to the AA Agreement.

**“Assigned LRV Supply Contract”** means the contract (Contract No. PLT4-C-133), dated as of June 17, 2016, for the design, manufacture and supply of light rail vehicles for the Project that was assigned to Owner pursuant to the AA Agreement.

**“Bonds”** has the meaning given to such term in the Settlement Agreement.

**“Consulting Services Agreement”** means the consulting services agreement, dated as of August 19, 2016 (as amended, supplemented and/or otherwise modified), for certain services contemplated therein that was assigned to Owner pursuant to the AA Agreement.

**“Interim Construction Costs”** has the meaning given to such term in the Settlement Agreement.

**“Majority Holders”** has the meaning given to such term in the Settlement Agreement.

**“New Financing Transactions”** has the meaning given to such term in the Settlement Agreement.

**“Replacement DB Contract”** has the meaning given to such term in Section 7.16.3.3.

**“Replacement DB Contractor”** has the meaning given to such term in Section 7.16.

**“Replacement DB Selection Period”** means that period beginning on the Second Amendment Effective Date and ending on the date of execution of the Replacement DB Contract or the date that is nine months following the Second Amendment Effective Date, whichever is earlier, unless otherwise terminated in accordance with the Settlement Agreement and this Second Amendment.

**“Replacement DB Selection Process”** has the meaning given to such term in Section 7.16.

**“Second Amendment Effective Date”** means December \_\_\_\_, 2020.

**“Selection Date”** means the date on which Owner and Concessionaire select the Replacement DB Contractor, if any, in accordance with the Replacement DB Selection Process.

**“Settlement Agreement”** means that certain Settlement Agreement and Mutual Release, dated as of December \_\_\_\_, 2020, by and between Owner and



Concessionaire.

**“Shortlisted Candidates”** has the meaning given in Attachment 2 to Exhibit 13B, which is attached to the Second Amendment as Annex 1.

**“Subsequent P3 Amendments”** has the meaning given to such term in the Settlement Agreement.

**“Termination Payment”** has the meaning given to such term in Section 7.16.4.

**“Termination Trigger Date”** has the meaning given to such term in Section 7.16.4.

**“Trustee”** has the meaning given to such term in the Settlement Agreement.

### 3.3 Amendments to Exhibit 13B.

3.3.1 Exhibit 13B of the Agreement is hereby amended by adding a new Section 6 as follows:

#### **“6. Termination Pursuant to Section 7.16.4 of the Agreement”**

**6.1 Early Termination Date Under Section 7.16.4.** If a termination occurs under Section 7.16.4 of the Agreement, then the Early Termination Date shall be 60 days (or such longer period as agreed to in writing by the Parties pursuant to Section 7.16.4(b) of the Agreement) following the expiration of the Replacement DB Selection Period (as such period may be extended pursuant to the Settlement Agreement).

**6.2 Amount Payable.** If the Agreement is terminated pursuant to Section 7.16.4 of the Agreement, Owner shall pay compensation to Concessionaire (or to Collateral Agent or Concessionaire’s Lenders, as applicable and in accordance with the Agreement, when the right to receive such compensation has been duly pledged) in an amount equal to the Termination Payment to an account designated in the manner described in Section 7.16.4 of the Agreement.

**6.3 Payment of Termination Payment.** If Owner intends to pay the Termination Payment prior to the deadline for payment thereof, then it shall provide Concessionaire and Collateral Agent at least 30 days’ advance notice of such earlier payment date. The Termination Payment owing under Section 6.2 of Exhibit 13B (including, in the case of the component thereof constituting the Project Debt Termination Amount, accrued but unpaid interest to the payment date, on the Project Debt, other than Subordinate Debt) shall be due and payable by Owner no later than 11:00 A.M. (Eastern Time) on the date contemplated by Section 7.16.4 of the Agreement, so long as Concessionaire (or Collateral Agent or Trustee) has provided Owner with a preliminary written statement and documentation of all components as to the Termination Payment not less than 75 days prior to the date when the Termination Payment is due and payable, with an updated final written statement and documentation of all components as reasonably required by and reasonably acceptable to Owner supporting such statement not less than 45 days prior to the date when the Termination Payment is due and payable (such preliminary written statement, updated written statement and supporting document may be provided prior to the termination of this Agreement). If the preliminary statement and documentation are not provided (or if the final written statement and documentation

are not provided by the deadline set forth above), the Termination Payment shall be due and payable no later than 60 days after a final written statement and supporting documentation is provided by the Concessionaire (or the Collateral Agent or Trustee). Any such Termination Payment shall be paid by Owner to Concessionaire in accordance with the terms of Section 7.16.4 of the Agreement. In the event that a written statement and supporting documentation have been provided only for the Project Debt Termination Amount, then the portion of the Termination Payment corresponding to the Project Debt Termination Amount shall be due and payable as aforesaid even if no such written statement or supporting documentation has been provided for the other component of the Termination Payment.”

3.3.2 Exhibit 13B of the Agreement is hereby amended by adding Attachment 2 (entitled “Replacement DB Selection Process”), which is attached to this Second Amendment as *Annex 1*.

4. Key Contract Amendments. Owner agrees that the provisions of Section 9.3.1 of the Agreement shall not be applicable in connection with the Replacement DB Contract and that the execution of any Replacement DB Contract shall instead be governed by Section 7.16 of the Agreement (as amended by this Second Amendment).

5. Approval of Change of Ownership. The Change of Ownership which will result from the redemption or transfer of the equity interest held by Fluor Enterprises, Inc. in Concessionaire shall be subject to Owner’s approval and the other requirements set forth in paragraph 5 of the Settlement Agreement, except if such redemption or transfer is made to the existing Equity Members of Concessionaire, Owner approval thereof shall not be required, in which case Owner acknowledges and agrees that no other further notice, request or information requirements from Concessionaire and set forth in Section 22.2 of the Agreement shall be required in connection with such Equity Transfer as a condition of Owner’s approval hereby of such Change of Ownership or otherwise.

6. Lender Rights. Without limiting the provisions of this Second Amendment, Owner acknowledges and agrees that, consistent with its acknowledgment in Section 3.1 of the Direct Agreement regarding the pledge of Concessionaire’s Interest pursuant to the terms and provisions of the Security Documents, this Second Amendment shall be pledged to the Collateral Agent pursuant to, and shall constitute “Collateral” under, and be subject to the terms of, the existing Security Documents.

7. Effective Date. Following receipt of the approvals set forth in paragraph 3 of the Settlement Agreement, the Settlement Agreement and this Second Amendment will be concurrently executed and delivered by the Parties. Upon such execution and delivery, this Second Amendment will be immediately effective as of the Effective Date of the Settlement Agreement.

8. Effect of Amendment. The Contract Documents, except as amended by this Second Amendment, remain in full force and effect in accordance with each of their respective terms.

9. Records. This Second Amendment shall be appended to each of the Parties’ original, execution version of the Contract Documents and filed in the books and records of each Party.

10. Counterparts. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Second Amendment. Electronic transmission in portable document format of any signed original document or retransmission of any signed electronic transmission in portable document format shall be deemed to have the same legal effect as delivery of any original.

*[remainder of page intentionally left blank – signatures appear on the following page]*

WITNESS:

PURPLE LINE TRANSIT PARTNERS LLC

\_\_\_\_\_

\_\_\_\_\_

(Signature)

\_\_\_\_\_

\_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Title)

WITNESS:

MARYLAND TRANSIT ADMINISTRATION

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

MARYLAND DEPARTMENT OF  
TRANSPORTATION

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
Assistant Attorney General

## **Annex 1 to Second Amendment**

### ATTACHMENT 2 TO EXHIBIT 13B

#### REPLACEMENT DB SELECTION PROCESS

Concessionaire will conduct a Replacement DB Selection Process to solicit and select a Replacement DB Contractor. Such process shall be similar to the Market Resolicitation process prescribed by Attachment 1 to Exhibit 13B of the Agreement; provided, however, the terms set forth below shall govern. Concessionaire shall be responsible for costs associated with the Replacement DB Selection Process from the commencement of the Replacement DB Selection Process until a Replacement DB Contract has been fully executed. Owner and Concessionaire will coordinate and cooperate with each other during the Replacement DB Selection Process, which shall take into account the matters contemplated in the Agreement, the Settlement Agreement, the Second Amendment, the Subsequent P3 Amendments, and the matters set forth below:

1. The Concessionaire shall comply with state and federal Laws applicable to it in respect of the Replacement DB Selection Process.

2. During the pendency of the Replacement DB Selection Period, there shall be an executive committee (the "Committee"), comprised of at least two designated authorized representatives on behalf of Owner and at least three designated authorized representatives on behalf of Concessionaire, which shall meet on a monthly basis (or more frequently as may be reasonably necessary, with the same or different representatives as requested by either the Owner or Concessionaire) to discuss the Replacement DB Selection Process, the Replacement DB Contract, the New Financing Transactions (including such matters as how the debt/equity will be structured, the timeline, and obtaining necessary approvals related to the New Financing Transactions) and any other relevant matters in respect of the Project. Following any month when the Committee is not able to meet because the requisite number of representatives are not available, the Committee shall meet the next month, regardless of the number of Owner or Concessionaire representatives that may be available.

3. Owner may select one or more representatives to act as the primary point of contact (the "Monitor") between Concessionaire and Owner and, except as specifically provided herein, to act on behalf of Owner for purposes of this Attachment 2 to Exhibit 13B. The Monitor will facilitate Owner's review of the Request for Qualifications ("RFQ") and Request for Proposals ("RFP") documentation and may review and comment on the RFQ and RFP documentation. Concessionaire and the Monitor shall endeavor to meet weekly during the Replacement DB Selection Process to discuss progress, issues for resolution and areas where Concessionaire requires Owner's assistance in reviewing RFQ or RFP documentation.

4. On or before the Second Amendment Effective Date, the Concessionaire provided to Owner a list of potential candidates to participate in the RFQ or similar process described below. Before finalizing this list, Owner and Concessionaire shall confirm that each candidate appearing on the list has not been disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a State department or agency.

5. Owner shall further provide input and feedback to Concessionaire with regard to the list of potential candidates, Owner and Concessionaire shall discuss in good faith the list of potential candidates, and Owner and Concessionaire shall finalize an agreed list no later than December 23, 2020 (the potential candidates on such agreed list, the “RFQ Recipients”).

6. Concessionaire shall draft and prepare the relevant documentation for the RFQ process, including as a minimum the qualification criteria such as capacity and capability to complete the Project. Owner shall provide any comments no later than 10 days following the receipt of the final RFQ draft with accompanying documentation. Once the RFQ documentation is finalized and in agreed form, the documentation shall be distributed on or about January 7, 2021 or sooner to the RFQ Recipients for their review, feedback and participation.

7. Unless otherwise agreed by Owner and Concessionaire, the response period to be allotted to the RFQ Recipients to respond to the RFQ shall be no more than four weeks.

8. At any time following the distribution of the RFQ (or if otherwise agreed by Owner and Concessionaire prior to such date), Concessionaire may conduct an industry day and/or one-on-one meetings with such RFQ Recipients. Owner shall be invited to participate in such industry day and/or meetings.

9. Concessionaire shall, within one day of receipt, distribute to Owner responsive statements of qualifications (“SOQs”) submitted by the RFQ Recipients. No later than one week following the date on which all SOQs shall have been received by Concessionaire, Concessionaire shall recommend to Owner, for discussion and Owner’s approval, the shortlist of potential candidates to advance to the Request for Proposals phase (the “RFP Phase”). The shortlist shall not include more than three potential candidates, unless Owner and Concessionaire agree otherwise. Owner, no later than five days following the receipt of such list, shall either concur with such list or discuss with Concessionaire potential changes to such list. Owner and Concessionaire shall work diligently to agree (through the Committee) upon a final list as soon as practicable (such final list of candidates, the “Shortlisted Candidates”).

10. Concessionaire shall, concurrently with the ongoing RFQ process noted above, draft and prepare the relevant documentation for the RFP Phase. Concessionaire shall establish a common digital space where RFP documentation, including reference data and Project information, shall be stored and to which only Concessionaire, the Shortlisted Candidates and Owner shall have access rights (“Data Room”). Concessionaire shall provide a final, consolidated draft RFP for Owner’s review. Where sections of the RFP will modify existing Contract Documents, Concessionaire shall provide redlined comparisons for Owner’s ease and efficiency of review. Owner shall provide comments no later than 10 days following the receipt of the final RFP. Once such documentation is finalized and agreed to by the Owner, the documentation shall be distributed to the Shortlisted Candidates for their review, feedback and participation.

11. Concessionaire shall make the RFP, in agreed form, available in the Data Room and shall notify Owner and the Shortlisted Candidates that the RFP Phase has commenced.

12. The RFP Phase shall include one-on-one meetings, one or more periods for questions and answers, addenda, and exchanges of value-maximizing solutions. Owner and Concessionaire shall coordinate and collaborate in respect of such process, as agreed by Owner and Concessionaire.

13. The RFP documentation shall establish a firm date to be agreed upon by the Parties by which the Shortlisted Candidates need to upload their lump sum, fixed price proposals into the Data Room.

14. Concessionaire and Owner shall meet no later than one week following receipt to evaluate responsive proposals so that Concessionaire may provide its recommendation to Owner for Owner's approval. Owner and Concessionaire shall meet, consult and discuss such recommendation and, except as otherwise agreed to by Owner and Concessionaire, shall select a Replacement DB Contractor no later than two weeks following Concessionaire's initial recommendation. Concessionaire shall consult with Lenders regarding its recommendation to Owner to obtain the Lenders' approval of the recommended Replacement DB Contractor prior to Owner's approval.

15. Owner and Concessionaire shall engage with the selected contractor to finalize all relevant documentation, including but not limited to the Replacement DB Contract to be approved by Owner. The terms of the Replacement DB Contract shall not change materially after receipt of proposals from Shortlisted Candidates and the final Replacement DB Contract may be subject to approval by the Board of Public Works.