

**PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

**PURPLE LINE PROJECT**

**BETWEEN**

Maryland Department of Transportation and the  
Maryland Transit Administration

and

Purple Line Transit Partners LLC

**DATED [\_\_\_\_\_]**

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# **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

## **PURPLE LINE PROJECT**

This Public-Private Partnership Agreement (the "Agreement") is entered as of the [ ] day of [ ], 2016 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"), with reference to the following facts:

A. Owner wishes 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 (the "Act").

B. On November 8, 2013, Owner issued a Request for Qualifications (as amended, the "RFQ"), received six statements of qualifications on or before the due date of December 9, 2013, and subsequently shortlisted four proposers.

C. On July 28, 2014, Owner issued a Request for Proposals to finance, develop, design, construct, equip, supply LRVs for, operate and maintain the Project through this Agreement (as amended, the "RFP").

D. On November 17, 2015, Concessionaire submitted a technical proposal and on December 8, 2015 it submitted a financial proposal to Owner offering to finance, develop, design, construct, equip, supply LRVs for, operate and maintain the Project. Owner received three additional responses to the RFP.

E. On January 4, 2016, Owner selected Concessionaire as the best value proposer, and Owner and Concessionaire proceeded with negotiations.

F. On March 1, 2016, following conclusion of negotiations, the Secretary of the Maryland Department of Transportation determined that Concessionaire's Proposal offered the best value to the State, and Owner proceeded with the final agreement review process required by the Act and implementing regulations.

G. On [ ], 2016, the Maryland Board of Public Works approved this Agreement in accordance with the provisions of the Act and implementing regulations.

H. This Agreement and the other Contract Documents collectively constitute a public-private partnership agreement as contemplated under the Act, and are entered into in accordance with the provisions of the RFP.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1. DEFINITIONS; CONTRACT DOCUMENTS; ORDER OF PRECEDENCE; OTHER DOCUMENTS**

### **1.1 Definitions**

Definitions for certain acronyms, abbreviations and terms used in this Agreement and the other Contract Documents are contained in Exhibit 1.

### **1.2 Contract Documents; Rules to Reconcile Conflicting Provisions**

**1.2.1** The term "Contract Documents" shall mean the documents listed in this Section 1.2. Each of the Contract Documents is an essential part of the agreement between the Parties. The Contract Documents are intended to be complementary and to be read together as a complete agreement.

**1.2.2** Subject to Sections 1.2.3 and 1.2.4, in the event of any conflict, ambiguity or inconsistency within the Contract Documents, the order of precedence, from highest to lowest, shall be as follows:

1. Change Orders and other Modifications, and all exhibits, appendices, annexes and attachments to such Change Orders and other Modifications, as applicable;
2. This Agreement, including Exhibits 1 through 16, and the executed originals of Exhibits that are contracts, except that Sections 1, 2, 4, 5, 6 and 7 of Exhibit 2 have lower priority as specified below;
3. Concessionaire's Proposal commitments identified in Section 1 to Exhibit 2;
4. Deviations from requirements of the Technical Provisions approved by Owner in accordance with the Instructions to Proposers, with respect to the ATCs identified in Section 2 of Exhibit 2;
5. Sections 4, 5, 6 and 7 of Exhibit 2;
6. Technical Provisions (Book 2), including all exhibits and attachments to the Technical Provisions;
7. Codes and Standards (Book 3);
8. Contract Drawings (Book 4);
9. Engineering Data (Book 5); and
10. Those portions of the Proposal identified and incorporated by reference in Exhibit 17.

**1.2.3** In the event of any conflict, ambiguity or inconsistency within the Contract Documents, the following rules of interpretation shall apply.

**1.2.3.1** Notwithstanding the order of precedence in this Section 1.2, if the Contract Documents contain differing provisions on the same subject matter, the provisions that

provide greater detail or establish a higher quality, manner or method of performing the Work, exceed Good Industry Practice or use more stringent standards shall prevail.

**1.2.3.2** Additional details in a lower priority Contract Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Contract Document.

**1.2.3.3** If the Contract Documents contain differing provisions on the same subject matter that cannot be reconciled by applying the rules in Section 1.2.3.1 or 1.2.3.2, then the provisions contained in the document of higher order of precedence shall prevail over the provisions contained in the document of lower order of precedence, unless Owner, in its discretion, approves or directs otherwise in writing.

**1.2.3.4** In the event of an irreconcilable conflict between specific provisions of the Contract Documents and any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a manual or publication within a lower priority Contract Document, the specific provision of the higher priority Contract Document shall prevail over said standards or other provisions established by reference, to the extent of the irreconcilable conflict.

**1.2.3.5** In the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project, established by reference to a manual or publication within a Contract Document or set of Contract Documents with the same order of priority, the standard, criterion, requirement, condition, procedure, specification or other provision offering the higher quality, manner or method or performing will apply unless Owner, in its discretion, approves or directs otherwise in writing.

**1.2.3.6** In the event of a conflict among the standards, criteria, requirements, conditions, procedures, specifications or other provisions of the Technical Provisions and those established by reference to a manual or publication, the Technical Provisions shall prevail.

**1.2.3.7** In all other respects, in the event of a conflict, ambiguity or inconsistency within the Contract Documents, general rules concerning construction of contracts shall be applicable.

**1.2.4** This Section 1.2 shall not apply to provisions in Books 2 through 5 that are erroneous, create a potentially unsafe condition, or may be inconsistent with Good Industry Practice or applicable Law. Instead, such provisions shall be reconciled under Section 7.2.4.

### **1.3 Conflicts, Ambiguities or Inconsistency in Concessionaire's Management Plans**

In the event of any conflict between the Concessionaire's Project Management Plan or O&M Management Plan and any of the Contract Documents, or if any provisions in Concessionaire's Project Management Plan or O&M Management Plan are in conflict, ambiguous or inconsistent, Concessionaire shall modify the Project Management Plan or O&M Management Plan, as applicable, to be consistent with the Contract Documents or cure the ambiguity or inconsistency in a manner satisfactory to Owner.

## **1.4 Reference Documents**

**1.4.1** Owner has provided the Reference Documents to Concessionaire. Reference Documents are not Contract Documents and may be relied upon by Concessionaire only to the extent that the Contract Documents incorporate specific provisions of the Reference Documents by reference or refer to the Reference Documents as a baseline for determining Relief Events. In all other respects, the Reference Documents are provided solely for the purposes of disclosure and, in the case of general industry and general governmental manuals and publications, of guidance regarding Good Industry Practice.

**1.4.2** Owner does not represent, warrant or guarantee the accuracy or completeness of the Reference Documents or the information contained in the Reference Documents or that such information is in conformity with the requirements of the Contract Documents, Governmental Approvals or Laws. However, Owner represents that it has not intentionally withheld material information in its possession relevant to conditions of the Site. Owner shall not be responsible or liable in any respect for any causes of action, claims or Losses by any Concessionaire-Related Entity by reason of any use of information, opinions or recommendations contained in, any conclusions Concessionaire may draw from, or any action or forbearance in reliance on, the Reference Documents, except to the extent that the Contract Documents incorporate specific provisions of the Reference Documents by reference or refer to the Reference Documents as a baseline for determining Relief Events.

**1.4.3** Concessionaire is obligated to conduct any and all studies, analyses, and investigations as it deems advisable to verify and supplement information in the Reference Documents. Any use of information in the Reference Documents in performance of the Work, without verification or supplement, is entirely at Concessionaire's own risk. To the extent Concessionaire or anyone on Concessionaire's behalf uses any of the information in Reference Documents in any way, such use is made on the basis that Concessionaire, not Owner, has approved and is responsible for said information.

**1.4.4** The Parties acknowledge and agree that general industry or general government manuals and publications that are part of the Reference Documents may be revised, changed, added to or replaced from time to time by the agencies or organizations that issue such manuals and publications. Owner shall have no obligation to notify Concessionaire regarding any such revisions, changes, additions or replacements, but Owner may notify Concessionaire regarding Changed D&C Standards under Sections 7.2.5 and 7.2.6. Concessionaire shall independently maintain awareness of such changes as they are published or made public.

**1.4.5** Where the Technical Provisions expressly require compliance with specified general industry or general government manuals and publications or portions thereof, then the manual, publication or portion thereof to be complied with is not considered a Reference Document and instead is considered to be incorporated by reference into the Technical Provisions.

**1.4.6** Nothing contained in this Section 1.4 is intended to diminish or to derogate from the rights of Concessionaire for compensation or time relief in connection with Relief Events under Article 15.

## ARTICLE 2. CONCESSION; TERM

### 2.1 Concession

In accordance with the Act and subject to the terms of the Contract Documents, Owner hereby grants to Concessionaire the exclusive right, and Concessionaire accepts the obligation and agrees, during the Term, to finance, develop, design, construct, equip, supply LRVs for, operate and maintain the Project, including performance of Renewal Work and handback of the Project at the end of the Term, and perform such other activities relating to the foregoing not specifically retained by Owner for the Project.

### 2.2 Right of Entry

Subject to Section 7.5, Concessionaire and Concessionaire-Related Entities shall have the right to enter onto Project ROW during the Term to carry out Concessionaire's obligations under this Agreement. After the Termination Date, Concessionaire and Concessionaire-Related Entities may enter onto Project ROW to perform post-termination obligations either based on the right of entry granted in Section 19.7.3 or on a separate right of entry provided by Owner in writing. Concessionaire shall comply with, and shall ensure that Concessionaire-Related Entities comply with, all agreements, easements, rights of entry, covenants, conditions, restrictions and other instruments under which Owner has received or will receive title or rights of entry or rights of access to said property.

In accordance with Section 7.5.4, Owner will provide reasonable assistance to Concessionaire in seeking approval for access to any parcel in advance of the date specified in the Property Acquisition Schedule (or, with respect to the properties listed therein, Exhibit 2, Section 7).

### 2.3 Title

**2.3.1** The Parties acknowledge and agree that:

- (a) Concessionaire is not the legal or equitable owner or lessee of the Project ROW or the Project improvements for any purpose;
- (b) Concessionaire's rights under this Agreement are derived solely from its status as an independent contractor under this Agreement, and not as tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property;
- (c) The payments to be received by Concessionaire under this Agreement are for services to be performed by Concessionaire, and are not payments in the nature of rent, fees with respect to real property, or purchase price of real property.

**2.3.2** Title to each LRV included in the D&C Work shall pass to Owner, free and clear of all liens or other charges of any kind or nature, upon payment by Owner to Concessionaire, under Section 13.1.1.1(d), which final payment shall be made following satisfactory completion of all acceptance testing for such LRV, as more fully described in Part 2C of the Technical Provisions. Title to each of the Option LRVs and the O&M Spare LRV shall pass upon delivery to Owner under ARTICLE 12 and Section 8.4.1, respectively. Title to all other materials, equipment, tools and supplies furnished under the Contract Documents for incorporation into the Project or that are required for operation or maintenance of the Project shall pass to Owner, free and clear of all liens or other charges of any kind or nature, upon the

earlier of (a) incorporation into the Project or, for items that will not be incorporated into the Project, delivery to the Site or (b) the date of payment by Owner to Concessionaire for such item, including payments in the form of Progress Payments, RSA Payments, payments for Change Orders and Availability Payments.

**2.3.3** Except for Concessionaire Intellectual Property, title to any Intellectual Property to the extent made, conceived, prepared or reduced to practice as part of the Work, incorporated into the Project, including any improvements, modifications, enhancements or derivative works to or of the Owner Intellectual Property shall vest in Owner at the earliest of creation, conception, preparation or reduction to practice.

**2.3.4** Concessionaire shall furnish or execute all necessary documents of title within 90 days of receiving a written request from Owner.

**2.3.5** Passage of title to Owner shall not affect Concessionaire's care, custody and control responsibilities. Except as provided in Section 2.3.6, Concessionaire shall be responsible for care, custody and control of all components of the Project, including all materials, equipment, tools and supplies described in Section 2.3.2, until the Termination Date.

**2.3.6** Concessionaire is responsible for care, custody and control of all elements of the Project (including the Third Party Work) that will be owned by third parties until acceptance of such elements by the relevant third party. As described in the Technical Provisions, during the O&M Period Concessionaire is also responsible for maintenance of certain improvements within the O&M Limits owned by third parties.

## **2.4 Term**

The Term ends 30 years after the earlier of the RSA Deadline and the date of issuance of the Certificate of Revenue Service Availability by the Independent Engineer, subject to (a) the right of the Parties to terminate this Agreement early in accordance with this Agreement or otherwise at law and (b) the effect of Extended Delays on the Term under Section 15.9.2.5.

## **2.5 Fare Setting**

Owner retains the right and discretion to set and adjust fares and all other charges payable by Users.

## **2.6 Limitation on Concessionaire's Rights**

Notwithstanding any delegation of rights under any Utility Agreement or anything else to the contrary in the Contract Documents, Concessionaire has no power or authority to make any commitments on Owner's behalf or to execute agreements in the name of or on behalf of Owner. Concessionaire shall not enter into any agreement with any Governmental Entity, Utility Owner, property owner or other third party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work that in any way purports to obligate Owner, or states or implies that Owner has an obligation, to the third party to carry out any installation, design, construction, maintenance, repair, operation, control, supervision, regulation or other activity after the end of the Term, unless Owner otherwise approves.



## **ARTICLE 3. FINANCIAL MODEL AND FINANCIAL MODEL UPDATES**

### **3.1 Financial Model; Financial Model Updates; Financial Modeling Data**

#### **3.1.1 Receipt, Examination and Inventory**

**3.1.1.1** Owner acknowledges receipt of the Base Case Financial Model and Financial Modeling Data included in the Proposal.

**3.1.1.2** The Parties shall, within 10 business days after the Effective Date, diligently examine and inventory all the Financial Modeling Data to verify that the Financial Modeling Data is authentic, legible and in accordance with the terms of this Section 3.1. A similar examination and inventory shall occur for the Financial Model and the Financial Modeling Data at Financial Close and subsequent updates to the Financial Model and Financial Modeling Data, within 10 business days after delivery.

**3.1.1.3** Owner's participation in any examination or inventory, whether before or after the Effective Date:

(a) Does not include review, nor constitute approval, of proposed construction methods, estimating assumptions, or demonstrate compliance with the Contract Documents; and

(b) Does not alter any terms of the Contract Documents.

**3.1.1.4** Upon completion of said examination and inventory, Concessionaire shall provide a written certification stating:

(a) With respect to the materials initially submitted to Owner, that such materials constitute the Base Case Financial Model and all the Financial Modeling Data included in or used in preparation of the Proposal;

(b) With respect to the materials submitted to Owner at the Effective Date and at Financial Close, that such materials constitute the Financial Model and all the Financial Modeling Data considered in connection with the Initial Project Debt; and

(c) With respect to all materials, that the individual executing the certification has personally examined the contents of the container and that the Base Case Financial Model, Financial Model or Financial Model Update, as applicable, and the Financial Modeling Data are complete and in accordance with the terms of the Contract Documents.

#### **3.1.2 Updates of Financial Model and Financial Modeling Data**

**3.1.2.1** Concessionaire shall run new projections and calculations under the Financial Model Formulas to produce a Financial Model Update in accordance with this Section 3.1.2 as follows:

- (a) In connection with Financial Close, as provided in Section 4.4.8;
- (b) With respect to a Relief Event for which Owner owes a Compensation Amount;
- (c) With respect to a Relief Event or Force Majeure Event resulting in an extension of the Term;
- (d) With respect to an event for which Owner is entitled to compensation under Section 17.2;
- (e) With respect to a Refinancing with Refinancing Gain in which Owner participates; and
- (f) With respect to any other event which requires the Contract Documents to be amended, if the Parties agree that the amendment has a material effect on the Financial Model.

**3.1.2.2** If an update is required under Section 3.1.2.1, Concessionaire shall:

- (a) Deliver the Financial Model Update and related Financial Modeling Data in accordance with Section 3.1.4, as and when prepared;
- (b) Participate in the examination and inventory under Section 3.1.1.2; and
- (c) Provide the certifications required under Section 3.1.1.4.

**3.1.2.3** Financial Model Updates under Section 3.1.2.1(a) require the approval of the Parties.

**3.1.3** For Financial Model Updates under Section 3.1.2.1(b), 3.1.2.1(c), 3.1.2.1(d) or 3.1.2.1(e), Owner may challenge the validity, accuracy or reasonableness of any Financial Model Update or the related updated Financial Modeling Data by submitting the issue to the Financial DRB. Any such challenge will be subject to the Dispute Resolution Procedures if the Parties do not agree to accept the Financial DRB's recommendation. Owner may not make any challenge based solely on a belief that future changes in interest rates or credit spreads may be favorable to Owner. In the event of a challenge, the immediately preceding Financial Model Update that has not been challenged (or, if there has been no unchallenged Financial Model Update, the Financial Model) shall remain in effect pending the outcome of the challenge or until a new Financial Model Update is issued and not challenged.

### **3.1.4 Form of Financial Model, Financial Model Updates and Financial Modeling Data**

Concessionaire shall deliver the Financial Model, Financial Model Updates and Financial Modeling Data both as a paper copy and on electronic storage media with enabled accounting formulas, such as Excel™ software, in a sealed container, clearly marked with Concessionaire's name, date of submittal, Project contract number and the words, "Financial Model and Financial Modeling Data to Be Held by MDOT/MTA".

## **3.2 Model Audits**

**3.2.1** Within two business days after Financial Close, Concessionaire shall deliver to Owner an update of the audit and opinion obtained from the independent model auditor that shall (a) be co-addressed to Owner, (b) expressly identify Owner as an entity entitled to rely thereon, and (c) take into account only the change in the Monthly Availability Payments and differences between the financial terms assumed in the Financial Model and the financial terms obtained through negotiations with the Lender(s) and/or Lead Underwriter as described in Section 4.4.2, as provided for in Section 4.4.7, and (d) take into account the final terms of the Initial Funding Agreements and Initial Security Documents.

**3.2.2** Owner may require that Financial Model Updates be audited by an independent audit firm satisfactory to Owner before the Financial Model Update becomes effective under this Agreement. The Parties shall initially bear equally the cost of such an audit. If the audit results in a material correction to the Financial Model, Concessionaire shall be responsible for the audit costs and shall reimburse Owner for reasonable amounts advanced by Owner. If the audit does not result in a material correction to the Financial Model, Owner shall be responsible for the audit costs and shall reimburse Concessionaire for reasonable amounts advanced by Concessionaire. Notwithstanding the foregoing, if the audit of the Financial Model Update is the same one required by the Lenders, Owner shall have no liability for the cost of the audit.

**3.2.3** Additional audit rights apply under Section 23.2 and Exhibit 16.

## **3.3 Financial Model Formulas**

In no event shall the Financial Model Formulas be changed except with the prior approval of both Parties, each in its discretion.

## **3.4 Additional Provisions**

Refer to Article 23 for additional provisions relevant to the Financial Model and accompanying materials.

## **ARTICLE 4. CONCESSIONAIRE FINANCING; REFINANCING; EQUITY**

### **4.1 Concessionaire Right and Responsibility to Finance**

**4.1.1** Concessionaire may grant security interests in or assign the entire Concessionaire's Interest (but not a portion of such interest) to Lenders for purposes of securing the Project Debt, subject to the terms of the Contract Documents. Concessionaire shall not pledge or encumber the Concessionaire's Interest, or any portion of such interest, to secure any indebtedness of any Person other than (a) Concessionaire, (b) any special purpose entity that owns Concessionaire but no other assets and has purposes and powers limited to the Project and Work, (c) a special purpose entity subsidiary owned by either Concessionaire or an entity described in Section 4.1.1(b), or (d) the PABs Issuer.

**4.1.2** Concessionaire shall obtain and repay, at its own risk and without recourse to Owner, all financing obtained by Concessionaire relating to the Project, including all financing needed to pay for costs of the D&C Work not covered by scheduled Owner payments. Concessionaire shall take all appropriate action to obtain the necessary financing as described in the Financial Proposal on or before the Financial Close Deadline.

**4.1.3** Subject to Section 4.4.6, if Concessionaire's Financial Proposal includes PABs, Concessionaire bears all risks relating to a delay in receiving the necessary approvals and for compliance with all Federal Requirements. At Concessionaire's written request, Owner will use reasonable efforts to assist Concessionaire's efforts to obtain necessary federal approvals for PABs, including a modification of the PABs allocation obtained by Owner for the Project to increase the principal amount of such allocation.

**4.1.4** Subject to Section 4.4.6, if Concessionaire's Financial Proposal includes TIFIA financing:

(a) Concessionaire bears all risks relating to such TIFIA financing including any delay in receiving the necessary approvals, compliance with all TIFIA requirements, satisfying any conditions placed on any TIFIA financing by USDOT and complying with any other requirements of State and federal tax laws, if applicable;

(b) Concessionaire will be responsible for closing TIFIA financing (including any TIFIA Loan); and

(c) Owner will bear the risk of, and be entitled to the benefit of, changes in the TIFIA Structuring Assumptions to the extent that the TIFIA Joint Program Office requires changes after the Proposal Date that have adverse or beneficial effects on the Financial Proposal. Furthermore, notwithstanding the provisions of this Section 4.1.4, Owner will not bear the risk of changes in the TIFIA Structuring Assumptions to the extent such changes are required by a Rating Agency to obtain an investment grade rating or by any Person providing financing (excluding the TIFIA Loan) to obtain such financing.

**4.1.5** If Concessionaire's Financial Proposal includes PABs:

(a) Concessionaire bears all risks relating to, and shall obtain ratings, bond counsel opinions and credit enhancement, as well as satisfying any conditions placed on the use of the allocation by USDOT or complying with any other requirements of state and federal tax laws, if applicable; and

(b) Owner will:

(i) Enter into a continuing disclosure agreement with respect to the PABs in substantially the form attached as Exhibit 5F;

(ii) Authorize Concessionaire to include, in the preliminary and final official statement for the PABs, the "Financial and Economic Statement for the State of Maryland" in the form posted on the "Electronic Municipal Market Access" ("EMMA") website at the time of the publication of such offering materials;

(iii) Provide the Owner Certificate Regarding PABs Official Statement with respect to such official statement in substantially the form attached as Exhibit 5E; and

(iv) Provide an opinion of the Attorney General of the State of Maryland that the portion of the "Financial and Economic Statement for the State of Maryland" entitled "Litigation" does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made in Exhibit 5E, in light of the circumstances under which they were made, not misleading.

**4.1.6** Except as otherwise provided in Section 4.4.7, Concessionaire bears all risk of any changes in the interest rate, payment provisions, collateral requirements, financing charges, breakage charges or the other terms of its financing.

**4.1.7** Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Concessionaire shall remain liable to Owner for the payment of all sums owing to Owner under this Agreement and the performance and observance of all of Concessionaire's covenants and obligations under the Contract Documents.

## **4.2 Owner Cooperation; No Owner Liability**

### **4.2.1 Implementation of the Financial Proposal**

(a) Owner will reasonably assist Concessionaire in obtaining approvals for issuance of debt by other Governmental Entities required by the Financial Proposal, including by providing documents and information required to comply with any requirements under applicable Laws in connection with such issuance or approvals. Notwithstanding the foregoing, but subject to Section 19.4.3, Owner does not bear any risk for the failure of Concessionaire to obtain funding from these potential sources, and such failure, if any, shall not diminish Concessionaire's obligations under this Agreement.

(b) If the Financial Proposal includes a TIFIA Loan and USDOT requires execution of the "New Starts Full Funding Grant Agreement" as a requirement for draw on such TIFIA Loan, then, without limiting Concessionaire's rights under Section 19.4.3, Owner will execute, and use commercially reasonable efforts to cause USDOT to execute, such "New Starts Full Funding Grant Agreement" prior to May 17, 2018.

**4.2.2** Except in the case of PABs issued for the Project:

(a) None of the State, Owner or any other agency, instrumentality or political subdivision of the State, and no member, director, officer, employee, agent or representative of any of them, shall have any obligation to pay: (i) debt service or principal sums on any Project Debt; (ii) obligations described in Section 25.2.4 issued or incurred by any Person in connection with this Agreement or the Project; (iii) any interest accrued on the amounts in items (i) and (ii); or (iv) any other sum secured by or accruing under any Funding Agreement or Security Document; and

(b) Owner shall have no obligation to join in, execute or guarantee any note or other evidence of indebtedness incurred in connection with the Project or the Contract Documents, any other Funding Agreement or any Security Document.

**4.2.3** In the case of PABs issued for the Project, the PABs are special and limited obligations of the PABs Issuer, payable solely from and secured exclusively by the revenues and other amounts pledged under the relevant indenture, including the payments to be made by Concessionaire under the loan agreement entered into between the PABs Issuer and Concessionaire in connection with the loan of the proceeds from the sale of the PABs by the PABs Issuer to Concessionaire and are not payable from taxes or from appropriations made by the Maryland General Assembly.

**4.2.4** PABs do not constitute an indebtedness, or a pledge of the faith and credit, of Owner, the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation. The obligation of the PABs Issuer to pay the amount of the principal of, premium, if any, and interest on the PABs does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation. The holders or owners of the PABs have, individually or collectively, no right to have taxes levied or compel appropriations by the Maryland General Assembly or any political subdivision of the State for the payment of any or all of the amount of such principal of, premium, if any, and interest on the PABs.

**4.2.5** Except in the case of a default under a Funding Agreement by the PABs Issuer with respect to its express obligations in such Funding Agreement with respect to the PABs and except for a violation by Owner of its express obligations to Lenders in any Direct Agreement, no Lender is entitled to seek any damages or other amounts from Owner or any other agency, instrumentality or political subdivision of the State, whether for Project Debt or any other amount.

**4.2.6** Section 4.2.5 does not affect Owner's liability to Concessionaire under Article 19 and Exhibit 13B for Termination Compensation that is measured in whole or in part by reference to outstanding Project Debt.

**4.2.7** Owner shall have no obligation to any Lender under the Contract Documents, except to the extent of any express obligations of Owner to Lenders under any Direct Agreement or in any other instrument or agreement signed by Owner in favor of such Lender or Collateral Agent. This Section 4.2.7 does not preclude Lender enforcement of this Agreement against Owner where the Lender has succeeded to the Concessionaire's Interest, whether by way of assignment or subrogation.

### **4.3 Mandatory Terms of Project Debt, Funding Agreements and Security Documents**

Project Debt, Funding Agreements and Security Documents (including any amendments or supplements), shall comply with the following:

**4.3.1** The Security Documents may only secure Project Debt if the funds advanced are obligated to be used exclusively for the purposes of:

- (a) Developing, designing, constructing, supplying and equipping the Project (including LRVs), and operating and maintaining the Project, including making payments to Utility Owners, or performing other Work;
- (b) Paying interest and principal on Project Debt;
- (c) Paying reasonable development fees to Concessionaire-Related Entities for services related to the Project;
- (d) Paying fees and premiums to any Lender of the Project Debt or such Lender's agents;
- (e) Paying costs and fees in connection with the closing and administering of any permitted Project Debt;
- (f) Making payments due under the Contract Documents to Owner or any other Person;
- (g) Making payment of Taxes;
- (h) Funding reserves required under this Agreement, Funding Agreements or Security Documents, applicable securities laws, or Environmental Laws;
- (i) Making permitted Distributions; and
- (j) Refinancing any Project Debt under Sections 4.3.1(a) through 4.3.1(i).

**4.3.2** All rights concerning Concessionaire's Interest acquired by Lenders under any Funding Agreement or Security Document (e.g., foreclosure and step-in rights) shall expressly state that, upon exercise of such rights, the Lender will be acting as Concessionaire under the Direct Agreement, in its own capacity or by and through the Collateral Agent, and thus be subject to the provisions of the Contract Documents. Project Debt (excluding Subordinate Debt) must be issued and held only by Institutional Lenders determined at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that (a) qualified investors other than Institutional Lenders may acquire and hold interests in Project Debt, but only if an Institutional Lender acts as Collateral Agent for such Project Debt and (b) PABs may be issued, acquired and held by parties other than Institutional Lenders but only if an Institutional Lender acts as indenture trustee for the PABs.

**4.3.3** The Security Documents collectively must encumber the entire Concessionaire's Interest, but this shall not affect Concessionaire's ability to enter into Subordinate Security Documents as permitted by the Funding Agreements or equipment lease financing.

**4.3.4** No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against Concessionaire's Interest shall extend to or affect the interest of Owner in (a) the Project (including the LRVs), (b) the Project ROW or (c) the Contract Documents.

**4.3.5** Each note, bond or other negotiable or non-negotiable instrument evidencing Project Debt or any other obligations owed to any Person described in Section 4.3.2 in connection with the Project must include, or refer to a document controlling or relating to any such note, bond or other such instrument that includes, a conspicuous recital and provisions:

(a) in the case of Project Debt other than PABs, stating that payment of the principal of and interest on such Project Debt is a valid claim only as against the obligor and the security pledged by Concessionaire or the obligor is not an obligation, moral or otherwise, of the State, Owner, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power, and no assets, of the State, Owner, or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon; and

(b) with respect to PABs, stating that (i) the PABs are special and limited obligations of the PABs Issuer, payable solely from and secured exclusively by the revenues and other amounts pledged under the relevant indenture, including the payments to be made by Concessionaire under the loan agreement entered into between the PABs Issuer and Concessionaire in connection with the loan of the proceeds from the sale of the PABs by the PABs Issuer to Concessionaire and are not payable from taxes or appropriations made by the General Assembly, (ii) the PABs do not constitute an indebtedness, or a pledge of the faith and credit, of Owner, the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation, (iii) the PABs are limited, special obligations of the PABs Issuer payable solely from amounts paid by the Concessionaire pursuant to the relevant Funding Agreement, and (iv) the PABs do not constitute a charge against the faith, credit or taxing power of the State or any political subdivision of the State within the meaning or application of any constitutional provision or limitation.

**4.3.6** Each Funding Agreement and Security Document subject to any Direct Agreement shall require the Collateral Agent to deliver any hard copy written notice it gives to Concessionaire under any Funding Agreement or Security Document relating to any "Event of Default" (or its equivalent, as defined in any Funding Agreement or Security Document that is subject to any Direct Agreement) to Owner concurrently with delivery of such notice to Concessionaire. Each Funding Agreement and Security Document, in either case not subject to any Direct Agreement, shall require the Lender to deliver a copy of any default-related notice to Owner concurrently with delivery of such notice to Concessionaire. Each Funding Agreement and Security Document that provides Lender remedies for default by Concessionaire under such Funding Agreement or Security Document, shall require the Collateral Agent to deliver notice concurrently to Owner, Concessionaire and any other Person, for every notice of election or enforcement of remedies under such Funding Agreement or Security Document, including an election to sell or foreclose, notice of sale or foreclosure or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Funding Agreement or Security Document.

**4.3.7** Each relevant Funding Agreement and Security Document that may be in effect during any part of the period that the Handback Requirements apply shall expressly



permit, without condition or qualification except as allowed under this Section 4.3.7, Concessionaire to (a) issue additional Project Debt, secured by Concessionaire's Interest, for the added limited purposes of funding work in accordance with the Handback Requirements and Safety Compliance under Section 10.4 and (b) otherwise comply with its obligations in the Contract Documents regarding Renewal Work, the Asset Management Plan, Safety Compliance and the Handback Requirements. For the avoidance of doubt:

(a) Lenders then holding Project Debt may limit additional Project Debt if other funds are then, in Owner's determination, readily available to Concessionaire for the purpose of funding the Work;

(b) No Lender then holding Project Debt is required to grant senior or *pari passu* lien or payment status to any such additional Project Debt;

(c) The Lenders then holding Project Debt may impose reasonable and customary requirements as to performance and supervision of the Work, provided that such requirements may not be more onerous than the requirements in their respective existing Funding Agreements or Security Documents; and

(d) No Funding Agreement for such additional Project Debt may grant to any Lender the right to apply monies in any account funded by other Project Debt towards payment of any Handback Requirements costs. Notwithstanding the preceding sentence, following foreclosure or transfer in lieu of foreclosure, any Lender or Substituted Entity that succeeds to the entire Concessionaire's Interest in accordance with the Direct Agreement may use monies in any account funded to pay Handback Requirements costs, consistent with restrictions in any Direct Agreement.

**4.3.8** Each Funding Agreement and Security Document shall expressly state that:

(a) The Lender shall not name or join Owner, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative of any of them in any legal proceeding seeking collection of the Project Debt or other obligations secured thereby or the foreclosure or other enforcement of the Funding Agreement or Security Document, except, in each case, (i) to the extent that an agency, instrumentality or political subdivision of the State is being named in its capacity as the conduit issuer of PABs under Section 10-101 *et seq.* of the Economic Development Article of the Annotated Code of Maryland and (ii) as such language may be modified in the Funding Agreements or the Security Documents approved by Owner as provided in any Direct Agreement.

(b) The Lender shall not seek any damages or other amounts from Owner, any other agency, instrumentality or political subdivision of the State, or any elected official, member, director, officer, employee, agent or representative of any of them, whether for Project Debt or any other amount, except (i) damages from Owner only for a violation by Owner of its express obligations to Lenders in any Direct Agreement, if applicable, and (ii) damages and other amounts due from Owner under this Agreement where the Lender has succeeded to the rights and interests of Concessionaire under the Contract Documents, whether by way of assignment or subrogation, or (iii) to the extent such damages or other amounts are being sought from an agency, instrumentality or political subdivision of the State in its capacity as the conduit issuer of PABs under Section 10-101 *et seq.* of the Economic Development Article of the Annotated Code of Maryland. Owner shall be entitled to take reasonable steps to

ensure Concessionaire's compliance with this clause (b), including contacting the Lender before execution of the Funding Agreement and Security Document.

(c) The Lender and the Collateral Agent shall respond to any request from Owner or Concessionaire for consent to a modification or amendment of any of the Contract Documents within a reasonable period of time.

The foregoing does not affect Owner's liability to Concessionaire under Article 19 and Exhibit 13B for Termination Compensation that is measured in whole or in part by reference to outstanding Project Debt.

**4.3.9** Each Security Document shall expressly state that the Collateral Agent shall have the right to take all actions, and shall perform all obligations, assigned to Collateral Agent under any Direct Agreement.

#### **4.4 Financial Close**

##### **4.4.1 Financial Close Security**

Concurrently with execution of this Agreement, Concessionaire shall deliver, or has delivered, to Owner the Financial Close Security, a copy of which is in Exhibit 6A.

##### **4.4.2 Schedule for Financial Close; Payment Adjustments**

**4.4.2.1** Concessionaire shall provide notice (the "Concessionaire FC Notice") to Owner regarding the date scheduled for Financial Close at least 45 days before the scheduled date for Financial Close, which scheduled date may not be any earlier than 150 days after the Proposal Date unless otherwise agreed in writing by Owner before delivery of the Concessionaire FC Notice. Owner may require Concessionaire to defer Financial Close in accordance with a notice (the "Owner FC Notice") delivered at least 21 days before the date identified for Financial Close in the Concessionaire FC Notice. The Owner FC Notice will specify a revised date for Financial Close, but (a) may not require deferral of Financial Close beyond 365 days after the Proposal Date and (b) except as otherwise provided in Section 4.4.2.2, Concessionaire's inability to achieve Financial Close by the Financial Close Deadline in effect on the date of the Concessionaire FC Notice due solely to such deferral shall be excused under Section 4.4.6.9.

**4.4.2.2** Concessionaire shall not be excused from achieving Financial Close by the Financial Close Deadline in effect on the date of the Concessionaire FC Notice and shall have no right to additional compensation due to an extension under Section 4.4.2.1 if (a) the date identified in the Owner FC Notice is seven or more days before such Financial Close Deadline in effect on the Concessionaire FC Notice or (b) Concessionaire is otherwise able to close before expiration of the commitments in the Financial Proposal, even if the close occurs after such Financial Close Deadline.

**4.4.2.3** The following provisions shall apply if achievement of Financial Close is excused under Section 4.4.6.9:

(i) the Financial Model and Availability Payments will be adjusted at Financial Close to account for Breakage Costs and commercially reasonable work fees, if any, payable to the Lenders who provided the commitments in the Financial Proposal and did not renew or extend such commitments after the expiration of such commitments before the new date for

Financial Close, provided that the total amount of such Breakage Costs and work fees for each such commitment shall not exceed 1% of the principal amount of the commitment; and

(ii) the Financial Model and amount of the Availability Payment will be adjusted at Financial Close to account for the increase in Concessionaire's reasonable and actual costs (without markup or profit) to achieve Financial Close and satisfactorily documented to the Owner, directly attributable to the delay in Financial Close, including external and internal costs but excluding costs covered under item (i) above, provided that such costs shall not exceed \$3,000,000.

**4.4.2.4** Except as otherwise provided under Section 4.4.2.2, if the date of Financial Close occurs more than 180 days after the Proposal Date due to a delay in Financial Close excused under Section 4.4.6 or an Owner FC Notice under Section 4.4.2.1, then the value of the D&C Work excluding Allowances and incentives (that is, the amounts shown in Exhibit 4A, Part A, items D, G and J) shall be adjusted based on the percentage change between (a) the average of the previous 12 months of monthly index values determined by reference to the most recently published Escalation Index 1 monthly index value as of 180 days after the Proposal Date, and (b) the average of the previous 12 months of monthly index values determined by reference to the most recently published Escalation Index 1 monthly index value as of seven business days before the date on which Financial Close is achieved. Notwithstanding the foregoing, no escalation shall be allowed with respect to any portion of the delay in Financial Close that was caused by the negligence, recklessness, willful misconduct, fault, breach of contract, fraud, or breach by any of Concessionaire-Related Entities of the requirements of the Contract Documents, or violation of Law or a Governmental Approval by any Concessionaire-Related Entity. The adjustment under this Section 4.4.2.4 will be accounted for through modifications to the Schedule of Values and a corresponding change in Owner's payments under Section 13.1.1 and/or an adjustment to the Financial Model and corresponding adjustment to Availability Payments.

**4.4.2.5** The payment adjustments under Sections 4.4.2.3 and 4.4.2.4, along with the provisions regarding changes in interest rates and/or credit spreads under Section 4.4.7, are the sole and exclusive amount payable to Concessionaire as compensation for delay in Financial Close excused under Section 4.4.6.

#### **4.4.3 Unconditional Obligation and Compliance with PABs Issuer MOU**

**4.4.3.1** Except as excused under Section 4.4.6, or as provided in Section 4.4.2.3, (a) Concessionaire is unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents and to complete closing on or before the Financial Close Deadline of all of the Initial Project Debt (including any sub-debt), and (b) the Initial Project Debt must be sufficient to fund all capital requirements associated with the D&C Work in the Financial Model, when combined with all direct payments for D&C Work to be made by Owner under this Agreement and all unconditional equity commitments by the Equity Members (which equity commitments must be acceptable to the Collateral Agent).

**4.4.3.2** If Concessionaire's Financial Proposal includes PABs, Concessionaire shall perform the obligations delegated by Owner to Concessionaire, as set forth in Article 1 of the PABs Issuer MOU, and the Concessionaire shall cause the Funding Agreements and Security Documents to comply with the requirements, in said Article.

#### **4.4.4 Conditions to Financial Close**

Except to the extent expressly permitted in writing by Owner, Financial Close shall not be deemed to occur until all of the following conditions have been satisfied:

**4.4.4.1** No less than 30 days before the scheduled date for Financial Close, Concessionaire has delivered to Owner for review and comment drafts of (a) the Initial Funding Agreements and Initial Security Documents containing the proposed commercial terms relating to the Initial Project Debt and (b) if not previously provided, the Design-Build Contract, Vehicle Supply Contract and any other Key Contracts that are ready for execution;

**4.4.4.2** Concessionaire has delivered to Owner a true and complete executed copy of each Direct Agreement (if any) requested by Lenders, each substantially in form and substance specified under Exhibit 5B;

**4.4.4.3** All applicable parties have entered into and delivered the Initial Funding Agreements, Initial Security Documents and Key Contracts (except to the extent that such documents are not required to be executed on the Financial Close date) meeting the requirements of Section 4.3, and Concessionaire has delivered to Owner true and complete copies of the executed Initial Funding Agreements, Initial Security Documents (other than minor ancillary documents customarily delivered after Financial Close and containing no new material commercial terms) and Key Contracts; and

**4.4.4.4** Concessionaire has delivered to Owner

(a) updates to the legal opinions provided by Concessionaire to Owner prior to Commercial Close regarding (i) the existence and good standing of the Concessionaire, (ii) due execution, authorization and delivery of the Agreement by Concessionaire, and (iii) enforceability of the Agreement against Concessionaire;

(b) a written opinion or opinions regarding (i) the existence and good standing of the parties to any Direct Agreement (other than Owner), (ii) due execution, authorization and delivery of the Direct Agreement by the parties thereto (other than Owner), and (iii) enforceability of the Direct Agreement against Concessionaire; and

(c) written opinions and/or, with respect to clauses (i) and (ii)(A), duly authorized officer's certificate(s), (i) regarding the existence and good standing of entity that is a party to each of the Key Contracts and each entity acting as guarantor under a guaranty subject to Section 11.4 and (ii) that each of the Key Contracts and each guaranty subject to Section 11.4: (A) has been duly executed, authorized and delivered by such entities, (B) is enforceable against such entities, and (C) does not conflict with (1) any agreement to which any such entity is a party, (2) any orders, judgments or decrees by which any such entity is bound, (3) any organizational documents of such entities or (4) any statute, rule or regulation applicable to such entities that are valid and in effect as of the date of Financial Close.

All opinions shall be in form and substance reasonably acceptable to Owner. The opinions described in clause (c) may be provided by naming Owner as an addressee to any opinion(s) delivered to Lenders and/or Collateral Agent in connection with Financial Close, giving Owner and its permitted assigns express permission to rely upon such opinion(s).

#### **4.4.5 Notice of Financial Close**

Concessionaire shall deliver to Owner notice of Concessionaire's satisfaction of the conditions in Section 4.4.4 within one business day after all such conditions are satisfied.

#### **4.4.6 Excused Obligation to Achieve Financial Close by the Financial Close Deadline**

Concessionaire's obligation to achieve Financial Close by the Financial Close Deadline is excused only if such failure is directly attributable to one of the following (in which case the Parties shall proceed under Section 4.4.12):

**4.4.6.1** If Concessionaire's Financial Proposal includes PABs, the withdrawal, rescission or reduction by either USDOT or PABs Issuer of the principal amount of the PABs allocation obtained by Owner before the Proposal Date below the principal amount of PABs as shown in Concessionaire's Financial Proposal and the Financial Model, due to no negligence, recklessness, willful misconduct, fault, breach of contract, fraud, or breach by any of Concessionaire-Related Entities of the requirements of the Contract Documents, or violation of Law or a Governmental Approval by any Concessionaire-Related Entity relating to such allocation;

**4.4.6.2** If Concessionaire's Financial Proposal includes PABs, the refusal or unreasonable delay of the PABs Issuer to comply with the PABs Issuer's obligations set forth in Article 1 of the PABs Issuer MOU and to issue bonds in the amount identified by Concessionaire's underwriters in the Initial Funding Agreements, provided that such refusal or delay is not due to any negligence, recklessness, willful misconduct, fault, breach of contract, fraud or breach by any of Concessionaire-Related Entities of the requirements of the Contract Documents, or violation of Law or a Governmental Approval by any Concessionaire-Related Entity, including Concessionaire's failure to comply with all obligations and requirements that it is obligated to comply with under Article 1 of the PABs Issuer MOU. Delay by the PABs Issuer shall not be considered unreasonable if the Concessionaire's financing schedule fails to provide normal and customary time periods for the PABs Issuer to carry out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds;

**4.4.6.3** If Concessionaire's Financial Proposal includes PABs:

(a) the refusal of counsel to the PABs Issuer to allow closing of the PABs if the bond counsel is ready to give an unqualified opinion regarding both the validity of the issuance of the PABs and the tax exempt status of interest paid on the PABs, unless the basis for such refusal is that it would be unreasonable for bond counsel to deliver the opinion; or

(b) the delay of the PABs Issuer's counsel in authorizing closing of the PABs beyond the date specified in the Concessionaire FC Notice (or the Owner FC Notice, if applicable), except to the extent that the financing schedule established by Concessionaire does not provide the PABs Issuer's counsel normal and customary time periods for carrying out the ordinary and necessary functions of such counsel to a conduit issuer of tax-exempt bonds;

**4.4.6.4** If Concessionaire's Financial Proposal includes PABs, Owner fails to timely provide both (a) a certificate substantially in the Form of Certificate regarding PABs Official Statement (Exhibit 5E) and (b) an executed Continuing Disclosure Agreement substantially in the form of Exhibit 5F;

**4.4.6.5** If Concessionaire's Financial Proposal includes a TIFIA Loan, either (a) a TIFIA Event occurs, or (b) in the opinion of Owner following consultation with Concessionaire a TIFIA Event is likely to occur;

**4.4.6.6** If Concessionaire's Financial Proposal includes a TIFIA Loan, Owner fails to (a) execute the "New Starts Full Funding Grant Agreement" and USDOT requires execution of the "New Starts Full Funding Grant Agreement" as a requirement for Financial Close on such TIFIA Loan, (b) provide evidence to USDOT of eligible project costs previously incurred by Owner meeting the requirements of 23 USC §§ 134 & 135, et seq.; or (c) include the Project in State and metropolitan transportation improvement plans (all as required in the TIFIA Term Sheet);

**4.4.6.7** Owner fails to timely deliver to Concessionaire (a) a certificate, substantially in the form of Exhibit 5D and (b) a letter from the Maryland Office of the Attorney General, substantially in the form attached as Exhibit 5I, addressed to Concessionaire and the Lenders, and incorporating necessary modifications acceptable to Owner;

**4.4.6.8** The occurrence of a Severe Market Disruption that directly causes a delay in the financing or that constitutes a basis for rescission by any Lender of its original, or as-modified, commitments in the Financial Proposal or otherwise excuses performance under, such commitments under their terms; provided that Concessionaire has exercised good faith efforts to prevent a delay or any such rescission or excused performance by such Lenders; or

**4.4.6.9** By an Owner FC Notice, Owner defers Financial Close to a date later than 173 days after the Proposal Date and as a result Concessionaire is unable to close on or before the deferred date due to expiration of commitments in the Financial Proposal under their terms, provided that Concessionaire has undertaken commercially reasonable efforts to extend or renew such commitments before expiration but has been unable to do so.

#### **4.4.7 Changes in Interest Rates and Credit Spreads**

Subject to Owner's rights to terminate under Section 19.6.1, Owner will bear the risk and have the benefit of the following:

**4.4.7.1** With respect to the Initial Project Debt, 100% of the impact (either positive or negative) on the Monthly Availability Payment of changes in the Benchmark Interest Rates between the Proposal Interest Rates and the relevant Financial Close Interest Rates. The Parties shall adjust the Financial Model at Financial Close to reflect differences between the Proposal Interest Rates and the Financial Close Interest Rates, any changes in the TIFIA Structuring Assumptions allowed under Section 4.1.4(c) and any revisions approved by the Parties but not any potential errors identified as part of the updated audit opinion provided under Section 3.2.2.

**4.4.7.2** 85% of the impact (either positive or negative) on the Monthly Availability Payment of the differences between the Proposal Credit Spread(s) for any bond debt instrument (whether PABs or taxable bonds) and the Financial Close Credit Spread(s) for the same debt instrument as obtained at Financial Close or the date of the execution of the bond purchase agreement relating to the purchase and sale of the PABs or taxable bonds. Following expiration of the commitments, as they may have been extended, renewed or renegotiated under this Section 4.4, Owner bears 100% of the impact described in the preceding sentence and 100% of the impact on the other components of Initial Project Debt, including bank facilities.

Except for any adjustments that may be made under Section 4.4.12, Owner will bear no risk (and have no benefit) with regard to differences in Concessionaire's costs relating to credit spreads, fees or hedge credit charges assessed for Project Debt incurred through a bank loan.

#### **4.4.8 Financial Model Update**

The Parties will use the Financial Model to calculate the change under Section 4.4.7, positive or negative, in the Monthly Availability Payment. The Parties shall make such calculation and produce the Financial Model and Equity IRR at Financial Close as follows:

**4.4.8.1** The Financial Modeling Data will be updated with the Base Interest Rates and the Credit Spread(s) as adjusted in Section 4.4.7. The Financial Model constraints will be updated with the revised TIFIA Structuring Assumptions, if any, allowed under Section 4.1.4(c).

**4.4.8.2** The Monthly Availability Payment and, if necessary, the debt-to-equity ratio will be adjusted in the Financial Model to restore both the Equity IRR and the Debt Service Coverage Ratio to the same levels as in the Base Case Financial Model if the Equity IRR and the Debt Service Coverage Ratio have changed as a result of any changes to (a) the Base Interest Rate and Credit Spread under Section 4.4.7, and/or (b) the TIFIA Structuring Assumptions under Section 4.1.4(c). Any change in the total debt amount resulting from a change in the debt-to-equity ratio will be allocated to the TIFIA Loan amount, unless this amount is constrained by the terms of the TIFIA Term Sheet or the constraints described in Exhibit 10 (except that the Financial Close date in the Base Case Financial Model shall be adjusted consistent with the requirements of this Section 4.4.8.2).

**4.4.8.3** The foregoing procedure to adjust the Financial Model is detailed in the instructions included in Exhibit 10. Such procedure shall be performed on Concessionaire's audited Financial Model.

**4.4.8.4** The as-adjusted Financial Model shall constitute a Financial Model Update, and the resulting internal rate of return on equity invested shall be the Equity IRR as of the date of Financial Close.

#### **4.4.9 Modification of Agreement**

The Parties shall prepare and execute an amendment to this Agreement updating Exhibit 5A at Financial Close to reflect changes arising from the process set out in Section 4.4.8.

#### **4.4.10 Return of Financial Close Security**

Within two business days after the date of Financial Close, Owner will return to Concessionaire the Financial Close Security.

#### **4.4.11 Delivery of Documents**

Concessionaire shall deliver copies of any minor ancillary documents customarily delivered (e.g., UCC financing statements) to Owner within 30 days after the date of Financial Close.

#### **4.4.12 Excused Delay in Financial Close**

The following provisions apply if delay in Financial Close is excused under Section 4.4.6:

##### **4.4.12.1 Extension of Commitments**

Within the 30-day period following any extension of the Financial Close Deadline, or any occurrence excusing Concessionaire from its obligation to achieve Financial Close by the Financial Close Deadline, Concessionaire shall (a) use commercially reasonable efforts to cause the Lenders and secured parties under the Initial Funding Agreements and Initial Security Documents to renew or extend their respective commitments, on the terms in such Initial Funding Agreements and Initial Security Documents, so as to enable Concessionaire to complete closing for all of the Initial Project Debt (including any sub-debt) by a date agreed to by Owner and (b) obtain an extension of the Financial Close Security to such date and deliver to Owner evidence of the extension.

##### **4.4.12.2 Unconditional Obligation; Modification**

(a) If Concessionaire is able to obtain renewal or extension of all such commitments so as to enable Concessionaire to complete Financial Close and Concessionaire is able to extend the Financial Close Security, as described in Section 4.4.12.1, then Concessionaire shall be unconditionally obligated (i) to enter into the Initial Funding Agreements and Initial Security Documents (as each may be amended to reflect the renewal or extension of all such commitments) and (ii) to complete closing for all of the Initial Project Debt (including any sub-debt) in a total amount sufficient to fund all capital requirements associated with the D&C Work in the Financial Model, when combined with all direct payments for D&C Work to be made by Owner under this Agreement and all unconditional equity commitments by the Equity Members (which equity commitments must be acceptable to the Collateral Agent).

(b) If, however, after such commercially reasonable efforts and within said 30-day period, Concessionaire is unable to obtain all such commitments, or Concessionaire is only able to obtain commitments on terms that differ materially (and adversely to Concessionaire) from those in the Initial Funding Agreements and Initial Security Documents, then Owner may, by written notice to Concessionaire and subject to Section 4.4.12.3, terminate this Agreement under Section 19.6.1, and Owner will return to Concessionaire the Financial Close Security. If Owner does not elect to terminate this Agreement under Section 19.6.1, then, by written notice to Concessionaire, Owner may direct actions to modify the Financial Proposal and the Financial Model to the minimum extent possible so as not to deviate materially from the Board of Public Works' approval of this Agreement and to conform to the applicable constraints in Exhibit 10, without, however, abrogating Concessionaire's rights under Section 4.4.12.6. Actions that the Owner may direct include:

- (i) Changing the amount, timing, or structure of the Progress Payments;
- (ii) Adjusting the Availability Payments;
- (iii) Lowering the equity requirement; and/or



(iv) Introducing alternative sources of debt financing and/or debt structures into Concessionaire's financial plan through a competition among eligible prospective lenders to provide Initial Project Debt in conformance with the applicable constraints in Exhibit 10.

Alternatively, Owner may request the Parties to meet during the ensuing 30 days to seek to reach agreement on modifications to the Financial Proposal and the Financial Model to the minimum extent possible so as not to deviate materially from the Board of Public Works' approval of this Agreement and to conform to the applicable constraints set forth in Exhibit 10.

#### **4.4.12.3 Conditional Termination by Owner**

(a) If Owner elects to terminate this Agreement under Section 19.6.1, then Owner will give Concessionaire 15 business days' written notice of Owner's intent to so terminate.

(b) Notwithstanding an election by Owner to terminate this Agreement under Section 19.6.1, Owner will not terminate this Agreement if, within 10 business days after Concessionaire's receipt of such written notice, Concessionaire confirms in writing to Owner that Concessionaire is prepared to conduct a timely, transparent and competitive process to identify and arrange for the lowest-priced debt financing commercially available on terms reasonably satisfactory to Owner and Concessionaire, consistent with Section 4.4.12.2(b)(iv). If Concessionaire fails to provide a response confirming its intention to conduct such a process, then in connection with termination of this Agreement under Section 19.6.1, Owner will return the Financial Close Security to Concessionaire.

(c) If Concessionaire timely responds, confirming its intention to conduct such debt financing process (under Section 4.4.12.3(b)), thereafter conducts such process, obtains commitments in writing from eligible prospective lenders (who are not Restricted Persons) to provide sufficient Project Debt, and stands ready to complete Financial Close under the resulting alternative sources of debt and/or debt structures, then Concessionaire shall submit such revised financing plan to Owner. Upon Owner's receipt of the revised financing plan, Owner will review the plan and determine whether such alternative committed finance deviates materially from the Board of Public Works' approval of this Agreement and conforms to the applicable constraints set forth in Exhibit 10. If Owner determines that such alternative committed finance does not deviate materially from the Board of Public Works' approval of this Agreement and conforms to the applicable constraints set forth in Exhibit 10, then Owner and Concessionaire shall work diligently to achieve Financial Close under such revised financing plan. If, however, Owner determines that such alternative committed finance deviates materially from the Board of Public Works' approval of this Agreement or does not conform to the applicable constraints set forth in Exhibit 10, then either Owner or Concessionaire may elect to terminate this Agreement under Section 19.6.1, in which case (subject to Section 4.4.12.6, if applicable) Owner will return the Financial Close Security to Concessionaire.

(d) If Concessionaire timely responds confirming its intention to conduct such debt financing process, thereafter conducts such process, and either fails to obtain commitments in writing from eligible prospective lenders (who are not Restricted Persons) to provide sufficient Project Debt, or is otherwise not in a position to complete Financial Close under such lender commitments, then either Owner or

Concessionaire may elect to terminate this Agreement under Section 19.6.1, in which case (subject to Section 4.4.12.6, if applicable) Owner will return the Financial Close Security to Concessionaire.

#### **4.4.12.4 Action Upon Modification**

If Owner directs modification of Concessionaire's Financial Proposal (and Financial Model) under Section 4.4.12.2(b), or if Owner and Concessionaire agree to take other alternative action, then:

(a) This Agreement, including elements of Concessionaire's Financial Proposal and Financial Model, if applicable, will be amended as mutually agreed by the Parties to reflect the corresponding action(s) taken, and deadlines set, under Section 4.4.12.2;

(b) Owner will extend the Financial Close Deadline as reasonably requested by Concessionaire to allow sufficient time for Concessionaire to take the action(s) required under Section 4.4.12.1(b); provided that Concessionaire causes the Financial Close Security to remain valid until the extended deadline; and

(c) Concessionaire shall otherwise take all actions required to achieve Financial Close in accordance with the requirements of this Section 4.4.

#### **4.4.12.5 Action Absent Modification**

If (a) Concessionaire and Owner are unable to agree on an alternative course of action during the 30-day period identified under Section 4.4.12.1 or (b) any of the Lenders and secured parties under the Initial Funding Agreements and Initial Security Documents fail to agree to a modification directed by Owner under Section 4.4.12.2(b) or an agreed-upon alternative course of action, within 30 days after either receipt by Concessionaire of such Owner direction or agreement between Owner and Concessionaire on such alternative course of action, then Owner may terminate this Agreement under Section 19.6.1, in which case Owner will return the Financial Close Security to Concessionaire.

#### **4.4.12.6 Non-Forfeiture of Financial Close Security**

If Concessionaire's obligation to achieve Financial Close is excused under Section 4.4.6, then Concessionaire may terminate this Agreement under Section 19.6.1 without forfeiting its Financial Close Security (with Owner subject to an affirmative obligation to timely return the Financial Close Security to Concessionaire) only if:

(a) Owner notifies Concessionaire that it will not take any action under Section 4.4.12.2;

(b) Owner directs modification of Concessionaire's Financial Proposal under Section 4.4.12.2(b), or if Owner and Concessionaire agree to take other alternative action, and the effect of any such action will change the Equity IRR and the Debt Service Coverage Ratio to different levels than are reflected in the Base Case Financial Model, unless Owner, using the adjustment provisions in Section 4.4.8.2, restores the Equity IRR and the Debt Service Coverage Ratio to the same levels as in the Base Case Financial Model;

(c) Within 30 business days after receiving a written request to terminate from Concessionaire, Owner fails to take action under Section 4.4.12.2; or

(d) If either condition (a) or (b) in Section 4.4.12.5 occurs and within 30 business days after receiving a written request to act from Concessionaire, Owner fails to notify Concessionaire that Owner is terminating the Agreement under Section 4.4.12.5.

#### **4.4.12.7 Incremental Costs of Seeking Commitment Extensions**

As between Owner and Concessionaire, Owner and Concessionaire shall bear equally all actual and direct Incremental Costs incurred by Concessionaire in Concessionaire's use of commercially reasonable efforts to cause the Lenders and secured parties under the Initial Funding Agreements and Initial Security Documents to extend their respective commitments. Concessionaire may elect either to invoice Owner, following Financial Close, for half of all such actual and direct Incremental Costs incurred or to account for Owner's portion as among costs owed to Concessionaire in connection with termination of this Agreement under Section 19.6. Notwithstanding the foregoing sentence, (a) Owner shall bear all such Incremental Costs for Owner-caused conditions under Section 4.4.6; and (b) Concessionaire shall bear all such Incremental Costs for conditions under Section 4.4.6 that are caused by any negligence, recklessness, willful misconduct, fault, breach of contract, fraud or breach by any of Concessionaire-Related Entities of the requirements of the Contract Documents, or violation of Law or a Governmental Approval by any Concessionaire-Related Entity.

#### **4.4.12.8 Forfeiture of Financial Close Security**

Nothing in this Section 4.4.12 shall be construed to supersede Owner's rights to draw upon the Financial Close Security under Section 19.6.2.

### **4.5 Refinancing**

#### **4.5.1 Right of Refinancing**

Owner's prior written approval is required for all Refinancings other than Exempt Refinancings and Rescue Refinancings. Owner shall have no obligations or liabilities in connection with any Refinancing other than its obligations relating to Lender's rights in any Direct Agreement. If the Refinancing is with a new Lender, the new Lender may be added to an existing Direct Agreement or Owner shall enter into a new Direct Agreement with the new Lender, if such Lender so elects.

#### **4.5.2 Notice of Refinancing**

**4.5.2.1** In connection with any proposed Refinancing (except an Exempt Refinancing under clause (b), (c) or (d) of the definition of Exempt Refinancing), Concessionaire shall promptly submit to Owner a summary of the proposed Refinancing, together with a schedule setting forth the various activities, each with schedule durations, to be accomplished from commencement through the close of the proposed Refinancing.

**4.5.2.2** At least 30 days (five days with respect to subsection (c) of this Section 4.5.2.2) before the proposed date for closing any Refinancing (except an Exempt Refinancing under clauses (b), (c) or (d) of the definition of Exempt Refinancing, in each case subject to subsection (c) of this Section 4.5.2.2), Concessionaire shall:

(a) Provide draft proposed Funding Agreements and Security Documents and initial versions of available Pre-Refinancing Data, and any other submittals required by Exhibit 5G;

(b) If Concessionaire believes the Refinancing is a Rescue Refinancing or an Exempt Refinancing (other than an Exempt Refinancing under clause (b) of the definition of Exempt Refinancing), provide notice to Owner setting out the facts to support the basis for characterization of the transaction as an Exempt Refinancing or Rescue Refinancing; and

(c) With respect to any TIFIA Loan, provide notice to Owner of any dilution, syndication or transfer of interest of the TIFIA Joint Program Office in any such TIFIA Loan; provided, however, that Concessionaire shall use good faith efforts to provide such notice earlier than 5 days before the proposed date for closing any transaction to effect such dilution, syndication or transfer of interest.

**4.5.2.3** Within 15 days after receipt of the materials required under Section 4.5.2.2, Owner will review and determine (a) whether the proposed Refinancing is an Exempt Refinancing or Rescue Refinancing, and if neither, (b) whether to approve or disapprove the proposed Refinancing, (c) whether the proposed Refinancing will result in a Refinancing Gain, and (d) if applicable, the means for payment of Owner's portion of the Refinancing Gain. Owner's failure to deliver to Concessionaire notice of such determination and selection within such time period shall not prejudice Owner's right to disapprove the proposed Refinancing, to receive any portion of Refinancing Gain, or its selection of the means for payment of such portion.

**4.5.2.4** At least seven days before the proposed date for closing the Refinancing, Concessionaire shall deliver to Owner final drafts of the proposed Funding Agreements and Security Documents, together with updated versions of the Pre-Refinancing Data.

**4.5.2.5** Within five business days after close of the Refinancing, Concessionaire shall deliver to Owner copies of all signed Funding Agreements and Security Documents in connection with the Refinancing, and the final Refinancing Data.

**4.5.2.6** With each submission of Pre-Refinancing Data and Refinancing Data Concessionaire shall include an update to Concessionaire's Financial Model showing how Concessionaire has calculated the Refinancing Gain, if any, following the procedures in Exhibit 5G, and any other submittals required by Exhibit 5F.

**4.5.2.7** Within 10 business days after close of the Refinancing, Owner and Concessionaire shall meet and confer to agree upon the final calculation of the Refinancing Gain. Once the final calculation is made, Concessionaire shall pay Owner its portion of the Refinancing Gain if the selected means of payment is a lump sum payment. If there is any dispute regarding the amount owing, Concessionaire shall pay the undisputed amount to Owner and the amount in dispute shall be subject to resolution under the Dispute Resolution Procedures.

### **4.5.3 Refinancing Limitations, Requirements and Conditions**

**4.5.3.1** Other than an Exempt Refinancing and a Rescue Refinancing, no Refinancing is permitted before the Final Completion Date, except to the extent Concessionaire demonstrates to Owner's reasonable satisfaction that (a) the Committed Investment will not

decrease as a result of the Refinancing to a level below that required by Section 4.7, and (b) the Refinancing will produce Refinancing Gain that will be shared with Owner under Exhibit 5G.

**4.5.3.2** If Owner renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering a consent and estoppel certificate under any Direct Agreement, then concurrently with close of the Refinancing, and as a condition precedent to Concessionaire's right to close the Refinancing, Concessionaire shall reimburse Owner all of Owner's Recoverable Costs incurred in connection with the Refinancing. Owner will deliver to Concessionaire a written invoice and demand before the scheduled date of closing. If for any reason the Refinancing does not close, Concessionaire shall reimburse such Owner's Recoverable Costs within 10 days after Owner delivers to Concessionaire a written invoice and demand for such costs.

**4.5.3.3** Concessionaire shall bear all risks for any Refinancing that negatively affects its Equity IRR, debt service coverage ratios or financial performance.

## **4.6 Refinancing Gain Sharing**

**4.6.1** Owner shall be entitled to receive a payment equal to 50% of any Refinancing Gain attributable to any Refinancing other than an Exempt Refinancing, calculated in accordance with Exhibit 5G.

**4.6.2** The Parties shall negotiate in good faith to determine the Refinancing Gain; and if the Parties fail to agree, the Dispute shall be subject to resolution under the Dispute Resolution Procedures.

## **4.7 Equity Requirements**

Throughout the period between the date of Financial Close and the RSA Date, Concessionaire shall maintain Committed Investments totaling not less than 10% of an amount equal to the sum of the Committed Investment (less dividends or return of capital) and the total debt principal outstanding after the RSA Payment (less any debt principal repaid with the Final Completion Payment), each expressed in year-of-expenditure terms, except to the extent:

(a) Concessionaire must reduce the amount of Committed Investments below 10% as part of a workout of a breach or default under the Initial Funding Agreements or Initial Security Documents; or

(b) The amount of Committed Investments is reduced below 10% because Concessionaire incurs additional Project Debt in connection with a Rescue Refinancing.

## **ARTICLE 5. MANAGEMENT SYSTEMS AND OVERSIGHT**

### **5.1 Submittal, Review and Approval Terms and Procedures**

#### **5.1.1 General**

**5.1.1.1** This Section 5.1 sets forth uniform terms and procedures for Submittals. In the event of any conflict between the provisions of this Section 5.1 and any other provisions of the Contract Documents, Project Management Plan or O&M Management Plan concerning procedures with respect to submission, review, comment, approval, consent, determination, decision or other actions with respect to Submittals, this Section 5.1 shall exclusively govern and control, except to the extent that the conflicting provision expressly states that it supersedes this Section 5.1.

#### **5.1.2 Submittal Requirements**

**5.1.2.1** Each Submittal provided by Concessionaire to Owner for review, comment, approval, consent to, determination or decision shall:

- (a) Be accurate, complete and in conformity with the Contract Documents;
- (b) Include a completed transmittal form in form agreed between Owner and Concessionaire; and
- (c) Include all necessary information and documentation concerning the subject matter and any additional information reasonably requested by Owner under Section 5.1.3.4.

**5.1.2.2** If Owner determines that a Submittal is not complete, it will notify Concessionaire of such determination on or before the due date for approval or comments.

#### **5.1.3 Time Periods**

**5.1.3.1** Subject to Sections 5.1.3.2 and 5.1.3.3, upon receipt of a Submittal which complies with the requirements of Section 5.1.2.1, (a) for any Submittal subject to Review and Approval or Review and Comment by Owner, Owner shall have 15 business days to act and (b) for any Submittal requiring review by a Third Party or by a Utility Owner, Owner shall have the greater of (1) 20 business days (15 business days plus five business days) or (2) the period specified in the Third Party Agreement or Utility Agreement, as applicable, plus five business days, to receive and reconcile the response from the Third Party or Utility Owner and deliver it to Concessionaire. The Parties shall agree in good faith upon any necessary extensions of the review period to accommodate particularly complex or comprehensive Submittals.

**5.1.3.2** If any other provision of the Contract Documents expressly provides a longer or shorter period for Owner to act, stating that it supersedes Section 5.1.3.1, then such period shall prevail. If the number of Submittals delivered simultaneously to Owner exceeds the limits specified in Part 2A, Section 10.4.3 of the Technical Provisions, then Owner may extend the applicable period for it to act with respect to such Submittals to allow Owner a reasonable period to respond, and no such extension shall constitute an Owner-Caused Delay, Owner Change, Relief Event, Force Majeure Event or other basis for any Claim.

**5.1.3.3** Submittals are considered “delivered simultaneously” if the review time periods available to Owner under this Section 5.1.3 for two or more Submittals entirely or partially overlap.

**5.1.3.4** Whenever Owner is in receipt of Submittals delivered simultaneously, Concessionaire may provide notice to Owner including a requested order of priority for processing such Submittals. Upon receipt of such notice Owner will use reasonable efforts to accommodate the requested order of priority; provided, however, that Owner will not be obligated to shorten the review times otherwise applicable under this Section 5.1.3.

**5.1.3.5** All time periods for Owner to act under this Section 5.1.3 shall be extended by the period of any delay in Owner’s review caused by any Relief Event or Force Majeure Event or any act, omission, breach, fault or negligence of Concessionaire or any Concessionaire-Related Entity.

**5.1.3.6** During any time that Owner is entitled under Section 5.5.2 to increase the level of its Oversight of Concessionaire’s compliance with its obligations under the Contract Documents, the applicable period for Owner to act on any Submittals received during such time and not related to curing Concessionaire Default(s) that instigated the Section 5.5.2 action shall be extended as reasonably needed due to the increased level of Oversight, but not to exceed 10 business days (e.g., if Owner would normally have 15 business days to act on a particular Submittal, then during a period of increased Oversight, Owner may take up to 25 business days to act). No such extension shall constitute an Owner-Caused Delay, Owner Change, Relief Event, Force Majeure Event or other basis for any Claim.

**5.1.3.7** Concessionaire may, by notice to Owner, request expedited action on a specific Submittal. Owner has no obligation to expedite any Submittal but upon receipt of such a request will use reasonable efforts to accommodate such request within the practical limitations (a) on availability of Owner personnel relevant to the request or (b) imposed by restrictions upon Owner’s rights under agreements with Third Parties and Utility Owners. However, Owner’s obligation to use reasonable efforts to accommodate such a request shall not apply with respect to the review periods described in Section 5.1.3.6.

**5.1.3.8** Owner will be responsible for coordinating the review process with Third Parties. If any Third Party fails to provide approval within the review period under Section 5.1.3.1, Concessionaire may request Owner to permit the Work to proceed without the Third Party’s approval.

**5.1.3.9** Approvals by Owner or third parties do not relieve Concessionaire from compliance with the requirements of the Contract Documents.

#### **5.1.4 Owner Discretionary Approvals**

Certain Submittals are subject to Owner’s approval. If the Contract Documents indicate approval of a Submittal is required from Owner, then Owner’s lack of approval, determination, decision or other action within the applicable time period under the Contract Documents shall be deemed a disapproval. No approval, rejection, disapproval or failure to approve by Owner shall be deemed to relieve Concessionaire of its obligation to perform in accordance with the Contract Documents.

#### **5.1.5 Owner Actions Relevant to Submittals**

Whenever the Contract Documents indicate that:

(a) A submittal is subject to Owner's review and comment but that Owner's approval is not required, and Owner delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under the Contract Documents, or

(b) Concessionaire is to deliver a Submittal to Owner for its information, then Concessionaire may proceed with the Work contemplated by the Submittal at Concessionaire's sole election and risk, without prejudice to Owner's rights to later object to, reject or disapprove the Work on the basis that the Work is not in accordance with the requirements of the Contract Documents. No failure or delay by Owner in taking action within the applicable time period under the Contract Documents (including reviewing Submittals and delivering comments, exceptions, objections, rejections or disapprovals) shall constitute a Relief Event, Force Majeure Event or other basis for any Claim except to the extent such failure or delay constitutes an Owner-Caused Delay. In accordance with Part 2A, Section 10.4.4 of the Technical Provisions, Submittals are subject to Owner's Review and Approval unless the Contract Documents or the Owner-approved Submittal List provide(s) that the Submittal is to be provided for Owner's information or for Owner's Review and Comment.

#### **5.1.6 Owner Objection, Rejection Binding**

**5.1.6.1** Any exception, objection, rejection or disapproval by Owner shall be deemed reasonable if based on any of the following grounds:

(a) The Submittal or subject provision fails to comply, or is inconsistent, with any applicable Codes and Standards or any covenant, condition, requirement, term or provision of the Contract Documents, Project Management Plan or O&M Management Plan;

(b) The Submittal or subject provision does not meet or exceed Good Industry Practice;

(c) Concessionaire has not provided all necessary information and documentation concerning the subject matter and any additional information reasonably requested relating to the Submittal (provided that Concessionaire may subsequently resubmit the Submittal with the required or reasonably requested content or information); or

(d) Adoption of the Submittal or subject provision, or of any course of action proposed in the Submittal, would result in a conflict with or violation of any Law or Governmental Approval.

**5.1.6.2** Except with respect to those comments that Owner has expressly identified as not requiring a response from Concessionaire, Concessionaire shall respond in writing to all of Owner's comments (including any exceptions, objections, rejections and disapprovals) relating to a Submittal, and shall make modifications to the Submittal as necessary to fully reflect and resolve all such comments in accordance with the review processes in this Section 5.1.

**5.1.6.3** Concessionaire shall undertake reasonable efforts, as part of the review processes described in this Section 5.1 and the Technical Provisions, to accommodate or otherwise resolve any of Owner's comments on Submittals, except to the extent that such accommodation or resolution would cause either (a) a delay to the Critical Path without the right



to receive a time extension or (b) a material increase in Concessionaire's costs without the right to receive additional compensation.

**5.1.6.4** If Concessionaire does not accommodate or otherwise resolve any Owner comment, Concessionaire shall, within 10 business days after receipt of Owner's comments, provide an explanation setting out:

(a) Why modifications based on Owner's comments are not required;

(b) The facts, analyses and reasons that support Concessionaire's conclusion; and

(c) The basis for any belief that incorporating Owner's comments or resolving exceptions, objections, rejections or disapprovals that would render the Submittal erroneous, defective or reflective of less than Good Industry Practice.

**5.1.6.5** Promptly following delivery of Concessionaire's explanation under Section 5.1.6.4, Concessionaire shall meet with Owner with the goal of reaching agreement regarding changes to be made to the Submittal. Owner may at any time issue a Directive Letter under Section 14.3, in which case Concessionaire shall proceed in accordance with Owner's Directive Letter with the right to seek resolution of the Dispute under the Dispute Resolution Procedures.

**5.1.6.6** If Concessionaire fails to provide an explanation to Owner in accordance with Section 5.1.6.4, Owner may deliver to Concessionaire a notice setting out comments that have not been addressed and relevant dates for Concessionaire to respond. If Concessionaire's fails to address such comments within five business days after receipt of the notice, Concessionaire shall make all changes necessary to accommodate and resolve the comment and will be fully responsible for such changes without right to assert an Owner Change, Owner-Caused Delay or other basis for a Claim that Owner has assumed design or other liability.

## **5.1.7 Limitations on Concessionaire's Right to Rely**

**5.1.7.1** No action or failure to take action by or on behalf of Owner relating to Oversight (including review and approval of the Project Management Plan) or other act or omission of Owner or the Independent Engineer shall:

(a) Constitute an approval or acceptance by Owner of Concessionaire's performance of its obligations in accordance with the Contract Documents;

(b) Alter, waive, diminish or otherwise prejudice any rights, remedies or powers that Owner has under the Contract Documents or otherwise; and

(c) Limit Concessionaire's obligation to perform the Work in accordance with the Contract Documents; and Concessionaire's liabilities and obligations to fulfill the requirements of the Contract Documents (including its indemnity obligations).

**5.1.7.2** Concessionaire acknowledges and agrees that review, comment, exception, objection, rejection, approval, disapproval, acceptance, concurrence, certification or failure to conduct any such activity by Owner:

- (a) Is solely for the benefit and protection of Owner;
- (b) Does not relieve Concessionaire of its responsibility for the selection and the competent performance of all Concessionaire-Related Entities;
- (c) Does not create or impose upon Owner any duty or obligation toward Concessionaire to cause it to fulfill the requirements of the Contract Documents;
- (d) Shall not be deemed or construed as any kind of warranty, express or implied, by Owner;
- (e) May not be relied upon by Concessionaire or used as evidence in determining whether Concessionaire has fulfilled the requirements of the Contract Documents;
- (f) Shall not relieve Concessionaire from liability for, and responsibility to replace Nonconforming Work (including Work based on Design Documents to the extent that they include a change, deviation, modification, alteration or exception from the Technical Provisions or Technical Documents not approved as a Deviation) and to cure Concessionaire Defaults;
- (g) Shall not be deemed or construed as any assumption of risk by Owner as to design, construction, equipping, supply, operations, maintenance, performance or quality of the Project or performance of the Work; and
- (h) May not be asserted by Concessionaire against Owner as a defense, legal or equitable, to, or as a waiver of or relief from, Concessionaire's obligation to fulfill the requirements of the Contract Documents.

**5.1.7.3** Notwithstanding the provisions of Sections 5.1.7.1 and 5.1.7.2, Concessionaire shall be entitled to rely on Owner's written approval of specific Deviations under Section 7.2.3 or 8.1.3 and will be entitled to rely on Interpretive Engineering Decisions to the extent specified in Section 5.8.3.

## **5.2 Project Management Plan; O&M Management Plan**

**5.2.1** Concessionaire shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements in Part 2A, Section 1 of the Technical Provisions and Good Industry Practice including those for Quality Assurance and Quality Control, and all FTA oversight requirements.

**5.2.2** Concessionaire shall develop the O&M Management Plan and its management plans, manuals, policies and procedures in accordance with the requirements in Part 3, Section 1.1 of the Technical Provisions and Good Industry Practice including those for Quality Assurance and Quality Control, and all FTA oversight requirements.

**5.2.3** The Project Management Plan and O&M Management Plan shall be consistent with the preliminary project management plan (and component parts, plans and other documentation) in the Proposal.

**5.2.4** Concessionaire shall submit to Owner, in accordance with the procedures and timeline described in the Technical Provisions, each component part, plan and other documentation of the Project Management Plan and O&M Management Plan, and any proposed changes or additions to or revisions of any such component part, plan or other documentation.

**5.2.5** Concessionaire shall not commence any aspect of the design of the Project or authorize work to commence on LRVs before approval of the relevant component parts, plans and other documentation of the Project Management Plan applicable to such Work under Part 2A, Section 14.2 of the Technical Provisions. Concessionaire shall not commence any aspect of the O&M Work before approval of the relevant component parts, plans and other documentation of the O&M Management Plan applicable to such Work.

**5.2.6** If any part, plan or other documentation of the Project Management Plan or O&M Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document, then all such referenced or incorporated materials shall be submitted to Owner for review, marked to identify relevant provisions; provided that, for any such documents which are publicly available, Concessionaire may provide a statement regarding how to obtain a copy, and detailed information regarding relevant provisions, in lieu of submitting a copy.

**5.2.7** Concessionaire shall monitor the Work and prescribe times for internal audits of the Project Management Plan and O&M Management Plan, and Concessionaire shall carry out such internal audits at the times prescribed.

**5.2.8** Concessionaire shall cause all Contractors to comply with the applicable requirements of the Project Management Plan and O&M Management Plan.

**5.2.9** The Quality Program Manager shall, irrespective of his or her other responsibilities, have:

(a) Authority to ensure the establishment and maintenance of the Project Management Plan and O&M Management Plan;

(b) A duty to report to Owner on the performance of the Project Management Plan and O&M Management Plan;

(c) Authority independent of the Project Manager and at least equivalent in level of authority to that of the Project Manager;

(d) Direct reporting obligations to superiors that are above the level of the Project Manager; and

(e) Satisfied the other requirements in Part 2A, Sections 2 and 14 of the Technical Provisions.

### **5.3 Maintenance of Traffic; Liquidated Damages**

Concessionaire shall maintain traffic so as to ensure the safe and efficient passage of all pedestrians, bicycles and vehicular traffic through and around work areas, while maintaining

safety and accessibility for all workers on the Project and minimizing adverse impacts on residents, visitors, businesses and road users, as more specifically described in Part 2A, Section 20 of the Technical Provisions. Concessionaire shall conduct the work at all times in such a manner and in such sequence as will assure the least practicable obstruction to all forms of traffic and minimal interference with the public. Concessionaire shall be liable for and pay to Owner liquidated damages in accordance with Exhibit 11 with respect to low traffic control ratings received by Concessionaire during the Design-Build Period and for any failure of Concessionaire to restore full traffic capacity as described in said Exhibit 11. For the avoidance of doubt, the liquidated damages provided for under this Section 5.3 are not intended to compensate Owner, or liquidate Concessionaire's liabilities, for any costs or damages incurred by Owner resulting from such failure (including costs of repair, renewal or replacement, costs to correct Nonconforming Work or failure to meet Safety Standards, costs of Safety Compliance Work, and damages related to termination for Concessionaire Default) or third party claims related to such failure. Further, such liquidated damages are not in lieu of any termination or other express rights of Owner as set forth in this Agreement. Such liquidated damages shall otherwise constitute Owner's sole right to damages for reduced roadway traffic capacity and for any failure of Concessionaire to restore full traffic capacity.

#### **5.4 Quality Assurance, Quality Control, Generally**

Concessionaire is responsible for all Quality Assurance and Quality Control activities (including self-monitoring activities) necessary to manage the Project. Concessionaire shall undertake all aspects of Quality Assurance and Quality Control for the Project and the Work in accordance with the Project Management Plan, the O&M Management Plan, the Technical Provisions, other applicable provisions of the Contract Documents, Good Industry Practice and applicable Law.

#### **5.5 Oversight, Inspection and Testing**

##### **5.5.1 Oversight by Owner, FTA; Assistance with Federal Financial Plan Requirement**

**5.5.1.1** Owner shall have the right at all times to conduct Oversight as provided in this Section 5.5, in Part 2A, Section 14.4 of the Technical Provisions and in Part 3, Section 1.14.3 of the Technical Provisions. Such Oversight may include assessments regarding compliance with the Contract Documents, Project Management Plan, the O&M Management Plan and requirements of federal agencies and applicable Law. Owner may designate any Person or Persons to carry out any Oversight on Owner's behalf.

**5.5.1.2** Owner's Oversight rights shall include the following:

(a) Monitoring and auditing Concessionaire and its Books and Records to determine compliance with requirements of the Contract Documents, the Project Management Plan and O&M Management Plan, including (i) audit review of compliance with quality procedures and processes under Concessionaire's Design Quality Plan, Construction Quality Plan and O&M Quality Management Plan, and (ii) audit review of Design Documents, Construction Documents, field work plans, land surveys, mapping, other data collection tasks, other Submittals and other Books and Records;

(b) Conducting audits of all design and pre-design activities for the Project as needed to ascertain and evaluate Concessionaire's design quality and safety control processes, including (i) review of engineering calculations, engineering reports, and findings, (ii) review of the work of Concessionaire's environmental

compliance personnel with the Comprehensive Environmental Protection Program, and (iii) review of certifications that Concessionaire's Quality Control checks of final Construction Documents have been performed and documented, and that the Construction Documents conform to the requirements of the Contract Documents;

(c) Conducting audits of all construction-related activities for the Project as needed to audit Concessionaire's construction quality and safety control processes, including (i) auditing the services of Concessionaire's accredited laboratories and associated testing devices and equipment, (ii) reviewing Concessionaire's construction quality procedures, including conducting field monitoring and inspections as needed for audit purposes of construction activities, materials, and system components, as indicated in the Contract Documents, (iii) auditing Concessionaire's records of all materials, materials tests, materials certifications, and performance tests for Project systems, (iv) reviewing and investigating Project progress, Project quality, Deviations, Defects, and repair and replacement of Nonconforming Work, and (v) conducting field monitoring and inspections;

(d) Conducting periodic reviews of Project documentation and files;

(e) Conducting material tests in accordance with the requirements of the Contract Document to verify Concessionaire's compliance with all testing frequencies and requirements, including (i) performance and acceptance testing, in the Contract Documents, the Project Management Plan and O&M Management Plan, (ii) the accuracy of the tests, inspections and audits performed by or on behalf of Concessionaire in accordance with Concessionaire's Design Quality Plan and Construction Quality Plan, and (iii) compliance of materials incorporated into the Project with the applicable requirements, conditions and standards of the Contract Documents, Governmental Approvals, the Project Management Plan, the O&M Management Plan, O&M Quality Management Plan and applicable Law;

(f) Reviewing and commenting on Submittals, and approving Submittals as applicable;

(g) Reviewing and commenting on the Asset Management Plan and revisions to said plan, as provided in Section 8.8.2;

(h) Participating in meetings, including meetings to discuss design progress, construction progress, Renewal Work progress, operations (Service Plan) progress, Concessionaire's Quality Control processes, audit activities, Third Party Work progress and other Project Management Plan and/or O&M Management Plan issues;

(i) Accompanying Concessionaire on physical inspections associated with Concessionaire's Performance Inspections, conducting its own Performance Inspections, assessing and scoring Concessionaire's O&M Records, and assessing and rating the condition of elements;

(j) Attending and witnessing Concessionaire's other tests and inspections, including system start-up and acceptance tests and inspections, subject to the obligation to observe all applicable safety standards and requirements;

(k) Reviewing Concessionaire's certification of Record Documents and surveys;

(l) Auditing the Books and Records of Key Contractors to confirm compliance with this Agreement and applicable Law;

(m) Investigating, analyzing and reporting on Safety Compliance and performance of Safety Compliance Orders; and

(n) Monitoring and auditing Concessionaire's detection, reporting, response times and time to respond to and rectify breaches and failures (1) for which Noncompliance Points may be assessed under Section 16.3 or (2) constituting Noncompliance Events in accordance with Exhibit 4D.

**5.5.1.3** Owner has the right to conduct formal reviews of every Design Document and Construction Document, but has no obligation to do so, except to the extent necessary to comply with FTA or other applicable federal agency requirements. Owner also has the right, but not the obligation, to conduct "over-the-shoulder" reviews of Design Documents and other Submittals.

**5.5.1.4** Nothing in the Contract Documents shall preclude, and Concessionaire shall not interfere with, any review, inspection or oversight of Submittals or of Work that FTA or any other regulatory agency with jurisdiction may desire to conduct in accordance with their agreements with Owner and applicable Law.

**5.5.1.5** To assist Owner in the preparation of its financial plan to be delivered to FTA, by July 31 of each year, starting on the July 31 following the Effective Date and ending upon delivery of the final plan after the RSA Date, Concessionaire shall:

(a) Before the RSA Date: (1) provide to Owner the current estimate of the total cost of the Project and the remaining cost to complete the Project, identify any significant cost changes since the previous submission, discuss reasons for and implications of the cost changes, and include a summary table showing the history of Concessionaire's total Project costs by major activity or category since the preceding submission; (2) provide to Owner the current schedule and implementation plan for completing the D&C Work, including a date on which Revenue Service Availability is expected to occur, identify major milestones for the Project and compare current milestone dates with milestone dates in the Baseline Schedule and the preceding submission, and discuss reasons for changes in such milestones; (3) provide to Owner current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding submission, discuss reasons for and implications of the funding changes, and include a summary table showing the history of funding since the prior submission; (4) provide to Owner an updated cash flow schedule showing annual cash needs versus available revenue and funding to meet those needs and identify any potential revenue and funding shortfalls, addressing contingency measures that will or may be taken to address any shortfalls; (5) provide to Owner cost containment strategies and risk mitigation plans that have been or may be implemented to address factors that are affecting or could affect the scheduled completion or financial viability of the Project; and (6) provide to Owner, in form and substance satisfactory to Owner, a written report on the progress of design, permitting, acquisition and construction of the Project since Concessionaire's previous submission to Owner, describing in reasonable detail all significant activities concerning status.

(b) During the O&M Period: (1) provide to Owner an updated cash flow schedule showing annual cash inflows (revenues, interest and other income) and outflows (operating costs, capital costs, Project Debt service, replenishment of reserves and other uses) with a narrative identifying any potential revenue or funding shortfall and discussing contingency measures that will or may be taken to address any shortfalls; (2) provide to Owner current and estimated amounts of revenues received and the amounts deposited into each fund and account held under this Agreement and the Funding Agreements and the amount disbursed from such funds and accounts and the balance in each of the funds and accounts; and (3) provide to Owner a narrative report explaining any material variances in costs or revenues since Concessionaire's previous submission to Owner and describing in reasonable detail any material issues that may affect the future performance of Concessionaire's obligations under this Agreement and the causes thereof to include all operational contracts and third party transactions.

### **5.5.2 Increased Oversight, Testing and Inspection**

**5.5.2.1** In addition to other remedies available under this Agreement, Owner shall, by notice to Concessionaire, be entitled to change the type and/or increase the level of its Oversight of the Project and Concessionaire's compliance with its obligations under the Contract Documents, in such manner and to such level as Owner reasonably sees fit, if at any time:

(a) Over the course of three consecutive Payment Periods (determined on a rolling basis), Concessionaire has accumulated 2,400 or more Noncompliance Points for Operations Availability Noncompliance Events or 960 or more Noncompliance Points for Activity Noncompliance Events;

(b) There exists a Remedial Plan Default; or

(c) Concessionaire receives one or more Notices of Concessionaire Default that may become a Default Termination Event under Section 19.3.1.

**5.5.2.2** If Owner changes the type or increases the level of its Oversight under Section 5.5.2.1, then Concessionaire shall pay and reimburse Owner within 30 days after receipt of written demand and reasonable supporting documentation all reasonable increased costs and fees Owner incurs in connection with such action, including Owner's Recoverable Costs. Such obligation to pay and reimburse shall apply to all changes in the type or increases in the level of Owner's Oversight occurring until Concessionaire has:

(a) Fully and completely cured the breaches and failures that are the basis for a potential Default Termination Event and any other then-existing Concessionaire Defaults;

(b) Submitted and complied with any remedial plan approved under Section 16.6.2;

(c) If applicable, reduced the number of uncured Noncompliance Points below the thresholds identified in Section 5.5.2.1(a); and

(d) If applicable, reduced by 50% the number of uncured Noncompliance Points outstanding on the date Owner delivers the notice under Section 5.5.2.1.

**5.5.2.3** Owner may, at its discretion and at its own expense, increase its level of monitoring, inspection, sampling, measuring, testing, auditing and other Oversight at other times.

## **5.6 Coordination, Cooperation and Access**

**5.6.1** Concessionaire at all times shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with:

(a) Owner, Third Parties, adjacent property owners, Authorities Having Jurisdiction and any of their contractors performing work on or around the Project ROW (including transit-oriented development work in the vicinity of Stations owned or operated by WMATA), Utility Owners and other Governmental Entities; and

(b) Owner and its Authorized Representative to facilitate Owner's Oversight activities.

**5.6.2** Concessionaire shall provide Owner, its representatives, designees and contractors, and the Independent Engineer (once selected) with, (a) safe and unrestricted access to the Project at all times, (b) safe access during normal business hours to Concessionaire's Project offices, operations buildings, Project-Specific Locations (including LRV assembly facility and production facilities), and (c) unrestricted access to data respecting the Work. Owner shall provide written notice to Concessionaire at least one business day in advance of visits to production facilities and the LRV assembly facility under this Section 5.6.2.

**5.6.3** Notwithstanding anything to the contrary in this Agreement, whenever Owner, its representatives, designees and any of its contractors are present on the Site (including LRV assembly facility) and LRV production facilities, including while conducting Oversight as described in Sections 5.5.1.1 and 5.5.2.3, they will abide by (as applicable) the Design-Build Contractor's, LRV Supplier's or O&M Contractor's reasonable, non-discriminatory safety policies and practices and will take appropriate measures to avoid unreasonable interference with normal construction activity or normal operation and maintenance activity.

## **5.7 Testing and Test Results**

**5.7.1** All tests shall be carried out in accordance with Part 2C of the Technical Provisions and the Contract Documents (including all requirements of Revenue Service Availability) and this Section 5.7.

**5.7.2** Concessionaire shall develop a test recording system which shall permit ready retrieval of all test readings and shall provide information relating to tests proposed, test methodology, Test Reports and test readings to Owner on request.

**5.7.3** Owner shall have the right to attend and witness any tests and verifications to be conducted as specified in the Technical Provisions or as required by the Codes and Standards or under the Project Management Plan or O&M Management Plan. Concessionaire shall provide to Owner all test results and reports (which shall be provided in electronic format in accordance with the Technical Provisions) within 10 business days after Concessionaire or its Contractor receives them. With respect to continuous testing operations (such as concrete quality, structural concrete strengths, aggregate quality, compaction tests and material quality), Concessionaire shall provide to Owner at regular intervals (not to exceed weekly unless otherwise agreed) test summary sheets and statistical analyses indicating strength and quality trends.



**5.7.4** Owner shall be given timely advance notice (not less than 10 business days) of the date and specific location of such tests.

**5.7.5** The Owner's Authorized Representative and any other designee may attend any test and will give advance notice (not less than one business day) of their intent to attend the test. Any materials or plant that fail(s) such tests shall be rejected.

**5.7.6** Third Parties shall have the same rights as Owner under this Section 5.7 with respect to the Third Party Work, subject to the same obligations that apply to Owner under Section 5.6.3.

**5.7.7** Concessionaire shall arrange and pay for supply of electrical power required for testing.

## **5.8 Interpretive Engineering Decisions**

**5.8.1** Concessionaire may at any time seek an Interpretive Engineering Decision from Owner by delivery of notice requesting such a decision, which may include Concessionaire's proposed interpretation. Owner may approve Concessionaire's proposed Interpretive Engineering Decision (if any), may issue its own Interpretive Engineering Decision or may disapprove any Interpretive Engineering Decision Concessionaire proposes.

**5.8.2** Within 15 business days after Concessionaire applies for an Interpretive Engineering Decision, or within such other time period as Owner and Concessionaire may agree to at the time of such application, Owner shall provide its determination including explanation of any disapproval of such application or any differing interpretation; provided that no presumption of approval or disapproval shall arise by reason of Owner's delay in issuing its determination.

**5.8.3** Accepted Interpretive Engineering Decisions shall constitute provisions of the Technical Provisions and shall not constitute an Owner-Caused Delay, Owner Change, Relief Event or other basis for any Claim. Subsequent Owner orders and directives that are contrary to the Interpretive Engineering Decision shall constitute an Owner Change.

## **5.9 Meetings**

**5.9.1** Concessionaire shall conduct regular progress meetings with Owner, in accordance with Part 2A, Section 12.5.1 of the Technical Provisions, during the course of design and construction, including any design and construction occurring during the O&M Period. At Owner's request, Concessionaire will require the Engineer of Record and Contractors responsible for or affected by such Work to attend the progress meetings.

**5.9.2** The Parties shall hold any other meetings, at such times, frequency and locations, as applicable, stated in the Technical Provisions.

**5.9.3** Owner and Concessionaire, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve issues relating to the Work.

**5.9.4** Concessionaire shall schedule all meetings with Owner at a date, time and place reasonably convenient to both Parties and, except in the case of urgency, shall provide Owner with notice and a meeting agenda at least five business days in advance of each meeting.

**5.9.5** Concessionaire shall schedule all progress and periodic meetings with its Design-Build Contractor and its O&M Contractor(s) at a date, time and place reasonably convenient for Owner and its designated representatives to attend and, except in the case of urgency, shall provide Owner and Owner's designated representatives with notice and an agenda for such meetings at least five business days in advance of each meeting. Owner and its designated representatives are authorized to attend all such meetings and are permitted to raise any questions, concerns or opinions without restriction.

## **5.10 Independent Engineer**

**5.10.1** The Parties shall select an Independent Engineer to provide services for the Project as described in this Agreement relating to Owner's obligation to make the RSA Payment. The Independent Engineer's role includes verifying whether the conditions to Revenue Service Availability specified in Section 7.10.2 have been met.

**5.10.2** Following Financial Close, Concessionaire shall, in consultation with Owner, establish the schedule and process for selection of an Independent Engineer. Concessionaire shall be responsible for developing the solicitation package and draft contract terms, subject to approval by Owner. The solicitation schedule shall be established with the goal of selecting the Independent Engineer at least 12 months before the scheduled date for Revenue Service Availability.

**5.10.3** The solicitation shall include issuance of a request for competitive proposals from a list of firms approved by Owner, review of proposals by Concessionaire and Owner, a joint determination regarding which firm is the best qualified to provide Independent Engineer services, and negotiation of a fair and reasonable price for performance of such services. If negotiations fail with the highest ranked firm, the Parties may elect to terminate negotiations and proceed with the next highest ranked firm. This process shall be followed until a firm is selected. If the Parties fail to reach agreement regarding selection of the Independent Engineer, or regarding acceptable terms of the agreement with the Independent Engineer, the Dispute shall be subject to resolution under the Dispute Resolution Procedures.

**5.10.4** The Independent Engineer will be appointed jointly by the Parties and will act independently and not as agent of either Party. Owner's Project Management Consultant and the Lender's engineering consultant are each deemed to have an organizational conflict of interest and therefore are not eligible to respond to the solicitation.

**5.10.5** Concessionaire shall be responsible for all costs of conducting the Independent Engineer solicitation, but has no obligation to reimburse Owner for Owner's costs relating to the solicitation. Amounts payable to the Independent Engineer under the terms of its agreement shall be paid by Concessionaire subject to the right to receive reimbursement for 50% of such costs from Owner. Such reimbursement will not be subject to the D&C Payment Cap.

## **ARTICLE 6. PROJECT PLANNING; SITE CONDITIONS; GOVERNMENTAL APPROVALS; ENVIRONMENTAL COMPLIANCE; PUBLIC INFORMATION**

### **6.1 Preliminary Planning and Engineering Activities**

Concessionaire, through appropriately qualified and licensed design professionals, as identified in the Project Management Plan, shall perform or cause to be performed all preliminary planning and engineering activities appropriate for design and development of the Project in accordance with the Contract Documents and Good Industry Practice.

### **6.2 Site Conditions**

#### **6.2.1 Concessionaire acknowledges and agrees that:**

(a) It has investigated and satisfied itself as to the conditions affecting the D&C Work, including those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages or similar physical conditions at the Site, the conformation and conditions of the ground, and the character of equipment and facilities needed in connection with the D&C Work;

(b) It has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including the results of exploratory work and other information provided to Concessionaire by Owner;

(c) Any failure by Concessionaire to acquaint itself with the available information relating to the conditions affecting the D&C Work will not relieve Concessionaire from responsibility for estimating properly the difficulty or cost of successfully performing the D&C Work;

(d) Except to the extent that the Contract Documents permit Concessionaire to rely on certain information provided by Owner as a baseline for determining whether a Relief Event has occurred:

(i) Concessionaire shall have no right to rely on surveys, data, reports or other information provided by Owner or other Persons concerning surface or subsurface conditions, including information relating to Utilities, Hazardous Materials, contaminated groundwater, paleontological resources, cultural (including archaeological and historic) resources, flooding conditions and seismic conditions, affecting the Work, the Site or surrounding locations; and

(ii) Such information is for Concessionaire's reference only and has not been verified.

**6.2.2** Differing Site Conditions include certain subsurface or latent physical conditions that are encountered at the Site (excluding Additional Properties and Project-Specific Locations) during the Design-Build Period that differ materially from the conditions indicated in the Contract Documents. With respect to these "Type I" conditions, the term "indicated in the Contract Documents" has a different meaning depending on whether the condition is encountered in the portion of the Site covered by the GBR or in other areas, as follows:

(a) In the area covered by the GBR, the Baseline Conditions, and no other conditions, are considered to be “indicated in the Contract Documents”.

(b) In other areas within the Site (excluding Additional Properties and Project-Specific Locations), the term “indicated in the Contract Documents” means that Concessionaire may rely on the boring data included in the Geotechnical Data Report provided by Owner as an accurate representation of the results of the borings, solely for purposes of determining whether a Differing Site Condition exists as the result of an error in the boring data. Concessionaire may not rely on such report as establishing baseline conditions except to the extent that Concessionaire made reasonable assumptions based on inaccurate data and establishes that its assumptions would have been accurate had the data been accurate.

Concessionaire is responsible for determining site conditions relevant to Work performed during the O&M Period and for advising potential Contractors regarding such site conditions before award of Contracts for such Work. Accordingly, the data provided by Owner in the Contract Documents shall not be considered as “indicated in the Contract Documents” with respect to any Work performed during the O&M Period.

**6.2.3** Differing Site Conditions also include discovery during construction of subsurface physical conditions of an unusual nature at the Site (excluding Additional Properties and Project-Specific Locations), differing materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Agreement. During the O&M Period, Claims for Differing Site Conditions are allowed only with respect to Work under Major Construction Contracts.

**6.2.4** Concessionaire shall have no right to claim that any condition constitutes a Differing Site Condition or that discovery of any paleontological or cultural (including archaeological and historic) resources, or Threatened or Endangered Species constitutes a Relief Event if:

(a) with respect to the D&C Work, (i) Concessionaire had actual knowledge regarding such conditions or resources as of the Proposal Date; or (ii) such condition or resource would have become known to Concessionaire based on a reasonable investigation of the area before the Setting Date and review of other information available to Concessionaire, consistent with Good Industry Practice; provided that Concessionaire may rely upon the determination of “no effect” on any Endangered Species by federal agencies as included in the Record of Decision; or

(b) with respect to work under any Major Construction Contract awarded during the O&M Period, (i) Concessionaire had actual knowledge regarding such conditions or resources prior to award of such contract, or (ii) such condition or resource would have become known to Concessionaire based on a reasonable investigation of the area in connection with establishment of the scope of work for such contract.

Notwithstanding the foregoing, Owner acknowledges that litigation has been filed in the U.S. District Court in the District of Columbia, captioned Friends of the Capital Crescent Trail v. FTA, Civil Case No. 14-01471 (RJL), and agrees that a determination by the court in such action, or by an AHJ, that a Threatened or Endangered Species exists at, near or on the Project ROW shall constitute a Relief Event to the extent that Concessionaire is required to stop Work or perform Extra Work as a result.

**6.2.5** During the progress of the D&C Work or, during the O&M Period, during the progress of Work under a Major Construction Contract, if either Party encounters any condition that would entitle Concessionaire to claim that a Relief Event has occurred (including any Differing Site Condition and any Relief Event under clause (c) or (d) of the definition of Relief Event), the Party discovering such condition shall notify the other Party of the specific condition promptly before it is disturbed, or as soon as practicable afterwards, and before the affected Work continues.

**6.2.6** Upon receipt of Concessionaire's notice or, if Owner encounters a condition that it believes may be a Differing Site Condition or other Relief Event as described in Section 6.2.5, Owner's Authorized Representative shall, within a reasonable time, investigate the Site. After such investigation Owner will promptly notify Concessionaire whether it considers that a Differing Site Condition or such other Relief Event may exist.

**6.2.7** Concessionaire shall bear the burden of proving that a Differing Site Condition or other Relief Event exists as described in Section 6.2.5 and that it could not reasonably have designed the Project or worked around the area so as to avoid additional cost, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (with the understanding that any additional costs reasonably incurred in connection with such reallocation or redeployment are allowable).

**6.2.8** Each Request for Change Order that is based on Differing Site Conditions or a Relief Event under clause (c) or (d) of the definition of Relief Event shall be accompanied by a statement signed by a qualified professional:

- (a) Describing the investigations undertaken by Concessionaire to determine Site conditions;
- (b) Setting forth all relevant assumptions made by Concessionaire with respect to the condition of the Site;
- (c) Justifying the basis for such assumptions and explaining exactly how the existing conditions differ from those assumptions; and
- (d) Stating the efforts undertaken by Concessionaire to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

**6.2.9** Concessionaire's rights relating to Differing Site Conditions under this Section 6.2 do not excuse Concessionaire from its responsibility to determine what additional geotechnical information is required to support its design and construction activities, to obtain such information and to ensure that such information is accurate throughout the Term.

**6.2.10** Except to the extent that Concessionaire is entitled to relief under Article 15 or to payment from an Allowance, Concessionaire shall bear the risk of all conditions occurring on, under or at the Site, including: (a) physical conditions (surface and/or subsurface) of an unusual nature, differing materially from those ordinarily encountered in the area; (b) changes in surface topography; (c) variations in subsurface moisture content and groundwater levels; (d) Utility facilities; (e) contaminated groundwater; (f) the discovery at, under, near or on the Project ROW of any paleontological resources or cultural (including archaeological or historic) resources; and (g) the discovery at, under, near or on the Project ROW of any Threatened or Endangered Species, and (h) seismic conditions.

## **6.3 Governmental Approvals**

**6.3.1** Owner is responsible for obtaining the Owner-Provided Approvals, as listed in Exhibit 8. As of the Effective Date, all such Owner-Provided Approvals have been issued and Concessionaire acknowledges receipt of said Owner-Provided Approvals. Subject to Sections 6.3.3 and 6.3.7, Owner is responsible for costs of litigation relating to the Owner-Provided Approvals.

**6.3.2** Concessionaire shall provide support to Owner and undertake additional efforts as specified in Section 6.3.13 with respect to any modifications, renewals and extensions of the Owner-Provided Approvals, including those required as the result of Concessionaire's design, Relief Events and Force Majeure Events.

**6.3.3** Owner has initiated the process for obtaining the NPS Special Use Permit. Owner has obtained a permit for access, inspection, surveys, and non-intrusive investigations and has coordinated with NPS in the planning for the Project improvements in the Baltimore Washington Parkway. Concessionaire acknowledges and agrees that the NPS Special Use Permit is required for the Work and that Concessionaire has received and is familiar with NPS ROD and supporting documentation included in the Reference Documents. Concessionaire bears the risk of (a) conditions imposed on performance of the Work by such NPS Special Use Permit and (b) any delay in obtaining the NPS Special Use Permit except to the extent that the delay qualifies as a Force Majeure Event.

**6.3.4** The Parties acknowledge that certain Governmental Approvals are required from Montgomery County, WMATA and the Maryland-National Capital Park and Planning Commission (Montgomery County) with respect to the Silver Spring ATC Work. Although Concessionaire is responsible for obtaining such approvals, material changes in the Work due to conditions imposed by such approvals will be considered an Owner Change under Section 14.1, and certain delays in obtaining such approvals will be considered an Owner-Caused Delay under clause (m) of the definition of Owner-Caused Delay; provided, however, that Concessionaire shall promptly inform Owner of any such conditions imposed by such approvals for Owner's determination whether to proceed with the Silver Spring ATC Work. Any change to the Silver Spring ATC Work resulting from Owner's further determination is also an Owner Change under Section 14.1. Notwithstanding the foregoing, the Governmental Approvals that Concessionaire is required to obtain under this Section 6.3.4 exclude the Owner-Provided Approvals.

**6.3.5** Concessionaire shall obtain all Governmental Approvals required for the Project and the Work, other than the Owner-Provided Approvals, and shall bear the risk of any delay in obtaining such approvals as well as the risk of conditions imposed on performance of the Work by such approvals. Concessionaire shall deliver to Owner true and complete copies of all new or amended Governmental Approvals other than the Owner-Provided Approvals.

**6.3.6** Before submitting any application for a Governmental Approval to a Governmental Entity (or any proposed modification, renewal, extension or waiver of a Governmental Approval or provision thereof), Concessionaire shall submit the same, together with any supporting studies, analyses and data, to Owner for review and approval.

**6.3.7** As between Owner and Concessionaire, Concessionaire shall bear all risk arising out of, relating to or resulting from:

(a) Any differences between Concessionaire's design for any portion of the Project and the design that served as the basis for the application for a Governmental Approval but excluding any differences due to an Owner Change;

(b) Any differences between the means and methods (including temporary works) Concessionaire chooses for performance of the Work and those stated in, referred to or contemplated in any Owner-Provided Approval, but excluding any differences due to an Owner Change, any change in O&M Standards, a Change in Law or a change in any Utility Standards;

(c) Any change in the Project alignment due to Concessionaire's design, except to the extent that the change in alignment was directly attributable to an Owner Change or a Change in Law; and

(d) Cost of litigation associated with Governmental Approvals other than the Owner-Provided Approvals.

**6.3.8** Actions to be taken by Concessionaire relating to Governmental Approvals include:

(a) Conducting all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws, obtaining all necessary Governmental Approvals other than the Owner-Provided Approvals, and obtaining all necessary modifications, renewals and extensions thereof, and providing support to Owner with respect to the Owner-Provided Approvals; and

(b) Complying with all requirements of Governmental Approvals.

**6.3.9** If Concessionaire wishes to obtain, modify, renew or extend any Governmental Approvals, Concessionaire shall first comply with, and obtain any consent or waiver required in accordance with, then-existing agreements between Owner and other Governmental Entities.

**6.3.10** Concessionaire may, by notice to Owner, request Owner's assistance and cooperation in obtaining modifying, renewing or extending any Government Approvals (including any modification, renewal or extension of an existing Governmental Approval required as the result of Concessionaire's design or construction methods). Upon receipt of such a notice and agreement of the Parties regarding the scope of assistance to be provided as described in Section 6.3.11, Owner will assist and cooperate with Concessionaire in seeking to obtain the Governmental Approvals including:

(a) Joining in conferences and meetings with the Governmental Entities with jurisdiction;

(b) Sharing data, information and documents available to Owner relevant to the application for the Governmental Approvals;

(c) Coordinating and working with elected and other public officials as necessary and appropriate;

(d) Assisting with evaluation and definition of solutions;

(e) If necessary, acting as the lead agency and directly coordinating with such Governmental Entities; and

(f) Otherwise partnering with Concessionaire to facilitate issuance of such Governmental Approvals.

**6.3.11** Owner and Concessionaire shall work jointly to establish a scope of work and budget for Owner's Recoverable Costs related to the assistance and cooperation Owner agrees to provide in connection with modifications to Owner-Provided Approvals under Section 6.3.10. Subject to any agreed scope of work and budget and to any rights of Concessionaire in the case of a Relief Event or Force Majeure Event, Concessionaire shall fully reimburse Owner for Owner's Recoverable Costs incurred in providing such assistance and cooperation, including those incurred to conduct further or supplemental environmental studies.

**6.3.12** Assistance provided by Owner under Section 6.3.10 shall not include any obligation to:

(a) Take a position which Owner believes to be inconsistent with the Contract Documents, the Project Management Plan or O&M Management Plan, applicable Law, Governmental Approval(s), the requirements of Good Industry Practice, or Owner policy;

(b) Take a position that is not usual and customary for Owner to take in addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the Project's public-private contracting methodology); or

(c) Refrain from concurring with a position taken by a Governmental Entity if Owner believes that position to be proper.

**6.3.13** Certain Governmental Approvals are required to be applied for or issued in Owner's name and/or require Owner to directly coordinate with such Governmental Entities in connection with obtaining Governmental Approvals. With respect to such approvals, Owner will assist and cooperate with Concessionaire following receipt of a request under Section 6.3.10, and the Parties shall proceed in accordance with Section 6.3.11. Concessionaire at its expense shall provide all necessary support and efforts to apply for and obtain the Governmental Approval including: (a) conducting necessary field investigations, (b) preparing mitigation analyses and studies and plans, (c) preparing surveys and required reports, applications and other documents in form approved by Owner, and (d) joint coordination and joint discussions and attendance at meetings with the applicable Governmental Entity.

**6.3.14** Concessionaire shall be solely responsible for obtaining all Governmental Approvals required in connection with, and for compliance with applicable Laws with respect to, Project-Specific Locations.

## **6.4 Environmental Compliance**

The Technical Provisions include requirements to be met by Concessionaire to ensure that the Project will comply with the requirements of the Environmental Approvals. Owner hereby delegates to Concessionaire, and Concessionaire accepts, all obligations, commitments and responsibilities of Owner under the Environmental Approvals, except to the extent that Part 2A, Section 5 of the Technical Provisions states that Owner retains certain obligations.



## **6.5 Compliance with Approvals**

Throughout the Term and the course of the Work, Concessionaire shall:

- (a) Comply with all Environmental Laws;
- (b) Comply with all conditions, and requirements imposed by all Governmental Approvals;
- (c) Perform all commitments and mitigation measures in all Environmental Approvals, except to the extent that the Contract Documents specifically state that Concessionaire is not responsible for such commitments and mitigation measures; and
- (d) Undertake all actions required by, or necessary to maintain in full force and effect, (i) all Governmental Approvals to be obtained by Concessionaire and (ii) the Owner-Provided Approvals, to the extent specified in the Technical Provisions and Books 3 through 5.

## **6.6 Community Outreach and Public Information**

As more fully stated in Part 2A, Section 13 of the Technical Provisions and Part 3, Section 1.16 of the Technical Provisions, Concessionaire shall participate in development and administration of the Owner's community and public outreach plan by providing ongoing support, information and public involvement coordination concerning the development, construction, operation and maintenance of the Project.

## **6.7 Alternative Technical Concepts**

**6.7.1** Concessionaire acknowledges and agrees that:

- (a) It has sole responsibility for obtaining, and shall use good faith efforts to obtain, any approvals required to implement ATCs included in its Proposal; and
- (b) If any condition in Owner's pre-approval of an ATC has not been met as of the Effective Date, Concessionaire shall (i) ensure that such condition is satisfied before implementing the ATC and (ii) use its good faith efforts to satisfy such condition.

**6.7.2** If Concessionaire cannot obtain any required approval required to implement ATCs included in its Proposal, fails to satisfy any such condition, or fails in any other way to implement the approved ATC:

- (a) Concessionaire shall provide notice to the Owner's Authorized Representative and shall comply with the corresponding baseline requirements (unmodified by the ATC) at its cost, without any additional compensation, time extension or other basis for any Claim; and
- (b) To the extent an ATC included in the Proposal represented additional Work or higher quality materials from what is otherwise required by the Contract Documents and resulted in a total net increase in amounts payable by Owner under the Contract Documents (accounting both for costs incurred during the Design-Build Period and the O&M Period), Owner shall be entitled to a credit for the net present value of the reduced cost (using the then-applicable yield on two-year U.S. Treasury bonds as the discount rate) to Concessionaire of reverting to the baseline requirements

of the Contract Documents, including reduced costs relating to financing and equity investment.

**6.7.3** Concessionaire acknowledges and agrees that, to the extent that Concessionaire uses any ATCs submitted by any other proposer provided to Concessionaire by Owner, Concessionaire does so at its sole risk and such use shall in no way confer or be deemed to confer liability upon Owner or the unsuccessful proposer.

## **ARTICLE 7. DESIGN AND CONSTRUCTION**

### **7.1 General Obligations of Concessionaire Concerning D&C Work**

Concessionaire shall:

- (a) Expeditiously and diligently progress performance of the D&C Work with the goal of achieving Revenue Service Availability and Final Completion by the applicable Contract Deadlines;
- (b) Carry out or do all things necessary to perform the D&C Work and design and construct the Project in accordance with the Contract Documents and Good Industry Practice;
- (c) Ensure that each of the following is fit for its intended function and uses: (i) all goods, equipment, consumables, and materials used or supplied by each Concessionaire-Related Entity in connection with the Project and the D&C Work and (ii) those LRV components obtained as part of the D&C Work;
- (d) Provide maintenance and other services as described in Part 2A, Section 24 of the Technical Provisions and Section 7.13 of this Agreement;
- (e) Ensure adequate materials, equipment and resources are available to ensure compliance with the requirements of the Contract Documents under normal conditions and reasonable anticipated abnormal conditions;
- (f) Ensure all materials and equipment are of good quality and new unless otherwise expressly stated;
- (g) Ensure the Project shall be free of defects, including design defects, errors and omissions,
- (h) Ensure the Site is kept in a neat and clean condition at all times;
- (i) Cooperate with Owner and AHJs in all matters relating to the D&C Work, including their review, inspection and oversight of D&C Work; and
- (j) Remove and replace Nonconforming Work and/or materials, whether discovered or rejected by Owner or Concessionaire, or otherwise remedy such Nonconforming Work and/or materials in an acceptable manner approved, in advance, by Owner.

### **7.2 Performance, Design and Construction Standards; Deviations**

**7.2.1** Concessionaire shall construct and equip the Project in accordance with the Final Design Documents and the Construction Documents, in each case taking into account the Project ROW limits and other constraints affecting the Project.

**7.2.2** The Project design and construction shall be subject to certification in accordance with the procedures contained in the approved Concessionaire's Design Quality Plan and Construction Quality Plan.

**7.2.3** Concessionaire may apply for Owner approval of proposed Deviations from requirements of the Technical Provisions and Technical Documents applicable to the D&C Work, as follows.

**7.2.3.1** Concessionaire shall submit a written application to Owner which:

- (a) Specifically identifies and labels the proposed Deviation;
- (b) Identifies the specific language within the Contract Documents to which the Deviation applies;
- (c) Provides proposed revised language and specifies the exact circumstances and/or limitations in seeking the Deviation; and
- (d) Identifies how the Deviation sought constitutes sound and safe design, engineering and or construction practices consistent with Good Industry Practice and achieves Owner's applicable Safety Standards and criteria and does not jeopardize the quality, integrity, life-cycle performance, service performance or extreme event performance of the Project.

**7.2.3.2** Upon receipt of an application under Section 7.2.3.1, Owner, may approve or reject the application. No request for a Deviation shall be deemed approved or be effective unless and until notice is provided to Concessionaire in writing and signed by Owner's Authorized Representative.

**7.2.3.3** Owner's failure to issue written approval of a Deviation within 15 business days after receipt of an application from Concessionaire shall be deemed a disapproval of such application.

**7.2.3.4** Except with respect to Deviation requests under Section 7.2.4, Owner's denial or disapproval of a requested Deviation shall be final without any right to appeal under the Dispute Resolution Procedures.

**7.2.3.5** Owner may elect to process the application as a Modification Request under Section 14.2 rather than as an application for a Deviation.

**7.2.4** Concessionaire shall use reasonable efforts to identify and provide notice to Owner of any specifications or other provisions in Books 2 through 5 that are erroneous, create a potentially unsafe condition, or may be inconsistent with Good Industry Practice or applicable Law. Such notice must include a request for Owner approval of a Deviation or changes to the provision that Concessionaire believes are necessary to render it correct, safe and consistent with Good Industry Practice and applicable Law. If Concessionaire commences or continues any D&C Work affected by the change after the need for the change was known, or should have been known through the exercise of reasonable care, Concessionaire shall bear any additional costs and time associated with redoing the D&C Work already performed.

**7.2.5** References in the Technical Provisions and Books 3 through 5 to manuals or other publications relating to the D&C Work shall mean the most recent editions in effect as of the Setting Date, unless expressly provided otherwise. Safety Compliance changes shall be in accordance with Section 10.4.

**7.2.6** The Parties anticipate that from time to time after the Setting Date, Owner will adopt changed, added or replacement standards (including Safety Standards), criteria,

requirements, conditions, procedures, specifications and other provisions of general application to design and construction of Owner's transportation facilities ("Changed D&C Standards"), which may be implemented through revisions to existing manuals and publications or through new manuals and publications. By delivery of notice to Concessionaire Owner may modify relevant provisions of Books 2 through 5 to incorporate any Changed D&C Standards, whereupon they shall constitute amendments to, and become part of, Books 2 through 5 and be deemed to replace and supersede inconsistent provisions of Books 2 through 5 without need for further action by either Party. If requested by Concessionaire in writing, Owner will identify superseded provisions. The following provisions shall apply with respect to any such Changed D&C Standards:

**7.2.6.1** To the extent that a Changed D&C Standard requires a change in the D&C Work or in the Work under any Major Construction Contract awarded before delivery of the notice to Concessionaire from Owner regarding the change, the requirement to implement such change with respect to such D&C Work or Work under the Major Construction Contract will be considered an Owner Change under Section 14.1.

**7.2.6.2** In certain cases, Changed D&C Standards may be directly attributable to a change in Law or may require development of capital improvements not required by the Operating Plan, Maintenance Plan or Asset Management Plan. In such case, unless the change qualifies as an Owner Change under Section 7.2.6.1, Concessionaire's entitlement to relief would be governed by the provisions of Article 15 relating to changes in O&M Standards.

**7.2.6.3** Except as otherwise provided in Section 7.2.6.1 or 7.2.6.2 Concessionaire is required to implement Changed D&C Standards without entitlement to additional compensation or relief.

## **7.3 Design Implementation**

Concessionaire, through appropriately qualified professional engineers registered and licensed in the State of Maryland and identified in Concessionaire's Project Management Plan, shall furnish designs, plans and specifications in accordance with the Contract Documents. Concessionaire shall cause the Engineer(s) of Record for the Project to sign and seal all Final Design Documents.

## **7.4 Schedule, Deadlines, Notices to Proceed and Commencement of Work**

### **7.4.1 Commitment to Meet Deadlines**

**7.4.1.1** As a material consideration for entering into this Agreement, Concessionaire hereby commits, and Owner is relying upon Concessionaire's commitment, to achieve Revenue Service Availability by the Long Stop Date and Final Completion by the Final Completion Deadline. Time is an essential element of this Agreement and it is important that the D&C Work be vigorously prosecuted until completion.

**7.4.1.2** Concessionaire represents that the Initial Baseline Schedule represents a practical schedule for Concessionaire to complete performance of the Work through Final Completion (absent Relief Events or Force Majeure Events that may irretrievably delay such performance), and is consistent with the Contract Deadlines. Concessionaire shall use the Initial Baseline Schedule as a foundation to prepare a Baseline Schedule for Owner's review, comment and approval in accordance with Part 2A, Section 9.1 of the Technical Provisions. The Parties shall use the Baseline Schedule, as approved by Owner, for planning

and monitoring the progress of the D&C Work. The Baseline Schedule shall include the RSA Deadline in the Initial Baseline Schedule. In the event that Concessionaire fails to provide an acceptable Baseline Schedule or Project Schedule update within the time required under Part 2A, Section 9 of the Technical Provisions, Concessionaire shall have no right to receive payments under this Agreement until Concessionaire has prepared and Owner has approved such schedule or update.

**7.4.1.3** Concessionaire acknowledges and agrees that the Contract Deadlines provide reasonable and adequate time to perform the Work required within the Contract Deadlines, subject only to Concessionaire's rights to obtain time extensions under Article 15. The relief and the compensation amounts specified in Article 15 represent Concessionaire's sole and exclusive remedy and right against MTA, MDOT and their respective successors, assigns, agencies, divisions, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees for adverse financial and schedule effects of any Relief Event or Force Majeure Event affecting the Work, the Project or Concessionaire during the Design-Build Period. Nothing in this Section 7.4.1.3 shall preclude Concessionaire's exercise of rights under Article 19 pertaining to Extended Delays.

#### **7.4.2 Float**

All Float contained in the Project Schedule, as shown in the Initial Baseline Schedule or as generated during the course of the Work, shall be considered a shared, jointly owned Project resource available to both Owner and Concessionaire, and shall not be considered as time for exclusive use or benefit of either Owner or Concessionaire. Concessionaire shall cause all Contracts with each Design-Build Contractor to acknowledge Project Float to be a shared, jointly owned resource available to Owner as well as Concessionaire as needed to absorb delay caused by Relief Events, Force Majeure Events or other events, achieve interim completion dates and achieve Contract Deadlines. All Float shall be identified as such in the Project Schedule on each affected schedule path. Owner shall have the right to examine the identification of (or failure to identify) Float on the Project Schedule in determining whether to approve the Project Schedule. Once identified, Concessionaire shall monitor, account for and maintain Float in accordance with critical path methodology.

#### **7.4.3 Work Before Financial Close**

Before Financial Close, Concessionaire shall perform all Work required to achieve Financial Close and may also proceed with other non-Construction Work at its own risk, including undertaking efforts to satisfy the conditions in Section 7.4.4 so as to enable the remaining D&C Work to commence promptly following Financial Close. Owner may issue one or more limited NTPs authorizing Concessionaire to perform elements of the D&C Work for which Owner will provide reimbursement on the terms of each such limited NTP. If Financial Close fails to occur, Owner shall have no obligation to reimburse Concessionaire for any of its costs incurred relating to this Agreement, other than payments authorized by a limited NTP and payments allowed under Section 5 of Exhibit 13B.

#### **7.4.4 Commencement of Non-Construction Work After Financial Close**

After Financial Close occurs, the following conditions must be satisfied before Concessionaire may commence any D&C Work (excluding Work required to satisfy said conditions):

**7.4.4.1** Owner has approved the updated Initial Baseline Schedule as specified in Part 2A, Section 9.1.1 of the Technical Provisions;

**7.4.4.2** All Insurance Policies required to be provided as of Financial Close under Section 11.1 have been obtained, have an effective date at or before the date of Financial Close and remain in full force and effect, and Concessionaire has delivered to Owner, within 15 business days before the date for commencement of D&C Work, true and certified copies of insurance policies and all endorsements to such policies verifying required coverages from the issuers of such policies;

**7.4.4.3** Concessionaire has certified to Owner that all personnel who will perform D&C Work either hold all licenses, certifications, registrations, permits or approvals necessary for performance of the D&C Work or will obtain them before starting work; and

**7.4.4.4** Owner has approved Concessionaire's proposed final DBE Participation Plan submitted under Section 9.10.1.5(h).

Upon satisfaction of the conditions precedent in this Section 7.4.4, Concessionaire's Authorized Representative shall execute and deliver a certificate, in form acceptable to Owner certifying to the same, and Owner will provide a countersigned certificate to Concessionaire acknowledging receipt.

#### **7.4.5 Commencement of Construction Work**

Construction Work may not commence until the following conditions precedent have been satisfied:

**7.4.5.1** The Performance Security and Payment Bond required under Section 11.2.1 have been obtained and are in full force and effect, and Concessionaire has delivered to Owner certified and conformed copies of the applicable bond(s) (or the original letter of credit, if applicable) and the original multiple obligee rider(s); provided that if Concessionaire procures the surety bonds directly, Concessionaire shall deliver to Owner the originals of the applicable bond(s);

**7.4.5.2** Insurance Policies required under Section 11.1 for the Construction Work have been obtained and are in full force and effect, and Concessionaire has delivered to Owner, within 15 business days before the scheduled date for commencement of Construction Work, written binders of insurance verifying coverages from the relevant issuers of such Insurance Policies;

**7.4.5.3** All Governmental Approvals necessary to begin the applicable portions of the Construction Work have been obtained and Concessionaire has furnished to Owner fully executed copies of such Governmental Approvals other than the Owner-Provided Approvals;

**7.4.5.4** All rights of access necessary for commencement of Construction Work on the applicable portion of the Site have been obtained;

**7.4.5.5** All applicable pre-construction requirements contained in the Record of Decision and other Governmental Approvals for the applicable portion of the Construction Work have been satisfied;

**7.4.5.6** The following requirements of the Technical Provisions have been satisfied:

(a) Concessionaire has obtained Owner approval of the Baseline Project Schedule as specified in Part 2A, Section 9.1.2 of the Technical Provisions;

(b) a safety and security work initiation meeting has occurred in accordance with Part 2A, Section 12.4.5 of the Technical Provisions;

(c) Concessionaire has obtained Owner approval of all components of the Project Management Plan relevant to the Construction Work to be performed, in accordance with Part 2A of the Technical Provisions;

(d) In accordance with Part 2A of the Technical Provisions, Concessionaire has obtained Owner approval of: the Protection of Existing Structures Plan (Section 4.6), the Comprehensive Environmental Protection Program (Section 5.4), the Concessionaire's Quality Program (Section 14.1), the Pest and Rodent Control Plan (Section 5.9), the Concessionaire Safety & Health Plan (Section 15.4), the Site Security Plan (Section 16.3), the Noise Control, Monitoring and Mitigation Plan (Section 17.3.1); the Transportation Management Plan (Section 20.3), and the Construction Access and Mobility Plan (Section 20.4.5);

(e) Concessionaire has caused to be developed and delivered to Owner the Release for Construction Documents for the affected Construction Work in accordance with Part 2A, Section 3.7 of the Technical Provisions and pre-construction surveys in accordance with Part 2A, Section 4.6 of the Technical Provisions;

(f) Concessionaire has completed and documented completion of necessary training required to allow full access to the Site to those individuals designated by Owner in accordance with Part 3, Section 1 of the Technical Provisions; and

(g) Concessionaire has (i) obtained any approvals and/or releases from Utility Owners and Third Parties (A) needed to begin Construction Work under Part 1 of the Technical Provisions or (B) required for the Silver Spring ATC Work, and (ii) has furnished to Owner fully executed copies of all such approvals and/or releases; provided that Concessionaire may commence construction of specific elements of the Work based on approvals and releases covering such elements, so long as Concessionaire does not proceed with any additional Construction Work until after it obtains all approvals and releases required for the additional work;

**7.4.5.7** Concessionaire has obtained approvals from Authorities Having Jurisdiction required for, as well as Owner approval of, any proposed lane closures, and has taken other appropriate measures to ensure maintenance of traffic in the area affected by the Work;

**7.4.5.8** Concessionaire has delivered to Owner, and Owner has accepted or approved, as applicable, all other Submittals relating to the applicable portion of the Construction Work required by the Project Management Plan and the Contract Documents, in the form and content required by the Project Management Plan or Contract Documents;

**7.4.5.9** The guarantees in favor of Owner, if any, required under Section 11.4 have been executed, obtained and delivered to, and received by, Owner and are in full force and effect; and



**7.4.5.10** All representations and warranties of Concessionaire in Section 21.1 shall be and remain true and correct in all material respects, and Concessionaire has delivered to Owner a certificate certifying to the same.

Upon satisfaction of the above conditions precedent, Concessionaire's Authorized Representative shall execute and deliver a certificate, in form acceptable to Owner certifying to the same, and Owner will provide a countersigned certificate to Concessionaire acknowledging receipt.

#### **7.4.6 Completion of D&C Work**

Concessionaire shall achieve Revenue Service Availability and Final Completion in accordance with the procedures, requirements and conditions set forth in Section 7.10.

### **7.5 Acquisition of Real Property**

#### **7.5.1 Property Acquisition Schedule**

**7.5.1.1** Owner has identified certain property to be used for the Project, the boundaries of which are depicted in the Right of Way plats in Book 4 (Contract Drawings). Owner will acquire, at its cost, the Project ROW as well as certain other property rights as specified in this Section 7.5. Owner will staff a ROW team that will be available to acquire ROW and deal with all issues that may arise relating to ROW acquisition. For purposes of this Section 7.5, dates in the Property Acquisition Schedule are as identified with respect to the properties listed in Exhibit 2, Section 7.

**7.5.1.2** The Property Acquisition Schedule in Exhibit 9 specifies dates by which Owner intends to provide Concessionaire with rights of access for properties as identified in said Exhibit 9. Concessionaire must obtain from Owner a notice of clear right of way prior to entering any property listed on Exhibit 9 or that is otherwise to be obtained by Owner.

**7.5.1.3** If Owner determines that it is necessary to acquire other real property interests for the Project as a result of a Relief Event during the Design-Build Period, then those real property interests will be added to the Property Acquisition Schedule and will not be treated as Additional Properties.

**7.5.1.4** If Concessionaire considers that other real property interests are required for the permanent System improvements or Third Party Work and were erroneously excluded from the Property Acquisition Schedule, Concessionaire may, by notice to Owner, request Owner to add such other real property interests to the acquisition schedule. Concessionaire's notice shall include an analysis identifying alternative approaches that could be adopted to avoid the need for the acquisition, including use of retaining walls and other design modifications. If Owner determines that any real property interests identified by Concessionaire are necessary for the permanent System improvements or Third Party Work and should therefore have been included in the Property Acquisition Schedule, Owner will add such real property interests to the Property Acquisition Schedule. Owner will determine acquisition dates and acquire such real property interests at its own expense and will not treat such real property interests as Additional Properties. However, Concessionaire shall remain responsible for any costs incurred with respect to such real property interests under Section 7.5.2.1.

**7.5.1.5** Real property required for Utility Easements will be considered an Additional Property for which Concessionaire is required to pay 50% of the acquisition costs, with the following exceptions:

(a) If it is impracticable to design the Project to avoid the need for the additional Utility Easement (that is, if such a design is impossible, overly costly or otherwise not in the best interest of the Project), the real property required for such Utility Easement will not be considered an Additional Property.

(b) If the Utility Easement is required as the result of an unreasonable refusal or delay by the Utility Owner to approve placement of Utility Adjustments within the boundaries of the properties identified in Exhibit 9, the real property required for such Utility Easement will not be considered an Additional Property.

Where the foregoing exceptions apply, Owner will be responsible for the costs of acquiring the real property required, excluding costs incurred by Concessionaire under Section 7.5.2.1, and delays under exception (b) above will be considered Utility Owner Delays. In all other cases, Concessionaire shall be responsible for 50% of the cost of acquisition of any such property as described in Section 7.5.2 as well as costs it incurs under Section 7.5.2.1, and shall be responsible for the risk of delays related to acquisition of such property. Such Utility Easements will be added to the Property Acquisition Schedule, subject to the cost allocations under this Section 7.5.1.5.

## **7.5.2 Documentation Relating to Additional Acquisitions**

**7.5.2.1** If Concessionaire identifies any property that it believes should be added to the Project ROW or is required for Utility Easements, Concessionaire may submit to Owner a request for acquisition of additional property interests and related documentation in accordance with Part 2A, Section 27.2 of the Technical Provisions. In such event, Concessionaire shall prepare and submit to Owner new or revised surveys, legal descriptions, draft ROW plats for review and approval by the Owner or its designee and design and other appropriate documentation of basis of acquisition and justification of acquisition of any property interests not listed in Exhibit 9 the need for additional ROW. Following delivery of a request under this Section 7.5.2.1,

(a) Owner will review the request and supporting documentation and will determine whether the proposed acquisition appears to be appropriate for the Project, whether it will be considered as an “Additional Property” acquisition or fits into another acquisition category, whether any additional information or documentation is necessary for the acquisition, and the anticipated schedule for the acquisition.

(b) Upon agreement between Owner and Concessionaire regarding the acquisition of any additional property, Concessionaire shall support the acquisition in accordance with Part 2A, Section 27.2 of the Technical Provisions.

(c) Prior to acquisition of any additional property interests under this Section 7.5, Concessionaire shall provide to Owner any additional documentation required by Owner for the acquisition.

**7.5.2.2** If Owner determines, in its sole discretion, that the requested acquisition is appropriate and in the best interest of the Project, Owner will approve Concessionaire’s request in accordance with this Section 7.5.2. Owner will then proceed with the acquisition in accordance with applicable federal and State procedures, and add such real

property interests to the Property Acquisition Schedule subject to this Section 7.5. In all other situations, Owner has no obligation to approve any request for acquisition.

**7.5.2.3** Concessionaire shall be responsible for all costs and expenses incurred by Owner in connection with acquisition of Additional Properties other than property required for Utility Easements. With respect to additional property required for Utility Easements, except as otherwise provided in Section 7.5.1.5, Concessionaire shall be responsible for its costs incurred under Section 7.5.2.1 and for 50% of the aggregate of all other costs and expenses incurred with respect to the acquisition of such properties. In paying all such costs and expenses, Concessionaire is not acquiring, and shall not be deemed to be acquiring, any interest in real property for Concessionaire. Such costs and expenses may include:

- (a) The cost of acquisition services, relocation services and associated document preparation costs;
- (b) The cost of relocation assistance in accordance with the applicable Maryland State law, the Uniform Act and FTA Circular 5010.1D;
- (c) The cost of condemnation proceedings handled by the Office of the Attorney General of the State of Maryland, including attorneys' and expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production;
- (d) The acquisition and associated costs, settlements, offers of judgment, court awards or judgments, including pre-judgment and post-judgment interest, costs, and attorney's fees, or other consideration for interests in real property for all parcels required for the Project or the Work;
- (e) The cost of permanent or temporary acquisition of leases, easements, rights of entry, licenses and other interests in real property, including for drainage, temporary work space, Project-Specific Locations, and any other convenience of Concessionaire;
- (f) The cost of permitting; and
- (g) Closing costs in accordance with the Uniform Act and Owner policies.

**7.5.2.4** Owner will submit statements to Concessionaire regarding Recoverable Costs relating to acquisition of Additional Properties and property required for Utility Easements, not more often than monthly. Concessionaire shall reimburse Owner within 30 days of Owner's submittal to Concessionaire of each such invoice. In addition to any other remedy, Owner shall have the right to curtail or suspend acquisition activities if Concessionaire for any reason fails to pay any such invoice in full when due. Owner will resume acquisition activities promptly after delinquent amounts are paid in full with interest.

**7.5.2.5** Concessionaire shall bear all risk of delays related to acquisition of Additional Properties.

### **7.5.3 Temporary Interests in Property**

**7.5.3.1** Concessionaire shall be solely responsible for acquisition of any temporary interests in property which Concessionaire determines is necessary, desirable or advisable to obtain in connection with the Project or the Work, excluding acquisitions of temporary interests in property identified in Exhibit 9 but including any property interests that Concessionaire wishes to obtain in advance of the acquisition date identified in Exhibit 9. Temporary interests to be obtained outside of the right of way boundaries in the ROW Maps may include rights to use property for borrow pits and storage, as well as any property needed for any temporary utility facilities being constructed by Concessionaire. Concessionaire shall pay the purchase price for all such property interests directly. If the property is within the limits of any real property scheduled for acquisition by Owner or is intended to be used for permanent improvements, or if Concessionaire intends to request Owner to acquire such real property, Concessionaire shall coordinate with Owner and shall not negotiate with the owner(s) of such interests except with express permission of Owner and in compliance with applicable Maryland Law, FTA Circular 5010.1D and the Uniform Act.

**7.5.3.2** Owner shall have no obligation to acquire temporary interests in property other than any temporary property interests identified in Exhibit 9, but may agree to do so following receipt of request from Concessionaire. Concessionaire shall solely bear the risk of any delays and cost impacts related to acquisition of temporary interests not listed in Exhibit 9, regardless of whether Owner agrees to undertake any such acquisition.

**7.5.3.3** Concessionaire shall promptly notify Owner regarding all temporary interests in property that it or any of its Contractors acquires in the vicinity of the Project.

### **7.5.4 Property Acquisitions and Scheduling Work**

**7.5.4.1** Concessionaire's Baseline Schedule shall not provide for any Work to be done on any property before the availability date in Exhibit 9. In developing its schedule, Concessionaire shall reasonably minimize dependence on the property acquisition process.

**7.5.4.2** Concurrently with the initial review of the Baseline Schedule, Concessionaire and Owner shall meet to discuss:

(a) Concessionaire's access requirements associated with planned activities and the extent to which delay in access to property listed in the Property Acquisition Schedule is likely to affect a Critical Path;

(b) What efforts (if any) could reasonably be undertaken by the Parties to accelerate acquisition of any critical real property interests;

(c) Whether schedule delays may be avoided by providing access to property subject to conditions or restrictions;

(d) Whether any changes should be made to the Property Acquisition Schedule or Baseline Schedule; and

(e) Whether anticipated covenants, conditions and restrictions affecting access will affect Concessionaire's ability to perform Work as scheduled, and how to mitigate any such problems.

**7.5.4.3** In certain cases, Owner may be able to avoid or mitigate schedule delays by providing access to property listed in the Property Acquisition Schedule subject to restrictions, in which case Owner will notify Concessionaire of the restrictions and Concessionaire shall ensure that all requirements are met. Concessionaire may be entitled to compensation under Section 15.11 for its costs of complying with said restrictions.

**7.5.4.4** If Owner agrees, based on a request from Concessionaire, to seek to accelerate acquisition of any property interests, such agreement shall have no effect on the scheduled access date listed in the Property Acquisition Schedule for the purpose of determining whether an Owner-Caused Delay has occurred.

**7.5.4.5** Concessionaire shall coordinate with Owner regarding:

(a) Completion of Project design and identification of final ROW requirements and construction impacts;

(b) Any adjustments to the Baseline Schedule necessary to reflect updates to the Property Acquisition Schedule; and

(c) Any design features that may impact properties for which no property acquisition is contemplated, with the goal of avoiding damages to properties not previously identified and addressed.

## **7.6 Utility Adjustments**

### **7.6.1 Concessionaire's Responsibility**

Concessionaire shall:

(a) Ensure completion of all Utility Adjustments necessary to accommodate the Project are completed in accordance with the Project Schedule and the requirements of the Contract Documents, including Part 2A, Section 9 of the Technical Provisions and Part 2B, Section 6 of the Technical Provisions;

(b) Conduct reasonable site investigation and exploration before commencement of Construction Work in any particular area to correctly identify all Utilities in the area;

(c) Include in the design all utilities identified in clause (b) to ensure that Utility services are not mistakenly disrupted by the Construction Work;

(d) Ensure that all Utility Work performed by Concessionaire-Related Entities complies with the Contract Documents; and

(e) Coordinate, monitor and otherwise undertake appropriate efforts to ensure timely performance of Utility Work by Utility Owners, in coordination with the D&C Work, and in compliance with the standards and other applicable requirements specified in the Contract Documents and Owner Utility Agreements. Concessionaire shall keep Owner informed of any concerns regarding work by Utility Owners, and Owner agrees to cooperate as reasonably requested by Concessionaire to ensure proper performance by the Utility Owners.

## **7.6.2 Utility Agreements**

**7.6.2.1** The Owner Utility Agreements and, in some cases, draft Owner Utility Agreements, are included as Reference Documents and portions of such agreements are incorporated into the Contract Documents by reference. The Owner Utility Agreements provide information regarding the responsibilities of Utility Owners and Concessionaire to perform the Utility Work, the basis for compensation, preliminary engineering agreements, extent of design reviews, requirements for Contractors engaged by Concessionaire to perform Utility Work, and other relevant information.

**7.6.2.2** Concessionaire is delegated, and accepts, certain responsibilities and obligations of Owner under the Owner Utility Agreements (or under the assumed terms of Owner Utility Agreements) in accordance with Part 1, Section 9, Part 2A, Section 19 and Part 2B, Section 6 of the Technical Provisions. Concessionaire shall comply with, be bound by and timely perform all such responsibilities and obligations except to the extent Concessionaire and the applicable Utility Owner expressly agree to modify such responsibilities and obligations, with prior approval from Owner. Concessionaire acknowledges and agrees that Utility or Owner may require Concessionaire to use pre-approved Contractors and/or Suppliers in performance of certain Utility Work.

**7.6.2.3** Before commencing Construction Work on a particular utility facility, Concessionaire shall obtain the relevant Utility Owner's approval regarding the work to be performed, in accordance with the requirements of the Owner Utility Agreement, Part 1, Section 9 of the Technical Provisions, and Good Industry Practice.

**7.6.2.4** If Concessionaire determines that a Utility Adjustment is required for a facility owned by a Utility Owner that has not entered into an Owner Utility Agreement, Concessionaire shall promptly notify Owner regarding the circumstances. In such event, unless Owner directs otherwise, Concessionaire shall prepare, negotiate and enter into a Concessionaire Utility Agreement with such Utility Owner, enabling Utility Work to proceed.

**7.6.2.5** Each Concessionaire Utility Agreement (if any) entered into pursuant to Section 7.6.2.4 shall:

- (a) Clearly specify and distinguish the scope of Utility Work to be performed by Concessionaire and the Utility Owner, respectively;
- (b) Contain provisions for payments, payment terms, controlling specifications, work description, compliance with applicable federal Law and any requirements with respect to use of Contractors or Suppliers pre-approved by any Utility Owner for work on its facilities;
- (c) Include specific procedures for resolving scheduling, design, construction and payment issues arising due to errors or omissions in information the Utility Owner provides to Concessionaire;
- (d) Require the Utility Owner and its contractors to comply with and abide by all applicable Buy America Requirements in connection with performance of Utility Work. The foregoing shall not be deemed to obligate Utility Owners to comply with federal Buy America Requirements if the Utility Owner is required by applicable law to perform such Utility Work at its own expense and without right to payment or reimbursement from Owner or Concessionaire, or if the Utility Owner is otherwise exempt from federal Buy America requirements; and

(e) Expressly provide that Owner shall have no liability under the Concessionaire Utility Agreement unless and until Owner is assigned Concessionaire's interests and agrees to assume Concessionaire's obligations under such agreement. Owner agrees to cooperate as reasonably requested by Concessionaire in pursuing Concessionaire Utility Agreements, including attending negotiation meetings and review of Concessionaire Utility Agreements. Concessionaire shall keep Owner informed of the status of any such negotiations. Concessionaire shall submit each such Concessionaire Utility Agreement (including supplements and amendments) to Owner for review and comment. Concessionaire shall deliver to Owner, within 10 days after execution, a true and complete copy of each such Concessionaire Utility Agreement entered into by Concessionaire. Concessionaire shall not enter into any agreement with a Utility Owner that purports to bind Owner in any way, unless Owner has also executed such agreement.

**7.6.2.6** Concessionaire is responsible for proper completion of the Utility Work required for the Project, in accordance with the Contract Documents, regardless of the nature or provisions of the Utility Agreements and regardless of whether Concessionaire or its Contractors, or the Utility Owner or its contractors, is performing the Utility Work. No extension of time will be allowed for delays associated with Utility Work, and no additional compensation will be allowed relating to Utility Work, except to the extent specifically permitted by the Contract Documents.

**7.6.2.7** In the event of any conflict, ambiguity or inconsistency within any Utility Agreement or between the provisions of any Utility Agreement and the Contract Documents, the provisions that establish the higher quality, manner or method of performing the Utility Work, establish better practice (as determined by Owner in its discretion), or use more stringent standards shall prevail, as between Concessionaire and Owner.

**7.6.2.8** If the conflict, ambiguity or inconsistency within any Utility Agreement or between the provisions of any Utility Agreement and the Contract Documents cannot be reconciled under Section 7.6.2.7, then the Contract Documents shall prevail.

**7.6.2.9** Concessionaire shall comply with and timely perform all obligations imposed on Concessionaire by any Utility Agreement.

### **7.6.3 Requirements**

Each Utility Adjustment (whether performed by Concessionaire or by the Utility Owner) shall comply with applicable Utility Standards and other requirements in the Utility Agreements, as well as requirements of the Technical Provisions, the other Contract Documents and applicable Law. Concessionaire is solely responsible for making arrangements with Utility Owners to limit applicability of changes to Utility Standards made after the Setting Date.

### **7.6.4 Costs of Utility Work**

**7.6.4.1** Concessionaire shall be responsible for:

(a) all costs of Utility Work performed by Concessionaire-Related Entities;

(b) all payments owing to Utility Owners for Utility Work under Concessionaire Utility Agreements (if any);

(c) A share of the costs of acquisition of property required for Utility Easements as provided in Section 7.5.2;

(d) all costs of Incidental Utility Work; and

(e) all costs of materials furnished by Utility Owners under Owner Utility Agreements.

**7.6.4.2** Concessionaire is responsible for making payments directly to the Utility Owner for costs that Section 7.6.4.1 or Part 1, Section 9 of the Technical Provisions requires Concessionaire to pay.

**7.6.4.3** Owner is responsible for payments owing to Utility Owners under the Owner Utility Agreements, except as otherwise provided in this Section 7.6.

## **7.6.5 FTA Reimbursement Requirements**

Unless Owner notifies Concessionaire that Owner does not intend to seek reimbursement from FTA for Utility Work:

**7.6.5.1** The Utility Work will be subject to, and Concessionaire shall comply with, 23 CFR Part 645 Subpart A (including requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit, in addition to Concessionaire's record retention obligations under Section 23.1) and FTA's associated policies and procedures.

**7.6.5.2** Each Concessionaire Utility Agreement (if any) shall incorporate by reference 23 CFR Part 645 Subparts A and B, and assign the obligations arising under 23 CFR Part 645 Subparts A and B.

**7.6.5.3** Concessionaire shall comply with 23 CFR Part 645, Subparts A and B, to ensure that costs of Utility Work are eligible for reimbursement from FTA.

## **7.6.6 Betterments**

**7.6.6.1** Utility Betterments may be added to the Work pursuant to this Section 7.6.6 and Part 2B, Section 6.1 of the Technical Provisions.

**7.6.6.2** Any Utility Owner may request Owner to permit Concessionaire to perform work relating to Betterments as a part of the Work, at the Utility Owner's expense. If Owner's Authorized Representative approves any such request, Concessionaire will have the obligation to perform such work, with the right to receive additional payment by a Change Order issued under Article 14 or by direct payment from the Utility Owner, in accordance with this Section 7.6.6. Unless specifically authorized in the approved Owner Utility Agreement, Concessionaire shall not request or accept payment directly from any Utility Owner for any Betterment added to the Work.

**7.6.6.3** Any Change Order for Betterment Work shall identify the scope of the Betterment Work and establish compensation for such work as agreed upon by Owner, Concessionaire and the Utility Owner. The amount payable by Owner under any such Change Order shall be a direct pass-through, without additional markup, of (a) the price negotiated by Contractor and the Utility Owner for such work or (b) amounts payable on a time and materials basis for such work in accordance with Exhibit 13A.



**7.6.6.4** Owner will approve the addition of a Betterment to the scope of the Work under this Section 7.6.6 only if: (a) the Utility Owner has agreed to the addition of such Betterment to the Work, (b) such Betterment is compatible with the Project and will not delay the Critical Path, (c) it is feasible to separate the cost/pricing of the Betterment work from that for any related Utility Work being furnished or performed by Concessionaire, (d) the Utility Owner has agreed to reimburse Owner or pay Concessionaire directly for all the costs of the Betterment, and (e) the Utility Owner has agreed as to the method of pricing such Work. Concessionaire shall provide Owner with such information, analyses and certificates as may be requested by Owner in connection with its review of the Betterment.

**7.6.6.5** If any Betterment added to the Work by Change Order is subsequently deleted from the Work, or if the scope of Concessionaire's Work with regard to such Betterment is materially reduced, then Owner shall be entitled to issue a Change Order reducing compensation payable to Concessionaire based on the reduction in the costs of the Work directly attributable to such deletion or reduction. If the entire Betterment is deleted from the Work, such Change Order shall be equal to the entire amount payable under the Change Order issued for the Betterment; otherwise, the amount of the deductive Change Order shall be determined in accordance with Exhibit 13A.

### **7.6.7 Assignment of Rights Against Utility Owners**

If Concessionaire establishes that it has a good faith claim based on wrongful actions or inactions of a Utility Owner pertaining to a Utility within the Project ROW or otherwise affected by the Project, upon receipt of a written request from Concessionaire, Owner may assign to Concessionaire Owner's rights of recovery, as such may exist, under any existing agreement between Owner and the Utility Owner or under any utility permit.

### **7.6.8 Applications for Utility Permits**

**7.6.8.1** For reasons unrelated to a Utility Adjustment, Utility Owners may apply to an Authority Having Jurisdiction for utility permits to install new Utilities that would conflict with the Project, or to modify, upgrade, relocate or expand existing Utilities within the Site. In such event, the Authority Having Jurisdiction would request Owner's input in connection with the permitting decision.

**7.6.8.2** Concessionaire agrees to:

- (a) Assist Owner in providing comments regarding such permit applications;
- (b) Make available upon request the most recent Project design information and/or Record Documents, as applicable, to the applicants;
- (c) Assist each applicant with information regarding the location of other proposed and existing Utilities; and
- (d) Use commercially reasonable efforts to coordinate work schedules with such applicants as appropriate to avoid interference, if possible, with the Work by applicants' activities.

### **7.6.9 Utility Owner Delays**

Subject to the requirements and limitations of Article 15 and this Section 7.6.9, (a) the risk of additional costs directly attributable to Utility Owner Delays shall be shared by the Parties in accordance with Section 15.3.2.2, (b) the RSA Deadline shall be extended by one day for every two days of Utility Owner Delay until the \$5,000,000 limit under Section 15.3.2.2(c) is reached, and (c) once the \$5,000,000 limit under Section 15.3.2.2(c) is reached, the RSA Deadline shall thereafter be extended on a day-for-day basis. Concessionaire shall give notice to Owner of any circumstances which may lead to a claim of a Utility Owner Delay within five days of Concessionaire's becoming aware that such circumstance has occurred or is likely to occur.

#### **7.6.9.1 Conditions to Relief for Utility Owner Delays**

Concessionaire shall not be entitled to reimbursement of Incremental Costs or any extension of the RSA Deadline for a Utility Owner Delay unless all of the following conditions are satisfied:

(a) Concessionaire has provided evidence reasonably satisfactory to Owner that: (i) Concessionaire has fulfilled its obligation under the Contract Documents and applicable Utility Agreement(s) to coordinate with the Utility Owner to prevent or reduce such delays; and (ii) Concessionaire has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation.

(b) If Concessionaire is responsible for the Adjustment, Concessionaire has provided a reasonable plan for completion of the Adjustment to the Utility Owner and Concessionaire has obtained, or is in a position to timely obtain, all applicable Governmental Approvals required for design and construction of such Adjustments, other than the Owner-Provided Approvals.

(c) No circumstances exist which have delayed or are delaying the affected Adjustment, other than those which fit within the definition of a Utility Owner Delay.

#### **7.6.9.2 Concurrent Delays**

To the extent that any Utility Owner Delay is concurrent with another delay to the Critical Path which is Concessionaire's responsibility under this Agreement, but which is not a Utility Owner Delay, then such Utility Owner Delay(s) shall not be grounds for extension of the Contract Deadlines, and Incremental Costs due to such delay shall not be considered in determining Concessionaire's entitlement to reimbursement under Section 15.3.2.2. To the extent that a Utility Owner Delay is concurrent with a delay caused by another Relief Event or Force Majeure Event, Concessionaire's entitlement to relief shall be based on the provisions concerning such other Relief Event or Force Majeure Event instead of the provisions concerning Utility Owner Delays.

### **7.6.10 Utility-Related Claims**

Concessionaire may assert that a Relief Event, Force Majeure Event or other basis for a Claim has occurred relating to Utilities only with respect to: (a) Relief Events concerning material inaccuracy of Utility Information or Utility Owner Delays (clauses (e) and (o) of the Relief Event definition); (b) Force Majeure Events under clause (l) of the Force Majeure

definition; and (c) Utility Work required solely as the result of an Owner Change or other Relief Event. In all other respects, Concessionaire assumes full responsibility for costs associated with Utility Work (including any inaccuracies in the Utility Information that do not qualify as a Relief Event and any inaccuracies in the Reference Documents) and any delays to the Project Schedule associated with Utilities and Utility Owners. In no event shall Concessionaire be entitled to make a Claim for increased costs of performing Incidental Utility Work or for any extension of time for delays associated with Incidental Utility Work, except with respect to Incidental Utility Work required as the result of an Owner Change.

## **7.7 Supply of LRVs and Fare System Equipment**

### **7.7.1 Concessionaire shall:**

(a) Obtain LRVs from the LRV Supplier, meeting requirements specified in the Contract Documents, including all requirements in Section 7.11.5, Part 2B, Section 12 of the Technical Provisions, this Section 7.7 and any additional commitments described in Exhibit 2;

(b) Ensure that LRVs are properly integrated with the System;

(c) Supply and install a fare collection system, including supply and installation of all Fare System Equipment;

(d) Ensure that the fare collection system meets requirements specified in the Contract Documents including any additional commitments described in Exhibit 2; and

(e) Ensure that the Fare System Equipment is integrated with the System, properly interfaces with Owner's accounting system and WMATA's New Electronic Payment Program (NEPP) and enables Concessionaire to meet the Performance Requirements relating to fare collection.

**7.7.2** The Parties acknowledge and agree that the LRV Supply Contract is a Key Contract.

**7.7.3** Concessionaire shall take appropriate measures to identify Fleet Defects and, if any Fleet Defects are identified, to (a) require LRV Supplier to correct all Fleet Defects in the LRVs, Option LRVs and all associated Equipment and (b) afford Owner right of Review and Approval of Fleet Defect corrective actions taken.

### **7.7.4 Fare System Allowance**

A Fare System Allowance in the amount of \$15,000,000 is available to reimburse Concessionaire for certain D&C Work activities related to the Fare System, performed in accordance with Part 2B, Section 19.7 of the Technical Provisions, without markup. No Change Order is required for invoicing amounts within the Fare System Allowance amount. Concessionaire acknowledges and agrees that other payments to Concessionaire provided under this Agreement provide compensation for all other costs relating to the Fare System and Fare System Equipment incurred as part of the D&C Work, including designing the Project to accommodate the Fare System Equipment, overhead expenses associated with administration of the Contract for supply of the Fare System Equipment and other work activities that Part 2B, Section 19.7 of the Technical Provisions states are not payable from the Fare System Allowance. If at any time the estimated costs of performing the D&C Work to be covered by the

Fare System Allowance exceed the Fare System Allowance amount, the Parties shall consult regarding measures to bring the cost within budget, provided that if it becomes apparent that the D&C Work to be covered by the Fare System Allowance cannot be performed within the Fare System Allowance and that the scope of D&C Work cannot be modified to reduce the cost to the Fare System Allowance, the Parties shall negotiate a Change Order for such excess costs. Concessionaire shall have no obligation to expend funds in excess of the Fare System Allowance amount for D&C Work related to the Fare System.

## **7.8 Hazardous Materials Management, Risk Allocation and Payment**

### **7.8.1 Hazardous Materials Management**

**7.8.1.1** Except as otherwise provided in this Section 7.8.1, Concessionaire shall, as part of the Work, perform, or cause to be performed, all Hazardous Materials Management required in connection with the Project in accordance with applicable Law, Governmental Approvals, the approved Comprehensive Environmental Protection Program, and all applicable provisions of the Contract Documents.

**7.8.1.2** Concessionaire shall have the following duties to identify, avoid, minimize and mitigate adverse monetary and non-monetary impacts to the Project and to Owner relating to Hazardous Materials:

(a) Concessionaire shall adopt design and construction techniques for the Project, using Good Industry Practice, that avoid, to the maximum extent practicable, the need for Hazardous Materials Management.

(b) When performing Hazardous Materials Management, Concessionaire shall use Good Industry Practice, including design modifications and construction techniques, to minimize costs (including long-term costs) of Hazardous Materials Management.

(c) Concessionaire shall use appropriately trained personnel to conduct Hazardous Materials Management activities.

**7.8.1.3** Concessionaire shall promptly provide notice to Owner of any Hazardous Materials encountered in connection with the Project, the Site or the Work that require (a) reporting or notice to any Governmental Entity and/or (b) taking any response action (e.g., evaluating and addressing the circumstances and location of the Hazardous Materials) under applicable Law, Governmental Approvals, the approved Comprehensive Environmental Protection Program and the Contract Documents, as applicable. A notice provided under this Section 7.8.1.3 shall advise Owner of any obligation to notify State or federal agencies under applicable Law. Concessionaire shall make all such reports, or deliver all such notices, to any Governmental Entity with respect to Hazardous Materials encountered in connection with the Project, the Site or the Work, providing concurrent notice and copies of such reports and notices to Owner.

**7.8.1.4** Concessionaire shall manage all Pre-Existing Hazardous Materials encountered in connection with the Project, in compliance with applicable Law, subject to the following:

(a) To the extent circumstances warrant off-site disposal of any Pre-Existing Hazardous Materials, Concessionaire shall manage and dispose of such materials in accordance with the Hazardous Materials Management Plan. The

Hazardous Materials Management Plan shall include utilization of an EPA site identification number(s) obtained for that purpose by Owner for said Pre-Existing Hazardous Materials. Owner has exclusive decision-making authority regarding selection of the destination facility to which any Hazardous Materials will be transported using an EPA site identification number provided by Owner and Concessionaire will not be designated as the generator on the transport manifest for Pre-Existing Hazardous Materials.

(b) To the extent circumstances warrant managing and/or remediating any Pre-Existing Hazardous Materials in place or otherwise on-site, Concessionaire shall take all appropriate actions in accordance with the Comprehensive Environmental Protection Plan (including specifically the Hazardous Materials Management Plan component) and applicable Law.

(c) As between Owner and Concessionaire, notwithstanding the obligations assumed by Concessionaire under Section 7.8.1.4(a) or 7.8.1.4(b), to the extent permitted by applicable Law, Owner accepts legal responsibility for any Losses incurred by either of the Parties arising out of, relating to or resulting from the proper management (including off-site disposal) of Hazardous Materials under Section 7.8.1.4(a) or 7.8.1.4(b), including Losses incurred due to any impacts to nearby property. Owner shall have no liability for third party claims under this Section 7.8.1.4(c) to the extent that such Losses were the result of any Concessionaire Release or the negligence, willful misconduct, or breach of applicable Law or contract by Concessionaire or any Concessionaire-Related Entity.

(d) As between Owner and Concessionaire, Concessionaire accepts legal responsibility for third party claims arising out of, relating to, or resulting from any Concessionaire Release and any Losses relating to Concessionaire Releases or any improper performance of off-site disposal or remediation or management in place of Pre-Existing Hazardous Materials by any Concessionaire-Related Entity.

(e) As between Concessionaire and Owner, and in addition to those obligations listed in Section 7.8.1.4(d) as Concessionaire's responsibility, without abrogating any of Concessionaire's rights under this Agreement, and to the extent permitted by and consistent with applicable Law, Concessionaire accepts legal responsibility for any Losses, including those of third parties, with respect to (i) Concessionaire Releases of Hazardous Materials and (ii) Hazardous Materials discovered or released into, onto or under Additional Properties or Project-Specific Locations. However, this shall not preclude or limit any rights or remedies that Concessionaire may have against third parties, including prior owners, lessees, licensees and occupants of the Additional Properties or Project-Specific Locations.

(f) To the maximum extent permitted by and consistent with applicable Law, Concessionaire shall indemnify and hold harmless Owner from and against any and all claims, causes of action, suits, legal or administrative proceedings or Losses arising out of, relating to or resulting from the off-site disposal of Hazardous Materials for which Concessionaire accepts or is imputed legal responsibility under Section 7.8.1.4(c) through 7.8.1.4(e).

(g) Nothing in this Section 7.8.1.4 shall preclude or limit any rights or remedies that Owner or Concessionaire may have against third parties, including (with respect to Owner) prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project ROW and (with respect to

Concessionaire) prior owners, lessees, licensees and occupants of Additional Properties), or shall abrogate any of Owner's rights under this Agreement and at law.

**7.8.1.5** If Concessionaire fails to undertake the Hazardous Materials Management required under this Section 7.8.1 within a reasonable time after discovery of Hazardous Materials, taking into consideration the nature and extent of the contamination and action required and the potential impact upon Concessionaire's schedule for use of and operations on the Project ROW, Owner may notify Concessionaire that it will undertake the Hazardous Materials Management itself. Following provision of a notice under this Section 7.8.1.5:

(a) Owner may undertake Hazardous Materials Management actions itself or procure a contractor to perform such work, in which case Owner will do so in accordance with all applicable Environmental Laws;

(b) Owner may draw against the Hazardous Materials Remediation Allowance for costs that would have been payable to Concessionaire from the Allowance;

(c) For costs not eligible for payment from the Allowance, Concessionaire shall reimburse Owner on a current basis, within 10 days of request, for the reasonable costs that Owner incurs in carrying out such Hazardous Materials Management actions (including costs incurred by virtue of fines, penalties or other assessments against Owner or the Project by Governmental Entities due to Concessionaire's delay or failure to undertake the Hazardous Materials Management), so long as Owner has performed in accordance with Section 7.8.1.5(a); and

(d) Owner shall have no liability or responsibility to Concessionaire arising out of, relating to or resulting from Owner's Hazardous Materials Management actions and such actions shall not constitute a Relief Event or other basis for a Claim.

## **7.8.2 Hazardous Materials Risk Allocation**

**7.8.2.1** Concessionaire shall bear all risk associated with the discovery of Hazardous Materials within the Site, except to the extent that (a) compensation for Hazardous Materials Management is payable by Owner under Section 7.8.1.4(c) or payable from the Allowance under Section 7.8.4 or (b) relief is allowed under Section 15.3.3.

**7.8.2.2** Notwithstanding anything to the contrary in the Contract Documents, no Request for Change Order may include:

(a) Costs incurred or extensions of time for investigation and characterization of Hazardous Materials (including Phase I or Phase II ESAs), except with respect to discovery of Hazardous Materials of an unexpected and extraordinary quantity or toxicity, in which event Owner will be responsible for reasonable costs and expenses of investigation and characterization incurred by Concessionaire.

(b) Costs incurred or extensions of time with respect to any discovery of Hazardous Materials within Additional Properties or Project-Specific Locations.

(c) Costs incurred or extensions of time with respect to any discovery of Hazardous Materials if Owner is not afforded the opportunity to inspect the area before Concessionaire takes any action that would inhibit Owner's ability to ascertain, based on a site inspection, the nature and extent of the materials, except for Concessionaire's Emergency actions necessary to stabilize and contain a sudden release or otherwise required by Law to immediately address the Emergency.

(d) Costs that are covered by insurance available to Concessionaire, or are deemed to be self-insured by Concessionaire under Section 11.1.4.6.

(e) Costs incurred associated with discovery and management of Known or Suspected Hazardous Materials, except as allowed under Section 7.8.4 or 15.3.3.

(f) Extensions of time for delays associated with discovery and management of Known or Suspected Hazardous Materials.

(g) With respect to Work for which unit prices are provided in Exhibit 4B: (i) costs of performing such Work that exceed the unit prices, as such prices may be adjusted under the terms of this Agreement, and (ii) costs of performing Work that is reasonably related to the unit priced Work but is not included in the unit price scope description in Exhibit 4B.

**7.8.2.3** Notwithstanding any contrary provision of the Contract Documents, an Owner-Caused Delay does not include any reasonable delay arising out of, relating to or resulting from (a) Owner's review and approval or disapproval of aspects of remediation plans in accordance with Part 2A, Section 5.4.3 of the Technical Provisions, (b) any act or omission by Owner concerning off-site disposal of Hazardous Materials (except Owner's failure to sign undisputed manifests under Section 7.8.1.4(a)), or (c) any Dispute over Concessionaire's entitlement to any compensation or time extension relating to Hazardous Materials.

### **7.8.3 Additional Hazardous Materials Obligations of Concessionaire.**

**7.8.3.1** Concessionaire shall avoid exacerbating Hazardous Materials (including Pre-Existing Hazardous Materials as well as new Releases) in, on, under or migrating from the Site. For purposes of determining liability, as between Owner and Concessionaire, under Sections 7.8.1.4(a) and 7.8.1.4(b), Concessionaire shall only be liable for exacerbation of Hazardous Materials arising out of or relating to the negligent (including grossly negligent), reckless, willful or intentional acts or omissions by Concessionaire or any Concessionaire-Related Entity.

**7.8.3.2** Concessionaire shall take all reasonable efforts to ensure that no act or omission of any Concessionaire-Related Entity will result in an unlawful Release of Hazardous Materials to or into wastewater, storm or sanitary sewer systems, surface water, air, soils or groundwater in, on, under or migrating from the Site.

### **7.8.4 Hazardous Materials Remediation Allowance**

A Hazardous Materials Remediation Allowance is available to pay for certain Hazardous Materials Management Work concerning Pre-Existing Hazardous Materials, with payments from the Allowance to be made based on the unit prices in Exhibit 4B, as adjusted under Section 13.9, and actual quantities.

**7.8.4.1** The initial amount of the Hazardous Materials Remediation Allowance is identified in Exhibit 4A, and is based on estimated quantities and unit prices for Allowance items specified in Exhibit 4B, Table 1.

**7.8.4.2** Owner may also elect to use the Hazardous Materials Remediation Allowance as a source of payment for Hazardous Materials Management Work directly attributable to a Hazardous Materials Relief Event under Section 15.3.3.2.

**7.8.4.3** No Change Order is required for invoicing amounts within the Hazardous Materials Remediation Allowance amount. Concessionaire shall promptly notify Owner if it becomes apparent that the Hazardous Materials Remediation Allowance amount will be exceeded, in which event the Parties shall negotiate a Change Order increasing the Allowance amount and/or modifying the scope of the Work to avoid the need to increase the Allowance.

## **7.9 Public Art**

**7.9.1** Concessionaire shall select one or more artists, from a prequalified pool of artists identified by Owner before Financial Close, to develop and implement concepts for integration of artwork into the Project in accordance with Owner's art in transit program and the requirements in Part 2B, Section 8.3.2 of the Technical Provisions. Concessionaire shall pay a stipend of up to \$3,500 to each prequalified artist who submits a conforming proposal. Concessionaire or its Design-Build Contractor shall enter into Contract(s) with selected artist(s), and shall coordinate with Owner, stakeholders and neighborhood work groups in development of the concepts.

**7.9.2** An Art in Transit Allowance in the amount of \$6,070,000 is available to reimburse Concessionaire for the stipends payable to shortlisted artists and amounts paid to selected artists for their work product and costs of transportation and installation of said product, subject to the limitations on reimbursement in Part 2B, Section 8.3.2.2 of the Technical Provisions, without markup. No Change Order is required for invoicing amounts within the Art in Transit Allowance amount. Concessionaire acknowledges and agrees that other payments to Concessionaire provided under this Agreement provide compensation for all other costs relating to the artwork, including designing the Project to accommodate the artist's concepts and overhead expenses associated with administration of the artwork Contract. If at any time the estimated costs of developing and implementing the art concepts exceed the Art in Transit Allowance amount, the Parties shall consult regarding measures to bring the cost within budget. Concessionaire shall have no obligation to expend funds in excess of the Art in Transit Allowance amount.

## **7.10 Availability and Final Completion**

### **7.10.1 Revenue Service Availability Deadline; Acceleration Request**

Concessionaire shall exercise its best efforts to achieve Revenue Service Availability on or before the RSA Deadline. Failure to achieve Revenue Service Availability by the Long Stop Date is a Concessionaire Default under Section 17.1.1(d)(i). Owner approval is required for any proposed opening before the RSA Deadline. Any request for early opening must be submitted to Owner at least 12 months before the date on which Concessionaire wishes the O&M Period to commence.



## **7.10.2 Conditions to Revenue Service Availability**

The Independent Engineer's Certificate of Revenue Service Availability may be issued only after satisfaction of the following conditions to Revenue Service Availability:

**7.10.2.1** Concessionaire has completed all D&C Work required for running normal and safe passenger service on the System at Service Level 1, including (a) full access to all points of entry and exit and (b) completion of all Construction Work other than punch list items approved by Owner;

**7.10.2.2** Concessionaire has successfully completed each Test Program Plan, including providing Owner with all of the certificates and reports listed in Part 2C, Section 4.7 of the Technical Provisions (except that certificates for the Reliability Demonstration Test under Part 2C, Section 1.7 of the Technical Provisions are not prerequisites for Revenue Service Availability);

**7.10.2.3** All systems and equipment installed by or on behalf of Concessionaire comply, in all respects, with applicable Laws and are operational and functional;

**7.10.2.4** Concessionaire has substantially completed the Capital Crescent Trail enabling safe use by the public of said trail for its entire length, as determined in Owner's discretion, including completion of the following:

- (a) The paved path and unpaved shoulders;
- (b) All bridges, underpasses, connections to Stations, trail access facilities and other structures;
- (c) Lighting; and
- (d) Safety fencing;

**7.10.2.5** D&C Work remaining to be performed is limited to (a) punch list items approved by Owner under Section 7.10.2.1 and (b) any other D&C Work that the Contract Documents contemplate will be performed after the RSA Date. No D&C Work scheduled for performance after the RSA Date shall require closure of any portion of the System or traffic lanes;

**7.10.2.6** All Submittals required by the Project Management Plan or Contract Documents to be submitted and/or approved by Owner before Revenue Service Availability have been submitted to and approved by Owner (as applicable), including the final Threat and Vulnerability Assessment;

**7.10.2.7** Concessionaire has delivered to Owner:

- (a) documents and evidence that electromagnetic interference caused by System operations between stationing 598+00 and 658+00 as described in the "Spectral Analysis of Radiated Emissions – Trial Running," defined in Part 2B, Section 11.3.5.4 of the Technical Provisions, does not exceed the greater of 0.1 mG or the ambient level immediately prior to the energization of traction power as described by the "Spectral Analysis of Existing background Radiation levels – Pre-Energization," as defined in Part 2B, Section 11.3.5.4 of the Technical Provisions; or

(b) an Owner-approved Operational Phase Mitigation Plan that includes mitigation measures designed to reduce the impacts to Research Facilities below said maximum level, in accordance with Part 2B, Section 11.3.5.1 of the Technical Provisions;

**7.10.2.8** There exists no uncured Concessionaire Default that is the subject of a notice, unless (a) Revenue Service Availability will effect its full and complete cure, or (b) with respect to a non-monetary Concessionaire Default relating to an obligation that does not constitute a condition to Revenue Service Availability under other provisions of this Section 7.10.2, (i) Concessionaire has a right to cure and is diligently pursuing cure within the applicable cure period or (ii) Collateral Agent has a right to cure and is diligently pursuing cure within the applicable cure period specified in any Direct Agreement; provided, however, that the Collateral Agent's and Concessionaire's respective cure periods shall be deemed to run concurrently, and not serially, for purposes of this condition to Revenue Service Availability;

**7.10.2.9** Concessionaire has delivered to Owner (a) all manufacturer warranties required under, and in the form and content specified by the Technical Provisions and (b) all documents and other evidence of warranties under Sections 7.10 and 7.11;

**7.10.2.10** Concessionaire demonstrates to Owner's reasonable satisfaction that Concessionaire has acquired and properly stored, or arranged for immediate availability, or incorporated into its Asset Management Plan arrangements to obtain, non-revenue service vehicles, the O&M Spare LRV, a reasonable inventory of all spare parts, spare components, spare equipment, tools, materials, expendables and consumables necessary for operation and maintenance of the Project during the O&M Period as identified in the Operating Plan, Asset Management Plan, Maintenance Plan and Maintenance Manuals;

**7.10.2.11** Concessionaire has (a) completed training of operations and maintenance personnel in accordance with Part 2C, Section 3.1.3 of the Technical Provisions, (b) delivered to Owner a certificate, in form acceptable to Owner, executed by Concessionaire that it and its Contractors are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the Project in accordance with the terms of the Contract Documents including the approved Staff Management Policies and Procedures Manual, (c) delivered to Owner training records evidencing compliance with training requirements including copies of course completion certificates issued to each of the subject personnel and (d) Concessionaire has completed and documented completion of all training required to allow full access to the Site to those individuals designated by Owner in accordance with Part 3, Section 1 of the Technical Provisions;

**7.10.2.12** Owner has reviewed and approved the final plans required in Part 3, Section 1 of the Technical Provisions;

**7.10.2.13** Concessionaire has received, and paid all associated fees for, all applicable Governmental Approvals (excluding Owner-Provided Approvals) and other third party approvals required for use and operation of the Purple Line System, such Governmental Approvals and other third party approvals are in full force and effect, there exists no uncured material violation of the terms of any such Governmental Approval or other third party approvals and all such Governmental Approvals are in final form and are not subject to appeal;

**7.10.2.14** Subject to Section 11.1.7, all Insurance Policies required under this Agreement to be in effect during the O&M Period (excluding insurance for capital asset replacement work) have been obtained and are in full force and effect and Concessionaire has delivered to Owner verification thereof as required under Section 11.2;

**7.10.2.15** Any Performance Security required under Section 11.2.3 for the O&M Period has been obtained, delivered to Owner and is in full force and effect;

**7.10.2.16** Concessionaire has provided evidence that (a) all deposits to the Intellectual Property Escrow(s) required to be provided at or before Revenue Service Availability under Section 23.5 have been made and (b) all Cost and Pricing Data required to be provided at or before Revenue Service Availability under Section 23.6 has been delivered to Owner;

**7.10.2.17** Concessionaire has satisfied any other requirements for commencement of O&M Work in the Technical Provisions (i.e., requirements that are expressly identified as conditions to Revenue Service or Revenue Service Availability as well as other requirements that must be completed prior to Revenue Services), including obtaining Owner's Approval of the Submittals required by Part 3, Section 1.17 of the Technical Provisions; and

**7.10.2.18** Concessionaire has provided evidence satisfactory to Owner that Concessionaire's Equity Member(s) have completed direct investment of good and immediately available funds, including the purchase of equity shares in and/or the provision of Subordinate Debt, to Concessionaire.

### **7.10.3 Process for Issuance of Revenue Service Availability Certificate**

**7.10.3.1** Promptly following award of a contract to the Independent Engineer under Section 5.10, the Independent Engineer shall meet with the Parties to review the requirements to be met as conditions to Revenue Service Availability, including Owner's final checklist for use by the Independent Engineer regarding Concessionaire's compliance with the Technical Provisions, substantially in the form of Exhibit 15B.

**7.10.3.2** Approximately six months before the date on which Concessionaire expects to achieve Revenue Service Availability, Concessionaire shall provide a schedule for the period up to and including the anticipated RSA Date for the purpose of enabling Owner and the Independent Engineer to schedule their activities relating to the System opening.

**7.10.3.3** Concessionaire shall promptly advise Owner and the Independent Engineer if at any time Concessionaire determines that Revenue Service Availability will be delayed beyond the date specified in the notice in Section 7.10.3.2. Such notice shall not excuse Concessionaire from meeting the requirements in Part 2C of the Technical Provisions.

**7.10.3.4** Concessionaire's schedule under Section 7.10.3.2 shall include, at a minimum:

(a) Dates when Concessionaire will submit all remaining documentation required by Part 2C, Section 2.7 of the Technical Provisions with respect to "Safety and Security Certification";

(b) Dates when Concessionaire will submit all remaining evidence required by Part 2C, Section 4.7 of the Technical Provisions with respect to "Readiness for Revenue Service" as such term is defined in said Section 4.7; and

(c) Dates when Concessionaire will complete all remaining Work required for "Trial Running and Revenue Service," as identified in Concessionaire's "Operational Readiness Plan/Strategy".

**7.10.3.5** Concessionaire shall provide an updated schedule to Owner and the Independent Engineer three weeks before the date of expected Revenue Service Availability. During the ensuing period, Concessionaire, Owner and the Independent Engineer shall meet, confer and exchange information on a regular cooperative basis, and Owner and the Independent Engineer will conduct, either jointly or independently, an inspection of the entire Project and its assets, a review of the Final Design Documents and such other investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the conditions to Revenue Service Availability have been satisfied or will be satisfied before the RSA Date. Concessionaire shall provide daily updates to Owner and the Independent Engineer regarding any potential delay in Revenue Service Availability.

**7.10.3.6** When Concessionaire is ready to start Revenue Service, Concessionaire shall deliver to Owner and the Independent Engineer notification of readiness to commence Revenue Service, as required in Part 2C, Section 4.7 of the Technical Provisions. The notice shall be accompanied by a certification, in form reasonably acceptable to Owner, stating that Concessionaire has met all the conditions in Section 7.10.2.

**7.10.3.7** Within two business days after receipt of the notice and evidence given by Concessionaire to Owner under Section 7.10.3.6, the Independent Engineer shall deliver a report of findings and recommendations to Owner and Concessionaire stating in the Independent Engineer's opinion whether Revenue Service Availability has been achieved or provide notice to Concessionaire stating the reasons why the conditions to Revenue Service Availability have not been met. In the latter event Concessionaire shall take appropriate steps to satisfy the remaining conditions and shall provide notice under Section 7.10.3.6 once the conditions have been satisfied.

**7.10.3.8** Within two business days after Owner's receipt of a report given by the Independent Engineer under Section 7.10.3.7 stating that the conditions to Revenue Service Availability have been achieved, Owner will either (a) notify Concessionaire that it concurs with the Independent Engineer's determination that conditions to Revenue Service Availability have been met or (b) notify Concessionaire regarding the reasons why Owner believes the conditions to Revenue Service Availability have not been satisfied. If Owner provides notice under Section 7.10.3.8(b), then it will nevertheless permit the System to be opened for Revenue Service and will make the RSA Payment. Following receipt of notice from Owner under this Section 7.10.3.8, or following expiration of the two-business day period if Owner fails to provide such notice, the Independent Engineer may issue the Certificate of Revenue Service Availability or may notify Concessionaire and Owner that additional conditions must be met before the certificate will be issued. In the latter event Concessionaire shall take appropriate steps to satisfy the remaining conditions and provide notice under Section 7.10.3.6 once the conditions have been satisfied. Revenue Service may commence once the certificate has been issued.

**7.10.3.9** In accordance with the Project Management Plan, Concessionaire shall prepare a punch list of D&C Work to be completed as a condition precedent to achievement of Final Completion, obtain Owner's approval of the punch list, and maintain the list until all such Work is completed. Concessionaire shall also obtain approval from Utility Owners of any punch list items relating to Utility Work. The punch list shall not include any items that adversely affect the safety, use or operability of the Purple Line System. The schedule for preparation of the punch list shall be consistent and coordinated with the requirements for Revenue Service Availability.

**7.10.3.10** Concessionaire shall notify Owner and the Independent Engineer not less than five days before the scheduled date when Concessionaire will commence punch list field inspections and punch list preparation. The Design-Build Contractor and the

Independent Engineer shall prepare, and Owner may participate in the development of, the punch list. Each participant (including Owner) shall have the right to add items to the punch list and no participant shall remove any item added by Owner without Owner's express permission. If Concessionaire objects to the addition of an item and the Parties are unable to resolve the objection, the Dispute shall be subject to resolution under the Dispute Resolution Procedures.

**7.10.3.11** Concessionaire shall deliver to Owner and the Independent Engineer a true and complete copy of the punch list and any modifications as soon as they are prepared.

#### **7.10.4 Final Completion**

**7.10.4.1** Promptly after achieving Revenue Service Availability, Concessionaire shall perform all remaining D&C Work. If Owner disputes the Independent Engineer's determination of Revenue Service Availability under Section 7.10.3.8(b), then all such items shall be required to be completed as a condition to Final Completion.

**7.10.4.2** The following are conditions to Final Completion:

(a) Owner has determined that all conditions to Revenue Service Availability have been satisfied;

(b) All remaining D&C Work has been completed, including completion of all punch list items and landscape establishment Work in accordance with Part 2B, Section 10.7 of the Technical Provisions;

(c) The Project ROW, other areas within the Limits of Disturbance and any Project-Specific Locations in the vicinity of the Project ROW shall be cleaned of all surplus and discarded materials, spilled materials, excess materials left deposited on the permanent Work as a result of the D&C Work, falsework, and rubbish and temporary structures and buildings, placed thereon by Concessionaire-Related Entities;

(d) Project-Specific Locations shall be reshaped, seeded and mulched, or otherwise restored to the extent required by the condition on which access was provided;

(e) Concessionaire has delivered, and Owner has accepted, all Submittals required as conditions precedent to Final Completion in accordance with Part 2A, Section 10 of the Technical Provisions (including Owner approval of (i) as-built survey sheets for the Project and (ii) a complete set of the Record Documents in form and content required by Part 2A, Section 26 of the Technical Provisions);

(f) If any Authority Having Jurisdiction requires any form of certification of design, engineering or construction with respect to the Project or any portion thereof, including any certifications from the Engineer of Record and architect of record for the Project, Concessionaire has caused such certificates to be executed and delivered and has concurrently issued identical certificates to Owner;

(g) All D&C Work that Concessionaire is obligated to perform for, or on behalf of, Third Parties and Utility Owners has been accepted by Owner for, or on behalf of, such Third Parties and Utility Owners, as provided under the Contract

Documents, and Concessionaire has paid for all work performed by third parties that Concessionaire is obligated to pay for, other than disputed amounts;

(h) Concessionaire has provided evidence that (i) all deposits to the Intellectual Property Escrow(s) required at or before Final Completion under Section 23.5 have been made and (ii) all Cost and Pricing Data required to be provided at or before Final Completion under Section 23.6 has been delivered to Owner;

(i) There exist no uncured Concessionaire Defaults that are the subject of a notice, or with the giving of notice or passage of time, or both, could become a Default Termination Event under Section 19.3.1 except for (i) any Concessionaire Default for which Final Completion will effect full and complete cure or for which corrective work is proceeding under the warranty provisions of this Agreement or (ii) any Concessionaire Default relating to the O&M Work if Concessionaire has a right to cure and is diligently prosecuting such cure;

(j) Concessionaire has submitted to Owner (i) documentation of DBE utilization and (ii) if the DBE Goal is not met, documentation supporting good faith efforts (including with respect to compliance with the DBE Participation Plan), as required under Section 9.10;

(k) Concessionaire, all relevant Contractors and the O&M Contractor have delivered to Owner certified copies of Labor Peace Agreement required under Section 9.14.1; and

(l) Concessionaire has provided to Owner the certificates and reports listed in Part 2C, Section 4.7 of the Technical Provisions. If any such certificate or report was previously provided subject to restrictions, exceptions, waivers or other temporary measures as permitted by Part 2C, Section 2.7 of the Technical Provisions, all such exceptions, waivers and other temporary measures shall have been resolved in accordance with Part 2C, Section 2.7.4 of the Technical Provisions, and a final certificate or report shall be provided reflecting the resolution.

**7.10.4.3** Concessionaire shall notify Owner upon completion of all physical Work and delivery of Submittals required under Section 7.10.4.2, excluding the requirements of subsections (f) and (g). Concessionaire and Owner shall meet, confer and exchange information on a regular cooperative basis. Owner will conduct inspections and other investigations whether jointly or independently in order to evaluate whether said conditions to Final Completion are satisfied.

**7.10.4.4** When Concessionaire believes that it has satisfied all conditions to Final Completion, it shall provide notice to Owner to that effect, including certification, in form reasonably acceptable to Owner, stating that Concessionaire has satisfied all the criteria in Section 7.10.4.2. Following receipt of such notice and certification, Owner will conduct such additional inspections and investigations either jointly or independently as it deems advisable to determine whether Final Completion has been achieved.

**7.10.4.5** Within three business days after Owner's receipt of the notice from Concessionaire under Section 7.10.4.4, Owner will either (a) issue a certificate of Final Completion or (b) provide notice to Concessionaire stating the reasons why the conditions to Final Completion have not been satisfied. If Owner provides notice under Section 7.10.4.5(b), then the notifications and processes in Section 7.10.4.3 to 7.10.4.4 shall be repeated until (i) Owner issues a certificate of Final Completion or (ii) either Party initiates the Dispute

Resolution Procedures. The certificate of Final Completion will indicate the actual date on which Concessionaire achieved Final Completion.

## **7.11 Warranties**

**7.11.1** Concessionaire shall obtain from all Prime Contractors, and shall ensure that all other Contractors and Suppliers provide, representations, warranties, guarantees and obligations in accordance with Good Industry Practice for work of similar scope and scale, with respect to design, materials, workmanship, equipment, tools and supplies furnished by all such Contractors and Suppliers, which shall extend not only to Concessionaire but also to Owner and relevant Third Parties.

**7.11.2** To the extent that any Contractor warranty or guaranty is voided after termination of this Agreement by reason of Concessionaire's negligence or failure to comply with the requirements of the Contract Documents in incorporating material or equipment into the Project, Concessionaire shall correct any defects which would otherwise have been covered by such warranty.

**7.11.3** Contractor warranties are in addition to all rights and remedies available under the Contract Documents or applicable Law, and shall not limit Concessionaire's liability or responsibility imposed by the Contract Documents or applicable Law with respect to the Work, including liability for design defects, construction defects, strict liability, breach, negligence, willful misconduct or fraud.

**7.11.4** Notwithstanding the foregoing, Concessionaire shall cause all Contractors performing Renewal Work during the last two years of the Term, and all Contractors, Suppliers and manufacturers providing warranties or guaranties that extend beyond the scheduled end of the Term, to provide such warranties and guaranties for the joint benefit of Owner and Concessionaire. Concessionaire hereby assigns to Owner all such warranties and guaranties, as well as Concessionaire's rights under the relevant Contracts, effective as of the end of the Term.

**7.11.5** If any LRV or associated equipment, part, system or component is replaced due to an identified Fleet Defect, the period of the LRV Supplier's warranty under the LRV Supply Contract as to that LRV, equipment, part, system or component shall commence again from the date of completion of the replacement and continue for the duration of the original, unextended warranty.

## **7.12 Warranties for Third Party Improvements**

Concessionaire shall provide, or obtain and ensure performance under as if Concessionaire provided, warranties and guaranties for all Work performed for Third Parties for a minimum of one year after the date of acceptance of such Work by the Third Party or such longer term as may be required in Part 1, Section 8 of the Technical Provisions, for such Third Party's benefit (with rights of enforcement). Owner shall have, and shall be identified as a third party beneficiary of the right to enforce, all such warranties and guaranties of such Work. Upon acceptance of such Work by the Third Party and delivery of an assignment of the relevant warranty and guaranty rights to the Third Party, Concessionaire shall be relieved of responsibility for maintenance of such Work. Concessionaire shall also provide any warranties or guaranties required under the Utility Agreements with respect to Utility Work performed by Concessionaire-Related Entities for the benefit of the Utility Owners, with Owner identified as a third party beneficiary of the right to enforce all such warranties and guaranties of such Work.

## **7.13 Responsibility for Loss or Damage**

**7.13.1** The D&C Work includes having full charge and care of the Site and the D&C Work (including bearing risk of loss and damage to the D&C Work and Site) through the RSA Date, except to the extent that third parties have accepted elements of the D&C Work and assumed responsibility for maintenance of such elements before the RSA Date. Following the RSA Date, the D&C Work shall include continued responsibility for all improvements not yet completed as of such date, until Final Completion is achieved or maintenance responsibility is assumed by third parties.

**7.13.2** Concessionaire shall take every reasonable precaution against loss or damage to any part of the Project by the action of the elements (e.g., rain, snow, wind, etc.), or from any other cause, whether arising from the performance or nonperformance of the D&C Work.

**7.13.3** For so long as Concessionaire bears the risk of loss and damage to D&C Work under Section 7.13.1, Concessionaire shall repair, restore and replace losses or damages to such D&C Work occasioned by any of the causes identified in Section 7.13.2, and shall bear the expense thereof except to the extent that compensation is allowed under Article 15.

**7.13.4** Concessionaire shall repair, restore or replace materials lost or structures damaged as a result of faulty temporary drainage during construction or the action of the elements.

## **7.14 Nonconforming Work**

### **7.14.1 Obligation to Replace Nonconforming Work**

Concessionaire shall perform all Work in conformity with the Contract Documents. If Concessionaire has not performed the Work in conformity with the Contract Documents, then, in addition to any other remedies available to Owner, Owner may direct Concessionaire to, and Concessionaire shall, remove and replace or otherwise remedy the Nonconforming Work, without entitlement to make a Claim in connection with such Work.

### **7.14.2 Concessionaire's Plan of Correction**

**7.14.2.1** Promptly after Nonconforming Work is identified and no later than 10 business days after Concessionaire first obtains knowledge of such Nonconforming Work, Concessionaire shall submit a proposed plan of correction to Owner, for review and approval, describing the error or defect giving rise to the Nonconforming Work and describing Concessionaire's planned remedial action. Such proposal shall address System integrity, aesthetics, operational impact, maintainability, the effect on the Project Schedule and other relevant issues.

**7.14.2.2** If Owner determines that a proposed plan of correction may infringe upon System integrity, operations or maintainability, then Owner may elect to perform a technical assessment of Concessionaire's proposal. Owner shall notify Concessionaire promptly upon determining that an assessment is required, and shall take reasonable efforts to expedite the assessment. Should Owner elect to perform any such technical assessment, (a) if so requested by Owner, Concessionaire shall not proceed with the plan of correction until Owner has conducted its technical assessment and provided prior approval of the plan of correction and (b) Concessionaire shall not be entitled to make any Claim in connection with the technical assessment or reasonable delay in the plan of correction pending Owner's approval.



#### **7.14.3 Owner's Remedies**

Owner shall have the right and authority to cause Nonconforming Work to be removed, replaced or otherwise remedied and to withhold or deduct the costs from any monies due or that become due to Concessionaire under the Contract Documents upon (a) any failure of Concessionaire to provide a proposed remedial plan as described in Section 7.14.2.1 and obtain Owner's approval thereof, promptly following discovery of the Nonconforming Work, or (b) any failure of Concessionaire to comply with Owner's direction under this Agreement relating to any safety issue, including Safety Compliance Orders under Section 10.4.

#### **7.15 System Integration**

Concessionaire shall perform, or cause to be performed, the successful commissioning, testing and acceptance of all components of the System, including operational readiness of the LRVs, subsystems and Fare System Equipment, in accordance with Part 2C of the Technical Provisions, so that the System may be opened for Revenue Service by the RSA Deadline. Concessionaire shall manage, administer, control, coordinate and integrate the work of all of the Contractors in execution of the D&C Work as detailed in Part 2 of the Technical Provisions.

## **ARTICLE 8. O&M WORK**

### **8.1 General**

#### **8.1.1 General Obligations**

**8.1.1.1** Concessionaire is responsible for performance of O&M Work in accordance with requirements specified in the Contract Documents, including Part 3 of the Technical Provisions.

**8.1.1.2** Concessionaire shall ensure that (a) all O&M Work, is performed in accordance with all applicable Laws, Governmental Approvals and Good Industry Practice, as it may evolve over time, (b) the System shall remain fit for use for the intended functions of meeting the Performance Requirements, and shall remain free of defects and shall meet the minimum performance standards for operations as specified in the Technical Provisions throughout the O&M Period, (c) all (i) materials and equipment furnished during the O&M Period shall be of good quality and new and (ii) all LRV(s), LRV components and related consumables obtained as part of the O&M Work and supplied during the O&M Period shall be of good quality and new and fit for its intended purpose, (d) all O&M Work is performed in accordance with the Owner-approved plans required in Part 3, Section 1 of the Technical Provisions and (e) the O&M Work shall meet all other requirements of the Contract Documents. Concessionaire shall be responsible for self-monitoring compliance of the O&M Work with the Contract Documents and notifying Owner if any noncompliance occurs.

**8.1.1.3** Unless expressly provided otherwise in this Agreement, Concessionaire shall comply with all Technical Provisions in performing the O&M Work, including Safety Standards throughout the O&M Period. The Activity Noncompliance Occurrence Table sets forth minimum performance requirements related to O&M Work and Part 3, Section 3 of the Technical Provisions sets forth additional requirements and the required availability of the Purple Line System. Concessionaire's failure to comply with such requirements shall entitle Owner to the rights and remedies under the Contract Documents, including the assessment of Noncompliance Points, deductions from payments otherwise owed to Concessionaire, and termination for uncured Concessionaire Default.

**8.1.1.4** In addition to performing all other requirements of the Contract Documents, Concessionaire shall cooperate with Owner (and Authorities Having Jurisdiction as applicable) in all matters relating to the O&M Work and required availability of the Purple Line System, including any Oversight with respect to operation and maintenance of the Project.

**8.1.1.5** Concessionaire shall obtain (as applicable), maintain, repair and replace elements of the System as appropriate throughout the duration of the O&M Period, including maintenance, repair and replacement of consumable and life-expired items and rehabilitation or overhaul of the LRVs.

**8.1.1.6** Concessionaire shall comply with, and require that all Contractors comply with, all requirements of Laws applicable to the O&M Work, and otherwise for the Term.

**8.1.1.7** Concessionaire shall develop the Project to accommodate future anticipated Technology Enhancements in keeping with Good Industry Practice. Concessionaire shall implement or incorporate Technology Enhancements for the System, at no cost to Owner, to the extent such enhancements are (a) scheduled in the Asset Management Plan, (b) needed to correct Defects in the Work, and (c) required to comply with Good Industry Practice.

## **8.1.2 Changes in O&M Standards and Technology Enhancements**

**8.1.2.1** Owner shall have the right to modify the O&M Standards applicable to the Project at any time, and it is also possible that standards applicable to the Project by reference will be updated during the Term. Owner will provide Concessionaire with prompt notice of changes in O&M Standards adopted by Owner that Concessionaire is obligated to implement.

**8.1.2.2** Upon Concessionaire's becoming aware of a change in O&M Standards, Concessionaire shall determine whether it believes the change is a Discriminatory Change in O&M Standards or a Non-Discriminatory Change in O&M Standards, shall review the Contract Documents to determine which provisions are affected by the change, and shall ascertain the estimated cost impact on performance of the O&M Work and whether the change will require capital improvements as described in Section 8.1.2.3 or 8.1.2.4. Concessionaire shall promptly notify Owner of its belief regarding the characterization of the changes and provide information to Owner regarding the impacts of the change, including information regarding how the change affects specific provisions of the Contract Documents. Subject to Section 8.1.2.3, Concessionaire shall promptly comply with all Non-Discriminatory Changes in O&M Standards unless Owner provides direction to the contrary. Implementation of any Discriminatory Change in O&M Standards shall proceed only after Concessionaire's receipt of a Change Order or Directive Letter issued under Article 14. Concessionaire may submit a request in writing to Owner to consider whether a change is discriminatory or non-discriminatory and to clarify when the change becomes effective, and shall include information with the request regarding Concessionaire's interpretation with the request. Within 10 business days after receipt of such a request, or such other time period as Owner and Concessionaire may agree to at the time of such request, Owner shall provide its determination regarding categorization of the change and the effective date.

**8.1.2.3** If a Non-Discriminatory Change in O&M Standards requires new improvements or any major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any element of the System (including any Technology Enhancement) that is not contemplated by one of the plans required in Part 3, Section 1 of the Technical Provisions, Concessionaire shall perform such Work by the first to occur of (a) any deadline specified by Owner in its notification (if any) regarding the Non-Discriminatory Change in O&M Standards, (b) the date when Concessionaire next performs Renewal Work on such element or (c) the date when Concessionaire is first obligated to perform Renewal Work on such element. Concessionaire will be compensated for its Incremental Costs of performing such Work under Section 15.3.4. No compensation will be allowed for costs of Work contemplated by the Operating Plan, Maintenance Plan or Asset Management Plan or for any costs incurred as a result of the Non-Discriminatory Change in O&M Standards except as allowed under Section 15.3.4.

**8.1.2.4** Concessionaire will be compensated through the Relief Event provisions of this Agreement for its Incremental Costs of performing Work directly attributable to the Discriminatory Change in O&M Standards. If a Discriminatory Change in O&M Standards requires new improvements or any major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any element of the System that is not contemplated by one of the plans required in Part 3, Section 1 of the Technical Provisions (including Technology Enhancements), Concessionaire shall perform such Work in accordance with the direction provided in the Change Order or Directive Letter.

**8.1.2.5** Owner shall have the right to modify the Operating Plan, including the Service Plan, for the Project at any time. In accordance with Part 3, Section 1.1.3 of the

Technical Provisions, if Owner requires a change in the Service Plan (and therefore the Operating Plan), Owner will provide Concessionaire with prompt notice of such change and if appropriate will issue a Change Order under Article 14. Concessionaire will be obligated to implement such change.

### **8.1.3 Deviations**

Concessionaire may provide notice to Owner seeking approval of Deviations from Technical Provisions or Technical Documents applicable to O&M Work. Owner may approve, any such application, and Concessionaire shall bear the burden of persuading Owner that the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves Owner's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until notice is provided to Concessionaire in writing signed by Owner's Authorized Representative. If Owner fails to issue approval of a Deviation within 10 business days after Concessionaire applies, Owner shall be deemed to have disapproved it. Except with respect to Deviation requests under Section 7.2.4, Owner's denial or disapproval of a requested Deviation shall be final and not subject to appeal under the Dispute Resolution Procedures. Owner may elect to process the application as a Modification Request under Section 14.2 rather than as an application for a Deviation.

### **8.1.4 Hazardous Materials Management**

The provisions of Section 7.8.1 concerning Hazardous Materials Management shall apply throughout the O&M Period except to the extent that such provisions are specific to the original construction of the Project.

### **8.1.5 Utility Accommodation**

**8.1.5.1** It is anticipated that from time to time during the course of the O&M Period, Utility Owners will apply for additional utility permits to install new Utilities that would cross or longitudinally occupy the Project ROW, or to modify, repair, upgrade, relocate or expand existing Utilities within the Project ROW. In such circumstances, the provisions of Section 7.6.8 shall apply.

**8.1.5.2** Throughout the O&M Period, Concessionaire shall monitor Utilities and Utility Owners within the Project ROW for compliance with applicable utility permits, Utility Agreements, easements, and applicable Law, and shall use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the Project ROW. Concessionaire shall promptly notify Owner if (a) Concessionaire believes that any Utility Owner is not complying with the terms of a utility permit, Utility Agreement, easement, or applicable Law affecting a Utility within the Project ROW, or (b) any other dispute arises between Concessionaire and a Utility Owner with respect to a Utility within the Project ROW, despite Concessionaire having exercised its diligent efforts to obtain the Utility Owner's cooperation. If Concessionaire, despite diligent efforts, is unable to resolve any dispute with a Utility Owner, Concessionaire may request Owner to provide reasonable assistance. Following delivery of such a request the Parties shall consult regarding measures to be undertaken.

## **8.2 Service Changes**

**8.2.1** Owner shall provide at least six months advance written notice of a Major Service Change contemplated by Part 3, Section 3.6 of the Technical Provisions or Exhibit 4D. No Change Order is required for any Major Service Change. Refer to Part 3, Section 3.6 of the Technical Provisions for requirements relating to commissioning and de-commissioning of LRVs

in connection with a Major Service Change. If Owner directs Concessionaire to decommission LRVs, re-commission LRVs that Owner previously directed Concessionaire to decommission, or store decommissioned LRVs off-site, Owner will pay reasonable costs associated with such decommissioning, re-commissioning, or off-site storage.

**8.2.2** Subject to the limitations in Part 3, Section 3.6 of the Technical Provisions, Owner may direct a Minor Service Change contemplated by said Section 3.6 by providing written notice of such change. Minor Service Changes may be implemented to address Tsc changes identified as described in Section 8.3, in which case (a) a change under Section 8.3.1 shall be effective at the start of Revenue Service Demonstration and (b) a change relating to Section 8.3.2 shall be effective as specified by Owner but no earlier than 30 days after issuance. Owner shall provide at least three months' advance written notice of any other Minor Service Change contemplated by Part 3, Section 3.6 of the Technical Provisions.

**8.2.3** Special Events, Special Event Service, and Special Event Service Support Staff are also contemplated in Part 3, Section 1.1.3 and Section 3.14 of the Technical Provisions. Payment for Special Event Support Staff will be made on a per hour basis in accordance with Exhibit 4D.

**8.2.4** No Change Order is required for Minor Service Changes or Special Events Services within the limits of the volume adjustment in Exhibit 4D, Part B, Section 2. However, any service adjustments that are outside of the volume adjustment parameters in said Section 2 will require a Change Order.

**8.2.5** Concessionaire shall notify Owner when sustained passenger loading on the Purple Line System has reached the Peak Passenger Loads condition described in Part 3, Section 3.3.2 of the Technical Provisions. Such notice shall include an analysis of the impact of the Peak Passenger Loads condition on Concessionaire's ability to meet the Performance Requirements. When the Purple Line System has sustained the Peak Passenger Loads condition described in Part 3, Section 3.3.2 of the Technical Provisions for at least three consecutive months, Concessionaire shall be entitled to a Modification for prospective relief from Operations Availability Noncompliance Deductions, provided the analysis of the Peak Passenger Loads condition demonstrates that (a) the impact of the sustained Peak Passenger Loads condition on the Total Trip Run Time results in unavoidable Operations Availability Noncompliance Deductions and (b) such passenger loading on the Purple Line System has reached or exceeded, and is reasonably expected to continue to exist at or exceed, the Peak Passenger Loads. Following delivery of such Modification Request, notwithstanding anything to the contrary in Section 14.2, the Parties shall negotiate in good faith to determine the remaining terms and conditions of a Modification. Any executed Modification giving relief from the Operations Availability Noncompliance Deductions under this Section 8.2.5 shall provide that such relief will expire when the Peak Passenger Loads no longer meet the conditions described in Part 3, Section 3.3.2 of the Technical Provisions.

### **8.3 Calculation of Total Trip Run Time and Tsc**

**8.3.1** Owner and Concessionaire shall conduct the activities specified in Part 2C, Section 4.9 of the Technical Provisions so as to enable Actual Combined Tsc and Total Trip Run Time to be determined before the start of Revenue Service Demonstration. During the five business day period after completion of the activities specified in said Section 4.9 in connection with the Revenue Service Demonstration, the Parties will consult regarding:

(a) the differences between (i) the commitments regarding Total Trip Run Time in Tables AA-1 through AA-4 of Section 3 of Exhibit 2 and (ii) actual Total Trip Run Time;

(b) the extent to which the differences in Total Trip Run Time are attributable to changes between the Bid Combined Tsc values in Table AA-5 of Section 3 of Exhibit 2 and the Actual Combined Tsc values;

(c) the effect of changes between the Bid Combined Tsc and the Actual Combined Tsc values on (i) Concessionaire's ability to meet the Performance Requirements and (ii) its costs of performance; and

(d) the extent to which it would be appropriate to exercise an LRV Option and/or implement Minor Service Changes to address the changes between the Bid Combined Tsc and the Actual Combined Tsc values.

Following such consultation, if and to the extent appropriate to address the impacts of changes between Bid Combined Tsc and Actual Combined Tsc, Owner will direct a Minor Service Change in accordance with Section 8.2.2 and revise the Total Scheduled Operating Hours and Total Scheduled LRV Miles to reflect the impacts of changes between Bid Combined Tsc and Actual Combined Tsc. Owner may also exercise an LRV Option in accordance with Article 12.

**8.3.2** Concessionaire and Owner shall repeat the activities specified in Part 3, Section 3.15 of the Technical Provisions to obtain a new determination upon request by either Party, subject to the constraints in this Section 8.3.2. The Parties anticipate that a re-determination will be made following a Service Change, but otherwise a re-determination will not be made more often than once during each five-year period, starting from the date of the most recent determination of Actual Combined Tsc values. Each Party shall notify the other in writing, before the end of each five-year period, whether or not it wishes to conduct such activities. The purpose of such activities is to recalculate the Actual Combined Tsc values and ascertain any changes to the other Total Trip Run Time elements, with the goal of producing a final report regarding current Actual Combined Tsc values and Total Trip Run Time at least 90 days prior the end of each five-year period. During the 30-day period after completion of the activities specified in said Section 3.15, the Parties will consult regarding:

(a) the differences between the actual Total Trip Run Time and the commitments in Tables AA-1 through AA-4 of Section 3 to Exhibit 2;

(b) the extent to which the differences in Total Trip Run Time are attributable to changes in between Bid Combined Tsc and Actual Combined Tsc;

(c) the effect of changes in between Bid Combined Tsc and Actual Combined Tsc on Concessionaire's ability to meet the Performance Requirements and its costs of performance; and

(d) the extent to which it would be appropriate to modify requirements of the Contract Documents or implement Minor Service Changes to address the changes between Bid Combined Tsc and Actual Combined Tsc.

Following such consultation, if appropriate, Owner may, in its discretion, direct a Minor Service Change in accordance with Section 8.2.2 or the Parties may negotiate a Change Order that includes equitable adjustments to Section 3 of Exhibit 2 and/or other requirements of the

Contract Documents as necessary to account for the changes between Bid Combined Tsc and Actual Combined Tsc. Owner may also exercise an LRV Option or otherwise provide additional LRVs in accordance with Article 12. If the Owner directs a Minor Service Change to account for such Bid Combined Tsc and Actual Combined Tsc changes, the Total Scheduled Operating Hours and Total Scheduled LRV Miles will be revised to account for the impacts of changes in Bid Combined Tsc and Actual Combined Tsc, taking into consideration any LRV Option previously exercised and other relevant prior actions by Owner. Any Change Orders previously issued with respect to items (i)(4) or (i)(5) of the definition of Relief Event during prior periods will be superseded by the Minor Service Change or Change Order issued under this Section 8.3.2.

**8.3.3** If the Parties fail to reach agreement regarding the need for a Change Order or on the terms of a Change Order as described above, Owner may issue a unilateral Change Order or direction to proceed.

**8.3.4** The Operations Availability Deduction Factor (OADFn) calculated in Section 1.1 of Appendix B to Exhibit 4D shall not be revised through any Change Order issued under this Section 8.3.

**8.3.5** If Owner exercises an LRV Option to address the impacts of changes between Bid Combined Tsc and Actual Combined Tsc (or between the previously determined Actual Combined Tsc and the newly determined Actual Combined Tsc), then, unless the Owner directs otherwise, the Concessionaire will automatically be required to provide the prior Peak Period headways as of the date established for completion of the delivery and commissioning of the Option LRVs consistent with Section 12.2.

## **8.4 Supply of the O&M Spare LRV**

**8.4.1** Concessionaire shall deliver the O&M Spare LRV to Owner no earlier than the RSA Date and no later than 390 days after the RSA Date. Delivery may not occur until after satisfactory completion of acceptance testing for the O&M Spare LRV.

**8.4.2** The O&M Spare LRV shall be properly integrated with the System and shall meet all of the requirements specified in the Contract Documents, including all requirements in Section 7.11.5, Part 2B, Section 12 of the Technical Provisions, Section 7.7 and any additional commitments described in Exhibit 2.

**8.4.3** Payment for the O&M Spare LRVs shall be made, pending delivery and completed commissioning, as part of the Special Lifecycle Payment.

## **8.5 Concessionaire Inspection, Testing and Reporting**

**8.5.1** Concessionaire shall carry out Inspections and tests in accordance with the Technical Provisions, Project Management Plan and O&M Management Plan and Section 5.7. Concessionaire shall use the results of such inspections and tests to develop and update the Asset Management Plan, to maintain asset condition and service levels, and to develop programs of maintenance and Renewal Work to minimize the effect of O&M Work on Users and other members of the public.

**8.5.2** Concessionaire shall submit all reports relating to the O&M Work, including the O&M annual reports, in the form, with the content and within the time required under the Contract Documents.

**8.5.3** The inspections and reports described above are in addition to maintenance of the Activity Noncompliance Occurrence, Activity Noncompliance Event and Operations Availability Noncompliance Event database and related reports under Section 16.2.

## **8.6 Fare Collection and Fare System**

**8.6.1** Concessionaire shall be responsible for:

- (a) Operations, maintenance and renewal of the Fare System Equipment (including making all equipment repairs and component replacements necessary to enable Concessionaire to meet performance requirements or remediate defects);
  - (b) Stocking ticket vending machines, collecting cash from such machines, depositing cash receipts and arranging for proceeds of credit and other electronic transactions to be deposited into a designated Owner account;
  - (c) Maintaining generally accepted fiscal controls and procedures in accordance with Owner and State of Maryland requirements;
  - (d) Providing accounting reports regarding all transactions and deposits;
- and
- (e) Monitoring the Fare System Equipment, and providing reports regarding, any intrusion or tampering with said equipment;

all as more specifically provided in Part 3 of the Technical Provisions.

**8.6.2** The O&M Work does not include the obligation to pay credit card transaction costs associated with fares purchased from the Fare System Equipment, or to pay WMATA fees for the New Electronic Payment Program (NEPP) server maintenance. Owner will directly pay WMATA and/or credit card companies for these costs.

**8.6.3** The Availability Payment formula is not dependent on the value of revenues collected. However, Noncompliance Points may be assessed for any Noncompliance Event, and failure to collect properly, deposit and account for fare revenues deposits constitutes a Concessionaire Default.

**8.6.4** The Lifecycle Payments do not include replacement of the entire Fare System during the Term or any replacement of Fare System Equipment components after Contract Year 15. Before Contract Year 15 (or before the end of the expected useful life of the initial Fare System, if earlier than Contract Year 15) the Parties shall consult regarding the scope of such replacements and associated changes to the O&M Work and shall proceed to negotiate a Change Order in accordance with Article 14. For the avoidance of doubt, MAPO and MAPM include all Fare System operating and maintenance costs during the entire Term. This Change Order will only address changes in such costs to the extent that the new Fare System Equipment results in changes in the Fare System requirements from those identified in the Technical Provisions.

## **8.7 Inventory**

Concessionaire shall comply with all requirements established in the Maryland Department of General Services Inventory Control Manual (dated July 1, 2012, as it may be updated from time to time) applicable to the "Custodial Agency" under said manual, except that Concessionaire



shall coordinate with Owner with regard to any contacts with the Department of General Services and any reports to said department required under said manual.

## **8.8 Renewal Work; Asset Management Plan; Renewal Work Budget**

### **8.8.1 Performance of Renewal Work**

**8.8.1.1** The State of Good Repair requirements in Part 3, Section 6 of the Technical Provisions and related provisions of the Technical Provisions include Performance Requirements for the O&M Work. Concessionaire shall diligently perform Renewal Work as and when necessary to comply with the Performance Requirements, and Contract Documents; to achieve full design life for each asset, supporting reliable and quality service operations and availability; and to restore the Useful Life of each element at the end of its Residual Life. Concessionaire shall use the Asset Management Plan, as updated from time to time, as the principal guide for scheduling and performing Renewal Work; but complying with the Asset Management Plan shall not excuse or be a defense to any failure to comply with the Performance Requirements.

**8.8.1.2** The O&M Work includes having full charge and care of those portions of the Project within the O&M Limits from the RSA Date through the end of the Term, except to the extent that charge and care of certain Work is Concessionaire's responsibility as part of the D&C Work in accordance with Section 7.13.

**8.8.1.3** Concessionaire shall take reasonable precautions against loss or damage to the System and other improvements and assets within the O&M Limits caused by (a) the action of the elements (e.g., rain, snow, wind, etc.), (b) Users or (c) any other cause, whether arising from the performance or nonperformance of the O&M Work.

### **8.8.2 Asset Management Plan**

**8.8.2.1** Within 90 days before the beginning of the first full calendar year of the O&M Period, Concessionaire shall prepare and submit to Owner for review and approval an Asset Management Plan under Part 3, Section 6.1 of the Technical Provisions. As part of the Asset Management Plan, Concessionaire shall state, by element, (a) the estimated Useful Life, (b) the estimated Residual Life, (c) a brief description of the type of Renewal Work anticipated to be performed at the end of the element's Residual Life, (d) a brief description of any Renewal Work anticipated to be performed before the end of the element's Residual Life, including reasons why this work should be performed at the proposed time, (e) the estimated cost in current dollars of such Renewal Work, (f) the total estimated cost in current dollars of Renewal Work in each of the years Renewal Work is anticipated to be performed under the Asset Management Plan, (g) a description of any Renewal Work performed in the prior 12 months including the cost of such Renewal Work and (h) a schedule for Renewal Work to be performed during the coming year. As part of the Asset Management Plan, Concessionaire shall also provide a listing and schedule for delivery of the O&M Spare LRV, those non-revenue service vehicles, spare parts, spare components, spare equipment, tools, materials, expendables and consumables necessary for operation and maintenance of the Project during the O&M Period that were not obtained at or prior to Revenue Service Availability.

**8.8.2.2** Concessionaire shall estimate the Useful Life of each element within the Asset Management Plan based on (a) Concessionaire's reasonable expectations respecting the manner of use, levels and mix of traffic, environmental conditions, and wear and tear and (b) the assumption that, when subject to Routine Maintenance, the element will comply throughout its Useful Life with each applicable Performance Requirement. Concessionaire shall

estimate the Residual Life of each element within the Asset Management Plan based on its age and whether (i) the element has performed in service in the manner and with the levels and mix of traffic and wear and tear originally expected by Concessionaire (ii) Concessionaire has performed Routine Maintenance of the element, and (iii) the element has complied throughout its life with each applicable Performance Requirement.

**8.8.2.3** Within 90 days before the beginning of the second full calendar year of the O&M Period and each subsequent calendar year, Concessionaire shall prepare and submit to Owner for review and approval either (a) a revised Asset Management Plan or (b) the then-existing Asset Management Plan accompanied by a statement that Concessionaire intends to continue its existing plan for Renewal Work in effect without revision (in either case, referred to as the “updated Renewal Work”). Revisions may reflect past experience, then-existing conditions, the factors described in Section 8.8.2.2, changes in estimated costs of Renewal Work, changes in technology, changes in Concessionaire’s planned means and methods of performing Renewal Work, and other relevant factors. The updated Asset Management Plan shall show the revisions, if any, to the prior Asset Management Plan and include an explanation of reasons for revisions. If no revisions are proposed, Concessionaire shall include an explanation of the reasons no revisions are necessary.

**8.8.2.4** At Owner’s request, Concessionaire and its O&M Contractor(s) shall promptly meet and confer with Owner to review and discuss the original or updated Asset Management Plan.

**8.8.2.5** Within 30 days after receiving the original or any updated Asset Management Plan, Owner shall have the right to comment on, object to, make recommendations on or disapprove the original or updated Asset Management Plan or any of its elements and disapprove such Plan. Owner may base its comments, objections, recommendations or disapproval on whether the original or updated Asset Management Plan and underlying assumptions are reasonable, realistic and consistent with Good Industry Practice, Project experience and condition, applicable portions of the Contract Documents, Governmental Approvals and Laws.

**8.8.2.6** Within 30 days after receiving timely notice of comments, objections, recommendations or disapprovals from Owner, Concessionaire shall submit to Owner a revised original or updated Asset Management Plan rectifying such matters or, if it disagrees with Owner, Concessionaire shall submit a notice identifying each comment, objection, recommendation and disapproval that Concessionaire disputes and the grounds for dispute.

**8.8.2.7** If Concessionaire fails to provide notice within the time period specified in Section 8.8.2.6, it shall be deemed to have accepted the comments, objections, recommendations or disapproval and the original or updated Asset Management Plan, as applicable, shall thereupon be deemed revised to incorporate the comments and recommendations and to rectify the objections or disapproval. After timely delivery of any such notice, Concessionaire and Owner shall endeavor in good faith to reach agreement as to the matters listed in the notice. If no agreement is reached as to any such matter within 30 days after Concessionaire delivers its notice, the Dispute may be subject to resolution under the Dispute Resolution Procedures.

**8.8.2.8** No later than five calendar years before the end of the Term or within a reasonable period before any Early Termination Date, Concessionaire and Owner shall identify and determine the Handback Renewal Work Plan, as set forth in Section 8.13.1.

### **8.8.3 Renewal Work Budget and Responsibility for Injury or Damage to the Project**

**8.8.3.1** As described in Exhibit 4D, Availability Payments include a budgeted amount for Renewal Work based on an assumed schedule for performance of Renewal Work. The portion of the Availability Payment allocable to Renewal Work performed during each Payment Period will be subject to escalation based on the index identified in Exhibit 4D.

**8.8.3.2** The schedule for performance of Renewal Work may be affected if any assets are repaired or replaced due to damage that is covered by insurance or paid for by Owner or another Governmental Entity. If during any Contract Year the cost of such repairs and replacements exceeds \$100,000 (excluding costs which are funded by Concessionaire as a deductible under any Insurance Policy), the Parties will document the Work done and cost of such Work, and will determine when the assets would have been repaired or replaced absent the Relief Event. If any such repairs or replacements would otherwise have been performed during the last 10 years of the Term, at the beginning of the Contract Year in which Concessionaire would otherwise have performed the repair or replacement, the Parties will determine the costs that Concessionaire would have incurred for a current repair or replacement and shall negotiate a Change Order allowing Owner a credit for the avoided costs of a current repair or replacement, not to exceed the value of the insurance proceeds used for the accelerated repair or replacement.

**8.8.3.3** Concessionaire shall repair, restore and replace all losses or damages to the System or such other improvements and assets during the O&M Period due to (a) the action of the elements (e.g., rain, snow, wind, etc.), (b) Users or (c) any other cause. Such repair, restoration and replacement shall be at Concessionaire's cost and expense, except to the extent that compensation is allowed under this Agreement.

**8.8.3.4** Owner will pay for Incremental Costs incurred by Concessionaire in performance of Work under Section 8.8.3.3 only to the extent that (a) any of the reasonable costs of repair, restoring or replacing are Owner's responsibility because it has agreed to act as a self-insurer for the relevant coverage (or has agreed to pay the difference between an adjusted and unadjustable deductible in connection with any claim made under an Insurance Policy arising out of a covered Loss) under Section 11.1.2.12(g), 11.1.7.2 or 11.1.8.10 or (b) the damage is covered by federal grant funds provided to Owner to compensate it for the costs of such Work.

**8.8.3.5** Owner will also pay for eligible Incremental Costs incurred by Concessionaire in performance of Work under Section 8.8.3.3 that are not covered by insurance or payable by Owner under Section 8.8.3.4, as follows:

(a) If, with respect to individual acts of Vandalism (other than acts of Vandalism occurring within areas for which Concessionaire is responsible for providing security) resulting in losses or damages exceeding \$1,000 (in Base Date dollars) in a 24-hour period, the total of such Incremental Costs during the Contract Year exceed \$100,000 (in Base Date dollars), Owner will reimburse Concessionaire for the excess amount. At the beginning of each Contract Year, the Parties shall escalate and document the revised limits under this Section 8.8.3.5(a) based on the General Escalation Factor (ESCGn) for that year.

(b) If, with respect to losses or damages not caused by Vandalism, the total of such Incremental Costs during the O&M Period exceeds, in the

aggregate, \$10,000,000 (the “O&M Damage Deductible”), Owner will reimburse Concessionaire for the excess amount. Concessionaire shall maintain records regarding the reasonable costs of repairing, restoring or replacing losses or damages in excess of costs, identifying the source of funding for such costs (including insurance proceeds, grant funds, and payments from Owner under Section 8.8.3.4(a)), and shall provide reports regarding Work performed and costs incurred in a format similar to the requirements applicable to records of force account work under Exhibit 13A.

**8.8.3.6** Incremental Costs eligible for reimbursement under Section 8.8.3.4 or 8.8.3.5 and to be considered in determining whether total costs incurred exceed the Vandalism thresholds or the O&M Damage Deductible under Section 8.8.3.5 shall exclude costs of repairing, restoring or replacing that (a) constitute payment of deductible amounts, SIRs and/or co-insurance requirements with respect to loss or damage required to be covered by insurance, (b) are due to normal wear and tear or obsolescence, (c) are attributable to breach of contract, negligence or other wrongful act or omission by any Concessionaire-Related Entity, or (d) could reasonably have been avoided or prevented.

## **8.9 Power Supply**

**8.9.1** Owner is responsible for directly paying for electrical power required for Purple Line System operations, including electrical power required for Purple Line System facilities and platforms as well as traction power. Concessionaire shall ensure the Project is connected to the power grid in accordance with Part 2B, Sections 6.5.2 and 9.4.1 of the Technical Provisions and shall take appropriate action to facilitate start-up of permanent power service to the Project before commencement of trial running. Owner is responsible for working with the electric power provider to establish electrical power rates and fees prior to the start of Trial Running.

**8.9.2** From and after start-up of permanent power service, Concessionaire shall take appropriate steps to ensure efficient energy usage and shall otherwise conform to the approved Energy Management Plan. Concessionaire shall provide monthly Electrical Power Usage Reports to Owner regarding electricity usage during the prior month and year to date, using the form described in Appendix E to Exhibit 4D, together with such other related information as Owner may reasonably request, within five business days after delivery of the monthly invoice to Concessionaire from the supplier of permanent electrical power. Such reports shall form the basis for adjustments to Monthly Availability Payments in accordance with Appendix E to Exhibit 4D.

## **8.10 Law Enforcement, Security and Incident Response**

### **8.10.1 Law Enforcement Services**

**8.10.1.1** The Maryland State Police or other State law enforcement services will provide law enforcement services, including enforcement of applicable laws and the Project fare policy and establishment of concurrent jurisdiction with other law enforcement agencies of the State and any political subdivision of the State.

**8.10.1.2** Concessionaire acknowledges and agrees that:

(a) The MTA Police Force is empowered to enforce all applicable Laws and to enter the Project, and that any person engaged by Owner to provide law enforcement services has the authority to enter the Project (including trains

in revenue and non-revenue service, Stations and Project facilities), at any and all times to carry out their duties;

(b) All law enforcement officers of the State and any political subdivision, as applicable, have the same powers and jurisdiction within the limits of the Project ROW (and otherwise with respect to the Project) as such law enforcement officers have in their respective areas of jurisdiction, including the roads and highways of the State, as applicable; and

(c) No provision of this Agreement is intended to surrender, waive or limit any police powers of the MTA Police Force or any other Governmental Entity, and all such police powers are expressly reserved.

**8.10.1.3** Concessionaire shall ensure that any person engaged by Owner to provide services under Sections 8.10.1.2(a) and 8.10.1.2(b) has necessary access to the Project to carry out their duties, power and jurisdiction (as applicable).

**8.10.1.4** Owner shall not have any liability or obligation to Concessionaire arising out of, relating to or resulting from the failure of the Maryland State Police or any other law enforcement agency to provide services, or any of their, or their respective agents' or employees', acts, omissions, negligence or misconduct in providing services. The general indemnity in Section 11.5.1 shall not apply to the extent that a claim, cause of action, suit, legal or administrative proceeding or any other occurrence, loss or damage of the type listed in Section 11.5.1 is directly attributable to actions of a law enforcement agency designated by Owner to provide services for the Project, and is not due to any fault of any Concessionaire-Related Entity.

**8.10.1.5** As reasonably requested by Concessionaire from time to time, Owner will set up meetings with Concessionaire and representatives of relevant law enforcement agencies to discuss issues affecting operation of the System.

## **8.10.2 Security and Incident Response**

**8.10.2.1** Concessionaire is responsible for the security of the Project and safety and security of the workers and public throughout the Term. Concessionaire shall perform or otherwise take all measures identified in the Safety and Security Plan required by Part 3, Section 1.9 of the Technical Provisions, as approved by Owner.

**8.10.2.2** Without limiting Section 8.10.2.1, as between Owner and Concessionaire, Concessionaire shall be responsible for site security and shall take measures, consistent with Good Industry Practice, to prevent damage to or destruction of Project improvements by any third party or by any Force Majeure Event.

**8.10.2.3** Concessionaire shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services.

**8.10.2.4** Without limiting Section 8.10.2.3, whenever the National Terrorism Advisory System (NTAS) or successor system has issued an "elevated" or "imminent" alert or comparable level of threat or alert for any region in which the Project is located or which the Project serves, Concessionaire, at its expense, shall assign management personnel with decision-making authority to be personally present at the relevant emergency operations center

serving the region. Concessionaire shall provide such service 24 hours a day, seven days a week, until such level or threat or alert expires based on a “sunset period” or is cancelled, or until the lead agency at the operations center determines such staffing level is no longer necessary.

**8.10.2.5** Concessionaire shall perform and comply with the provisions of Part 2A, Section 15.4 of the Technical Provisions concerning Incident response, safety and security.

**8.10.2.6** Concessionaire shall implement all Incident response, safety and security procedures, protocols and requirements in the Incident Management Plan and Emergency Plan included in the O&M Management Plan.

### **8.10.3 Additional Services**

**8.10.3.1** Concessionaire may engage one or more security firms, at Concessionaire’s own expense, to provide services for the Project following receipt of written approval from Owner.

**8.10.3.2** Concessionaire may at any time request the Maryland State Police and/or MTA Transit Police to provide additional services required for operation of the System. Concessionaire acknowledges that Owner has no obligation to require performance of any such services.

## **8.11 Coordination of Operations and Maintenance Responsibilities**

**8.11.1** At Concessionaire’s request from time to time, Owner will assist Concessionaire in seeking the cooperation and coordination of any Authority Having Jurisdiction with respect to Concessionaire’s operation and maintenance activities. The objectives of such assistance will be to minimize disruptions to Revenue Service and traffic and ensure that all operation and maintenance activities are carried out in accordance with then-current maintenance standards and then-current traffic management standards, practices and procedures of such Authorities Having Jurisdiction.

**8.11.2** Except where expressly identified in this Agreement as a Non-Concessionaire Caused Disruption or Force Majeure Event, no interference with or disruption of traffic due to activities on the O&M Limits, and no failure to meet such standards, practices and procedures, by any such other Authorities Having Jurisdiction, shall entitle Concessionaire to any Claim.

## **8.12 Annual Budget; Support for Annual Reporting by Owner**

**8.12.1** Concessionaire shall, concurrently with delivery to any Lender, deliver to Owner any budget for O&M Work, and any updates to such budget, required by or delivered to any Lender.

**8.12.2** Concessionaire acknowledges and agrees that Owner may be required to provide such budget and other documents pertaining to the Availability Payment as part of its annual reporting obligations. Concessionaire shall provide such assistance as Owner may reasonably request in connection with preparing and delivering all such documentation, provided that Owner has identified the requirements to be met by Concessionaire at least 60 days before the due date of the report.

**8.12.3** Concessionaire shall make available to Owner information relating to the status of the Work, including non-proprietary information relating to the design, engineering and construction, estoppel certificates, and such other matters as Owner may reasonably request in accordance with the Technical Provisions.

**8.12.4** Concessionaire shall furnish such further certifications, and opinions of counsel addressed to Owner and the State and other documents, as may be reasonably requested by Owner.

## **8.13 Handback Requirements**

### **8.13.1 Handback Condition**

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

**8.13.1.2** Subject to Section 8.13.3.2, all Handback Renewal Work shall be completed no later than the earlier of (a) three months before the Termination Date (under clause (a) of the definition thereof) and (b) the Early Termination Date.

**8.13.1.3** The Handback Requirements and the Handback Renewal Work Plan shall incorporate the following criteria:

(a) The main civil and structural works and other System elements shall not exhibit any undue signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification and to support reliable service operations for a period of three years beyond the end of the Term;

(b) Limited life and "wear and tear" components of the System elements have been replaced by Concessionaire during the O&M Period in accordance with Good Industry Practice as and when they failed, wore out, or reached their design life or customary replacement frequency, as part of ongoing maintenance activities;

(c) Major electrical and mechanical components or other System elements (excluding the LRVs) have been repaired, refurbished, or replaced by Concessionaire as appropriate if their then condition indicates that they are unlikely to support reliable service operations (without recourse to major repair) for a period of three years beyond the end of the Term; and

(d) Each LRV and its components, whether original or replacement equipment, have been, and continues to be, maintained in accordance with

the original equipment manufacturers' recommendations, subject to reasonable modification of maintenance practices, up until the end of the Term.

### **8.13.2 Handback Inspections**

The Parties shall conduct inspections of the Project at the times and according to the terms and procedures specified in the Handback Requirements, for the purposes of:

- (a) Determining and verifying the condition of all elements and their Residual Lives;
- (b) Adjusting, to the extent necessary based on inspection and analysis, element Useful Lives, Ages, Residual Lives, estimated costs of Renewal Work and timing of Renewal Work;
- (c) Revising and updating the Asset Management Plan to incorporate such adjustments;
- (d) Determining the Renewal Work required to be performed and completed before the Termination Date, based on the Handback Requirements for Residual Life at the conclusion of the Term, the foregoing adjustments and the foregoing changes to the Asset Management Plan; and
- (e) Verifying that such Renewal Work has been properly performed and completed in accordance with the Handback Requirements.

### **8.13.3 Renewal Work under Handback Requirements**

**8.13.3.1** Concessionaire shall diligently perform and complete all Renewal Work required to be performed and completed before the Termination Date, based on the required adjustments and changes to the Asset Management Plan resulting from the inspections and analysis under the Handback Requirements.

**8.13.3.2** In the event of an early termination of this Agreement, this Section 8.13 shall apply to the extent of any Renewal Work required to be performed and completed before the Early Termination Date, based on the required adjustments and changes to the Asset Management Plan resulting from the inspections and analysis under the Handback Requirements.

### **8.13.4 Additional Handback Requirements; Owner Right to Self-Perform and Recover Costs**

**8.13.4.1** On or before the date of Handback, and as a condition to acceptance of Handback by Owner, Concessionaire shall, and shall cause its Contractors to, deliver all specialized equipment used in operations and maintenance of the System, which, in each case, shall be mechanically, electrically and structurally sound, as applicable, and ready for and capable of being operated, and otherwise used safely, in the normal course of business by Owner after Handback.

**8.13.4.2** If, before or at the end of the Term, Owner determines that the Project does not comply with any Handback Requirement, or Renewal Work is not timely or properly performed, then, in addition to Owner's rights under the Contract Documents, Concessionaire shall be liable for Owner's Recoverable Costs incurred in bringing the Project



into compliance with such Handback Requirement(s). In recovering such amounts, Owner may (a) reduce any Availability Payment then due and owing from Owner to Concessionaire, (b) invoice Concessionaire for such amount, as a lump sum payment, (c) set off such amount against any other amount then due and owing from Owner to Concessionaire, (d) draw against funds withheld under Section 8.14 or against the letter of credit described in Section 8.14.5, (e) require funds in the reserve account described in Section 8.14 to be used to pay for required Renewal Work, or (f) any combination of (a) through (e).

## **8.14 Handback Requirements Holdback**

**8.14.1** When the schedule for Renewal Work to meet Handback Requirements is set, the Parties shall determine whether the remaining budget for Renewal Work included in the Availability Payments is sufficient to cover the cost of such Renewal Work. If a shortfall exists, the Parties shall then determine whether the shortfall is covered by amounts held in a Project handback reserve account that is subject to restrictions satisfactory to Owner ensuring that funds from said account will be used only to pay for reasonable costs of performance of Renewal Work and any other uses that have previously been approved by Owner.

**8.14.2** If the shortfall is not covered by amounts held in the handback reserve account, Owner may withhold sufficient funds from future Availability Payments to cover any remaining deficit after accounting for funds in the handback reserve account. The amount to be withheld from each Monthly Availability Payment shall not exceed the greater of (a) the portion of the payment that would otherwise be available for Distributions to Equity Members or (b) the deficit amount divided by 60.

**8.14.3** Each month following finalization of the schedule for Renewal Work, Owner will assess whether to pay out amounts withheld from Availability Payments based on (a) a review of progress of the Renewal Work, (b) updated estimates regarding the cost of Renewal Work remaining to be performed, and (c) a determination as to whether the sum of the remaining budget for Renewal Work included in the Availability Payments and amounts in the handback reserve account is sufficient to cover the cost of such Renewal Work.

**8.14.4** If Owner is withholding excess funds, it shall promptly pay the excess amount to Concessionaire. If Owner is not holding sufficient funds to cover the revised deficit amount, Owner shall continue to have the right to withhold additional funds from Availability Payments until it has withheld an amount sufficient to cover the entire deficit, provided that the monthly amount withheld may not exceed the greatest of (a) the portion of the payment that would otherwise be available for Distributions to Equity Members, (b) the amount determined under Section 8.14.2(b), or (c) the updated deficit amount divided by the number of months remaining to the end of the Term.

**8.14.5** Concessionaire shall have the right to provide a letter of credit as described in this Section 8.14.5 to secure its obligation to perform Renewal Work, and thereby have the right to receive Monthly Availability Payments without any withholding based on the deficit. Any such letter of credit shall be in form reasonably acceptable to Owner and in an amount equal to 100% of the deficit. If the letter of credit is not renewed at least 30 days before expiration, Owner shall have the right to withhold payments as described in Sections 8.14.1, 8.14.2, and 8.14.3, including the right to withhold "catch-up" payments without regard to the limitations described in Section 8.14.1, until the total amount withheld by Owner is at the same level that Owner would otherwise have held as of such date, as though Concessionaire had not elected to provide security for its obligations to perform Renewal Work.

## **ARTICLE 9. CONTRACTING AND LABOR PRACTICES**

### **9.1 Disclosure of Contracts and Contractors**

**9.1.1** The provisions of this Section 9.1 apply with respect to (a) Prime Contracts and lower tier Contracts entered into by Prime Contractors, excluding personal services contracts and contracts with Suppliers other than Key Contractors, and (b) Contracts with Affiliates, regardless of the nature or tier of the Contract. With respect to each such Contract, Concessionaire shall notify Owner's Authorized Representative of the proposed Contractor and proposed scope of work to be performed by the Contractor, at least 10 days in advance of execution and delivery of the Contract.

**9.1.2** Each notice under Section 9.1.1 shall identify the Work to be performed under the Contract and the proposed dollar value of the Contract. If the Contract includes Construction Work, the notice shall include assurance that the minimum wage for labor, as specified in the Contract Documents, shall apply to labor performed on all work sublet, assigned, or otherwise disposed of in any way.

**9.1.3** Each of the Contracts listed in the notice under Section 9.1.1 may be executed and delivered 10 days after the notice provided to Owner unless Owner's Authorized Representative objected to Concessionaire regarding that Contract during the prevailing 10 day period or Section 9.3 or 9.6 applies. The failure of Owner's Authorized Representative to object to a Contract shall not be construed to relieve Concessionaire or any Contractor of responsibility for the fulfilling of all the requirements of the Contract Documents.

**9.1.4** Concessionaire shall provide Owner a monthly report separately listing (a) all Key Contracts in effect, (b) all Contracts in effect to which Concessionaire is a party, (c) all Subcontracts in effect to which an Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract with Concessionaire are delegated to the Subcontractor and (d) all other Subcontracts. Concessionaire also shall list in the monthly report the Contractors under such Contracts, guarantees of Key Contracts in effect and the relevant Guarantors. Concessionaire shall allow Owner ready access to all Contracts and records regarding Contracts and shall deliver to Owner, (i) within 10 days after execution, copies of all Key Contracts, guarantees thereof and amendments and supplements to Key Contracts and guarantees thereof, and (ii) within 10 days after receipt of a request from Owner, copies of all other Contracts (including amendments and supplements) as may be requested.

### **9.2 Responsibility for Work, Contractors and Employees**

**9.2.1** Concessionaire shall be entitled to enter into one or more Contracts with Contractors to perform portions of the Work. Concessionaire shall retain or cause to be retained only Contractors that are qualified, experienced and capable in the performance of the portion of the Work assigned. Concessionaire shall ensure that each Contractor has at the time of execution of the Contract, and maintains at all times during performance of the assigned Work, all licenses, certifications, registrations, permits, approvals bonds and insurance required by applicable Laws.

**9.2.2** The retention of Contractors by Concessionaire does not relieve Concessionaire of its responsibilities under this Agreement or for the quality of the Work or materials or services provided by it.

**9.2.3** Each Contract shall include (a) terms sufficient to ensure both the acknowledgement of and compliance by the Contractor with the applicable requirements of the Contract Documents and to ensure that Owner has the ability to exercise its rights specified in the Contract Documents, (b) those terms that are specifically required by the Contract Documents to be included in such Contract, and (c) all applicable federal requirements, including those in Exhibit 16.

**9.2.4** Concessionaire shall require each Contractor to familiarize itself with the requirements of any and all applicable Laws, including those Laws applicable to the use of federal-aid funds, and the conditions of any required Governmental Approvals.

**9.2.5** Nothing in this Agreement will create any contractual relationship between Owner and any Contractor. No Contract entered into by or under Concessionaire shall impose any obligation or liability upon any Indemnified Party to any Contractor or any of its employees. Concessionaire shall include, or cause to be included, a provision in all Contracts acknowledging the same.

**9.2.6** Concessionaire shall supervise and be fully responsible for the actions, omissions, negligence, willful misconduct, fraud, bad faith or breach of applicable Law or contract by any Concessionaire-Related Entity or by any member or employee of Concessionaire or any Concessionaire-Related Entity while performing Work under this Agreement or while on the Site, as though Concessionaire directly employed all such individuals.

### **9.3 Key Contracts; Contractor Qualifications**

#### **9.3.1 Key Contract Approvals, Amendments and Termination; Use of and Change in Key Contractors**

**9.3.1.1** Concessionaire shall provide Owner, for Owner's review and comment, draft copies of (a) any Key Contracts not executed prior to the Agreement Date and (b) proposed material amendments to Key Contracts (regardless of whether the Key Contract to be amended was executed before the Agreement Date). Such drafts shall be provided at least 30 days prior to execution. Any proposed amendment to required terms described in Section 9.3.2 shall be considered a material amendment.

**9.3.1.2** Except as otherwise approved by Owner, Concessionaire shall retain, employ and utilize the firms and organizations specifically identified in the document entitled "Information About Major Participants and Other Identified Contractors" in the Technical Proposal to fill the applicable Key Contractor roles.

**9.3.1.3** Concessionaire shall not terminate or permit termination of any Key Contract or permit any substitution, replacement or assignment of any Key Contractor, except with Owner's prior approval; provided, however, that Owner's prior approval is not required in the event of (a) any termination of this Agreement where Owner elects not to assume Concessionaire's future obligations under such Key Contract, (b) any suspension, debarment, disqualification or removal (distinguished from ineligibility due to lack of financial qualifications) of the Key Contractor, or (c) any agreement for voluntary exclusion of the Contractor, from bidding, proposing or contracting with any federal, State or local department or agency; and provided, further, that Owner will act reasonably with respect to approval of a replacement in the case of material uncured default by the Key Contractor under the Key Contract.

### **9.3.2 Key Contract Provisions**

Each Key Contract shall expressly:

**9.3.2.1** Require the Key Contractor to carry out its scope of work in accordance with applicable requirements of the Contract Documents, the Governmental Approvals, applicable Law, and plans, systems and manuals developed and used by Concessionaire under the Contract Documents;

**9.3.2.2** Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Contract Documents and in accordance with Good Industry Practice for work of similar scope and scale;

**9.3.2.3** To the extent applicable, if not obtained by Concessionaire, require the Key Contractor to provide a Payment Bond and Performance Security as required under Section 11.2 before commencement of any work by or on behalf of the Key Contractor;

**9.3.2.4** Preclude suspension of performance or demobilization by the Key Contractor unless and until it delivers to Owner notice of the other contracting party's breach or default under such Key Contract and allows Owner the reasonable opportunity to cure such breach or default;

**9.3.2.5** Not be assignable by the Key Contractor without Concessionaire's and Owner's prior consent, provided that this provision shall not prohibit subcontracting of portions of the Work;

**9.3.2.6** Include the requirements and provisions in this Agreement applicable to Contractors regarding title to and other Intellectual Property rights and licenses;

**9.3.2.7** Require the Key Contractor to participate in meetings between Concessionaire and Owner concerning matters pertaining to such Key Contractor, its work or the coordination of its work with other Contractors in accordance with direction to such Key Contractor provided by Concessionaire or other party to the Key Contract, provided that Owner retains authority to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

**9.3.2.8** Require the Key Contractor to participate in, be subject to and give evidence in any dispute resolution proceeding under Article 20, if such participation is requested by either Owner or Concessionaire;

**9.3.2.9** Without cost to Concessionaire or Owner, and subject to the rights of the Collateral Agent under any Direct Agreement, permit assignment to Owner, the Collateral Agent or either of their respective successors, assignees or designees of all Concessionaire's or other contracting party's rights under the Key Contract, contingent only upon delivery of notice from Owner following the Termination Date, allowing Owner or its successor, assign or designee to obtain the benefit of Concessionaire's or other contracting party's rights with liability only for those remaining obligations of Concessionaire or the other contracting party accruing after the date of delivery of said notice from Owner, without extinguishing existing claims of the Key Contractor against Concessionaire or the corresponding Claims of Concessionaire against Owner;

**9.3.2.10** Include (a) a covenant acknowledging that, subject to the rights of the Collateral Agent under any Direct Agreement, upon receipt of written notice from Owner,

Owner is entitled to exercise step-in rights with respect to the Key Contract (where Owner is also exercising its step-in rights under Section 17.2.4), without any necessity for a consent or approval from Concessionaire or the making of a determination whether Owner validly exercised its step-in rights, and (b) a waiver and release by Concessionaire of any claim or cause of action against the Key Contractor arising out of, relating to or resulting from its recognition of Owner's step-in rights in reliance on any such written notice from Owner;

**9.3.2.11** Include a covenant that will survive termination of the Key Contract obligating the Key Contractor to promptly execute and deliver to Owner or its successor, assign or designee a new contract between the Key Contractor and Owner or its successor, assign or designee on the same terms as the Key Contract, if (a) the Key Contract is rejected by Concessionaire in bankruptcy or is wrongfully terminated by Concessionaire and (b) Owner delivers a request for such new contract within 60 days following termination or expiration of this Agreement;

**9.3.2.12** Include a covenant that will survive termination of the Key Contract to the effect that if the Key Contractor was a party to an escrow agreement for an Intellectual Property Escrow and Concessionaire terminates it, then the Key Contractor also shall execute and deliver to Owner, concurrently with such new contract, a new escrow agreement on the same terms as the terminated escrow agreement, and shall concurrently make the same deposits to the new Intellectual Property Escrow as made or provided under the terminated escrow agreement. The obligation to include the same terms in each such new contract (including new Intellectual Property Escrows) is subject to the following exceptions: (i) terms of a Key Contract or Intellectual Property Escrow agreement rendered moot or inapplicable solely due to change in the identity of the contracting party to Owner or its successor, assign or designee; and (ii) terms of a Key Contract that must be adjusted due to schedule delay caused solely by Concessionaire's rejection in bankruptcy or wrongful termination;

**9.3.2.13** Require the Key Contractor to (a) maintain usual and customary Books and Records for the type and scope of operations of business in which it is engaged and retain such Books and Records for the period stated in Section 23.1.1 or other applicable period specified in the Contract Documents, (b) permit audit of Books and Records by Owner and (c) provide progress reports to Concessionaire appropriate for the type of work it is performing sufficient to enable Concessionaire to provide the reports it is required to furnish Owner under this Agreement;

**9.3.2.14** Include a right of inspection for Owner, or Owner's designee(s), consistent with Owner's inspection rights under the Contract Documents.

Each Key Contract shall provide that any purported amendment contrary to the requirements of this Section 9.3, without the prior written consent of Owner, shall be null and void.

## **9.4 Prompt Payment to Contractors**

Concessionaire shall make prompt payment to its Prime Contractors, and shall require all Contractors to make prompt payment to lower tier Contractors with whom they have privity of contract, as follows:

**9.4.1** Within seven days after Concessionaire's receipt of payment allocable to Work performed by a Prime Contractor, Concessionaire shall make the corresponding payment to such Prime Contractor. Concessionaire shall insert in all Prime Contracts a requirement for the Prime Contractor to (a) make all payments owing to Subcontractors within seven days after

receiving payment for Work satisfactorily performed by such Subcontractors and (b) require Subcontractors to insert the same provision in each Subcontract at all tiers. Any Subcontractor that does not receive prompt payment shall have the right to request a remedy in accordance with COMAR 21.10.08, incorporated in this Agreement by reference.

**9.4.2** The Parties agree that, for purposes of Section 17-110(c) of the State Finance and Procurement Code of the Annotated Code of Maryland, the fact that the Owner will pay for a portion of the D&C Work through the RSA Payment, the Final Completion Payment and Availability Payments allows Concessionaire to withhold retainage from payments owing to the Design-Build Contractor as provided in this Section 9.4.2. The retainage to be withheld from the Design-Build Contractor shall not exceed 5% of the amount otherwise owing. If Concessionaire elects to withhold such retainage from the Design-Build Contractor, the Design-Build Contractor shall have the further right to withhold retainage from its Subcontractors, not to exceed the amount withheld by Concessionaire, and each Subcontractor from whom retainage is withheld shall have the right to withhold retainage from its lower tier Subcontractors, not to exceed the amount withheld from the upper tier Subcontract. If retainage is withheld, Concessionaire shall be obligated to provide evidence to Owner, as a condition to Revenue Service Availability, that all retainage for Construction Work completed as of the RSA Date has been paid in full, or will be paid in full from the proceeds of the RSA Payment, within the relevant time period specified in Section 9.4.1. Furthermore, Concessionaire and the Contractors shall comply with requirements to release retainage under 49 CFR 26.29 upon satisfactory completion of Work by Subcontractors. Accordingly, as the D&C Work proceeds, Concessionaire shall release retainage to the Design-Build Contractor, and shall require Contractors at each successive tier to release retainage, so as to enable release of retainage to each individual Subcontractor upon satisfactory completion of all Work by such Subcontractor in accordance with applicable Law including 49 CFR 26.29.

**9.4.3** The duties and obligations under the foregoing payment requirements, Section 15-226 of the State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.10.08 (incorporated in this Agreement by reference) shall apply to all tiers of Contractors performing Construction Work under this Agreement.

## **9.5 Key Personnel**

Concessionaire shall:

- (a) Retain, employ and utilize the individuals specifically listed in the Technical Proposal, the Project Management Plan or O&M Management Plan to fill Key Personnel positions for the relevant period;
- (b) Not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by Owner under Section 9.5(c);
- (c) Provide notice to Owner of any proposed replacement for any Key Personnel position. Owner shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position and act reasonably in approving or disapproving use of such individual in such position before the commencement of any Work by such individual;
- (d) Cause each Key Person to dedicate the full amount of time necessary for the proper prosecution and performance of the Work, as more specifically described in Part 2A, Section 2.3 of the Technical Provisions;

(e) Commit each Key Person exclusively to the Project with no other conflicting assignments during the periods indicated in Part 2A, Section 2.3 of the Technical Provisions;

(f) Provide Owner with office and cell phone numbers and email addresses for each Key Person. Owner may contact any Key Personnel 24 hours per day, seven days per week;

(g) Ensure that the Project Manager identified in the Technical Proposal or otherwise approved by Owner (a) will have full responsibility for the prosecution of the D&C Work, (b) will act as agent and be a single point of contact in all matters relating to the D&C Work on behalf of Concessionaire at least until Final Completion, (c) is present (or his or her approved designee is present) at the construction site at all times that Construction Work is performed, and (d) will be available to respond promptly to Owner or its Authorized Representative; and

(h) Ensure that the Quality Program Manager identified in the Technical Proposal or otherwise approved by Owner (a) will have full responsibility for quality assurance and quality control with respect to D&C Work until Final Completion, (b) is present (or his or her approved designee is present) at the construction site at all times that Construction Work is performed, and (c) will be available to respond promptly to Owner or its Authorized Representative.

## **9.6 Contracts with Affiliates**

**9.6.1** Affiliates may perform Work only if:

**9.6.1.1** Concessionaire executes a written Contract with the Affiliate which:

(a) Complies with all applicable provisions of the Contract Documents, including this Article 9, is consistent with Good Industry Practice, and is in form and substance substantially similar to Contracts then being used by Concessionaire or Affiliates for similar Work or services with unaffiliated contractors;

(b) Sets forth the scope of Work and all the pricing, terms respecting the scope of Work; and

(c) Contains pricing, scheduling and other terms no less favorable to Concessionaire than those that Concessionaire could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor. Concessionaire shall bear the burden of proving that the same are no less favorable to Concessionaire; and

**9.6.1.2** The Work to be performed by the Affiliate is not Work that any Contract Document, the Project Management Plan or O&M Management Plan indicates is to be performed by an independent or unaffiliated party.

**9.6.2** Before entering into a written Contract (including supplements and amendments) with an Affiliate, Concessionaire shall submit a true and complete copy of the proposed Contract to Owner for review and comment. Owner shall have 20 days after receipt to deliver its comments to Concessionaire. If the Contract with the Affiliate is a Key Contract, it shall be subject to Owner's approval as provided in Section 9.3.1.

**9.6.3** Concessionaire shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

## **9.7 Labor Standards**

**9.7.1** In performing the Work, Concessionaire shall comply, and require all Contractors to comply, with all applicable federal and State labor, occupational safety and health Laws and orders, including payment of prevailing wages.

**9.7.2** All individuals performing the Work shall be qualified, experienced, competent and skilled in the performance of the portion of the Work assigned and related obligations of Concessionaire in accordance with the Contract Documents and any applicable minimum levels in the Technical Provisions.

**9.7.3** If any individual employed by Concessionaire or any Contractor lacks such qualifications, skill, competence, experience, licensing, certification, registration, permit, approval, bond or insurance or is not performing the Work in a proper, safe and skillful manner, then Concessionaire shall, or shall cause such Contractor to, remove such individual and such individual shall not be re-employed on the Work. Concessionaire shall not be entitled to make any Claim as a result of such removal.

**9.7.4** If, after notice and reasonable opportunity to cure, Concessionaire fails to take action as required by Section 9.7.3, or if Concessionaire fails to ensure that qualified, skilled, experienced, competent, licensed, certified, registered, permitted and approved personnel are furnished for the proper performance of the Work, then Owner may suspend the affected portion of the Work by delivering to Concessionaire notice of such suspension. Such suspension shall in no way relieve Concessionaire of any obligation contained in the Contract Documents or entitle Concessionaire to make any Claim.

## **9.8 Ethical Standards**

**9.8.1** Within 90 days after the Effective Date, Concessionaire shall adopt written policies establishing ethical standards of conduct for all Concessionaire-Related Entities, including Concessionaire's supervisory and management personnel, in dealing with (a) Owner and (b) employment relations. Such policy shall be delivered to Owner upon request. Such policy shall include standards of ethical conduct concerning:

**9.8.1.1** Compliance with restrictions applicable to federal grantees, Maryland state agencies, public contracts, public officials and employees, and former public officials and employees, in accordance with the Maryland Public Ethics Law, Title 15 of the State Government Article of the Annotated Code of Maryland and Title 14 of the Election Law Article of the Annotated Code of Maryland with respect to prohibitions on political contributions by Concessionaire, and other requirements specified in Attachment 1 to Exhibit 16, Part A, Section 1.2;

**9.8.1.2** Protection of employees of Concessionaire-Related Entities from unethical practices in selection, use, hiring, compensation or other terms of employment, or in firing, promotion and termination of employees;



**9.8.1.3** Protection of employees of Concessionaire-Related Entities from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any Concessionaire-Related Entity;

**9.8.1.4** Restrictions on directors, members, officers or supervisory or management personnel of any Concessionaire-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

**9.8.1.5** Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of Concessionaire or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

**9.8.1.6** Restrictions on directors, members, officers or employees of any Concessionaire-Related Entity performing any of the Work if the performance of such Work would be prohibited under Owner's conflict of interest rules and policies.

**9.8.2** Concessionaire shall cause its directors, members, officers, supervisory and management personnel, and require those of all other Concessionaire-Related Entities, to adhere to and enforce the adopted policy on ethical standards of conduct. Concessionaire shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

**9.8.3** No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while so employed, become or be an employee of any Concessionaire-Related Entity.

## **9.9 Non-Discrimination; Equal Employment Opportunity**

### **9.9.1 Compliance with State Non-Discrimination Law and Regulations**

During the performance of this Agreement, Concessionaire, for itself, its assignees and its successors in interest, agrees as follows:

(a) Not to discriminate in any manner against any employee or applicant for employment because of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity or disability unrelated in nature and extent so as reasonably to preclude the performance of such employment;

(b) To include a provision similar to that contained in Section 9.9.1(a) in each Contract, and to require such a provision to be included in all lower tier Contracts, other than Contracts for standard commercial supplies or raw materials; and

(c) To post and to cause Contractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of Section 9.9.1(a).

### **9.9.2 Sanctions**

In the event of noncompliance with the nondiscrimination provisions of this Agreement, Owner will impose such sanctions as it may determine to be appropriate, including:

- (a) Withholding of payment to Concessionaire under this Agreement until the Concessionaire-Related Entity complies; and/or
- (b) Cancellation, termination or suspension of this Agreement in whole or in part.

Owner will provide notice regarding any breach of Section 9.9.1(c) and allow Concessionaire five business days to cure the breach before taking any action under this Section 9.9.2. If Owner elects to terminate this Agreement pursuant to this Section 9.9.2, Concessionaire shall be entitled to compensation in accordance with Section 4.5 of Exhibit 13B.

### **9.9.3 Compliance with Federal Law**

- (a) Concessionaire assures Owner that it is conforming to the provisions of the Civil Rights Act of 1964 and Section 202 of Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.
- (b) Concessionaire shall comply with all applicable federal laws pertaining to nondiscrimination in employment, including the requirements specified in Exhibit 16.

### **9.9.4 Affirmative Action and EEO Requirements**

Concessionaire shall comply with Owner's affirmative action requirements and all applicable Equal Employment Opportunity requirements and shall require its Contractors to comply with such requirements. Such requirements shall apply to the entire Project and all the Work.

## **9.10 Disadvantaged Business Enterprise (DBE)/Minority Business Enterprise (MBE)**

### **9.10.1 General Requirements**

**9.10.1.1** The spirit and intent of the State of Maryland is to afford small, disadvantaged, minority and women-owned businesses the opportunity to perform viable and meaningful services in a teaming effort. It is the desire of the State to maximize notice, and the opportunity to participate in the solicitation process, to a diverse and broad range of small, disadvantaged, minority and women-owned businesses.

**9.10.1.2** The governing statutes, regulations and program requirements are: 49 CFR Part 26; the Maryland Annotated Code, State Finance and Procurement Article Sections 14-301 through 14-309; COMAR 21.11.03, COMAR 11.01.10.01; and the State of Maryland Minority Business and Federal Disadvantaged Business Enterprise Program Manuals. These manuals can be found at the Maryland Department of Transportation website: <http://www.mdot.maryland.gov/Office%20of%20Minority%20Business%20Enterprise/Resources/Information/Resources%20Information>, or successor site.

**9.10.1.3** Concessionaire shall support and actively participate in various meetings, as directed by Owner, including executive steering committees, workgroups, advisory groups, USDOT OSDBU “Bonding Education Program” and local business leadership councils.

**9.10.1.4** Owner expects continuing good faith efforts on the part of Concessionaire over the course of the Project to achieve the DBE or MBE participation goal(s).

**9.10.1.5** This Section 9.10.1.5 sets out requirements and procedures consistent with Laws or policies applicable to the unique aspects of this Agreement:

(a) The DBE participation goal(s) for the Design-Build Period of the Project (excluding supply of LRVs) are 26% for D&C Design Services and 22% for D&C Construction Services;

(b) The LRV Supplier shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The requirements of 49 CFR Part 26.49, “Transit Vehicle Manufacturer’s Certification of Compliance with DBE Regulations,” are incorporated into this Agreement by reference. Failure by the LRV Supplier to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or such other remedy as Owner deems appropriate. Each Contract the LRV Supplier signs with a Contractor at any tier must include the assurance in this paragraph (see 49 CFR 26.13(b));

(c) Only MDOT-certified DBEs can be utilized to achieve the Project’s DBE participation goal(s) and only MDOT-certified MBEs can be utilized to achieve the Project’s MBE participation goals/subgoals;

(d) At Financial Close, Concessionaire shall provide to Owner the following information: (i) a list of D&C Construction Services contracts, including the dollar value, for which Construction Work is anticipated to begin within the first 180 days after Financial Close; and (ii) the DBE Participation Forms (as directed by Owner) for each D&C Construction Services contract awarded as of Financial Close;

(e) Beginning 90 days after Financial Close and on a quarterly basis thereafter, Concessionaire shall submit: (i) an updated list of Construction Work contracts, including the dollar value, for which Construction Work is anticipated to begin within the next 180-day period; (ii) DBE Participation Forms, as directed by Owner, for the Construction Work contracts awarded since the last submission of DBE Participation Forms; and (iii) any other forms or information the Owner requests related to the total dollar value of the awarded Construction Work contracts and total commitments to DBE firms;

(f) On a quarterly basis after Financial Close, Concessionaire shall also provide a brief description of the scope of work for each Construction Work contract to be issued for bid by the Design-Build Contractor in the upcoming 90-day period;

(g) Where Concessionaire is unable to meet a specific DBE or MBE goal established by Owner, Concessionaire shall submit to Owner a waiver request, with documentation of Concessionaire’s good faith efforts, and Owner will work with Concessionaire to establish an improvement plan as part of the DBE Participation Plan, or determine whether to seek other appropriate remedies herein;

(h) In accordance with the “DBE/MBE Participation Plan” portion of the “Project Management Technical Solutions” in the Proposal, Concessionaire shall, promptly following Commercial Close, submit an updated DBE/MBE Participation Plan, detailing Concessionaire’s continuing responsibility to meet its DBE commitments, including its obligation to use good faith efforts to achieve the Project’s DBE participation goal(s), including how final design will lead to maintaining the goal(s) or achieving additional participation (the “DBE Participation Plan”). The DBE Participation Plan shall also include a system of reports and procedures that will document adjustments and maintenance of the DBE participation schedule, achievement of the Project’s DBE goal(s) and compliance with the requirements of COMAR 21.11.03.13.

## **9.10.2 Waivers**

**9.10.2.1** If Concessionaire is unable to meet a DBE goal or MBE goal/subgoal (or a portion thereof), then Concessionaire must request a waiver and submit all required documentation as directed by Owner, including Form H-6 (MDOT MBE/DBE Form E – Good Faith Efforts Guidance and Documentation attached as Exhibit 15C). Documentation supporting a waiver request includes:

(a) A detailed statement of the efforts made to select portions of the Work proposed to be performed by certified firms in order to increase the likelihood of achieving the stated goal;

(b) A detailed statement of the efforts made to contact and negotiate with certified firms including the names, addresses, dates, and telephone numbers of the certified firms contacted and a description of the information provided to the certified firms regarding plans, specifications, and anticipated time schedule for portions of the work to be performed;

(c) As to each certified firm that placed a quotation or offer that Concessionaire considered not to be acceptable, a detailed statement of the reasons for this conclusion; and

(d) In the event certified minority Subcontractors are found to be unavailable, a signed and notarized Statement of Unavailability, on the form provided by Owner, must be prepared by Concessionaire to include the names, addresses, dates, times, and telephone numbers of the certified firms contacted and the reason each certified firm is unavailable.

**9.10.2.2** In order to be granted a waiver, Concessionaire must demonstrate good faith efforts to meet the goal, which includes a reasonable demonstration by Concessionaire that it was unable to obtain certified DBE or MBE participation or was unable to obtain such participation at a reasonable price.

**9.10.2.3** The documentation required under Section 9.10.1 shall be provided by Concessionaire within the time specified by Owner. If Owner determines that Concessionaire:

(a) Has not complied with the participation contract goal;

(b) Has not obtained a waiver as required;

- Documents;
- (c) Failed to submit the documentation required by the Contract
  - (d) Failed to comply in good faith with outreach efforts, or
  - (e) Failed to adhere to the improvement plan established under Section 9.10.1.5(g),

then Owner, in consultation with MTA's Office of Fair Practices, and upon review by the Office of the Attorney General, may make a determination that Concessionaire is non-compliant, and take appropriate action against Concessionaire in accordance with provisions of this Agreement.

### **9.10.3 Amendment for Unforeseen Circumstances**

**9.10.3.1** If at any time after submission of a proposal but before the award of this Agreement, Concessionaire determines that a certified firm listed on the Participation Schedule has become or will become unavailable or is ineligible to perform the work, Concessionaire shall promptly provide notice to Owner. The notification shall indicate Concessionaire's efforts to substitute another certified firm to perform the work.

**9.10.3.2** Within 10 business days after delivery of notification under Section 9.10.3.1, Concessionaire may request and submit an amendment to the Participation Schedule, signed by both Concessionaire and the newly proposed certified firm(s), which certified firms must be approved by Owner.

**9.10.3.3** If Concessionaire cannot find one or more replacements, Concessionaire shall document and submit in writing all good faith efforts to substitute another certified firm to perform the work that the unavailable or ineligible firm would have performed, including seeking assistance from Owner.

**9.10.3.4** Any change to the Participation Schedule shall be approved in advance by Owner and shall indicate Concessionaire's efforts to substitute another certified firm to perform the work as set forth in Section 9.10.3.1. Changes to the Participation Schedule occurring after the Effective Date may occur only upon written approval by Owner and evidenced by a Modification to this Agreement.

### **9.10.4 Third-Tier and Lower-Tier Contracting**

**9.10.4.1** Owner must approve all third-tier and lower-tier contracting intended to be used to achieve DBE goals. Two conditions must be met before Owner may approve any such third-tier and lower-tier contracting arrangement:

- (a) Before awarding the Contract, Owner must be satisfied, through the DBE participation schedule and the preliminary DBE Participation Plan, that the third-tier or lower-tier contract is a necessary component of the Project's DBE goal(s); and
- (b) The DBE participation schedule submitted with the Proposal (i.e., Proposal Form H-3) must have attached approval requests for each third-tier and lower-tier Contract arrangement that contain specifics as to why a third-tier or lower-tier contracting arrangement should be approved with respect to DBE firms identified in said schedule. During the course of the Project, approval requests must be submitted to

Owner whenever the use of third-tier or lower-tier contracting arrangements is contemplated.

**9.10.4.2** No third-tier or lower-tier contracting arrangement intended to be counted toward meeting the Project's DBE goals may be used to perform the Work until approved by Owner. Owner will require submission of all records of any approved third-tier or lower-tier Subcontract and Concessionaire shall make the records available to Owner upon request. Third-tier or lower-tier contracting to meet the Project's DBE goal(s) is to be considered the exception and not the rule.

#### **9.10.5 Subcontract Report**

**9.10.5.1** As part of the monthly progress report, Concessionaire shall submit a subcontract report which shall:

- (a) Include an updated list of Subcontractors (design and construction, at all tiers; and to the extent when applicable, operations and maintenance, at all tiers);
- (b) Identify DBE firms and to the extent applicable, MBE firms, and the location where the Subcontractors worked;
- (c) Include results of all procurements consummated in the previous month, including those procured competitively and by other means;
- (d) Indicate the type of work or product procured and size of the procurement (in dollars), the names of firms competing for the Subcontract, and the name of the selected Subcontractor;
- (e) Indicate the total number of Subcontractors and the total dollar value of all Subcontracts awarded to date;
- (f) Show the total number of Subcontracts and the total value of Subcontracts awarded to DBE firms to date; and
- (g) Indicate, for each Subcontract, the following:
  - (i) The original Subcontract amount;
  - (ii) The value of any modifications to date; and
  - (iii) Payments made to date.

Suppliers are not required to be included in the report unless they are DBEs; however, Concessionaire must retain records of non-DBE supplier contracts and subcontracts.

#### **9.10.6 Compliance**

**9.10.6.1** As requested by Owner, Concessionaire shall report to Owner regarding compliance with the DBE and MBE requirements for purposes of Owner's monitoring.

**9.10.6.2** If Owner finds that Concessionaire is not in compliance, Owner may take immediate action to ensure compliance. The compliance process includes monitoring payments and performing onsite reviews to verify that the certified firms listed in applicable DBE

Participation Forms and other relevant submissions are actually performing work and receiving compensation in accordance with that schedule.

**9.10.6.3** Owner shall monitor compliance, and in accordance with this Section 9.10, Concessionaire shall:

(a) By the 15th of each month, beginning the first month after the date of Financial Close, submit to Owner a Monthly Prime Disadvantaged Business Enterprise Payment Report in the form provided by Owner, for each certified DBE or MBE firm. The report shall include: (i) a listing of all invoices submitted by each certified firm during the reporting period; (ii) all invoices paid by Concessionaire to the certified firms during the reporting period, and (iii) a listing of unpaid invoices over 30 days old received from a certified firm, and the reason payment has not been made;

(b) Include in its agreements with its certified DBE or MBE firms a requirement that the certified firms submit by the 15th of each month to the MTA Office of Fair Practices (or its designee) the Monthly Subcontractor Disadvantaged Business Enterprise Payment Report (MDOT Attachment F), and listing:

(i) All invoices submitted to Concessionaire during the reporting period;

(ii) All payments received from Concessionaire in the preceding 30 days; and

(iii) A listing of unpaid Subcontractor invoices over 30 days old, and the reason payment has not been made;

(c) Provide right-of-entry at reasonable times to enable Owner's representatives to verify compliance with DBE or MBE participation requirements, including inspecting any relevant matter, conducting periodic reviews, reviewing records, visiting jobsites and interviewing Subcontractors and workers; and

(d) Maintain and retain all records concerning participation and make them available for Owner's inspection for a period of three years from the date of final payment under the Award. Subcontract agreements documenting the work performed by all certified firms shall be retained by Concessionaire and furnished to Owner upon request.

**9.10.6.4** Upon notification by MTA Office of Fair Practices of Concessionaire's noncompliance, including failure to meet reporting deadlines, Owner shall notify Concessionaire of its findings and shall specify what corrective actions are required. Concessionaire shall be required to initiate the corrective actions within 10 business days of Concessionaire's notice and complete them within the time specified by Owner.

**9.10.6.5** If Owner determines that noncompliance with DBE or MBE program requirements exists and that Concessionaire refuses or fails to take the corrective action required by Owner, then Owner, in its capacity as a governmental body charged with enforcing the DBE and MBE programs, may impose sanctions on Concessionaire, including:

(a) Withholding payment;

- Default;
- (b) Suspending the Work and declaring a Concessionaire Default;
  - (c) Terminating this Agreement for Concessionaire Default;
  - (d) Referring the matter to the Office of the Attorney General for appropriate action; and
  - (e) Using any other compliance mechanism available at law, including the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (dated August 1, 2008), and promulgated under Code of Maryland Regulations at 21.11.03.01, *et seq.*; and, should Owner issue MBE goals, appropriate liquidated damages provisions shall apply in accordance with COMAR 21.11.03.10(E), to be evidenced by a Modification to this Agreement.

#### **9.10.7 Prohibited Acts; Fines**

Under Section 14-308 of the State Finance and Procurement Article (the "SFP") of the Annotated Code of Maryland, any person who commits any of the following acts is guilty of a felony, and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both:

- (a) Fraudulently obtains, holds, or attempts to obtain or hold certification;
- (b) Aids another person in performing an act prohibited under item (a) of this Section;
- (c) Willfully obstructs, impedes, or attempts to obstruct or impede a State official or employee investigating the qualifications of a business entity that has requested certification;
- (d) Fraudulently obtains, attempts to obtain, or aids another person in fraudulently obtaining or attempting to obtain, public monies to which the person is not otherwise entitled under SFP Title 14, Subtitle 3; or
- (e) In any minority business enterprise matter administered under SFP Title 14, Subtitle 3:
  - (i) Willfully falsifies, conceals, or covers up a material fact by any scheme or device;
  - (ii) Makes a false or fraudulent statement or representation; or
  - (iii) Uses a false writing or document that the person knows to contain a false or fraudulent statement or entry.

#### **9.10.8 Cancellation of DBE or MBE Contracts**

Concessionaire shall not cancel or terminate any contract with a DBE or MBE firm except with Owner's prior, written consent. Concessionaire must provide written notice of its request to cancel or terminate the DBE or MBE Contract and comply with the applicable requirements and provisions of 49 CFR 26.53, the DBE Program Manual for DBE firms, SFP § 14-302, and the MBE Program Manual for MBE firms.



#### **9.10.9 Contract Provisions**

Concessionaire shall include provisions to implement the requirements of this Section 9.10 in every applicable Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all applicable Subcontracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each applicable Prime Contractor and Subcontractor.

#### **9.11 Workforce Provisions**

**9.11.1** Concessionaire shall make good faith efforts to assure that:

(a) not less than 33% of all Construction Work Hours are performed by Nationally Targeted Workers;

(b) not less than 10% of the Construction Work Hours under Section 9.11(a) are performed by Nationally Targeted Workers of Social Disadvantage; and

(c) not more than 50% of the aggregate Construction Work Hours performed pursuant to Sections 9.11(a) and (b) may be worked by Helpers or other Unskilled Laborer position as defined in the Davis-Bacon Act.

**9.11.2** If Concessionaire and/or the Design-Build Contractor relies in whole or in part upon a Labor Organization as a source of employees, Concessionaire and/or the Design-Build Contractor will use good faith efforts to obtain the cooperation of such Labor Organizations to increase opportunities for Nationally Targeted Workers with the Labor Organizations and to effect referrals by such Labor Organizations of Nationally Targeted Workers.

**9.11.3** Construction Work Hours performed by a Nationally Targeted Worker of either category may not also be used to satisfy the requirement of the other category.

**9.11.4** Recognizing that Nationally Targeted Workers of Social Disadvantage face a transition to stable employment and economic self-sufficiency, a two-year “look-back” at a person’s eligibility rather than their eligibility on the date of employment on the Project shall be acceptable for counting Construction Work Hours towards the requirement set forth in Section 9.11.1. This provision shall not apply to Former Foster Care Youth or Early-Stage Registered Apprentices.

**9.11.5** Examples of good faith efforts include:

(a) systematic and documented recruitment efforts likely to yield qualified Nationally Targeted Worker applicants;

(b) entering into and performing in accordance with an agreement with a Preferred Training Partner or other government recognized workforce training agency or organization that offers an apprenticeship program recognized by the U.S. Department of Labor or Maryland Apprenticeship Training Council.

**9.11.6** Nothing in this Section 9.11 shall obligate Concessionaire to provide or pay for any job counseling, workforce training or action necessary for the Nationally Targeted Worker to successfully perform the work he or she is hired to perform.

**9.11.7** Nothing in this Section 9.11 shall be construed to interfere with or contravene Concessionaire's lawful employment practices.

**9.11.8** Prior to the start of Construction Work, Concessionaire shall propose to Owner the form of reporting on the Concessionaire's progress towards achieving the Nationally Targeted Workers requirements in this Section 9.11. Reporting shall occur on a monthly basis and shall include:

- (a) The number of Construction Work Hours performed by position or trade;
- (b) The number of Nationally Targeted Workers hired specifically to work on the Project, including their designation as a Nationally Targeted Worker of Economic Disadvantage or Nationally Targeted Worker of Social Disadvantage;
- (c) The number of Nationally Targeted Workers subject to layoff or termination from the Project and the cause for such layoff or termination;
- (d) Total wages paid to Nationally Targeted Workers; and
- (e) Any other information which the Concessionaire may deem useful to report to the Owner regarding successes or challenges in implementing this Section 9.11.

**9.11.9** Concessionaire shall maintain and retain all records concerning the Construction Labor & Workforce Development Plan, including Nationally Targeted Workers. Such records shall be made available for Owner's inspection for a period of three years from the RSA Date.

## **9.12 Prevailing Wages for Construction**

**9.12.1** The minimum wage rates and benefits paid to workmen under this Agreement and Contracts for Construction Work shall be those prevailing in the locality as predetermined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. §§ 276a through a-7) and regulations (29 CFR Part 5) promulgated thereunder. Davis-Bacon rates applicable to the D&C Work are stated in Exhibit 16, Attachments 2A through 2D.

**9.12.2** To the extent Construction Work performed during O&M Period is not otherwise governed by the Davis-Bacon Act, then provisions of Section 17-201 et seq. of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.11.11 pertaining to Prevailing Wage for Public Works shall be appropriately incorporated into any Contracts for said Construction Work.

**9.12.3** It is Concessionaire's sole responsibility to determine the wage rates required to be paid. If rates of wages and benefits change while this Agreement is in effect, then Concessionaire shall bear the cost of such changes and shall have no right to a Claim against Owner on account of such changes. Without limiting the foregoing, no Claim will be allowed which is based upon Concessionaire's lack of knowledge or a misunderstanding of any such requirements or Concessionaire's failure to include in the Financial Model or Financial Model Updates adequate increases in such wages over the duration of this Agreement.

**9.12.4** If it is found that any individual employed by Concessionaire or a Contractor has been or is being paid a rate of wages less than the rate of wages required by this

Agreement to be paid, Owner may declare a Concessionaire Default under Section 17.1.1(i), and such a Concessionaire Default may lead to termination of this Agreement under Section 19.3.

### **9.13 Not Used**

### **9.14 Additional Requirements for O&M Work**

**9.14.1** Concessionaire shall, and shall cause the O&M Contractor and all Contractors that will perform Operations Work or Maintenance Work, to execute and deliver to Owner by Final Completion a Labor Peace Agreement with a labor organization that (a) contacted Concessionaire and the O&M Contractor, in writing, before Financial Close and (b) is actively engaged in representing or attempting to represent individuals that are to perform the Operations Work and Maintenance Work for the Project. Concessionaire and each such Contractor shall be bound by the terms of such Labor Peace Agreement, which agreement shall be valid and enforceable under 29 U.S.C. § 158 and shall, at a minimum, prohibit any and all such labor organization(s) and its members from engaging in any picketing, work stoppages, boycotts or other interference, economic or otherwise, affecting the O&M Work or the System.

**9.14.2** Concessionaire shall, and shall cause its O&M Contractor to, assume all obligations under applicable Section 13(c) agreements (if any), as required under 49 U.S.C. § 5333(b).

**9.14.3** Any uniforms, badges, logos and other identification worn by personnel of Concessionaire-Related Entities shall bear colors, lettering, design or other features to ensure clear differentiation from those of Owner and its employees.

### **9.15 Sanctions Upon Improper Acts**

**9.15.1** In the event Concessionaire, or any of its officers, partners, principals or employees, is convicted of a crime arising out of, relating to or resulting from the procurement of work to be done or payment to be made under this Agreement, Owner may terminate this Agreement. Section 16-203 of the State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.08.01, which relate to contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe are incorporated in this Agreement by reference. If Owner elects to terminate this Agreement pursuant to this Section 9.15.1, Concessionaire shall be entitled to compensation in accordance with Section 4.5 of Exhibit 13B.

**9.15.2** Section 11-205 of the State Finance and Procurement Article and COMAR 21.08.03 relating to collusion for purposes of defrauding the State are incorporated into this Agreement by reference.

**9.15.3** Section 16-101 of the State Finance and Procurement Article and COMAR 21.08.04 relating to debarment for offenses other than bribery are incorporated into this Agreement by reference.

**9.15.4** Concessionaire shall deliver to Owner, by January 31 of each year during the Term, updated affidavits in the forms included in Exhibit 14, signed by Concessionaire and each Equity Member.

## **ARTICLE 10. INTEGRATION AND INTERFACE RESPONSIBILITIES; THIRD PARTIES; SAFETY COMPLIANCE; EMERGENCY REPAIR WORK**

### **10.1 Interfaces with Related Transportation Facilities**

**10.1.1** Concessionaire shall be responsible for interfaces and integration of the Project with Related Transportation Facilities, including integration with roadway networks, operational connections to the MARC commuter rail system, intermodal connections and interfaces with facilities owned by WMATA and other transit service providers, in accordance with requirements specified in the Technical Provisions and other Contract Documents.

**10.1.2** Without limiting the obligations in Sections 5.6, 8.3 and 10.1.1, Concessionaire shall cooperate and coordinate with Owner and any third party that owns, manages, operates or maintains a Related Transportation Facility with regard to the construction, maintenance and repair programs and schedules for the Work and the Related Transportation Facility, in order to minimize disruption to the operation of the Project and the Related Transportation Facility.

**10.1.3** To assist Concessionaire, Owner will provide to Concessionaire during normal working hours, and upon reasonable prior notice, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of Owner or its contractors and consultants pertaining to Related Transportation Facilities. Concessionaire, at its expense, shall have the right to make copies of the same to the extent of Owner's rights with respect to such plans, surveys, drawings, etc. Concessionaire, at its expense, shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to identify the Related Transportation Facilities and comply with this Section 10.1.

**10.1.4** At Concessionaire's request from time to time, Owner will provide reasonable assistance to Concessionaire in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that Concessionaire may have against any such third parties. Such assistance may include Owner's participation in meetings and discussions. In no event shall Owner be required to bring any legal action or proceeding against any such third party. At Concessionaire's request, Owner and Concessionaire shall work jointly to establish a scope of work and budget for Owner's Recoverable Costs in connection with providing such cooperation to Concessionaire. Subject to any agreed scope of work and budget, Concessionaire shall reimburse Owner for all reasonable costs, including Owner's Recoverable Costs, it incurs in connection with rendering such assistance within 10 days after receipt of Owner's request.

### **10.2 Work for and Coordination with Third Parties**

**10.2.1** Concessionaire shall implement the Third Party Agreement Requirements, including (a) performing certain obligations associated with the Third Party Agreements as described in Part 1 of the Technical Provisions and in Section 11.5.5.5, and (b) designing and constructing certain improvements that will be owned by Third Parties.

**10.2.2** Work performed that will be owned by Third Parties will be subject to acceptance by the Third Parties, and Concessionaire shall meet all requirements stated in the Contract Documents for acceptance by the Third Party. Refer to Section 7.12 for warranty requirements applicable to such Work.

**10.2.3** At Concessionaire's request from time to time, Owner will provide reasonable assistance to Concessionaire in obtaining cooperation and coordination from Third Parties and in enforcing rights, remedies and warranties that Concessionaire may have against any such third parties. Such assistance may include Owner's participation in meetings and discussions. In no event shall Owner be required to bring any legal action or proceeding against any such third party.

**10.2.4** Concessionaire shall provide Owner at least two business days' notice in writing regarding meetings with Third Parties, including information regarding topics to be discussed. If Owner does not provide a representative to participate in meetings with Third Parties, Concessionaire shall act in Owner's best interest in such dealings and to provide Owner with all information of interest to Owner regarding matters discussed in the meetings.

### **10.3 Coordination with Property Owners and Other Third Parties**

**10.3.1** Concessionaire shall schedule and perform all Work on property owned by third parties or otherwise affecting third parties in accordance with requirements reasonably imposed by such third parties and without unreasonably impairing, disrupting, interfering with, or otherwise having an adverse impact on the third party's activities or operations; provided that Concessionaire shall not be in breach of this Section 10.3.1 with respect to any such interruption that has been agreed to by the third party.

**10.3.2** To the extent that Concessionaire causes any impairment or disruption to, or interference with or impact on a third party's activities or operations not authorized under Section 10.3.1, Concessionaire shall, to the fullest extent permitted by Law, fully and effectively indemnify and hold harmless Owner from and against all claims, causes of action and Losses arising out of, relating to or resulting from such impairment, disruption, interference or impact, but only to the extent that such Losses and/or claims do not arise as a result of the negligent acts, omissions or willful misconduct of Owner or any Owner agent, servant, consultant or employee.

**10.3.3** Unless Owner agrees to an alternative schedule for payment of Losses, Concessionaire shall pay to Owner on demand all Losses under Section 10.3.2 or, at Owner's sole election, Owner may deduct the amount owing from amounts otherwise payable by Owner to Concessionaire under the Contract Documents.

### **10.4 Safety Compliance**

**10.4.1** Owner is entitled from time to time to issue Safety Compliance Orders to Concessionaire with respect to the Project to implement Safety Compliance.

**10.4.2** Promptly upon Owner becoming aware of any circumstance or information relating to the Project which in Owner's reasonable judgment is likely to result in a Safety Compliance Order, Owner will notify Concessionaire regarding the issue. Except in the case of Emergency, Owner will consult with Concessionaire before issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Concessionaire resources to fund the Safety Compliance work.

**10.4.3** Subject to conducting such prior consultation (unless excused in the case of Emergency), Owner may issue Safety Compliance Orders to Concessionaire at any time from and after the Effective Date.

**10.4.4** Concessionaire shall implement each Safety Compliance Order as expeditiously as reasonably possible following its issuance. Concessionaire shall diligently prosecute the work necessary to achieve such Safety Compliance until completion. Concessionaire shall not be entitled to claim that any Force Majeure Event, Non-Concessionaire Caused Disruption or Relief Event relieves Concessionaire from compliance with any Safety Compliance Order.

## **10.5 Emergency Repair Work**

**10.5.1** Starting on the date Construction Work is allowed to commence under this Agreement, Concessionaire shall procure and oversee temporary and/or permanent repair work required due to any Emergency affecting the Project (during the Design-Build Period) or affecting improvements within the O&M Limits (during the O&M Period). Concessionaire shall solicit competitive bids for such work if regulations, policies or procedures applicable to work to be funded by federal agencies (e.g. FTA or FEMA) require competitive bidding in order to obtain reimbursement for eligible costs. Refer to Sections 8.8.3 and 15.3.5.3 for provisions regarding payments to be made to Concessionaire if federal funding is obtained.

**10.5.2** Concessionaire shall ensure that such repair work is performed in accordance with the Contract Documents and State and federal Law applicable to such Emergency-related repair work. Further, Concessionaire shall maintain estimates, cost records and supporting documentation in accordance with such Laws, and in a form and content to enable Owner to seek reimbursement for eligible costs from federal agencies, if applicable.

## **ARTICLE 11. INSURANCE; PAYMENT AND PERFORMANCE SECURITY; INDEMNITY**

### **11.1 Insurance**

#### **11.1.1 Insurance Policies and Coverage**

At a minimum, Concessionaire shall procure or cause to be procured and keep in effect (a) the Insurance Policies in accordance with the requirements of this Section 11.1 and Exhibit 7A, and (b) the Contractors' insurance coverages as required in Section 11.1.2.5 and Exhibit 7A.

#### **11.1.2 General Insurance Requirements**

##### **11.1.2.1 Qualified Insurers**

Each Insurance Policy shall be procured from an insurer that qualifies as an Eligible Insurer or as a Surplus Lines Insurer at the time of policy placement and throughout the coverage term, unless Owner approves otherwise in writing.

##### **11.1.2.2 Deductibles and Self-Insured Retentions**

(a) Owner's liability for deductibles is limited to the amounts, if any, included as part of a Compensation Amount or Termination Compensation and deductibles paid with respect to claims under the Additional Excess Liability Insurance Policy or Policies in accordance with Section 11.1.9. Owner shall have no liability for amounts in excess of the coverage required or provided, except to the extent expressly permitted under Sections 8.8.3.4, 11.1.2.12(g), 11.1.7, 11.1.8 and 15.3.5. For purposes of this Section 11.1.2.2(a), "deductible" includes a self-insured retention and/or any co-insurance.

(b) If an Insurance Policy provides coverage with respect to an occurrence or event other than a Relief Event, then Concessionaire shall pay all insurance deductibles, and Owner shall have no liability for deductibles or claim amounts in excess of the required coverage.

(c) If no Insurance Policy provides coverage with respect to an occurrence or event other than a Relief Event, then (a) during the Design-Build Period, the provisions of Section 7.13 apply and (b) during the O&M Period, the provisions of Sections 8.8.3.3 through 8.8.3.6 apply.

(d) With respect to an occurrence or event other than a Relief Event, Owner may elect to advance or pay a deductible or any claim amount in excess of the required or provided coverage, in which case Owner shall have the right to recover such payment, in full, through deductions from the Availability Payments, direct billing, or any other method deemed appropriate by Owner.

##### **11.1.2.3 Primary Coverage**

(a) Each Insurance Policy shall provide expressly that its coverage is primary and noncontributory with respect to all insureds, except for coverage that is specifically denominated as excess coverage to a specified Insurance Policy

required under the Contract Documents. Any excess coverage shall provide expressly that it will become primary and noncontributory once the policy limits of the specified Insurance Policy are eroded.

(b) If, in connection with the Project, Concessionaire procures any additional or other insurance or expressly self-insures beyond the specifications in the Contract Documents (excluding excess cover contemplated by Section 11.1.2.3(a)), then the Insured Parties shall be named as an additional insured. Notwithstanding the foregoing, the Insured Parties are not required to be named as additional insureds on any directors and officers, crime, fiduciary, employment or additional professional errors and omissions coverage procured by Concessionaire.

#### **11.1.2.4 Verification of Coverage**

(a) Concessionaire shall deliver to Owner a written and signed binder of insurance, together with pro forma or exemplar “specimen” copies of Insurance Policies and all endorsements (including for existing corporate insurance programs, if allowed under Exhibit 7):

(i) Fifteen business days before Concessionaire is required to procure or cause to be procured any Insurance Policy, including insurance coverage required of Contractors; and

(ii) Fifteen business days before the expiration or termination date of each Insurance Policy, or at such later date as Concessionaire may request for Owner’s approval (but in no event later than five business days before the expiration or termination date of such Insurance Policy).

(b) The evidence/binder of insurance shall be in a form reasonably acceptable to Owner and be personally and manually signed by a representative or agent of the insurer. Upon binding of insurance, evidence of payment of deposit insurance premiums shall also be provided to Owner.

(c) Each binder of insurance must be accompanied by a signed broker letter of undertaking stating that the insurance complies with all of the requirements of this Agreement.

(d) The evidence of insurance must be original documents, state the signer’s company affiliation, title and phone number, state the identity of all insurers, named insureds and additional insureds, state the type and limits of coverage, deductibles, subrogation waiver, termination provisions of the policy and other essential policy terms, attach all policy forms and endorsements, in full, and include a statement of non-cancellation consistent with Section 11.1.2.8(a).

(e) Concessionaire may provide electronic copies of the written and signed binder of insurance, pro forma or exemplar “specimen”, copies of Insurance Policies and all endorsements, provided written copies of such documents are delivered, to Owner within 10 business days after delivery of the electronic copies (five business days before the expiration or termination date of such Insurance Policy).

(f) As soon as they become available, but in no event later than 60 days after binding of coverage or renewal, as applicable, Concessionaire shall deliver



to Owner (i) a complete certified and signed copy of each such Insurance Policy or modification, or renewal or replacement Insurance Policy and all related endorsements and (ii) satisfactory evidence of payment in full of the applicable premiums that are due.

(g) If Concessionaire has not provided Owner with proof of coverage within five days after Owner delivers to Concessionaire request for such proof or Notice of a Concessionaire Default for such failure, Owner may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force, (i) obtain such an Insurance Policy; and Concessionaire shall reimburse Owner for the cost thereof (including premiums, commissions, taxes and any and all other costs and expenses incurred in connection with obtaining any such insurance) upon demand, and (ii) suspend all or any portion of Work and shut down System operations until Owner receives from Concessionaire proof of coverage in accordance with this Section 11.1 (or until Owner obtains an Insurance Policy, if it elects to do so).

#### **11.1.2.5 Contractor Insurance Requirements**

(a) Concessionaire's obligations regarding Contractors' insurance are contained in Exhibit 7A.

(b) If Concessionaire and/or any Contractor fails to procure and keep in effect the insurance required of it under Exhibit 7A and Owner provides Notice of a Concessionaire Default for such failure, Concessionaire may, within the applicable cure period, cure such Concessionaire Default by (i) procuring or causing such Contractor to obtain the requisite insurance and providing Owner proof of insurance, or (ii) terminating the Contractor and removing its personnel from the worksite. In connection with any such cure, Concessionaire shall be responsible for ensuring there is no gap or interruption in coverage.

(c) A consolidated insurance program, with Owner's prior approval, is acceptable to satisfy all insurance requirements, provided that it otherwise meets all requirements described in this Section 11.1 and Exhibit 7A.

#### **11.1.2.6 Project-Specific Insurance**

Except as otherwise provided in Exhibit 7A, all Insurance Policies shall be purchased specifically and exclusively for the Project and extend to all aspects of the Work, with coverage limits devoted solely to the Project.

#### **11.1.2.7 Policies with Insureds in Addition to Concessionaire**

Except with respect to professional errors and omissions Insurance Policies, all Insurance Policies that are required to insure named insureds in addition to Concessionaire shall comply with the following provisions:

(a) Each Insurance Policy shall contain a separation of insureds provisions such that the Insurance Policy shall be written or endorsed so that (i) no acts or omissions of an insured shall cancel or diminish coverage of any other insureds and (ii) insurance shall apply separately to each named insured, except with respect to the erosion of the specified limits of the insurer's liability.

(b) Without limiting Section 11.1.2.7(a), the Insurance Policy shall be written so that any failure on the part of a named insured to comply with reporting or notice provisions or other conditions of the Insurance Policies, any breach of a warranty included in such Insurance Policy, any action or inaction of a named insured or others, or any change in the ownership or control of Concessionaire or the Concessionaire's Interest shall not affect coverage provided to the other named insureds (and their respective members, directors, officers, employees, agents and Project consultants). Furthermore, if commercially available, no Insurance Policy shall have an exclusion for change in control with respect to Concessionaire or the Concessionaire's Interest.

(c) Without limiting Section 11.1.2.7(a), all endorsements adding additional named insureds to required Insurance Policies shall: (i) contain no limitations, conditions, restrictions or exceptions to coverage other than those that apply to all other named insureds, including the first named insured, under the Insurance Policy; and (ii) state that the interests and protections of each such named insured shall not be affected by any misrepresentation, act or omission of another named insured or any breach by another named insured of any provision in the policy which would otherwise result in forfeiture or reduction or limitation of coverage.

#### **11.1.2.8 Additional Terms**

(a) Each Insurance Policy shall be endorsed to state that coverage or limits of coverage cannot be canceled, voided, suspended or changed by endorsement or other change in policy language (including for non-payment of premium) except after 45 days' prior written notice (or 10 days in the case of cancellation for nonpayment of deposit premium at the inception of the policy) has been given to Owner and during which time no cure has been effected by any insured. Payment of claims under an Insurance Policy is not considered an adverse modification to coverage or to coverage limits for purposes of this Section 11.1.2.8(a).

(b) No Insurance Policy shall provide coverage on a "claims made" basis (with the exceptions of any professional liability, contractor's pollution liability and operator's pollution liability Insurance Policies) unless otherwise expressly stated in Exhibit 7A. If the policy is permitted to be written on a "claims made" basis, coverage must be continued without interruption throughout the O&M Period and for a period of 10 years after termination or expiration of this Agreement (except as otherwise provided in Exhibit 7A with respect to professional liability Insurance Policy or Policies). If "claims made" coverage is terminated at any time, then an extended automatic and pre-paid reporting period of not less than 10 years after termination or expiration must be included.

(c) No self-insurance is permitted with respect to any risk or occurrence required to be insured by this Agreement without the prior consent of Owner.

(d) Each Insurance Policy, and any other liability policy of insurance placed by or on behalf of Concessionaire relating to the Work or the Project, shall contain a provision acknowledging or be endorsed to acknowledge the rights of Owner and certain other Persons to select and approve its own defense counsel as required by applicable Law as described in Section 11.8.1, and/or counsel approved by the Governmental Entity and reasonably acceptable to the insurance carrier, with respect to matters covered by the policy.

(e) Each Insurance Policy shall provide that Owner and any other Governmental Entity that is an insured has the right to settle or compromise the claim with such insurer(s) prior consent, which shall not be unreasonably withheld, delayed, conditioned or denied.

#### **11.1.2.9 Waivers of Subrogation**

Concessionaire and all of the insurance carriers providing Insurance Policies shall each waive all subrogation rights against all other Insured Parties for any claims to the extent covered and paid by insurance obtained under this Section 11.1. If Concessionaire is deemed to self-insure a claim or loss under Section 11.1.4.6, then Concessionaire's waiver shall apply as if it carried the required insurance. Concessionaire shall require all Contractors and their respective insurance carriers to provide similar waivers in writing each in favor of all other Concessionaire-Related Entities and Insured Parties. Each Insurance Policy, including workers' compensation if permitted under the applicable worker's compensation insurance Laws, shall be endorsed to include a waiver of any right of subrogation by Concessionaire and each insurance carrier against the Insured Parties or a consent to the insured's waiver of recovery in advance of loss.

#### **11.1.2.10 No Recourse**

Except as otherwise provided in this Section 11.1, there shall be no recourse against Owner or any of the other Insured Parties (other than Concessionaire) for payment of premiums or other amounts with respect to the Insurance Policies.

#### **11.1.2.11 Support of Indemnifications**

(a) The commercial general liability Insurance Policy and any other liability Insurance Policy shall provide coverage of Concessionaire's indemnity liabilities under the Principal Project Documents, to the maximum extent commercially available, either specifically as a grant of coverage or as insured contracts under an exception to any contractual liability exclusion in such Insurance Policies.

(b) No Insurance Policy shall preclude coverage of Concessionaire's indemnity obligations, including specifically indemnification obligations to the Indemnified Parties, under the Principal Project Documents arising out of, relating to or resulting from the Project or the Work. For purposes of this paragraph, normal and customary exclusions may be included in such Insurance Policies to the extent (i) not prohibited by this Agreement and (ii) unrelated to agreements, obligations, or indemnity obligations with respect to the Project or the Work.

(c) Concessionaire's indemnification obligations under the Contract Documents are not limited to the type or amount of insurance coverage that Concessionaire is required to provide under this Agreement.

#### **11.1.2.12 Adjustments in Coverage Amounts**

(a) At least once every five years during the O&M Period, Concessionaire shall retain an independent, unaffiliated, qualified and reputable insurance broker or advisor not involved in the Project and experienced in insurance brokerage and underwriting practices for major transportation facility projects, to prepare a report analyzing the policy limits and deductibles currently in place and recommending any adjustments to such limits and deductibles having regard to (i) the nature of the

Project and the Work, (ii) the Insurance Policies which Concessionaire has placed, or caused to be placed, at that time and the risks insured under those Insurance Policies; (iii) the risks sought to be insured, (iv) the terms on which insurance is available, (v) the commercial reasonableness of those terms, (vi) the insurances and risk management practices generally applying in industry with respect to the required Insurance Policies and other insurance coverages, (vii) any events that have an impact on the cost of procuring insurance in the global insurance market generally, and (viii) other factors which Owner and Concessionaire may agree to be appropriate. In accordance with Section 26.14.12, Concessionaire must provide such report at its own cost.

(b) Concessionaire shall deliver the report prepared under Section 11.1.2.12(a) to Owner, within 90 days before each adjustment date calculated under Section 11.1.2.12(a). Owner shall have 45 days after receiving such report to approve or disapprove the proposed adjustments to the limits and deductibles described in Section 11.1.2.12(a).

(c) If the report prepared under Section 11.1.2.12(a) shows an increase or decrease in premiums by more than 30% from the premiums charged for the corresponding Insurance Policy during the preceding period, the Parties will consider changes in the policy limits or deductibles to reduce the premiums. If the Parties fail to agree upon any adjustment, Owner will determine the adjustment, subject to the Dispute Resolution Procedures. The Parties acknowledge that any such adjustment is intended to result in a permanent adjustment to the insurance requirements under Exhibit 7A, and that this process will not be used to address temporary fluctuations in insurance premiums, which are to be addressed through the benchmarking provisions under Section 11.1.8.10.

(d) In determining adjustments to limits and deductibles described in Section 11.1.2.12(c), Concessionaire and Owner shall take into account (i) claims and loss experience for the Project, provided that premium increases due to adverse claims experience shall not be a basis for justifying increased deductibles, (ii) the condition of the Project, (iii) the Renewal Work record for the Project, (iv) the Safety Compliance and Noncompliance Points record for the Project and (v) then-prevailing Good Industry Practice for insuring comparable transportation projects.

(e) Concessionaire is solely responsible for any premium amounts arising from increased limits and/or increased deductible payments under this Section 11.1.2.12 that are made as a result of the loss experience of Concessionaire, any Concessionaire-Related Entity or any Affiliate. Owner agrees, however, that such adjustments under this Section 11.1.2.12 will not increase the aggregate limits required by more than 100% from the requirements specified in Exhibit 7A (for example, a limit of \$10,000,000 will not be increased to more than \$20,000,000).

(f) If, on a policy-by-policy basis, the insurance premiums for the Insurance Policies adjusted under this Section 11.1.2.12 exceed the premiums under the preceding policy, Owner will increase the Availability Payment by an amount equal to 100% of the increase in such premiums until the next adjustment date, under Section 11.1.2.12(a). If, on a policy-by-policy basis, the insurance premiums for the Insurance Policies adjusted under this Section 11.1.2.12, are less than the preceding policy's premiums, Owner will decrease the Availability Payment in an amount equal to 100% of the decrease in such premiums until the next such adjustment date under Section 11.1.2.12(a).

(g) If, under Section 11.1.2.12(c), Owner directs a decrease of aggregate limits for an Insurance Policy below the policy limits identified in Exhibit 7A, and a Loss arises during the same insurance period that is not insured to the unadjusted Insurance Policy limit, then Owner shall be responsible for any amount not fully insured solely as a result of such adjustment up to the unadjusted Insurance Policy limit. If, under Section 11.1.2.12(c), Owner directs an increase in the deductible for an Insurance Policy, and a Loss arises during the same insurance period that is covered by such Insurance Policy, then Owner shall be responsible for the difference between the adjusted and unadjusted deductible amount. Except as otherwise expressly provided in the Contract Documents, nothing in this Section 11.1.2.12 shall be deemed to relieve Concessionaire of its responsibility for Losses exceeding the unadjusted Insurance Policy limit and for payment of the amount of unadjusted deductibles in connection with any claim on an Insurance Policy.

#### **11.1.2.13 Defense Costs**

No defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that defense costs may be included within the limits of coverage of any pollution liability and professional liability policies.

#### **11.1.2.14 Contesting Denial of Coverage**

If any insurance carrier under an Insurance Policy denies coverage with respect to any claims reported to such carrier, upon Concessionaire's request, Owner and, to the extent necessary, the other Insured Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage. If the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Concessionaire shall bear all costs of contesting the denial of coverage.

#### **11.1.2.15 Insolvent Insurer**

If an insurer providing any of the Insurance Policies (a) becomes the subject of any order of liquidation, (b) becomes insolvent, (c) is the subject of an order or directive limiting its business activities given by any Governmental Entity, including the Maryland Insurance Administration or the insurance regulators of any other state or jurisdiction, (d) becomes the subject of any proceeding in any state or jurisdiction for the liquidation or winding up of its affairs or in which a liquidator, conservator or custodian is appointed at the request of any Governmental Entity, or (e) if its rating is lowered below that specified in the definition of "Eligible Insurer", then Concessionaire shall exercise best efforts to promptly secure alternative coverage in compliance with the insurance requirements contained in this Section 11.1 so as to avoid any lapse in insurance coverage.

#### **11.1.2.16 Requirements Not Limiting**

The Parties acknowledge and agree that requirements of specific coverage features or limits contained in this Article 11 and in Exhibit 7A are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any Insurance Policy, and specific reference to a given coverage feature is not intended by to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

All insurance coverage and limits provided by Concessionaire, or by third parties on behalf of Concessionaire, and, in either case, available to settle claims shall be exhausted to the full extent of the policy and other limits of the insurance coverage before other

relief, if any, is afforded under the terms of this Agreement; nothing contained in this Agreement limits, or shall be deemed to limit, the application of such insurance coverage against any eligible claim before application of other relief under this Agreement.

Except as otherwise provided in the Contract Documents, Concessionaire may meet its Insurance Policy and related obligations with any reasonable combination of underlying, primary, umbrella and excess insurance policies, so long as, in each case, Concessionaire meets all the coverage, limits and all other requirements contained in this Article 11 and in Exhibit 7A.

### **11.1.3 Lender Insurance Requirements; Additional Insurance Policies**

**11.1.3.1** If under the terms of any Funding Agreement or Security Document, Concessionaire is obligated to, and does, carry insurance coverage with higher limits, lower deductibles, or broader coverage than required under this Agreement, Concessionaire's provision of such insurance shall satisfy the applicable requirements of this Agreement provided such Insurance Policy meets all the requirements of this Section 11.1 and in Exhibit 7A.

**11.1.3.2** If Concessionaire carries property or casualty insurance coverage insuring risks to any Concessionaire-Related Entity arising out of, relating to or resulting from the Work or the Project in addition to that required under this Agreement (excluding, except as prescribed in Exhibit 7A for pre-Financial Close Work, if any, insurance that is part of Concessionaire's corporate insurance program), then Concessionaire shall include the Insured Parties as named insureds. The additional named insured endorsements shall be as described in Section 11.1.2.7(c); and Concessionaire shall provide to Owner and, upon Owner's request, the other Insured Parties, the proofs of coverage and copy of the policy described in Section 11.1.2.4. The provisions of Sections 11.1.2.4, 11.1.2.7, 11.1.2.9, 11.1.2.10 and 11.1.3 shall apply to all such policies of insurance coverage, as if they were within the definition of Insurance Policies. For purposes of clarity, insurance policies carried in addition to the project-specific insurance specified under this Agreement do not include pre-existing corporate insurance programs not insuring risks under the Project.

### **11.1.4 Notice and Prosecution of Claims**

**11.1.4.1** Owner shall have the right, but not the obligation, to report directly to insurers and may process and pursue directly claims against applicable Insurance Policies.

**11.1.4.2** Concessionaire shall report timely to the insurer(s) under each Insurance Policies any and all claims, facts, incidents or matters which give rise to or may give rise to an insurance claim and unless otherwise directed by Owner, promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, for defense and indemnity.

**11.1.4.3** Concessionaire shall diligently enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Concessionaire shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means. Concessionaire shall cooperate with Owner concerning the foregoing and shall keep Owner fully informed.

**11.1.4.4** Concessionaire shall immediately notify Owner, and continue to keep Owner fully informed, of any incident, potential claim, claim or other matter of which

Concessionaire becomes aware that involves or could conceivably involve a claim against or loss suffered by any Insured Party.

**11.1.4.5** If Concessionaire is not otherwise aware of such matters, Owner agrees to promptly notify Concessionaire of matters that may reasonably be expected by Owner to give rise to a claim against Owner which would be covered under the Insurance Policies. Owner shall reasonably cooperate with Concessionaire as necessary for Concessionaire to fulfill its duties under the Contract Documents, including providing Concessionaire copies of any written materials Owner receives asserting a claim against Owner that is subject to defense by an insurer under an Insurance Policy.

**11.1.4.6** If Concessionaire has not complied with its insurance obligations under the Contract Documents or cannot enforce and collect any such insurance for failure to comply with the terms of the Insurance Policies or to prosecute claims diligently, then, for purposes of determining Concessionaire's liability and the limits on its liability or determining reductions in compensation due from Owner to Concessionaire on account of available insurance, Concessionaire shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Concessionaire complied with its obligations under the Contract Documents.

**11.1.4.7** If Concessionaire elects under Section 19.2.3 to keep this Agreement in effect despite existence or occurrence of Insurance Unavailability, then, notwithstanding Section 11.1.7, for purposes of determining Concessionaire's liability and the limits on its liability, or determining reductions in compensation due from Owner to Concessionaire on account of available insurance, Concessionaire may request that Owner reimburse up to the full amount of insurance coverage which Concessionaire would have been obligated to carry had such coverage been commercially available, on the terms, and subject to the conditions, of such insurance coverage (as set out in the applicable sections of Exhibit 7A) except to the extent caused by the fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the Contract Documents of or by any Concessionaire-Related Entity, Collateral Agent or Lender.

### **11.1.5 Application of Insurance Proceeds**

All insurance proceeds received for physical property damage to the Project under any Insurance Policies, other than any business interruption or delay in start-up insurance maintained as part of such Insurance Policies, shall be first applied to repair, restore or replace each part or parts of the Project or the Work with respect to which such proceeds were received.

### **11.1.6 Inadequacy of Required Coverages**

Owner makes no representation that the scope or limits of insurance coverage specified for any Insurance Policy to be carried under this Agreement or approved variances therefrom are adequate to protect Concessionaire against its undertakings under this Agreement to Owner, or its liabilities to any third party. It is the responsibility of Concessionaire and each Contractor to determine if any additional coverages or limits are required to adequately protect their interests. No such limits of liability or approved variances shall preclude Owner from taking any actions as are available to it under the Contract Documents or otherwise at law.

### **11.1.7 Unavailability of Required Coverages**

**11.1.7.1** If Concessionaire demonstrates to Owner's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets (including those efforts described in Section 11.1.7.6) to procure the required Insurance Policy coverages, and if despite such diligent efforts and through no fault of Concessionaire any Insurance Unavailability exists or occurs, Owner may seek out, through review the global insurance and reinsurance markets, coverage at Commercially Reasonable Insurance Rates. If coverage is found, Concessionaire shall place such insurance at the premium negotiated by Owner, not to exceed Commercially Reasonable Insurance Rates, so long as such coverage complies with the applicable prescriptions under this Section 11.1 and Exhibit 7, following which the relevant Insurance Unavailability will no longer exist. If Owner is unsuccessful in identifying coverage under Section 11.1.7.1, Owner will consider in good faith approving alternative insurance packages and programs presented by or through Concessionaire that provide coverage as comparable to that contemplated in this Section 11.1 and in Exhibit 7A as is possible under then-existing insurance market conditions. Subject to other provisions in this Section 11.1.7, Owner shall thereafter act under Sections 11.1.7.2, 11.1.7.3, 11.1.7.4, or otherwise as may be agreed by the parties.

**11.1.7.2** If Owner approves alternative insurance requirements because of Insurance Unavailability, then (a) subject to Section 11.1.7.6, Owner will be responsible for any loss to the extent that the unavailable Insurance Policy or portion thereof would have covered the loss, for the duration of the Insurance Unavailability and (b) Owner will be entitled to a reduction in the Monthly Availability Payments totaling 100% of the insurance premiums that Concessionaire avoids as a result of the modification of the insurance requirements. In determining Concessionaire's avoided insurance premiums, the Parties shall calculate the amount of insurance premiums Concessionaire would have been obligated to pay under this Section 11.1 and Exhibit 7A (up to the Commercially Reasonable Insurance Rates) had there been no modification of insurance requirements; provided that if relevant comparison data is not then available, it shall be assumed that Concessionaire would have been obligated to pay 100% of the total avoided insurance premiums up to the greater of (A) the Commercially Reasonable Insurance Rates or (B) the premiums assumed in the Financial Model.

**11.1.7.3** If the required Insurance Policies are available from insurers meeting the financial requirements in Section 11.1.2.2 but not at Commercially Reasonable Insurance Rates, then Owner may by notice to Concessionaire elect not to approve modification of insurance requirements and to pay 100% of the premiums that exceed the Commercially Reasonable Insurance Rates.

**11.1.7.4** In the event of Insurance Unavailability, Owner may elect not to proceed under either Section 11.1.7.2 or 11.1.7.3 and instead terminate this Agreement under Section 19.2.2 and, if applicable, Section 19.2.9, by notice to Concessionaire.

**11.1.7.5** If the required insurance coverage is not subject to an Insurance Unavailability, Owner's decision to approve or disapprove a variance from the requirements of this Section 11.1, and the terms of any such approval or disapproval, shall be final and binding on Concessionaire and not subject to appeal under the Dispute Resolution Procedures.

**11.1.7.6** If Insurance Unavailability exists or occurs, Concessionaire shall review the global insurance and reinsurance markets at least quarterly (before the O&M Period) and at least annually no later than 120 days before insurance program renewal, to track changes in market conditions and adjust insurance coverages as soon as the coverages become available at Commercially Reasonable Insurance Rates. Concessionaire shall keep



Owner currently informed of insurance market conditions and deliver to Owner the information obtained from such quarterly (or annual, after commencement of the O&M Period) reviews.

**11.1.7.7** The provisions of this Section 11.1.7 apply to the Excess Liability Insurance Policy/(ies) in addition to all other Insurance Policies required under the Contract Documents.

### **11.1.8 Insurance Premium Benchmarking**

This Section 11.1.8 allocates the risk between Owner and Concessionaire of certain significant increases in insurance premiums for Insurance Policies (excluding “stand-alone” Terrorism Insurance Policy/ies) specified during the O&M Period for the period starting on the first anniversary of the O&M Commencement Date and ending at the end of the Term (“Benchmarking Term”), on a Line-by-Line basis, through an insurance benchmarking process. The Parties acknowledge that certain Insurance Policies may be placed for multi-year terms. At least once every three years during the Benchmarking Term, the Parties shall complete the benchmarking process as to each O&M Period Insurance Policy (excluding “stand-alone” Terrorism Insurance Policy/ies). Each Party has the right to require benchmarking to be undertaken more than once every three years during the Benchmarking Term, but no more frequently than annually. Owner will pay the insurance premium-related portion of the Availability Payment as outlined in Exhibit 4D, Section 1.5 (as such premium-related portion may be adjusted under this Section 11.1.8 or Section 11.1.2.12).

**11.1.8.1** Increases in insurance premiums attributable to any of the following factors shall be excluded from the value of the premium for an Insurance Policy (including “stand-alone” Terrorism Insurance Policy/ies) subject to the benchmarking process described in this Section 11.1.8:

- (a) Additional or extended coverages or limits beyond those required under this Article 11 and Exhibit 7A, unless requested by Owner in advance;
  - (b) Deductibles less than the maximum deductibles in this Article 11 and Exhibit 7A, unless requested by Owner in advance;
  - (c) Premium increases due to poor operations, claims, losses or other experience of Concessionaire or any Concessionaire Related Entity;
  - (d) Any fees paid or to be paid to any broker or agent of Concessionaire or any Concessionaire Related Entity by or on behalf of Concessionaire or any Concessionaire Related Entity or any other insured or agent thereof, any commissions and any indirect, incentive, or contingent commissions or other amounts in relation to policies placed or services provided by such broker or agent; and
  - (e) Other variations from the requirements for Insurance Policies under this Article 11 and Exhibit 7A, unless requested by Owner in advance
- (together, the “Excluded Premium Increases”).

**11.1.8.2** Not later than 60 days after the commencement of the Benchmarking Term and annually thereafter with respect to each Benchmarking Reference Period, Concessionaire shall submit a report (“Insurance Review Report”) to Owner that includes at least the following:

(a) Unless previously submitted to Owner (including submission with preceding annual Insurance Review Reports with respect to multi-year Insurance Policies), the written binders of insurance in the form and with all of the content required under this Article 11 and Exhibit 7A, or complete, certified and signed copies of each such Insurance Policy (including all endorsements), in each case for the subject annual insurance period (“Actual Benchmark Insurance Policies”);

(b) The premium invoices for each of the Actual Benchmark Insurance Policies (or annual pro rata allocation for Actual Benchmark Insurance Policies with terms greater than one year);

(c) If any of the Actual Benchmark Insurance Policies (or such pro rata allocation) varies from the requirements under this Article 11 or Exhibit 7A, then a comprehensive written analysis and explanation by Concessionaire’s licensed insurance broker setting forth (i) the effect (if any) that factors described in Sections 11.1.8.1(a) through (e) have had on the premiums, (ii) the Excluded Premium Increases, if any, and an explanation of the manner in which the Excluded Premium Increases were computed and (iii) the increase, if any, in the insurance premiums that would have occurred absent the factors described in Sections 11.1.8.1(a) through (e); and an explanation of the manner in which the foregoing was computed; and

(d) Detailed calculations of the final amount of the insurance premiums for the Actual Benchmark Insurance Policies, adjusted for surcharges, refunds, Excluded Premium Increases, and other increases due to the factors described in Sections 11.1.8.1(a) through (e), as well as all related backup documentation sufficient to describe how these amounts were computed.

**11.1.8.3** On an annual basis (unless multi-year policies remain in place from prior years and do not require renewal or replacement at that time), Concessionaire shall place actual Insurance Policies required under Article 11 and Exhibit 7A for the subject insurance period (the “Actual Insurance Policies”). Concessionaire shall maintain copies of all of the Actual Insurance Policies (including all endorsements) and all of the Insurance Review Reports and make these documents available following each renewal period to Owner or its designee for the entire Term plus 10 years.

#### **11.1.8.4 Owner’s Review**

(a) Each year during the Benchmarking Term, Owner will review Concessionaire’s Insurance Review Reports, with accompanying data required under Section 11.1.8.11, as applicable, promptly following receipt.

(b) Owner may, at its sole expense, independently assess the accuracy of the information in any Insurance Review Report or update including retaining actuaries or other advisors, obtaining independent quotes for the Required Minimum Insurance Policies or performing its own assessment as to the impact of factors described in Sections 11.1.8.1(a) through (e), the amount of Excluded Premium Increases, and the amount of increases in the insurance premiums for the Actual Benchmark Insurance Policies or Actual Insurance Policies that would have occurred absent the factors described in Sections 11.1.8.1(a) through (e).

(c) If Owner elects to independently assess, then Concessionaire shall cooperate in good faith with any reasonable requests for additional

information from Owner or its insurance and/or actuarial advisor(s) and shall promptly provide all such information to Owner or its insurance and/or actuarial advisor(s).

**11.1.8.5** The Starting Insurance Benchmarking Premiums for the Actual Benchmark Insurance Policies shall be calculated and established promptly after receipt of the first Insurance Review Report during the Benchmarking Term (including the annualized pro rata allocation of premium for multi-year Insurance Policies). The “Starting Insurance Benchmarking Premiums” (excluding “stand-alone” Terrorism Insurance Policy/ies) means the higher of (a) premiums actually charged or incurred for Actual Insurance Policies in place as of the O&M Commencement Date (or the annualized pro rata allocation of premiums for multi-year Insurance Policies) and (b) premiums for the Actual Insurance Policies identified in such first Insurance Review Report (or annualized, pro-rata equivalent of the premiums). The “Starting Insurance Benchmarking Premiums” for “stand-alone” Terrorism Insurance Policy/ies means the Base Relevant Insurance Cost for Terrorism Insurance Policy/ies.

**11.1.8.6** The Starting Insurance Benchmarking Premiums for all Insurance Policies shall be escalated annually for each 12-month period during the Benchmarking Term (each such period, a “Benchmarking Reference Period”). The Starting Insurance Benchmarking Premiums shall be escalated based on the percentage change between (a) the average of the previous 12 monthly index values to be determined by reference to the most recently published Escalation Index 1 monthly index value, as of the Proposal Date and (b) the average of the previous 12 months of index values to be determined by reference to the most recently published Escalation Index 1 monthly index value as of the first day of the relevant annual insurance period. The benchmark premium amount for each Benchmarking Reference Period, as adjusted under Section 11.1.8.2(d), is referred to as the “Escalated Benchmark Insurance Premiums”.

**11.1.8.7** No Insurance Policy benchmarking adjustment of the Availability Payment shall occur before the second anniversary of the O&M Commencement Date. At that time, notwithstanding the first paragraph of Section 11.1.8, the Escalated Benchmark Insurance Premiums for each Benchmarking Reference Period commencing with the second year after the O&M Commencement Date shall be compared with the Base Relevant Insurance Cost. Following each such comparison, with respect to all Insurance Policies excluding “stand-alone” Terrorism Insurance Policy/ies, the higher of the two figures shall be the “Insurance Premium Benchmark Amount” for the relevant period. With respect to “stand-alone” Terrorism Insurance Policy/ies, the “Insurance Premium Benchmark Amount” for the relevant period is the Base Relevant Insurance Cost for Terrorism Insurance Policy/ies, as escalated under Section 11.1.8.6.

**11.1.8.8** The Insurance Premium Benchmark Amount shall be used in the benchmarking process for each relevant period for performing the benchmarking assessment (i.e., at least once every three years during the Benchmarking Term (but no more frequently than annually, at either Party’s initiation) during the remainder of the Benchmarking Term in accordance with the procedures in this Section 11.1.8.8. The relevant Insurance Premium Benchmark Amount is the amount, determined as provided above, on an annual basis (hereafter, the “relevant period”). For example, if Concessionaire initiates benchmarking assessment in the second year of the Benchmarking Term, then, with respect to Insurance Policies other than the “stand-alone” Terrorism Insurance Policy/ies, the Insurance Premium Benchmark Amount shall be for the higher of the Escalated Benchmark Insurance Premium, on a Line-by-Line basis, and the Base Relevant Insurance Cost, on a Line-by-Line basis, for the preceding policy year (distinguished from the average of the prior two years’ Escalated Benchmark Insurance Premiums compared to the average of the prior two years’ Base Relevant Insurance Cost). The benchmarking assessment procedures are as follows:

(a) Owner will use the applicable Insurance Premium Benchmark Amount to measure the difference in premium costs on a Line-by-Line basis for the relevant period. In accordance with Section 11.1.8.7, Concessionaire and Owner will determine the difference between the Insurance Premium Benchmark Amount and the insurance premiums for the Actual Insurance Policies for the Benchmarking Reference Period as such premiums may be adjusted for Excluded Premium Increase.

(b) Both Parties acknowledge that the actual insurance premiums are to be reduced by the Excluded Premium Increases for the purpose of the insurance benchmarking process and the Availability Payment adjustment described in Section 11.1.8.8(d).

(c) No later than 30 days after Concessionaire's submission of each updated Insurance Review Report under Section 11.1.8.3, Owner will make its determination of the eligible premium increases subject to the Availability Payment adjustment described in Section 11.1.8.8(d). In the event of a dispute, Owner's determination shall be subject to appeal under the Dispute Resolution Procedures.

(d) If, on a Line-by-Line basis, the insurance premiums for the Actual Insurance Policies for the Benchmarking Reference Period (as adjusted for Excluded Premium Increases under Section 11.1.8.8(b)) exceed 120% of the applicable Insurance Premium Benchmark Amount, Owner will increase the Availability Payment for that benchmarking period in an amount equal to 80% of the excess amount (subject to Section 11.1.8.9) until the next benchmarking period. If, on a Line-by-Line basis, the insurance premiums for the Actual Insurance Policies for the Benchmarking Reference Period (as adjusted for Excluded Premium Increases under Section 11.1.8.8(b)) is less than 80% of the applicable Insurance Premium Benchmark Amount, Owner will reduce the Availability Payment for that benchmarking period in an amount equal to 80% of the difference.

**11.1.8.9** Whenever completion of the benchmarking process is required under this Agreement, Concessionaire shall obtain firm quotes from three or more established and recognized insurance providers for the Insurance Policies required under this Article 11 and Exhibit 7A during each benchmarking cycle. No increase shall be made to the Availability Payment unless Concessionaire has demonstrated that as a result of such firm quotes, all premium quotes are above or below the 120% threshold after adjustments for Excluded Premium Increases.

#### **11.1.8.10 Adjustments Instead of or in Addition to Benchmarking.**

(a) Notwithstanding Section 11.1.8.9, within a reasonable time following receipt of any Insurance Review Report, Owner may direct Concessionaire to modify any Insurance Policies, for the Benchmarking Reference Period or, if a multi-year insurance Policy, for the entire policy term, either in combination with or instead of making benchmarking adjustments. (As an example, Owner may, instead of applying the foregoing benchmarking regime, direct Concessionaire to increase the deductible and/or decrease the policy limit for a specified Insurance Policy so as to reduce premiums.) The Parties acknowledge that the intent of this Section 11.1.8.10 is to effect a temporary response to premium fluctuations (with the intent of retaining the unadjusted insurance prescriptions under Exhibit 7A) and not to adjust the insurance prescriptions under Exhibit 7A permanently, on a going-forward basis, such adjustments to be made under Section 11.1.2.12. The minimum insurance policies do not prohibit any cost associated with insurance that exceed the insurance limits under Section 11.1.8.1(a).

(b) If Owner directs such a modification, a claim arises during the same insurance period that is not fully insured solely as a result of such modification, and either a final judgment on the claim is issued that Concessionaire is legally required to pay after exhausting all appeals or the claim is settled on terms approved by Owner in advance, then Owner will pay to Concessionaire, in connection with such judgment or settlement, 100% of the amount of the Loss not covered by insurance that would have been covered but for Owner's directed modification. If Owner has directed modification of the deductible amount for an Insurance Policy, and if a claim arises during the same annual insurance period that is not fully insured solely as a result of such modification, and either a final judgment on the claim is issued that Concessionaire is legally required to pay after exhausting all appeals or the claim is settled on terms approved by Owner in advance, and if the amount of the claim exceeds the original deductible amount, then Owner will pay to Concessionaire, in connection with such judgment or settlement, 100% of the excess deductible amount attributable to Owner's directed modification of the deductible. For purposes of this calculation, the "original" deductible amount shall be the amount specified in Exhibit 7A, provided that if Exhibit 7A does not specify a deductible, the "original" deductible shall be the actual deductible for the same policy during the immediately preceding insurance period.

(c) Owner's obligation under Section 11.1.8.10(b) shall exist from the date of Owner's direction to Concessionaire to modify any Insurance Policy until the earlier of (a) the end of the insurance period during which the modification is made and (b) the date on which it becomes possible to restore the policy limits and deductibles through payment of premiums that do not exceed the amount originally budgeted for the ensuing period's Availability Payment. If after Owner directs any such modification, Concessionaire is able to restore the policy limits and/or deductibles through payment of budgeted premium amounts, Concessionaire shall make such payments and such other arrangements with applicable insurance companies to restore such policy limits and/or deductibles. For purposes of clarity, if at the end of the annual insurance period during which the modification is made with respect to an Insurance Policy and, at such date, the Insurance Policy is subject to Insurance Unavailability, then the Parties shall proceed under Section 11.1.7.

(d) Nothing in this Section 11.1.8.10 limits Concessionaire's obligation for losses for which Concessionaire is responsible under this Agreement above the policy limits prescribed in Exhibit 7A, including in such circumstances where Owner directs adjustments in lieu of benchmarking.

The following example illustrates how this process might be implemented, based on an original Insurance Policy with a deductible of \$250,000, Owner's election to direct Concessionaire to procure a succeeding Insurance Policy with a deductible of \$500,000 instead of implementing a benchmarking adjustment under this Section 11.1.8. In such event, should Concessionaire experience a Loss covered by such Insurance Policy that exceeds the \$250,000 deductible, then Concessionaire would pay the first \$250,000 of the \$500,000 deductible, Owner would pay the remaining \$250,000.

#### **11.1.8.11 Anticipated Material Change in Insurance Costs or Availability**

(a) Notwithstanding anything to the contrary in this Section 11.1.8, if Concessionaire has reason to believe, or has knowledge, that there will be (i) a material change in insurance availability, (ii) a material increase in premium for any Insurance Policy or (iii) Insurance Unavailability will exist for the succeeding full annual insurance period, then Concessionaire shall provide Notice to Owner 150 days

before expiration of the subject Insurance Policy/(ies), or promptly following Concessionaire's knowledge of any of the foregoing. In such case, Concessionaire shall allow, and shall cause its insurers to allow, Owner to participate in negotiations of such Insurance Policy/(ies) to be placed in the succeeding full annual insurance period. Concessionaire shall cause such negotiations to commence promptly following the date of Concessionaire's earlier Notice delivered under this Section 11.1.8.11.

(b) Concessionaire shall use commercially reasonable efforts to ensure such negotiations conclude sufficiently in advance of expiration of such Insurance Policy/(ies) to ensure continuation, without gap, of insurance coverage under (the) renewed or replacement Insurance Policy/(ies). Owner will cooperate with Concessionaire in its discharge of this obligation.

(c) If Concessionaire delivers Notice to Owner under this Section 11.1.8.11, then a reasonable time before commencement of negotiations with Concessionaire's insurers, Concessionaire shall submit to Owner:

(i) Firm quotes from three or more Eligible Insurers for the Insurance Policies required under this Article 11 and Exhibit 7A for the upcoming annual insurance period, without any variation from such requirements ("Required Minimum Insurance Policies"). If Concessionaire is unable to obtain at least three firm quotes, then Concessionaire shall provide documentation to Owner of Concessionaire's good faith efforts to obtain at least three firm quotes from all relevant domestic and foreign markets, including a detailed declination report signed by the broker providing details of all markets approached. The quotes shall represent the current and fair market cost of providing the Required Minimum Insurance Policies; if there are less than three firm quotes, Owner may elect to consider two or one quotes as sufficient to establish the current and fair market cost of providing such Required Minimum Insurance Policies; and

(ii) A comprehensive written analysis and explanation by Concessionaire's independent insurance broker or consultant setting forth (i) industry trends in premiums for the Required Minimum Insurance Policies, (ii) any claims (paid or reserved) since the last review period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles provided, (iii) the effect (if any) that factors described in Section 11.1.8.1(a) through (d) have had on the premiums for the Required Minimum Insurance Policies, and (iv) a confirmation that there is no Excluded Premium Increase or the dollar amount of any Excluded Premium Increase and an explanation of the reason there is Excluded Premium Increase.

(d) Concessionaire's obligations under this Section 11.1.8.11 precede and are in addition to those pertaining to Insurance Unavailability in Section 11.1.7.

## **11.1.9 Additional Excess Liability, Excess Liability Allowance**

**11.1.9.1** Exhibit 4A identifies an amount (the "Excess Liability Allowance" amount) budgeted by Owner to pay the cost of placing Excess Liability insurance required under Exhibit 7A, Part A, Section 1.2(c). These funds will be used by Owner to reimburse Concessionaire for such costs, without markup, or to pay such costs directly.

**11.1.9.2** No Change Order is required for invoicing amounts within the

Excess Liability Allowance amount.

**11.1.9.3** Concessionaire has no obligation to pay premiums for Excess Liability insurance that exceed the available Excess Liability Allowance amount. Concessionaire shall promptly notify Owner if it becomes apparent that the Excess Liability Allowance amount will not be sufficient to pay actual premiums. Subject to Section 11.1.9.4, if at any time the actual cost of placing the Excess Liability Insurance Policy or Policies exceeds the remaining balance of the Excess Liability Allowance amount, the Parties shall execute a Change Order to increase the Excess Liability Allowance amount to cover the additional costs.

**11.1.9.4** If Concessionaire fails to obtain the Additional Excess Liability insurance required under Exhibit 7A, Part A, Section 1.2(c), or if Owner elects to obtain the Additional Excess Liability insurance because Owner determines that its costs are lower than Concessionaire's, then Owner may notify Concessionaire that it will place such insurance itself, whereupon Owner may use the Excess Liability Allowance amount to pay for costs that would otherwise have been payable to Concessionaire from the Excess Liability Allowance. Owner shall have no liability or responsibility to Concessionaire arising out of, relating to or resulting from Owner's placement of the Additional Excess Liability Insurance Policy or Policies or draws against the Excess Liability Allowance, and such actions shall not constitute a Relief Event or other basis for a Claim.

## **11.2 Payment and Performance Security**

### **11.2.1 Design and Construction Security Requirements**

**11.2.1.1** Concurrently with Financial Close, and in no event later than the start of Construction Work, Concessionaire shall obtain and deliver to Owner (a) one or more Payment Bonds with an aggregate value equal to 55% of the "Total Value of D&C Construction Work" specified in Exhibit 4A; and (b) separate Performance Security in the same aggregate amount.

**11.2.1.2** The Payment Bond(s) shall be substantially in the form of Exhibit 6B, issued by an Eligible Surety, and otherwise to the reasonable satisfaction of Owner. A Payment Bond shall be obtained from each Design-Build Contractor and any other Prime Contractor performing Construction Work during the Design-Build Period.

**11.2.1.3** The Performance Security shall be obtained by Concessionaire from each Design-Build Contractor and any other Prime Contractor performing Construction Work, shall cover each Design-Build Contractor's and any other Prime Contractor's obligations under this Agreement, and shall remain in force until said obligations have been fulfilled. The Performance Security required under this Section 11.2.1 is not required to cover the LRV Supplier's obligations. The Performance Security shall be to the reasonable satisfaction of Owner and shall be:

(a) Surety bond(s) substantially in the form(s) of Exhibit 6C with a multiple obligee rider naming Owner as an additional obligee in the form of Exhibit 6D or 6E, as applicable, issued by Eligible Sureties, covering all obligations under the Contract Documents relating to the Work to be performed by such Contractor, including any obligations to pay liquidated damages and to perform warranty Work, and maintained in force until all obligations related to the Work to be performed by such Contractor have been fulfilled; or

(b) Letter(s) of credit meeting the requirements of Section 11.2.1.4 (or replacement letter(s) of credit provided to Owner at least 30 days before the expiration of the existing letter(s) of credit).

**11.2.1.4** If the Performance Security is in the form of a letter of credit, it shall be substantially in the form of Exhibit 6F, subject to draw as and when provided in Section 17.2.6 due to breach or failure to perform the D&C Work; and maintained in effect until the Final Completion Date. The letter of credit shall:

(a) Expressly provide an original expiry date not earlier than the Final Completion Deadline;

(b) Expressly provide for successive automatic renewals of at least six months each, taking effect no later than 30 days before the expiry date, until the Final Completion Date; and

(c) Comply with requirements in Section 11.3.1.

**11.2.1.5** The requirements to provide Payment Bonds under this Section 11.2.1 shall also apply to each Major Construction Contract during the O&M Period, except that the Payment Bond amount shall be 100% of the total value of Construction Work to be performed under the Major Construction Contract. The requirement to provide Performance Security shall also apply to such Contracts to the extent required by Law. Before allowing Work to commence under any Major Construction Contract, Concessionaire shall obtain Owner's approval of the form and amount of the Payment Bond for such Contract, and if Performance Security is required, shall also obtain Owner's approval of the form and amount of such security. Such bond and other security may be provided either by the O&M Contractor or the Subcontractor that is a party to the Major Construction Contract.

## **11.2.2 LRV Supply Security**

**11.2.2.1** If Concessionaire obtains security for payment and/or performance from the LRV Supplier, then Concessionaire shall obtain the following from the issuer, maker or guarantor, as applicable, of such payment and/or performance security for delivery to Owner:

(a) A certified copy of the payment and/or performance security;

(b) In the case of a letter of credit, documentation naming Owner as a transferee beneficiary and providing for transfer of such facility to Owner in certain circumstances, on the same terms as permitted with respect to letters of credit under Section 11.2.1.4(c);

(c) In the case of a bond, a dual-obligee rider naming Owner an additional obligee under the bond, on the same terms as permitted with respect to bonds under Section 11.2.1.3(a); and

(d) In the case of a guaranty, the documentation stated in Section 11.4.

**11.2.2.2** The documentation required under Section 11.2.2.1 shall be provided by Concessionaire to Owner within 10 days after delivery of the payment and/or performance security to Concessionaire.



**11.2.2.3** As of the Effective Date, the Parties acknowledge that Concessionaire has not obtained security for payment and/or performance from the LRV Supplier in favor of Concessionaire that is subject to this Section 11.2.2.

### **11.2.3 Operations and Maintenance Security**

**11.2.3.1** If Concessionaire obtains security for payment and/or performance from any O&M Contractor, then Concessionaire shall obtain the following from the issuer, maker or guarantor, as applicable, of such payment and/or performance security for delivery to Owner:

- (a) A certified copy of the payment and/or performance security in form of Exhibit 6H;
- (b) In the case of a letter of credit, documentation naming Owner as a transferee beneficiary and providing for transfer of such facility to Owner in certain circumstances, on the same terms as permitted with respect to letters of credit under Section 11.2.1.4(c);
- (c) In the case of a bond, a dual-obligee rider naming Owner an additional obligee under the bond, on the same terms as permitted with respect to bonds under Section 11.2.1.3(a); and
- (d) In the case of a guaranty, the documentation stated in Section 11.4.

**11.2.3.2** The documentation required under Section 11.2.3.1 shall be provided by Concessionaire to Owner within 10 days after issuance of the payment and/or performance security.

## **11.3 Letters of Credit**

### **11.3.1 General Provisions**

Wherever in the Contract Documents Concessionaire has the option or obligation to deliver to Owner a letter of credit, the following provisions shall apply.

**11.3.1.1** Except to the extent expressly provided otherwise in the Contract Documents, the letter of credit shall:

- (a) Be a standby letter of credit;
- (b) Be issued by a financial institution that is not an Affiliate, has a credit rating for long-term, unsecured debt of not less than "A/A2" from one of the Rating Agencies or as otherwise approved in writing by Owner, and has an office in the United States at which the letter of credit can be presented for payment by facsimile or by electronic means. Unless otherwise approved in writing by Owner, if the bank issuing the letter of credit fails to maintain such credit rating, Concessionaire shall deliver a substitute letter of credit issued by a qualified financial institution within 30 days of the date that the prior financial institution failed to maintain such credit rating or otherwise furnish additional security acceptable to Owner as may be required from time to time to protect the interests of Owner;
- (c) Be in form approved by Owner;

(d) Be payable on demand, conditioned only on written presentment from Owner to the issuer of a sight draft drawn on the letter of credit and a certificate stating that Owner has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to Owner, without requirement to present the original letter of credit;

(e) Be in place for the entire period of time for which the letter of credit is providing security. Letters of credit with an expiration date shall provide for automatic renewal unless the issuer provides notice to Owner and to Concessionaire to the contrary no later than 30 days before the expiration date;

(f) Allow for multiple draws;

(g) Name Owner as a beneficiary, and not provide for any other dual or multiple beneficiaries; and

(h) Be consistent with the requirements of this Section 11.3.

**11.3.1.2** Except to the extent expressly provided otherwise in the Contract Documents, if Concessionaire has failed to pay or perform when due the duty, obligation or liability under the Contract Documents for which the letter of credit is held, Owner has the right to draw on the letter of credit as and when provided in Section 17.2.6. If Owner makes such a draw on the letter of credit, Owner shall use and apply the proceeds as provided in this Agreement for such letter of credit.

**11.3.1.3** Except to the extent expressly provided otherwise in the Contract Documents, Owner has the right to draw on the letter of credit, without prior notice to Concessionaire, if (a) for any reason Concessionaire fails to deliver to Owner a new or replacement letter of credit, on the same terms, at least 30 days before such expiration date, unless the applicable terms of the Contract Documents expressly provide that no further letter of credit is required with respect to such duty, obligation or liability, or (b) the financial institution issuing the letter of credit fails to meet the requirements in Section 11.3.1.1(b) and Concessionaire fails to provide a substitute letter of credit issued by a qualified financial institution within 30 days before its expiration date. If Owner makes such a draw on the letter of credit, Owner shall be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit, without payment of interest to Concessionaire.

**11.3.1.4** Except to the extent expressly provided otherwise in the Contract Documents, draw on letters of credit shall not be conditioned on prior resort to Concessionaire or any other security of Concessionaire. For all draws conditioned on prior notice from Owner to Concessionaire, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Owner will use and apply draws on letters of credit (or cash security held from draws on letters of credit) toward satisfying the relevant obligation of Concessionaire (or, if applicable, any other Person for which the letter of credit is performance security). Subject to Owner's rights under Sections 11.3.1.2 and 11.3.1.3, if Owner receives proceeds of a draw in excess of the relevant obligation, Owner will promptly refund the excess to Concessionaire (or such other Person) after all relevant obligations are satisfied in full.

**11.3.1.5** Except to the extent expressly provided otherwise in the Contract Documents, Concessionaire's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from Owner a refund of the proceeds which are misapplied, and subject to Section 17.4.3, reimbursement of the

reasonable costs Concessionaire incurs as a result of such misapplication; provided that at the time of such refund Concessionaire increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Concessionaire acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Concessionaire injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Concessionaire covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and Concessionaire irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

**11.3.1.6** Concessionaire shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with Owner's presentment of sight drafts and drawing against letters of credit or replacements thereof.

**11.3.1.7** If Owner makes a permitted assignment of its rights and interests under this Agreement, then Concessionaire shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Concessionaire.

**11.3.1.8** Owner acknowledges that if the letter of credit is performance security for a Person other than Concessionaire (e.g., a Key Contractor), Owner's draw may only be based on the underlying obligations of such Person. Furthermore, Owner agrees to forbear from exercising remedies under any such letter of credit so long as Concessionaire or a Lender is diligently pursuing remedies under such letter of credit.

## **11.3.2 Collateral Agent as Beneficiary**

**11.3.2.1** Notwithstanding Section 11.3.1.1(g) the Collateral Agent may be named as beneficiary of a letter of credit under Section 11.2.1.3(b) or 11.2.2.1(b) (or be entitled to transfer of beneficiary rights), or may transfer the beneficiary's rights under the letter of credit from Concessionaire to the Collateral Agent rather than Owner, provided the following conditions are met:

(a) The Collateral Agent is restricted in making draws on such letter of credit solely for the purpose of causing Concessionaire to perform its obligations to Contractors performing D&C Work or its obligations under the Contract Documents respecting the D&C Work (or, as applicable, causing the Contractor to perform its performance obligations under its Contract respecting the D&C Work) and

(b) Concessionaire delivers to Owner, concurrently with the issuance of such letter of credit, documents reasonably satisfactory to Owner permitting Owner to become the transferee beneficiary and make drawings under such letter of credit if Owner determines that:

(i) Contractor has breached or failed to perform such obligations; Owner has the right to draw on the letter of credit under Section 17.2.6; and the Collateral Agent has failed to draw on such letter of credit for the purpose of causing the performance of such obligations by or on behalf of Concessionaire within 10 days after Owner delivers notice of such breach to

Concessionaire and the Collateral Agent and the Cure Period (as such term is defined in the Direct Agreement) has expired, or

(ii) The letter of credit will expire within 30 days; Owner has not received a certified copy of a replacement or extension of the letter of credit with required transfer documents; and Owner has no actual knowledge of a prior, full draw on the expiring letter of credit by the Collateral Agent.

At a minimum, such transfer documents shall include a present, executed transfer and assignment of the beneficiary rights in the letter of credit from the Collateral Agent to Owner and a certified copy of the letter of credit which shall expressly authorize such transfer without condition and permit draw without presentation of the original letter of credit.

### **11.3.3 Special Letter of Credit Provisions**

The provisions of this Agreement describing particular letters of credit which Concessionaire or a Lender is required to or may provide under this Agreement include additional requirements applicable to such letters of credit.

## **11.4 Guarantees**

**11.4.1** If Concessionaire, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, then either (a) Concessionaire shall cause such Person to (i) expressly include Owner as a guaranteed party under such guaranty, with the same protections and rights of notice, enforcement and collection as are available to any other guaranteed party, and (ii) deliver to Owner a duplicate original of such guaranty, which guaranty shall provide that the rights and protections of Owner shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party; or (b) Concessionaire shall deliver to Owner, concurrently with the issuance of such guaranty, a duplicate original of such guaranty and such other documents reasonably satisfactory to Owner permitting Owner, subject to the rights of the Collateral Agent under any Direct Agreement, to become the transferee beneficiary under such guaranty under the circumstances described in Section 11.4.2, and to enforce it, including enforcing the guaranty in favor of Owner or the Project, or both, which transfer documents shall include a certified copy of the guaranty and a present, executed transfer and assignment of the beneficiary rights from Concessionaire or Collateral Agent, as applicable, to Owner; and the guaranty shall expressly authorize such transfer without condition and permit draw without presentation of the original guaranty. Notwithstanding the foregoing, this Section 11.4.1 does not apply to security from the LRV Supplier for the benefit of the Design-Build Contractor and O&M Contractor as of the Effective Date.

**11.4.2** Owner's rights as a transfer beneficiary are exercisable if, subject to Section 11.4.3 and the Direct Agreement, Owner determines that (a) a Key Contractor has breached or failed to perform any obligations under its Contract, (b) such breach has caused, or with the passage of time reasonably may cause, a Concessionaire Default or, if a Concessionaire Default has occurred, the applicable cure period has expired without full and complete cure and (c) Concessionaire or the Collateral Agent has failed to call upon or otherwise enforce such guaranty for the purpose of causing the performance of such obligations by or on behalf of the Contractor within 10 days after Owner delivers notice of such breach or expected breach to Concessionaire and the Collateral Agent and the Cure Period (as such term is defined in the Direct Agreement) has expired.

**11.4.3** So long as Concessionaire or a Lender is diligently pursuing remedies under a guaranty, Owner agrees to forbear from (a) exercising remedies under any such guaranty that names Owner as a direct beneficiary, and (b) exercising its right to become a beneficiary under Section 11.4.1(b); provided, however, that if the Concessionaire Default giving rise to exercise remedies under any such guaranty remains uncured at the end of the Cure Period, Owner's obligation to forbear from exercising remedies as a guaranteed party shall cease. The foregoing shall not obviate any agreement by Owner to forbear from exercising its rights and remedies contained in a Direct Agreement.

## **11.5 Indemnities**

### **11.5.1 General Indemnity**

Subject to Section 11.5.5, Concessionaire shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from:

(a) Any act, omission, neglect or misconduct by any Concessionaire-Related Entity in the manner or method of executing said Work satisfactorily or due to the failure to perform the Work, including (i) any neglect in safeguarding the Work, (ii) use of unacceptable materials in performance of the Work or other Defect in the Work, (iii) faulty, inadequate or improper temporary drainage during construction, (iv) the use, misuse, storage or handling of explosives in performance of the Work, or (v) other breach, alleged breach or violation of Concessionaire's obligations under the Contract Documents or any Contract;

(b) The failure or alleged failure by any Concessionaire-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management) relating to the performance of the Work;

(c) Any Concessionaire-Related Entity's performance of, or failure to perform, the obligations under any Utility Agreement;

(d) Any Concessionaire-Related Entity's breach of or failure to perform an obligation that Owner owes to a third party, including Governmental Entities, under Law or under any agreement between Owner and a third party, where performance of the obligation is delegated to Concessionaire under the Contract Documents, or the acts or omissions of any Concessionaire-Related Entity which render Owner unable to perform or abide by an obligation that Owner owes to a third party, including Governmental Entities, under any agreement between Owner and a third party, provided the agreement was previously disclosed or known to Concessionaire;

(e) Any alleged infringement or other allegedly improper appropriation or use of Intellectual Property in performance of the Work, or arising out of, relating to or resulting from any use in connection with the Project of methods, processes, designs, information or other items furnished or communicated to Owner or another Indemnified Party under the Contract Documents; provided that this indemnity shall not apply to any infringement resulting from Owner's failure to comply with specific written instructions regarding use provided to Owner by Concessionaire that are consistent

with Concessionaire's obligations to convey and license Concessionaire Intellectual Property under this Agreement;

(f) Any Concessionaire Release of Hazardous Materials and any liabilities resulting therefrom:

(g) Any fines or penalties imposed on Owner by any Authority Having Jurisdiction arising out of, relating to or resulting from Concessionaire's breach of or failure to comply with applicable requirements of the Contract Documents;

(h) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Concessionaire-Related Entity with respect to any payment for the Work made to or earned by such Concessionaire-Related Entity under the Contract Documents;

(i) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of (i) the failure of any Concessionaire-Related Entity to comply with Good Industry Practice, requirements of the Contract Documents, the Project Management Plan or O&M Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts in connection with the performance of the Work, (ii) the intentional misconduct or negligence of any Concessionaire-Related Entity in connection with the performance of the Work, or (iii) unauthorized physical entry onto or encroachment upon another's property by any Concessionaire-Related Entity in connection with the performance of the Work.

#### **11.5.2 Design Defects**

Subject to Section 11.5.5, Concessionaire shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, losses, liabilities, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from errors, omissions, inconsistencies or other defects in the Design Documents, regardless of whether such errors, omissions, inconsistencies or other defects were also included in the Contract Drawings or Reference Documents, except to the extent that an error, omission, inconsistency or other defect in the Design Documents is directly attributable to an error, omission, inconsistency or other defect in the Contract Drawings and Concessionaire did not act negligently in finalizing the design of the Project. Concessionaire agrees that, because the Contract Drawings and Reference Documents are subject to review and modification by Concessionaire, except as otherwise provided in this Section 11.5.2, it is appropriate for Concessionaire to assume liability for errors, omissions, inconsistencies and other defects in the completed Project even though they may be related to errors, omissions, inconsistencies and other defects in the Contract Drawings and Reference Documents.

#### **11.5.3 Operations on Railroad Right of Way**

Concessionaire shall conduct its operations upon the right of way of any railroad company fully within the rules, regulations and requirements of the railroad company. Concessionaire shall be responsible for acquainting itself with such requirements as the railroad company may demand. Concessionaire shall be held responsible for any accidents that may happen to the railroad company as a result of Concessionaire's operations.

#### **11.5.4 Property Damage; Third Party Claims; Relief Events**

Subject to Section 11.5.5, Concessionaire's obligations under this Section 11.5 include responsibility for loss (including loss of use) of or damage to real or personal property of MTA, MDOT or any other Person, and said responsibility shall continue until the end of the Term; provided, however, that the obligation with respect to loss of use with respect to MTA and MDOT is subject to Section 17.6.3. Except with respect to loss or damage to Owner's property, the requirements to provide indemnity as specified in this Section 11.5 are intended to provide protection to Owner with respect to third party claims associated with the event giving rise to the indemnification obligation, and shall not provide Owner with an alternative cause of action against Concessionaire for breach of contract. Nothing in this Section 11.5 shall be deemed to require Concessionaire to indemnify Owner for any failure of Concessionaire to perform obligations under this Agreement to the extent that such obligations are excused due to the occurrence of Relief Events, Force Majeure Events or Non-Concessionaire Caused Disruptions.

#### **11.5.5 Limitations on Indemnification Obligations**

##### **11.5.5.1 Damage during O&M Period**

Concessionaire's obligations with respect to repairing, restoring and replacement of loss or damage to the Project during the O&M Period are subject to Owner's obligations under Section 8.8.3 to pay for certain costs of such repair, restoring, and replacement.

##### **11.5.5.2 Insured Losses**

With respect to any loss or damage of the type covered by the insurance required to be provided under this Agreement or otherwise obtained by Concessionaire for the Project, Concessionaire's indemnity obligation shall not extend to any loss, damage or expense arising out of, relating to or resulting from the sole negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

##### **11.5.5.3 Uninsured Losses**

With respect to any Loss which is not of the type covered by the insurance required to be provided under this Agreement or otherwise obtained by Concessionaire for the Project, Concessionaire's indemnity obligation shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by (a) the breach by Owner of any of its obligations to Concessionaire under this Agreement or (b) the negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party. Furthermore, Concessionaire's indemnity obligations shall not include payment of punitive damages except to the extent that punitive damages are assessed as the result of culpable conduct by Concessionaire.

##### **11.5.5.4 Claims by Employees**

In claims by an employee of Concessionaire or a Contractor, anyone directly or indirectly employed by Concessionaire or a Contractor, or anyone for whose acts Concessionaire or Contractor may be liable, the indemnification obligation under this Section 11.5 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Concessionaire or a Contractor under workmen's compensation, disability benefit or other employee benefits laws; provided that this provision

shall not be construed as a waiver in favor of any employee by Concessionaire or any Contractor of any limitation of liability afforded by such laws.

#### **11.5.5.5 Claims by University of Maryland**

(a) Concessionaire acknowledges that the Third Party Agreement with the University grants certain rights and remedies to the University with respect to EMI during System operations. Concessionaire agrees, subject to the limitations in this Section 11.5.5.5, to undertake mitigation measures as specified under Part 2B, Section 11.3.5.4 of the Technical Provisions.

(b) With respect to any claim filed by the University relating to EMI during System operations, if Concessionaire establishes that the Project meets the requirements of Part 2B, Section 11.3.5.1 of the Technical Provisions and that Concessionaire has complied with Part 2B, Section 11.3.5.4 of the Technical Provisions and identified and corrected anticipated system wear and failure that could create excessive EMI above the required standards, then Concessionaire's liability to the University and to Owner under this Section 11.5.5.5 relating to EMI will be limited to \$2.5 million of costs and expenses incurred, sharing responsibility with Owner, on a dollar-for-dollar basis, for such costs and expenses incurred up to \$5 million. However, such limitation shall not apply with respect to any excess EMI that is due to (i) the failure of the Project to meet requirements in Part 2B, Section 11.3.5.1 of the Technical Provisions or (ii) Concessionaire's failure to implement required mitigation, including compliance with the Owner-approved Operational Phase Mitigation Plan, if applicable.

(c) This Section 11.5.5.5 shall not be construed to limit Concessionaire's obligations under this Section 11.5 with respect to any matters other than the University's rights and remedies concerning EMI during System operations.

#### **11.5.6 Reliance on Concessionaire's Performance**

Concessionaire acknowledges and agrees that it is Concessionaire's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on Concessionaire's performance of such obligation. Concessionaire further agrees that any review and/or approval by Owner and/or others under this Agreement is subject to Section 5.1.7.

### **11.6 Indemnities by Contractors**

Concessionaire shall ensure that each Contract includes indemnity provisions appropriate to the scope of the Work to be performed by the Contractor, naming the Indemnified Parties as indemnitees.

### **11.7 Notice of Claims by Third Parties**

In the event of any injury to persons, damage to property or other occurrence covered by the indemnities in Section 11.5, Concessionaire shall promptly notify Owner and, unless subject to evidentiary privilege, promptly furnish to Owner copies of all factual reports and factual portions of any other reports given to Concessionaire's insurance carrier or carriers.



## **11.8 Defense and Indemnification Procedures**

**11.8.1** Concessionaire acknowledges that (a) the Maryland Office of the Attorney General, is required by applicable Law to represent and defend Owner, and/or may appoint counsel approved by the Maryland Office of the Attorney General to act in their stead and (b) certain other Indemnified Parties (including Montgomery County, Prince George's County, University of Maryland College Park, MDSHA and the Maryland-National Capital Park and Planning Commission) may have similar statutory representation obligations and rights. As a result, Owner and such other Indemnified Parties have the right to elect to conduct their own defense at any time but may also agree to allow defense to be conducted in whole, in part, in conjunction with, or from time to time by counsel appointed by Concessionaire or its insurer.

**11.8.2** Subject to Section 11.8.1, if the insurer under any applicable Insurance Policy accepts the tender of defense, Owner and Concessionaire shall, when in its best interest, reasonably cooperate in the defense proffered by the Insurance Policy and, for purposes of the Contract Documents and proceedings relating to such matter, each applicable Indemnified Party shall be deemed to be an Insured Party. If no insurer under potentially applicable Insurance Policies provides defense, then Section 11.8.3 shall apply.

**11.8.3** Subject to Section 11.8.1, if the defense is tendered to Concessionaire, then within 30 days after receipt of the tender, Concessionaire shall notify the Indemnified Party whether it has tendered the matter to an insurer, and, if not tendered to an insurer or if the insurer has rejected the tender, shall deliver a notice stating that Concessionaire:

(a) Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

(b) Accepts the tender of defense but with a "reservation of rights" in whole or in part; or

(c) Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement.

(d) If Concessionaire has tendered the matter to an insurer, and the insurer has not rejected the tender, then, for purposes of the Contract Documents and proceedings relating to such matter, the applicable Indemnified Party or Parties shall be deemed to be (an) Insured Party or Parties.

**11.8.4** Subject to Section 11.8.1, if Concessionaire accepts the tender of defense under Sections 11.8.3(a) and 11.8.3(b), Concessionaire shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Concessionaire shall otherwise direct the defense of such claim, and bear the fees and costs of defending and settling such claim. Owner retains all rights with regard to settlement and Concessionaire shall seek Owner's consent to any settlement terms and conditions. During such defense:

(a) Concessionaire shall fully and regularly inform the Indemnified Party, and with respect to Owner, the Maryland Office of the Attorney General, of the progress of the defense and of any settlement discussions; and

(b) The Indemnified Party shall reasonably cooperate in said defense, provide to Concessionaire all reasonably required materials and access to personnel it

requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and to the extent permitted by applicable law maintain the confidentiality of all communications between it and Concessionaire concerning such defense.

**11.8.5** Subject to Section 11.8.1, if Concessionaire responds to the tender of defense as specified in Section 11.8.3(c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

**11.8.6** Notwithstanding Sections 11.8.3(a) and 11.8.3(b), any Indemnified Party (regardless of whether it is entitled to conduct its own defense under Section 11.8.1), may assume its own defense at any time by delivering to Concessionaire notice of such election and the reasons therefor.

**11.8.7** If an Indemnified Party elects to conduct its own defense pursuant to this Section 11.8 of a claim for which it is entitled to indemnification, Concessionaire shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending such claim. If the Indemnified Party is entitled to and elects to conduct its own defense, then:

**11.8.7.1** In the case of a defense that otherwise would be conducted under Section 11.8.3(a), the Indemnified Party shall have the right to settle or compromise the claim with each of Concessionaire's and Concessionaire's relevant insurer(s)' prior written consent, which, in each case, shall not be unreasonably withheld or delayed;

**11.8.7.2** In the case of a defense that otherwise would be conducted under Section 11.8.3(b), the Indemnified Party and Concessionaire shall consult with each other on a regular basis to determine whether settlement is appropriate and, subject to the rights of any insurer providing coverage for the claim under a policy required under this Agreement, and the Indemnified Party shall have the right to settle or compromise the claim with Concessionaire's prior written consent without prejudice to the Indemnified Party's rights to be indemnified by Concessionaire; and

**11.8.7.3** In the case of a defense conducted under Section 11.8.3(c), the Indemnified Party shall, subject to the rights of any insurer providing coverage for the claim under a policy required under this Agreement, have the right to settle or compromise the claim without Concessionaire's prior written consent and without prejudice to its rights to be indemnified by Concessionaire.

**11.8.8** A refusal of, or failure to accept, a tender of defense, as well as any Dispute relating to assumption of control of defense by an Indemnified Party under Section 11.8.6, shall be resolved according to the Dispute Resolution Procedures. Concessionaire shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

## **11.9 Disclaimer**

Nothing in this Article 11 or elsewhere in the Contract Documents is intended to establish a standard of care owed to any member of the public or to extend to the public the status of a third party beneficiary for any of the insurance or indemnifications described in this Article 11.

## ARTICLE 12. LRV OPTIONS

### 12.1 Exercise of LRV Option

**12.1.1** Owner has three separate options (the “LRV Options”) to require Concessionaire to purchase Option LRVs and commission said LRVs: (a) LRV Option A for the committed number of additional LRVs required for a change from Service Level 1 to Service Level 2; (b) LRV Option B for the committed number of additional LRVs required to enable Concessionaire to meet the Peak Period Headways for Service Level 1 or Service Level 2, as applicable, if Actual Combined Tsc is 1.00 through 6.00 minutes higher than Bid Combined Tsc in a Peak Period; and (c) LRV Option C for the committed number of additional LRVs required to enable Concessionaire to meet the Peak Period Headways for Service Level 1 or Service Level 2, as applicable, if Actual Combined Tsc is 6.01 through 12.00 minutes higher than Bid Combined Tsc in a Peak Period.

**12.1.2** The number of LRVs and pricing information for each such option are specified in subparagraphs (a) through (c) below. The Owner must exercise each such option by delivery of notice to Concessionaire to such effect (an “LRV Option Notice”), identifying which option is being exercised. The LRV Options may be exercised independently of each other. LRV Option A may be exercised at any time during the period starting at Financial Close and ending on the seventh anniversary of Commercial Close. LRV Options B, and C may only be exercised during the period starting on the fifth anniversary of Commercial Close and ending on the seventh anniversary of Commercial Close.

(a) LRV Option A includes five additional LRVs: option price of \$9,234,296 per LRV, subject to escalation as specified in Section 14.1.4.1.

(b) LRV Option B includes one additional LRV: option price of \$13,796,112, subject to escalation as specified in Section 14.1.4.1; provided that if LRV Options A and B are exercised concurrently, the price per LRV under this clause (b) shall be the same price that applies under clause (a).

(c) LRV Option C includes two additional LRVs: option price of \$10,931,144 per LRV, subject to escalation as specified in Section 14.1.4.1; provided that if LRV Options A and C are exercised concurrently, the price per LRV under this clause (c) shall be the same price that applies under clause (a).

**12.1.3** The Parties acknowledge that a change from Service Level 1 to Service Level 2 will require performance of certain additional Work relating to the OMF as described in the Technical Proposal (specifically, that section of the Technical Proposal entitled “Design and Construction Technical Solutions”). Accordingly, in connection with exercise of LRV Option A, the Parties shall negotiate a Change Order in accordance with Article 14 specifying the price, delivery schedule and scope of such additional Work.

### 12.2 Delivery; Payment

Following delivery by Owner to Concessionaire of an LRV Option Notice, Concessionaire shall procure the Option LRVs for delivery and commissioning and shall notify Owner regarding the scheduled date for such delivery and commissioning. If the LRV Option Notice is delivered more than 36 months before the RSA Deadline, the scheduled date shall be the RSA Deadline. In all other cases, the scheduled date shall be no later than 36 months after the date of the LRV

Option Notice. Payments for Option LRVs shall be made based on milestones in accordance with the schedule in Part D of Exhibit 4A.

### **12.3 Option LRV Requirements**

**12.3.1** Concessionaire shall ensure that each Option LRV is (a) compatible and interchangeable with the other LRVs provided under this Agreement to the extent needed for Concessionaire to meet the Performance Requirements and provide safe and reliable operations, (b) incorporates all relevant upgrades available as of the date of manufacture that have been incorporated into the Initial Fleet as of such date; provided, however, that if a replacement or alternative LRV Supplier has been approved by Owner, then Concessionaire's obligation to ensure incorporation of "all relevant upgrades available" shall be to the maximum extent possible, so long as the Option LRV provided by the replacement or alternative LRV Supplier otherwise conforms to clauses (a), (c) and (d) of this Section 12.3.1, (c) manufactured in accordance with the requirements of Part 2B, Section 12 and to the specifications applicable to the LRVs originally procured by Concessionaire for the Project, and (d) tested as part of the manufacturing process and placement into service in accordance with Part 2B, Section 12.6.3 of the Technical Provisions.

**12.3.2** Concessionaire acknowledges and agrees that it is responsible for providing LRVs sufficient to enable Performance Requirements to be met at each Service Level described in the Contract Documents, without any right to rely on provision of additional LRVs through exercise of the LRV Option or otherwise, except as otherwise provided in Sections 12.4 through 12.5. Concessionaire shall remove and replace, or repair, any defective LRVs (including LRVs with Fleet Defects) supplied by Concessionaire, at Concessionaire's sole expense.

### **12.4 Provision of Additional LRVs for Service Level 2 or Service Level 3**

**12.4.1** Owner acknowledges that additional LRVs may be required in order for Concessionaire to meet the Performance Requirements concerning System availability for Service Level 2 or Service Level 3. Accordingly, if Owner wishes to require implementation of Service Level 2 or Service Level 3, but has not exercised one or more LRV Options that will increase the LRV fleet size to the number of LRVs that the Proposal states are required for the relevant Service Level, Owner will be responsible for providing additional LRVs for the Project that meet the requirements applicable to Option LRVs stated in Section 12.3.

**12.4.2** If Owner plans to purchase LRVs from a source other than Concessionaire, Owner shall ensure that warranties are obtained from the vendor consistent with Good Industry Practice. Concessionaire shall review and comment on the proposed contract documents, including technical specifications, and shall notify Owner of any issues that appear likely to affect Concessionaire's obligations under this Agreement, including costs of performance of the Work as well as Concessionaire's ability to meet the Performance Requirements. To the extent that an adverse impact on Concessionaire's rights and/or obligations under this Agreement is attributable to any differences between the LRVs supplied by Owner's third party vendor and the LRVs that Concessionaire would have obtained had Owner exercised an LRV Option, such differences shall be treated as an Owner Change.

**12.4.3** If Owner has exercised LRV Option A, then the start date for moving to Service Level 2 will be the date established for delivery and commissioning of the LRV Option Vehicles under Section 12.2. If Owner has made other arrangements to provide the additional LRVs required to meet the Performance Requirements for Service Level 2, then the start date for moving to Service Level 2 will coincide with the date on which such additional LRVs are

placed into service. In all cases, the Change Order described in Section 12.1.3 shall include a completion date consistent with such start date.

**12.4.4** If Owner has exercised LRV Option A, Concessionaire has the option to make LRV Deferral Payments to Owner and thereby defer the start date for moving to Service Level 2 under Section 12.4.3 by up to 24 months. The amount of each LRV Deferral Payment shall be calculated as a percentage of the total value of the relevant LRV Option order, as follows: (1) for delays up to 12 months after the established date, 0.4% per month; (2) for delays during the following six months (that is, months 13 through 18), 0.7% per month; and (3) for delays during the following six months (that is, months 19 through 24), 1.0% per month. If Concessionaire wishes to defer the start date for less than a full month, the payment for that month shall be prorated based on the actual number of days in the month and the total number of deferral days. The aggregate total of LRV Deferral Payments for an LRV Option may not exceed 15% of the total value of the relevant LRV Option order. Concessionaire shall notify Owner in writing of its intent to defer the start date at least 30 days before the scheduled start date, shall provide written updates at least monthly thereafter, and shall give Owner at least 180 days' advance notice of the actual date that the higher Service Level will commence.

## **12.5 Provision of Additional LRVs if Actual Combined Tsc Is Higher than Bid Combined Tsc in a Peak Period**

**12.5.1** Owner acknowledges that additional LRVs may be required in order for Concessionaire to maintain Peak Period headways in a Peak Period if the Actual Combined Tsc for such period is at least 1.00 minutes higher than the Bid Combined Tsc for such period. Until the seventh anniversary of Commercial Close, Owner has the right to provide such LRVs by exercising an LRV Option under Section 12.1, but after such date any additional LRVs would either be provided pursuant to a Change Order or purchased separately from this Agreement. Owner is not obligated to provide additional LRVs or direct a Minor Service Change as contemplated by Section 8.3.1 for a Peak Period unless Concessionaire demonstrates that the need for the additional LRVs is directly attributable to the fact that the Actual Combined Tsc for a Peak Period is at least 1.00 minute higher than Bid Combined Tsc for such period. Concessionaire acknowledges that it is required to maintain Peak Period headways in a Peak Period, without any obligation of Owner to provide additional LRVs or any other remedy unless (a) the Actual Combined Tsc is at least 1.00 minute higher than the Bid Combined Tsc for that Peak Period, and (b) Concessionaire demonstrates that its need for the additional LRVs is directly attributable to the fact that the Actual Combined Tsc is at least 1.00 minute higher than Bid Combined Tsc in that Peak Period.

**12.5.2** Owner may direct a Minor Service Change under Section 8.3.1, regardless of whether it has exercised an LRV Option in connection with a change between Bid Combined Tsc and Actual Combined Tsc.

**12.5.3** Regardless of whether the Actual Combined Tsc for a Peak Period is at least 1.00 minutes higher than Bid Combined Tsc for such period, the Owner has the right to elect not to exercise the LRV Options and instead to proceed with other actions identified in Section 8.3.

## **12.6 Concessionaire Obligations**

Nothing in this Article 12 shall affect Concessionaire's obligation to provide a sufficient number of LRVs to enable it to meet the Performance Requirements, nor shall it affect Concessionaire's obligation to remove and replace any defective LRVs supplied by Concessionaire whether in the original order or as part of the Option.

## ARTICLE 13. PAYMENTS TO CONCESSIONAIRE; OWNER'S COSTS

### 13.1 Design-Build Period Progress Payments; Revenue Service Availability and Final Completion Payments

**13.1.1** Owner will make payments for the D&C Work following receipt of periodic requests for payment submitted by Concessionaire in accordance with this Section 13.1.1 (or, as applicable, other provisions within this Agreement) subject to withholding or reduction as specified in this Agreement. The amount payable is subject to certain limitations and may be reduced in accordance with the Contract Documents. The periodic requests for payment shall identify amounts owing for Progress Payments, Allowances, Change Orders, incentive payments under Section 13.1.1.4, Owner's share of Independent Engineer costs, the RSA Payment and the Final Completion Payment, and shall include information as required by Owner for the purpose of allowing Owner to pass through costs to third parties.

**13.1.1.1** Certain payments will be made based on monthly invoices submitted during the Design-Build Period, based on progress determinations (the "Progress Payments"), equal to 85% of the value of D&C Work eligible for Progress Payments performed during the period covered by the invoice. Progress determinations will be based on substantiated progress and the approved Schedule of Values, subject to the following:

(a) Invoices for mobilization for Construction Work may be submitted in accordance with the following schedule, not to exceed 85% of 6% of the "Total Value of D&C Construction Work" specified in Exhibit 4A. An initial installment up to 25% of the total mobilization amount may be invoiced upon Owner approval to commence non-Construction Work as specified in Section 7.4.4; a second installment equal to 35% of mobilization (bringing the total to 60%) may be invoiced upon Owner approval to commence Construction Work; and the final installment of 40% of mobilization (bringing the total to 100%) may be invoiced when D&C Work valued at 20% of the Total Value of the D&C Construction Work is complete.

(b) Invoices for the value of materials and products for Construction Work not yet incorporated into the finished Project may be submitted only as permitted under Section 13.1.5.

(c) Invoices otherwise in accordance with the provisions of this Agreement.

(d) With respect to LRVs, excluding the O&M Spare LRV, Progress Payment amounts will be determined in accordance with Part B of Exhibit 4A.

(e) In no event shall Owner have any obligation to pay Concessionaire any Progress Payment amount that would result in payment for any activity in excess of 85% of the value of the activity under the Schedule of Values. However, if the D&C Payment Cap has not yet been reached and Work performed during a prior period was not eligible for payment because the value of the Work exceeded the payment limitation for such period, that Work may be included in subsequent invoices.

**13.1.1.2** Allowance payments will be equal to 100% of the value of Allowance Work performed during the period covered by the invoice, provided that such payments may not exceed the amounts specified in this Agreement for each Allowance, as such

amounts may be modified by Change Order. The value of Allowance Work may be determined based on measured units multiplied by unit prices, substantiated progress and Schedule of Values, or force account records. For unit priced items, full compensation for all expenses involved in conforming to the requirements for measuring and weighing materials shall be considered as included in the unit prices for the materials being measured or weighed and no additional compensation will be allowed therefor. Refer to Sections 13.1.1.5 and 13.1.1.6 regarding applicability of the D&C Payment Cap to Allowance Work.

**13.1.1.3** If, as of Final Completion or such earlier date as Allowance Work is completed, the Allowance has not been fully expended, a Change Order will be issued reducing the Allowance amount(s) to match actual expenditures made.

**13.1.1.4** As an inducement to Concessionaire to achieve certain goals, Owner has established a monetary incentive payment program applicable to certain Work, as described in Part B of Exhibit 11 for performance that meets or exceeds prescribed criteria. Incentive payments are payable following a determination by Owner regarding the amount owing, as specified in said Part B.

**13.1.1.5** The cumulative amount of Progress Payments made by Owner as of any date, in combination with mobilization payments and Allowance payments up to the allowance amounts in Exhibit 4A, Part A, may not exceed the cumulative D&C Payment Cap for such period specified in Exhibit 4A.

**13.1.1.6** Change Orders for Work to be performed during the Design-Build Period may be payable based on progress determinations, in which case the value of the Change Order Work will be determined as described in Section 13.1.1.1 except that the amount will be based on 100% of the progress determination instead of 85% and the D&C Payment Cap will not apply. Alternatively, the Change Order may provide for payments to be made on a lump sum basis, based on measured units multiplied by unit prices, substantiated progress and Schedule of Values, or force account records. If a Change Order results in a net decrease in Concessionaire's costs of performing the D&C Work, the amount of the reduction shall be applied to reduce Owner's payments during the Design-Build Period, with any change in costs of performing the O&M Work addressed through a change to the Availability Payments.

**13.1.1.7** The RSA Payment is payable following issuance of the Independent Engineer's Certificate of Revenue Service Availability under Section 7.10.2, and the Final Completion Payment is payable following achievement of Final Completion under Section 7.10.4.

**13.1.2** Requests for payment shall be made on a form acceptable to Owner. Concessionaire shall submit draft invoices to Owner with backup documentation as described in Part 2, Section 11 of the Technical Provisions before each monthly invoice review meeting. After the meeting, Concessionaire shall submit a final invoice to Owner, addressing comments received at the meeting. Requests shall be signed by Concessionaire's Authorized Representative and shall be accompanied by the following certifications:

**13.1.2.1** A certification from Concessionaire that (a) Concessionaire has made all undisputed payments to all of its Contractors from the proceeds of prior payments by Owner and other funds available, and (b) Concessionaire will make timely payments of undisputed amounts due and owing to all of its Contractors from the proceeds of the current payment by Owner and other funds available, in conformance with its contractual arrangement with them;

**13.1.2.2** A certification from each Contractor that (a) all items included in the invoice that were the subject of a previous non-conformance report have been corrected and/or resolved in accordance with the Project Management Plan or O&M Management Plan, (b) all construction documentation is completed and records and reports submitted and/or retained as required by the Project Management Plan or O&M Management Plan, and (c) it has made payment from proceeds of prior payments, and it will make timely payments from the proceeds of the current payment to its Subcontractors, Suppliers, laborers, Utility Owners and other third parties in conformance with its contractual arrangement with them;

**13.1.2.3** If the invoice includes materials or products not yet incorporated into the Project, a certification from the Contractor's quality assurance manager confirming that such materials or products have been tested and found to have conformed to the requirements of the Contract Documents or to have been accepted under an approved certification program before delivery, and have been safely stored;

**13.1.2.4** If the invoice includes Construction Work, a certification from Concessionaire's quality assurance manager confirming that (a) Design Documents for such Work have been checked and reviewed in accordance with the Project Management Plan, (b) Release for Construction Documents are on the site where the improvements are being constructed, and (c) the Construction Work included in the invoice has been inspected and sampling and testing conducted in accordance with the Project Management Plan; and

**13.1.2.5** If the invoice is for LRVs, a certification from Concessionaire's Authorized Representative stating that all requirements relating to the applicable milestone defined in Exhibit 4A, Part B have been satisfied in accordance with Part 2B, Section 12 of the Technical Provisions.

**13.1.3** As a condition precedent to consideration by Owner of any invoice under this Section 13.1, certified payrolls for all construction workers for all periods covered by the request and all prior periods shall be up to date and submitted to Owner. Refer to Exhibit 16 for additional information regarding the requirement to provide certified payrolls.

**13.1.4** If Owner makes the RSA Payment under Section 7.10.3.8(b) based on a determination by the Independent Engineer that Owner disputes, either Party may elect to submit the points of disagreement regarding compliance with the requirements for Revenue Service Availability to the Dispute Resolution Procedures. In such event, if and to the extent the Dispute is resolved in Owner's favor:

(a) Owner may require Concessionaire to repay a portion of the RSA Payment to Owner, as deemed appropriate by Owner to cover the value of the Work in question, plus interest on the amount owing, at the Late Payment Rate, from the date payment was made to Concessionaire to the earlier to occur of (i) the date that Concessionaire has fully performed all of the Work that was in dispute or (ii) the date that Concessionaire repays Owner. Following receipt of the repayment, Owner will thereafter make Progress Payments for such Work in accordance with Section 13.1.1.1, except that the amount payable will be based on 100% of the progress determination instead of 85%, or will be made in accordance with other payment arrangements agreed to by the Parties.

(b) Alternatively, if requested by Concessionaire, in lieu of requiring repayment Owner will accept a bond or letter of credit covering Concessionaire's obligation, in the repayment amount, from a surety or financial institution acceptable to Owner, in form acceptable to Owner, and naming Owner as the primary obligee or



beneficiary, as applicable. In such event, the bond or letter of credit will be released upon request by Concessionaire after Owner determines that all such Work has been satisfactorily completed.

If neither Party submits the issue to the Dispute Resolution Procedures, Concessionaire shall be conclusively deemed to have agreed to perform all disputed elements of the D&C Work as a condition to Final Completion, in accordance with Section 7.10.4.1.

**13.1.5** Concessionaire may request payment for certain elements of the Work not yet incorporated into the permanent improvements, subject to the following terms and conditions:

(a) Payment may be made for certain materials stored at the Site (including Project-Specific Locations in the vicinity of the Project ROW) as follows:

(i) For superstructure members delivered to the Site (including Project-Specific Locations in the vicinity of the Project ROW), payment equal to 85% of the material cost plus freight charges as invoiced may be made, provided the cost does not exceed 90% of the applicable WBS value. The amount payable will be based upon validated invoices or bills for material including freight charges, and a copy of such invoices or bills shall be made a part of the documented records for the project.

(ii) For reinforcement steel, piling, pipe, traffic barrier, signs and sign assemblies, and other nonperishable material in storage at the Site (excluding aggregates, cement, seed, plants, fertilizer or other perishable items), payment equal to 85% of the invoiced cost of the material plus freight charges to Concessionaire may be made, provided the cost does not exceed 90% of the applicable WBS value. Such material shall be delivered and stock-piled at the Site after being tested in accordance with the Concessionaire's Quality Program and found to have conformed to the requirements of the Contract Documents.

(iii) Only end product manufactured material or fully fabricated products that are awaiting installation or incorporation into the finished Work are eligible for prepayment under this Section 13.1.5(a). Components, elements, or ingredients of a finished product are not eligible for prepayment.

(iv) When it is considered impractical to store materials on the Site, Owner's Authorized Representative may approve other storage areas which will be considered at the Site for purposes of this Section 13.1.5(a). Concessionaire shall use reasonable efforts to provide storage in the vicinity of the Project ROW, but where storage in the vicinity of the Project ROW is not practical, Owner's Authorized Representative may approve storage elsewhere. Storage of materials outside the State of Maryland will be subject to the conditions set forth in this Section 13.1.5 and limited to materials exceeding \$25,000 in cost, which are designed and fabricated exclusively for use on the Project.

(b) For elements of the Work with a fabrication period of at least six months and that could neither be readily utilized on, nor diverted to, another job, payment equal to 85% of the material cost as invoiced may be made, provided the cost does not exceed 90% of the applicable WBS value.

(c) All material for which payment is to be made under this Section 13.1.5 shall be clearly marked with Owner's contract number on individual units. If the material is normally shipped to the Project in bundles or other forms of packaging, Owner's contract number shall be clearly marked or affixed to the package. When the material is not stored at the Site, the material shall be physically separated by fencing or equivalent barrier from other materials stored at the same site. The material shall be accessible to Owner at all times. Material for which payment has been made, either wholly or partially, shall not be removed from the approved location until such time that it is to be incorporated into the Work, unless authorized by Owner's Authorized Representative.

(d) If any of the elements of the Work for which payment has been made under this Section 13.1.5 are lost or become damaged in any manner, Concessionaire shall be responsible for repairing or replacing the damaged materials. The value of the lost or damaged material will be deducted from Concessionaire's subsequent applications for payment until replacement has been accomplished. Any invoice submitted by Concessionaire concerning materials stored on private property within the State of Maryland shall be accompanied by a release from the owner and/or tenant of such property agreeing to permit the removal of the materials from the property at no cost to Owner.

(e) No payment will be made under this Section 13.1.5 for fuels, form lumber, falsework, temporary structures or other materials of any kind which will not become an integral part of the finished construction. No payment for stored material will be made if it is anticipated that the material will be incorporated into the Work within 30 days of the written request.

(f) Concessionaire shall submit written notice to Owner's Authorized Representative regarding intent to include material in an invoice, at least two weeks before submittal of the invoice. The following items shall accompany the invoice:

(v) Consent of Surety specifying the material type and the item(s) in which the material is to be used.

(vi) Validated invoices with the signature of an officer of the company supplying the material showing actual cost.

(vii) A notarized statement from Concessionaire or the Design-Build Contractor attesting that the invoices as submitted do not include charges or fees for placing, handling, erecting, or any other charges or markups other than the actual material cost and, if applicable, sales tax(es) and freight charges.

(viii) Bills of lading showing delivery of the material, if applicable. The request for payment for any materials stored on property outside the State of Maryland shall be accompanied by a release from the owner or tenant of such property agreeing to permit verification by the inspector that the material is stored at the approved location, and to permit the removal of the materials from the property at no cost to Owner.

(ix) Inspection test reports, certifications and/or a written statement from the Construction Quality Control Manager(s) attesting to the inspection and approval of the material.

(x) A statement explaining why the material cannot be stored on the Site in the vicinity of the Project ROW, if Concessionaire is requesting to store material at another location. The statement shall include the methods of storage, separation, and identification to be used by Concessionaire. Concessionaire shall provide a method of inventory control and withdrawal satisfactory to Owner that shall be used by Concessionaire to monitor materials not stored on the project.

(xi) A cost breakdown showing the relationship of the cost of the stored material to the costs of all other materials, labor, and components of the Work.

Upon receipt of the above by Owner's Authorized Representative and verification by Owner's Authorized Representative that the material is stored at the approved location, Owner's Authorized Representative will authorize payment.

Concessionaire shall pay the material provider the amount shown on the invoice within 10 days of receipt of payment from Owner. Evidence of payment shall be provided to Owner. Failure to make invoice payments as specified will be cause to deduct the monies from future estimates and/or deny future stored materials invoices.

Copies of all pertinent data shall be made by Concessionaire and retained as part of the documented records for the Project.

## **13.2 Availability Payments**

### **13.2.1 Basis for Availability Payments**

**13.2.1.1** Except as otherwise expressly provided in this Agreement, Owner will pay Availability Payments to Concessionaire during the O&M Period as provided in this Section 13.2.

**13.2.1.2** The obligation of Owner to make Availability Payments is based on, and is subject to, the Project being open for public transit as measured through Concessionaire's compliance with the Contract Documents.

### **13.2.2 Availability Payment Calculation**

**13.2.2.1** Availability Payments shall be calculated and earned by Concessionaire according to the methodology in Exhibit 4D. The adjustments provided for in Exhibit 4D establish differential payments for different levels of service that may be provided by Concessionaire.

**13.2.2.2** In addition to any other deductions or withholdings allowed under this Agreement, the Availability Payments shall be subject to adjustment for Noncompliance Events and other adjustments resulting from other provisions under this Agreement in accordance with Exhibit 4D, subject to the limitation on adjustments during an Owner step-in under Section 16.7.

### **13.2.3 Requests for Availability Payments**

**13.2.3.1** Owner will pay the Availability Payments by making Monthly Availability Payments as partial payments of each Annual Payment, subject to the methodology in Exhibit 4D.

**13.2.3.2** Invoices shall be submitted monthly in arrears, no earlier than two business days after the end of the prior month. Each request must state the amount and calculation of the Monthly Availability Payment due, including the amount of each Monthly Availability Payment component and calculation of the Deduction(s) for all applicable Noncompliance Events for the prior month (if any) in accordance with Exhibit 4D. Any invoices that include compensation for Construction Work shall also include certified payroll, certification regarding payment to Contractors performing such Work and other backup documentation equivalent to that required for Progress Payments under Section 13.1. In addition, the invoice for the final Monthly Availability Payment for any given Contract Year must be accompanied by an attached report containing information that Owner can use to verify the Monthly Availability Payments and any adjustments for all applicable Noncompliance Events for such Contract Year. Such attached report shall include:

- (a) The calculation of the actual Availability Payment earned during such Contract Year using the methodology in Exhibit 4D;
- (b) A description of any Noncompliance Events, including the date and time of occurrence and duration;
- (c) Any adjustments to reflect previous over-payments and/or under-payments;
- (d) A detailed calculation of any interest payable with respect to any amounts owed; and
- (e) Any other amount due and payable from Concessionaire to Owner or from Owner to Concessionaire under this Agreement, including deductions Owner is entitled to make under the Contract Documents.

**13.2.3.3** Owner will return any invoices that are incomplete and/or incorrect in any material respect to Concessionaire for correction and resubmission.

**13.2.3.4** Owner will verify the amount of each Monthly Availability Payment by (a) examining the invoice, (b) verifying the results reported by Concessionaire, including through Owner's independent oversight and auditing process, and (c) reconciling the actual Monthly Availability Payment earned and any other amount due and payable from Concessionaire to Owner or from Owner to Concessionaire under this Agreement.

### **13.3 Disputed Amounts**

**13.3.1** Owner shall have the right to dispute, in good faith, any amount specified in an invoice submitted under Section 13.1 or 13.2. Owner shall pay all undisputed amounts for which payment is requested and that are not subject to withholding.

**13.3.2** Concessionaire and Owner shall use reasonable efforts to resolve any invoice dispute within 30 days after the dispute arises. If they fail to resolve the dispute within

that period, then it shall be subject to resolution according to the Dispute Resolution Procedures.

### **13.4 Payment Due Date; Interest on Late Payments and Overpayments**

**13.4.1** Except as otherwise expressly provided in the Contract Documents, payments to Concessionaire of all undisputed amounts under this Agreement shall be made within 30 days after Owner's receipt of a proper invoice from Concessionaire, accompanied by all required documentation. A proper invoice shall include, in addition to the requirements specified in Sections 13.1 and 13.2, the contract number, Concessionaire's Federal Tax Identification Number; information regarding the payee sufficient to allow payment to be made, and the name and address of the proper invoice recipient. If payment is not made within 45 days after the date of receipt of proper invoice, then Concessionaire shall be entitled to interest, at the Late Payment Rate, on the undisputed amount owing, commencing on the 31st day after receipt of proper invoice until the date paid, subject to Section 13.4.3.

**13.4.2** If any invoice is disputed and an amount is determined to be due under the Dispute Resolution Procedures, payment of the disputed amount shall be made within 30 days following resolution of the dispute, together with interest at the Late Payment Rate on the amount owing in accordance with this Section 13.4 from the date that the payment was due (based on the agreement of the parties or the decision of the dispute resolver) until the date of payment.

**13.4.3** In order to receive payment of interest, Concessionaire must submit a proper invoice for accrued interest within 30 days after the payment due date of the amount on which the interest is claimed to have accrued or within 30 days after resolution of the dispute. Interest may not be claimed for more than one year following the 31st day after the date that a proper invoice was received, or on amounts representing unpaid interest.

**13.4.4** For the purposes of this Agreement an amount will not be deemed due and payable if:

- (a) The amount invoiced is inconsistent with the Contract Documents;
- (b) The proper invoice has not been received by the person or office specified in this Agreement;
- (c) The amount requested or performance under this Agreement is in dispute;
- (d) Concessionaire has failed to otherwise comply with the provisions of this Agreement with respect to the Work for which payment is requested;
- (e) Owner otherwise has the right to withhold payment under the terms of this Agreement;
- (f) If acceptance is a prerequisite to payment, the item or services have not been accepted;
- (g) The quantity of items delivered is less than the quantity invoiced;
- (h) The items or services do not meet the quality requirements of this Agreement;

(i) The invoice is for a Progress Payment, and the invoice for the Progress Payment has not been properly and/or timely submitted;

(j) This Agreement provides for amounts to be withheld, the invoice is for the withheld amount, and all stipulated conditions for release of the withheld amounts have not been met; or

(k) Concessionaire has not submitted satisfactory documentation or other evidence reasonably required by Owner concerning performance under the Contract Documents and compliance with its provisions.

**13.4.5** Refer to Section 17.3.1(a) for provisions concerning interest payable by Owner on late payments by Owner under this Article 13.

**13.4.6** If as a result of any inaccuracy in an invoice any overpayment is made by Owner to Concessionaire then, in addition to the adjustments to Monthly Availability Payments as provided in Section 13.2, Owner shall be entitled to deduct or receive as a payment from Concessionaire interest on such amount at the Late Payment Rate, starting on the date of Owner's payment of the invoice to the date the overpayment is deducted or paid. Owner will provide notice to Concessionaire of any Owner determination that it is entitled to deduct or receive payment for interest owed on any such overpayment. Such right of Owner to deduct or receive payment of interest is without prejudice to any other rights Owner may have under this Agreement.

### **13.5 Payments by Electronic Funds Transfer**

Concessionaire agrees to accept payments by electronic funds transfer and shall register using the State Comptroller's Office using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Following such registration, all State payments to Concessionaire (including payments under other State contracts regardless of value) will be disbursed via electronic funds transfer.

### **13.6 Appropriations**

**13.6.1** All obligations of Owner and the State are subject to all applicable law and appropriations by the Maryland General Assembly. The obligation of Owner to make payments under this Agreement does not constitute an indebtedness of the State within the meaning or application of any constitutional provision or limitation and does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. Furthermore, Owner has no taxing power, and Concessionaire has no right to have taxes levied or to compel appropriations by the General Assembly for any payment owing under this Agreement. This clause shall not be construed to preclude Concessionaire from exercising its remedies for Owner's failure to comply with Section 13.6.3.

**13.6.2** Owner shall prepare, before the end of each fiscal year, its annual budget request submission to the Governor and include funds necessary to make scheduled payments to Concessionaire under this Agreement for the coming fiscal year under this Agreement. Owner will use its best efforts to obtain the authorization and appropriation of all necessary funds before the beginning of the coming fiscal year.

**13.6.3** If Owner becomes aware that it will not obtain appropriations for any fiscal year sufficient, in combination with other available funds, to pay all compensation owing to

Concessionaire under this Agreement for such year, Owner will promptly notify Concessionaire regarding the anticipated shortfall, and will consult with Concessionaire to discuss the situation and possible solutions. If Owner determines that it will not have funds available to make any of the payments owing, Owner will suspend all Work. If Owner determines that there will be a partial shortfall, Owner will suspend all or a portion of the Work so as to ensure that Owner has sufficient funds to make payments owing for Work performed. Any such suspension shall be considered an Owner Change.

### **13.7 Owner Right of Withholding**

Any amounts due and payable by Concessionaire to Owner, including any liquidated damages owing under the Contract Documents, may be withheld from amounts otherwise due and payable by Owner to Concessionaire, including Availability Payments payable under Section 13.2, but expressly excluding the Special Lifecycle Payments. Owner also has certain other rights to withhold payment as specified in this Agreement.

### **13.8 Full Compensation**

Concessionaire acknowledges and agrees that the payments provided for in Article 13 constitute full compensation for performance of all the Work, subject only to Concessionaire's rights under Articles 14, 15 and 19 and Section 5.10.5.

### **13.9 Adjustment of Unit Prices**

With respect to unit priced items included in Exhibit 4B, if the actual quantities of any such item vary more than 15% above or below the estimated quantity stated in said exhibit, an equitable adjustment to the unit price shall be made upon demand of either Party. The equitable adjustment shall be based on any increase or decrease in costs per unit due solely to the variation above 115% or below 85% of the estimated quantity, based on the description and scope for the relevant unit priced item included in Exhibit 4B, and a Change Order issued documenting the adjusted unit price. Prior invoices shall be recalculated using the adjusted unit prices, as appropriate. The dollar thresholds stated in Section 15.3.3.1 (relating to Hazardous Materials discovered during demolition) shall not be modified based on an adjustment to unit prices, but any prior calculations and payments made under said provision are subject to adjustment based on the adjusted unit prices.

### **13.10 Payment for Certain Backfill Material and Disposal Costs**

#### **13.10.1 Backfill Provisions**

**13.10.1.1** The Parties acknowledge that the Total Value of D&C Construction Work is based, in part, upon the assumption that excavation required for the Project will produce at least [REDACTED] tons of select backfill material for Backfill Uses during performance of the Work.

**13.10.1.2** Subject to the limitations in this Section 13.10.1 and to the Backfill Requirements, if Project excavation fails to produce select backfill material in at least the estimated quantity available for Backfill Uses or adverse weather conditions unreasonably inhibit the use of such backfill material, Concessionaire shall be entitled to a "Backfill Change Order." The Backfill Change Order shall provide for payment based on delivery tickets at a unit price of \$[REDACTED] for each ton of #57 stone required to be obtained for Backfill Uses due to the shortfall. The procedural requirements for obtaining a Backfill Change Order under Section 13.10.1.3 apply in lieu of the procedural requirements for issuance of Change Orders under ARTICLE 15.

**13.10.1.3** In its performance of the Work, Concessionaire shall exercise diligent efforts to maximize production of select backfill material available for Backfill Uses. Concessionaire shall provide monthly reports regarding the quality and quantity of materials produced through excavation, quantities of #57 stone obtained for Backfill Uses, and an updated estimate regarding the total quantity of select backfill material that will be produced and available for Backfill Uses, including appropriate backup information and any other information reasonably requested by Owner. If Concessionaire establishes that a shortfall exists despite Concessionaire's diligent efforts as described above, Owner will process and issue a Backfill Change Order covering the estimated quantities of #57 stone required as a result of the shortfall, not to exceed \$14,000,000. As the Work proceeds, the Backfill Change Order shall be subject to adjustment (increased or decreased) based on updated estimates and actual quantities, but shall in no event exceed \$14,000,000.

**13.10.1.4** In its performance of the Work, if Concessionaire determines in its reasonable discretion that available material does not meet the standard for suitable select backfill material available for Backfill Uses at a given location, then Concessionaire shall notify Owner of Concessionaire's intent to arrange for and use of #57 stone at such location. Concessionaire shall use good faith efforts for such notification to occur at least 1 Business Day prior to making such arrangements; provided, however, that after giving such notice, Concessionaire may arrange for and use #57 stone at such location.

**13.10.1.5** Concessionaire acknowledges and agrees that (a) other payments to Concessionaire provided under this Agreement provide compensation for its costs relating to Backfill Uses not covered by the unit prices, as well as any costs exceeding the maximum amount of the Backfill Change Order, and (b) any delay arising out of or relating to obtaining, hauling or otherwise utilizing #57 stone due to a shortfall in select backfill material available for Backfill Uses shall not constitute an Owner-Caused Delay, Owner Change, Relief Event, Force Majeure Event or other basis for a Claim.

## **13.10.2 Landfill Provisions**

**13.10.2.1** The Parties acknowledge that the Total Value of D&C Construction Work is based, in part, upon the assumption that (a) the Gude Drive Landfill in Montgomery County will accept delivery of up to 90,000 cubic yards of soil and construction or demolition debris, at 8.5 cubic yards/truckload ("Fill") without assessing a fee and (b) the Brown Station Road Landfill in Prince George's County will accept delivery of up to 40,000 cubic yards, at 8.5 cubic yards/truckload of Fill without assessing a fee.

**13.10.2.2** Subject to the limitations in this Section 13.10.2, Concessionaire shall be entitled to a Change Order covering its cost of alternative disposal of Fill (the "Landfill Change Order") if Concessionaire has complied with applicable Landfill Requirements but the Gude Drive Landfill or Brown Station Landfill (as applicable) has refused to accept Fill as described in Section 13.10.2.1. The procedural requirements for obtaining a Landfill Change Order under Section 13.10.2.3 apply in lieu of the procedural requirements for issuance of Change Orders under ARTICLE 15. The amount of the Change Order shall be based on the following:

(a) \$21.80/cubic yard for each cubic yard of Fill that is either rejected by the Gude Drive Landfill and deposited at a landfill other than the Brown Station Road Landfill or for which the Gude Drive Landfill assesses a fee, provided that such Fill is under the 90,000 cubic yard limit and Concessionaire has met all other applicable Landfill Requirements;



(b) \$24.25/cubic yard for each cubic yard of Fill that is either (a) rejected by the Brown Station Road Landfill and deposited at a landfill other than the Brown Station Road Landfill or for which the Brown Station Road Landfill assesses a fee, provided that such Fill is under the 40,000 cubic yard limit and Concessionaire has met all other applicable Landfill Requirements;

**13.10.2.3** Concessionaire shall provide monthly reports regarding the Fill deposits at the Gude Drive and Brown Station Road Landfills and estimated quantities of future deposits. Concessionaire shall promptly notify Owner if either landfill rejects Fill that meets applicable Landfill Requirements or assesses a fee to accept such Fill, including backup documentation. If Concessionaire establishes that such Fill has been rejected or that it has been assessed a fee to deposit such Fill, Owner will process and issue a Landfill Change Order in the amount of (a) tipping fees charged by the landfill that Concessionaire used (in the event of a rejection by the Gude Drive or Brown Station Road Landfill, as applicable) or (b) the fee charged by either such landfill (in the event of a fee charged), subject to the limitations on total Fill specified above and not to exceed \$2,932,000 in the aggregate. As the Work proceeds, the Landfill Change Order shall be subject to adjustment (increased or decreased) based on updated estimates and actual quantities, but shall in no event exceed \$2,932,000 in the aggregate.

**13.10.2.4** If Concessionaire deposits Fill in excess of 90,000 cubic yards at the Gude Drive Landfill or deposits Fill in excess of 40,000 cubic yards at the Brown Station Road Landfill, and is not assessed a fee with respect to either deposit(s), Owner shall be entitled to issue a deductive Change Order reducing the compensation otherwise payable for D&C Construction Work, as follows:

(a) A credit of \$21.80/cubic yard shall be allowed for each cubic yard of Fill in excess of 90,000 cubic yards deposited at the Gude Drive Landfill without assessment of a fee;

(b) A credit of \$24.25/cubic yard shall be allowed for each cubic yard of Fill in excess of 40,000 cubic yards deposited at the Brown Station Road Landfill without assessment of a fee;

Based on the reports provided by Concessionaire, Owner may determine the amount of credit owing and withhold such amount for payments otherwise due and payable by Owner to Concessionaire, pending finalization of the deductive Change Order under this Section 13.10.2.4.

**13.10.2.5** Concessionaire acknowledges and agrees that (a) other payments to Concessionaire provided under this Agreement provide compensation for its costs relating to the disposal of Fill not covered by the unit prices and quantities under the Landfill Change Order and (b) any delay arising out of or relating to rejection of Fill by either or both the Gude Drive Landfill or Brown Station Road Landfill shall not constitute an Owner-Caused Delay, Owner Change, Relief Event, Force Majeure Event or other basis for a Claim.

## **ARTICLE 14. OWNER CHANGES; CONCESSIONAIRE MODIFICATION REQUESTS; DIRECTIVE LETTERS**

This Article 14 concerns (a) Change Orders or other Modifications unilaterally issued by Owner, (b) Change Orders or other Modifications issued by Owner following a Request for Change Proposal or Modification Request, and (c) Change Orders for performance of Betterment Work issued by Owner under Section 7.6.6.

### **14.1 Owner Changes**

#### **14.1.1 Owner Right to Issue Change Order**

**14.1.1.1** Owner may, at any time and from time to time, without notice to any Lender or Surety, authorize and/or require, under a Change Order or other Modification, changes to the Work (including reductions in the scope of the D&C Work or O&M Work), changes to requirements of the Technical Provisions (including changes in the standards applicable to the Work), changes in the Service Plan and changes relating to Betterments, except Owner has no right to require any change that would give rise to a threat to health and safety or would be inconsistent with Law.

**14.1.1.2** Changes in service directed by Owner in accordance with Section 8.2 do not require a Change Order except as specified under that Section. A negotiated Modification would be required under Section 14.1.4 in connection with establishment of a Service Level higher than Service Level 3 as well as for any equitable adjustments to the Availability Payments under Section 2.2(c) of Part B of Exhibit 4D and the appropriate action under Exhibit 4D, Part B, Section 3.3.

**14.1.1.3** Owner (a) may agree with one or more Third Parties or Utility Owners to modify the Third Party Agreements or Owner Utility Agreements (including modifying assumed terms and conditions of such agreements set forth in the Technical Provisions), and (b) may identify a new Third Party at any time. Owner will promptly notify Concessionaire of any changes in the terms and conditions of such agreements that affect the Work, and will promptly provide Concessionaire with information regarding any new Third Parties. Any changes in the scope of the Work due to modifications to the terms and conditions (or assumed terms and conditions) of Third Party Agreements or Utility Agreements or identification of a new Third Party which delay the Critical Path or otherwise have a material impact on Concessionaire's obligations under the Contract Documents during the Design-Build Period will be implemented through an Owner Change in accordance with this Article 14.

#### **14.1.2 Owner Request for Change Proposal**

**14.1.2.1** If Owner desires to initiate or evaluate whether to initiate a Change Order, then Owner may issue a Request for Change Proposal. The Request for Change Proposal shall state the nature, extent and details of the proposed Owner Change. Owner's delivery of notification to Concessionaire under Section 14.1.1.3 shall be considered a Request for Change Proposal with respect to any material changes to the terms and conditions (or assumed terms and conditions) of the Third Party Agreement or Owner Utility Agreement identified in the notice, provided that if Owner notified Concessionaire regarding any such material changes before the Effective Date, the Request for Change Proposal shall be deemed delivered as of the Effective Date.

**14.1.2.2** Within five business days after Concessionaire receives a Request for Change Proposal, or such longer period approved by Owner, the Parties shall consult to define the proposed scope of the change. Within five days after the initial consultation, or such longer period approved by Owner, Owner and Concessionaire shall consult concerning the estimated Incremental Cost and extensions of time, excuse from compliance with the Contract Documents, effect on the LRV Option and other impacts.

**14.1.2.3** Owner may at any time provide a written analysis to Concessionaire regarding Owner's assessment of avoided costs and impacts on the Project Schedule and Contract Deadlines associated with a proposed Owner Change, as well as any other relevant information related to carrying out the proposed Owner Change.

### **14.1.3 Response to Request for Change Proposal**

As soon as possible through the exercise of diligent efforts, and in any event within 30 days following Owner's delivery to Concessionaire of a request for a change in the Service Plan or within 60 days following Owner's delivery to Concessionaire of any other Request for Change Proposal, Concessionaire shall provide Owner with a response as to whether, in Concessionaire's opinion, the proposed Owner Change results in entitlement to additional compensation, an extension of time, excuse from compliance or other relief in accordance with this Agreement, including the following:

**14.1.3.1** With respect to a request for change in the Service Plan, a Change to a Service Plan Report and with respect to any other Request for Change Proposal, Concessionaire's detailed estimate regarding how the proposed Owner Change will affect Concessionaire's costs of performing the D&C Work and O&M Work;

**14.1.3.2** If the Change Notice is issued before the Revenue Service Availability Date, the effect of the proposed Owner Change on the Project Schedule, including any impacts on Contract Deadlines, taking into consideration Concessionaire's duty to mitigate any delay, and including a time impact analysis meeting the requirements of Section 15.2.3.1(f) if any extension of the Contract Deadlines will be requested in connection with the change;

**14.1.3.3** Where a request for an extension of time to any Contract Deadline is made, a time impact analysis meeting the requirements of Section 15.2.3.1(f) to support such request, and an assessment regarding feasibility of accelerating the Work to meet the original deadline or to reduce the total delay period and, if acceleration is feasible, an estimate of the cost to accelerate;

**14.1.3.4** Concessionaire's planned actions to mitigate, the additional compensation, extension of time, excuse from compliance and other consequences of the Owner Change required under Section 15.11;

**14.1.3.5** The effect (if any) of the proposed Owner Change on Performance Requirements, the Activity Noncompliance Occurrence Table, Noncompliance Events, the Payment Mechanism, the Asset Management Plan and Handback Requirements; and

**14.1.3.6** Any other relevant information related to the proposed Owner Change.

#### **14.1.4 LRV Option; Service Changes**

**14.1.4.1** Owner's exercise of LRV Option A shall be considered direction to Concessionaire to prepare a draft Change Order adding supply of additional LRVs as specified in the LRV Option Notice for the LRV Option Price, adjusted to account for escalation as provided in this Agreement, and to prepare a draft Change Order as described in Section 12.1.3. It shall also be considered direction to start Work to the extent specified in the LRV Option Notice, regardless of the status of the Change Order. Escalation of the LRV Option Price shall be based on:

(a) 25% of the percentage change between (i) an average of the previous 12 months of monthly index values to be determined by reference to the most recently published Escalation Index 1 monthly index value as of the Proposal Date and (ii) an average of the previous 12 months of index values to be determined by reference to the most recently published Escalation Index 1 monthly index value as of the business day immediately preceding the date on which the LRV Option is exercised,

(b) 25% of the percentage change between (i) an average of the previous 12 months of monthly index values to be determined by reference to the most recently published Escalation Index 3 monthly index value as of the Proposal Date and (ii) an average of the previous 12 months of the index values to be determined by reference to the most recently published Escalation Index 3 monthly index value as of the business day immediately preceding the date on which the LRV Option is exercised, and

(c) 50% of the percentage change between (i) an average of the previous 12 months of monthly index values to be determined by reference to the most recently published Escalation Index 4 monthly index value as of the Proposal Date and (ii) an average of the previous 12 months of the index values to be determined by reference to the most recently published Escalation Index 4 monthly index value as of the business day immediately preceding the date on which the LRV Option is exercised.

**14.1.4.2** The Parties acknowledge that a change from Service Level 2 to Service Level 3 will require performance of certain additional Work relating to the OMF as described in the Technical Proposal (specifically, that section of the Technical Proposal entitled "Design and Construction Technical Solutions"). Accordingly, in connection with direction by Owner to change to Service Level 3, the Parties shall negotiate a Change Order specifying the price, delivery schedule and scope of such additional Work. The schedule established by such Change Order shall be consistent with the schedule for delivery of additional LRVs as described in Section 12.4.

**14.1.4.3** If it becomes apparent that demand warrants implementation of service providing greater Peak Period capacity than is required for Service Level 3, the Parties shall consult regarding changes that would be required to meet demand and enter into negotiations regarding a Modification to implement such changes and provide additional compensation to Concessionaire. Any change to service providing greater Peak Period capacity than is required for Service Level 3 shall require mutual agreement of the Parties. Section 8.2 identifies certain other circumstances under which a Change Order is required for service changes.

**14.1.4.4** A Modification establishing a Service Level with higher Peak Period capacity than Service Level 3 or implementing direction issued by Owner under

Section 12.4 shall include revised commitments regarding maximum power usage for Service Level 3, replacing the commitments in Attachment 2 to Appendix E of Exhibit 4D.

#### **14.1.5 Negotiation and Directed Changes**

**14.1.5.1** Following Owner's receipt of Concessionaire's response provided under Section 14.1.3 and Owner's further assessment of the cost, schedule and other impacts of the proposed Owner Change, Owner and Concessionaire, giving due consideration to such assessments, shall engage in good faith negotiations to reach agreement on the terms of a Change Order including (a) adjustment of the Contract Deadlines as appropriate and/or (b) either (i) the Compensation Amount to which Concessionaire is entitled, determined in accordance with Exhibit 13A, or (ii) any net cost savings and schedule savings to which Owner is entitled under Exhibit 13A. The Change Order shall specify, as applicable, the timing and method for payment of any Compensation Amount or for realizing any net savings in the cost of the Work.

**14.1.5.2** If Owner and Concessionaire are unable to reach agreement on a Change Order, Owner may seek to resolve the Dispute under the Dispute Resolution Procedures without issuing a Directive Letter, or it may issue a Directive Letter under Section 14.3.1 directing Concessionaire to proceed with the performance of some or all of the proposed Owner Change notwithstanding such disagreement. Concessionaire shall proceed immediately with the Work as directed, pending execution of a formal Change Order (provided that, if Concessionaire disagrees with the description of the original scope of Work in the Directive Letter, Concessionaire shall proceed as directed but shall have the right to assert a Claim that an Owner Change has occurred with respect to such Work). If Work proceeds based on a Directive Letter, Concessionaire shall maintain force account records for such Work in accordance with Exhibit 13A, pending execution of a Change Order.

#### **14.2 Concessionaire Modification Requests**

**14.2.1** By submittal of a Modification Request using a form approved by Owner, Concessionaire may request Owner to approve (a) a Change Order increasing compensation as described in Section 14.2.2, (b) modifications to the requirements of Books 2 through 5, (c) modifications to Exhibits 2 and 17, or (d) adjustments to the Project ROW. The Modification Request shall state Concessionaire's detailed estimate of net impacts (positive and negative) on costs and schedule attributable to the requested change, the effect (if any) of the requested change on Performance Requirements, the Activity Noncompliance Occurrence Table, the Asset Management Plan and Handback Requirements and such other relevant information related to carrying out the requested change.

**14.2.2** Before Financial Close, the Parties shall ascertain whether Concessionaire is entitled to an increase in compensation as specified in Article 4 and Owner will issue a Change Order as appropriate. No increase in compensation will be allowed for costs due to negligence, willful misconduct or breach of contract by any Concessionaire-Related Entity.

**14.2.3** Except with respect to Modifications under Section 7.5.1.4, 8.2.5, 14.2.2 or 14.2.6, Owner's consideration of any Modification Request is a courtesy to Concessionaire and Owner may accept or reject any Modification Request proposed by Concessionaire for any reason or for no reason. If Owner is prepared to accept a Modification Request (or if Section 7.5.1.4, 8.2.5, 14.2.2 or 14.2.6 applies), the Parties shall engage in good faith negotiations to reach agreement on the terms of a Change Order.

**14.2.4** In determining the Compensation Amount for any Change Order issued under this Section 14.2, the Parties shall consider Owner's overhead, administrative and out-of-pocket costs resulting from the change as well as Concessionaire's costs.

**14.2.5** Certain minor changes without significant cost savings or revenue benefits may be approved by Owner as Deviations on a "no-cost" basis, as described in Sections 7.2.3 and 8.1.3, and in such event shall not require a Change Order. Any other change in the requirements of the Contract Documents shall require a Change Order.

**14.2.6** Owner shall not be entitled to reject any element of a Modification Request that is required in order for Concessionaire to comply with applicable Law or the Owner-Provided Approvals.

### **14.3 Directive Letters**

**14.3.1** Owner may at any time issue a Directive Letter to Concessionaire regarding any matter for which a Change Order can be issued or in the event of any Dispute regarding the scope of the Work or whether Concessionaire has performed the Work in accordance with the requirements of the Contract Documents. The Directive Letter will state that it is issued under this Section 14.3, will describe the Work to be performed and will state the basis for determining compensation, if any and schedule adjustment, if any. Concessionaire shall proceed immediately as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within Concessionaire's original scope of Work or is necessary to comply with the requirements of the Contract Documents, Concessionaire shall proceed with the Work as directed but shall have the right to assert a Claim that an Owner Change has occurred).

**14.3.2** The fact that a Directive Letter was issued by Owner shall not be considered evidence that an Owner Change has occurred. The determination whether an Owner Change has occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination as to whether the Directive Letter in fact constituted a change in those requirements.

### **14.4 Betterment Change Orders**

The process for negotiation and issuance of Change Orders relating to Betterments is stated in Section 7.6.6.

### **14.5 Allowable Costs**

Except as otherwise provided in Exhibit 13A, Concessionaire shall not be entitled to any indirect costs under any Change Order, regardless of whether the Change Order amount is based on force account records, based on mutual agreement or determined under the Dispute Resolution Procedures.

### **14.6 Payments and Credits**

**14.6.1** If a Change Order issued under this Article 14 involves a net increase in the costs of Work to be performed during the Design-Build Period, the Change Order will provide for the Compensation Amount to be paid as specified in Section 13.1.1.6. If the Change Order involves a net increase in the costs of Work to be performed during the O&M Period, Owner will pay the Compensation Amount through adjustments to the Availability Payments, calculated to result in a neutral monthly cash flow for Concessionaire.

**14.6.2** If a Change Order issued under this Article 14 involves a net reduction in costs of Work, the Change Order will provide for the credit to be applied either to payments during the Design-Build Period or to Availability Payments, as applicable, as the savings accrue. In either case the credit will be determined in accordance with Section 1.1.5 of Exhibit 13A.

**14.6.3** If a Change Order issued under this Article 14 affects Concessionaire's cost of supplying Option LRVs, the Change Order shall either provide for an increase in the LRV Option Price to pass through the additional costs to Owner or a reduction in the LRV Option to pass through the reduction in costs to Owner.

## **ARTICLE 15. RELIEF EVENTS; FORCE MAJEURE EVENTS; NON-CONCESSIONAIRE CAUSED DISRUPTIONS**

### **15.1 Overview**

#### **15.1.1 General**

This Article 15 sets forth the requirements for obtaining relief with respect to Relief Events (excluding Owner Changes which are addressed in Article 14), Force Majeure Events and Non-Concessionaire Caused Disruptions. Refer to Exhibit 13A for additional information regarding determination of (a) Incremental Costs incurred in performance of Extra Work and changes in the Work due to Relief Events and (b) Delay Costs and Delay Interest for Relief Events and Force Majeure Events.

#### **15.1.2 General Limitations**

**15.1.2.1** Notwithstanding anything to the contrary in this Agreement, the occurrence of the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption shall not excuse Concessionaire from liability that arose before such occurrence or that occurs concurrently.

**15.1.2.2** Concessionaire shall not be entitled to assert a Relief Event, Force Majeure Event, Non-Concessionaire Caused Disruption or other basis for a Claim with respect to the consequences of any violation of Law or Governmental Approval, or negligence, recklessness, willful misconduct, fault, breach of contract, fraud, or other noncompliance with the requirements of the Contract Documents (including Safety Standards) by any of Concessionaire-Related Entities.

### **15.2 Relief Event, Force Majeure Event and Non-Concessionaire Caused Disruption Claim Process**

This Section 15.2 establishes the process to be followed to obtain a Change Order for a Relief Event (excluding Owner Changes), Force Majeure Event and Non-Concessionaire Caused Disruption. Owner Changes will be processed in accordance with Article 14.

#### **15.2.1 General Provisions**

**15.2.1.1** Concessionaire's rights under this Article 15 will be determined based on the terms of the Contract Documents, without regard to the fact that a Contractor may have agreed to be responsible for the consequences of events if Concessionaire cannot obtain relief with respect to such events under this Article 15. In such case, for purposes of evaluating the merits of any Request for Change Order under this Article 15, the costs incurred or impact on schedule or performance of Work will be deemed to be directly incurred by Concessionaire.

**15.2.1.2** Concessionaire acknowledges and agrees that it is not entitled to any Incremental Costs associated with a Force Majeure Event or Non-Concessionaire Caused Disruption except as otherwise provided in Section 15.3.5.3 and to the extent Delay Interest is payable in relation to a Force Majeure Event.



## **15.2.2 PCO Notice Concerning Relief Event or Force Majeure Event**

**15.2.2.1** As a condition precedent to a Change Order for a Relief Event or Force Majeure Event under this Agreement, Concessionaire shall deliver to Owner a notice ("PCO Notice") stating the event or situation which Concessionaire believes justifies issuance of a Change Order.

**15.2.2.2** The PCO Notice shall include, to the maximum extent of the information then available:

- (a) A description of the Relief Event or Force Majeure Event and its date and time of occurrence or inception in reasonable detail;
- (b) Concessionaire's preliminary good faith estimate of the allowable Incremental Costs and/or Delay Costs, if any, and of any anticipated net reduction in cost of the work that will occur, and the basis for such estimates;
- (c) Concessionaire's preliminary good faith estimate of any (i) impacts on the Critical Path directly attributable to the Relief Event or Force Majeure Event, and (ii) Delay Interest payable during the RSA Extension Period associated with the Critical Path delay, and the basis for such estimate;
- (d) Concessionaire's preliminary good faith analysis of any adverse effect of the Relief Event or Force Majeure Event on its ability to perform its obligations under this Agreement;
- (e) The actions Concessionaire has taken and will take to mitigate the consequences of the Relief Event or Force Majeure Event required under Section 15.11; and
- (f) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.

**15.2.2.3** The nature and scope of the potential Change Order stated in the PCO Notice shall remain consistent (except for reductions) for the remainder of the Change Order and Claim process and, if applicable, during any subsequent dispute resolution proceeding. Concessionaire may assert new consequences of a Relief Event or Force Majeure Event if the consequences (a) are of a different nature or scope, (b) first arise or occur after the PCO Notice is delivered, and (c) could not have been anticipated through the exercise of Good Industry Practice before delivering the PCO Notice. If any such new consequences arise or occur, or otherwise come to Concessionaire's attention, before Owner's issuance of a Change Order relating to the PCO Notice, Concessionaire shall report them to Owner by a supplemental PCO Notice and incorporate them into the Request for Change Order.

**15.2.2.4** Concessionaire shall submit the PCO Notice on a standardized form approved by Owner.

**15.2.2.5** Concessionaire shall assign an exclusive identification number for each PCO Notice, determined by chronological sequencing. The exclusive identification number shall be used on each of the following corresponding documents: (i) Request for Change Order; (ii) supplemental notices and submissions pertaining to the PCO Notice; and (iii) the final Change Order.

**15.2.2.6** If a single Relief Event or Force Majeure Event is a continuing cause of delay or interference, only one PCO Notice will be necessary.

### **15.2.3 Request for Change Order for Relief Event or Force Majeure Event**

**15.2.3.1** Concessionaire shall, within 60 days after the date of the PCO Notice, submit to Owner a Request for Change Order that provides Concessionaire's complete reasoning for any Incremental Costs, Delay Costs or Delay Interest, any extension of time and any other requested relief relating to the Relief Event or Force Majeure Event. The "Request for Change Order" shall be consistent with the PCO Notice and include the following information, to the maximum extent then available:

(a) Full details of the Relief Event or Force Majeure Event, including its nature, the date of its occurrence, its duration (if the Relief Event or Force Majeure Event and its effects have ceased) or estimated duration (if the Relief Event or Force Majeure Event and its effects have not ceased), affected locations, and items of Work affected or necessary Extra Work. Impacts to the O&M Work, if any, shall be stated by Contract Year;

(b) Identification of all pertinent documents and the substance of any oral communications, if any, relating to the Relief Event or Force Majeure Event and the name of the person or persons making such material oral communications;

(c) Identification of the particular provisions of the Contract Documents that are claimed to entitle Concessionaire to the relief sought, and a statement that sets forth the reasons why such provisions entitle Concessionaire to such relief;

(d) Where a request for a Contract Deadline adjustment is made, an assessment regarding feasibility of accelerating the Work to meet the original deadline or to reduce the total delay period and, if acceleration is feasible, an estimate of the cost to accelerate;

(e) If a request for an extension of time, combined with previous extension requests, evidences a delay equal to 10% or more of the Baseline Schedule, and if Owner so requests, evidence that consent of the Lender and Sureties has either been obtained or is not required, either by providing written consent from the Lender and Sureties or a certification from Concessionaire that such consent is not required;

(f) Where a request for an extension of time is made, a time impact analysis that identifies Critical Path impacts (with activity numbers, durations, predecessor and successor activities, resources, costs and reasons why Float is not available), illustrates the effect of schedule changes or disruptions on the Contract Deadlines and complies with the requirements of Part 2A, Section 9.4 of the Technical Provisions. In connection with its time impact analysis, the Request for Change Order shall include:

(i) A Project Schedule update comparing the proposed new schedule to the Baseline Schedule or most recent update to the Project Schedule, as appropriate. The Project Schedule update shall demonstrate to Owner's reasonable satisfaction that the event or circumstance (A) had a specific impact on the Critical Path and either was the sole cause of such impact or is

concurrent with other identified delay(s), and (B) could not have reasonably been avoided by re-sequencing of the Work or other reasonable alternatives;

(ii) Information regarding the estimated costs of accelerating the schedule to reduce or avoid delay to the extent practicable, as well as information regarding the Delay Costs and Delay Interest payable by Owner if the schedule is not accelerated; and

(iii) Such other supporting documentation as may reasonably be required by Owner;

(g) A detailed, itemized estimate of all allowable amounts claimed under Sections 15.3 through 15.7. To the extent appropriate, the estimate shall be presented in terms of the eligible direct costs as described in Exhibit 13A;

(h) For Requests for Change Order submitted during the O&M Period, separate estimates for capital costs, operations and maintenance costs and other allowable costs, meeting the requirements of clause (g). The capital cost estimate shall be based on the assumption that the work will be paid for through progress payments; the operating cost estimate shall be based on the assumption that the work will be paid for through an adjustment to Availability Payments; and the estimate of other costs shall be based on the assumption that payments will be made as costs are incurred. If a Change Order is issued that includes an adjustment to the Availability Payment, the adjustment shall, unless otherwise agreed by the Parties, (i) be allocated among each of the remaining Contract Years, (ii) be stated in current Contract Year dollars and identify the current Contract Year as the base date for escalation, and (iii) be accompanied by a narrative justification regarding the proposed allocation and schedules updating the Availability Payments to current year dollars as well as accounting for the adjustment due to the change in the O&M Work;

(i) The effect of the Relief Event or Force Majeure Event on Concessionaire's ability to perform any of its obligations under this Agreement, including details of the relevant obligations, the effect on each such obligation, and the likely duration of that effect;

(j) An explanation of the measures that Concessionaire has previously taken to prevent, and proposes to undertake to prevent or mitigate the consequences of the Relief Event or Force Majeure Event required under Section 15.11; and

(k) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.

**15.2.3.2** Concessionaire shall submit the Request for Change Order on a standardized form approved by Owner.

**15.2.3.3** If, following issuance of any Request for Change Order, Concessionaire receives or becomes aware of any further information relevant to the Request for Change Order with respect to the Relief Event or Force Majeure Event and/or impact on cost, schedule, Closures or performance of Work, including information on new consequences as described in Section 15.2.2.3, Concessionaire shall submit such further information to Owner as a supplement to its original Change Order documentation as soon as possible but in no event later than the date the Change Order is issued. Concessionaire may not use such a

supplement as the basis for avoiding time limitations applicable to PCO Notices and Requests for Change Order. Owner may request from Concessionaire any further information that Owner may reasonably require, and Concessionaire shall supply the same within a reasonable period after such request.

**15.2.3.4** All Change Orders issued by the Owner shall be in writing, and neither the fact that Concessionaire submits to Owner a Request for Change Order, nor the fact that Owner monitors force account costs or orally discusses the Work or Change Order in connection with such request, shall in any way be construed as an agreement by Owner that a Relief Event or Force Majeure Event has occurred or that the method of computing any compensation or extension of time, as applicable, is appropriate.

#### **15.2.4 Owner Evaluation and Response to Request for Change Order; Negotiations**

**15.2.4.1** Owner will evaluate the information presented in the Request for Change Order and provide a response to Concessionaire within 45 days, either notifying Concessionaire that the Change Order will be issued as requested or advising Concessionaire regarding issues that remain to be resolved. If Concessionaire complies with the notice and information requirements in Sections 15.2.2 and 15.2.3, but Owner does not provide Concessionaire a response within such 45-day period, then, except as otherwise provided in Section 15.2.6, Concessionaire shall have the right to assert a Claim against Owner for the relevant Relief Event or Force Majeure Event and have its rights with respect to such Claim determined according to the Dispute Resolution Procedures.

**15.2.4.2** If Concessionaire timely complies with the notice and information requirements in Sections 15.2.2 and 15.2.3 and Owner provides a response within the 45-day period indicating that there are matters in dispute regarding the Request for Change Order, then the Parties may mutually elect to commence good faith negotiations to determine the matters in dispute, or Concessionaire may elect to assert a Claim against Owner for the matters in dispute and have its rights with respect to such Claim determined according to the Dispute Resolution Procedures.

**15.2.4.3** If Owner or Concessionaire determines, after engaging in good faith negotiations, that continuation of such negotiations is not likely to resolve the matters in dispute, then, except as otherwise provided in Section 15.2.6, either Party may initiate the Dispute Resolution Procedures.

#### **15.2.5 Notice of Non-Concessionaire Caused Disruption**

**15.2.5.1** As a condition precedent to Concessionaire's right to be excused from compliance or obtain relief from Deductions for a Non-Concessionaire Caused Disruption under this Agreement, Concessionaire shall have (a) identified such Non-Concessionaire Caused Disruption in the O&M Daily Report required by Part 3, Section 1.13.3 of the Technical Provisions for each of the days on which the Non-Concessionaire Caused Disruption occurred or was continuing and (b) provided detailed information regarding each such Non-Concessionaire Caused Disruption that occurred during the month in a written notice (the "NCD Notice") delivered concurrently with its Monthly Performance Monitoring Report required by Part 3, Section 1.13.3 of the Technical Provisions.

**15.2.5.2** The NCD Notice shall include information regarding:

- (a) The time of occurrence and duration of the Non-Concessionaire Caused Disruption;
- (b) The effect of the Non-Concessionaire Caused Disruption on Concessionaire's ability to perform any of its obligations under the Agreement, including details of the relevant obligations, the effect on each such obligation, and the likely duration of that effect;
- (c) An explanation of the measures that Concessionaire has previously taken to prevent, and proposes to undertake to mitigate the consequences of the Non-Concessionaire Caused Disruption required under Section 15.11; and
- (d) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance if there was any associated Loss suffered by Concessionaire.

Such information may be provided by cross-referencing relevant provisions in the Monthly Performance Monitoring Report, as appropriate.

**15.2.6 Waiver**

**15.2.6.1** Time is of the essence in Concessionaire's delivery of its PCO Notice, NCD Notice, supplemental PCO Notice and Request for Change Order.

**15.2.6.2** If any PCO Notice is delivered more than 45 days after Concessionaire first discovered (or should have discovered in the exercise of reasonable prudence) the relevant condition or occurrence, Concessionaire shall have no right to make a Claim with respect to the Relief Event or Force Majeure Event for (as applicable) (a) any costs incurred before the date of delivery of the PCO Notice that could have been avoided had the PCO Notice been timely delivered, (b) an extension of time with respect to any delay in a Critical Path which accrued before the date of delivery of the PCO Notice or that could have been avoided had the PCO Notice been timely delivered, or (c) an excuse from compliance during the O&M Period to the extent the noncompliance could have been avoided had the PCO Notice been timely delivered.

**15.2.6.3** If any PCO Notice is delivered later than 90 days after Concessionaire first discovered (or should have discovered in the exercise of reasonable diligence) the relevant condition or occurrence, Concessionaire shall have no right to make any Claim with respect to the Relief Event or Force Majeure Event, unless Concessionaire can show, based on a preponderance of the evidence, that Owner was not materially prejudiced by the lack of notice.

**15.2.6.4** Without limiting Sections 15.2.6.2, 15.2.6.3 or 15.3, if any PCO Notice concerns a Relief Event involving conditions for which inspection and/or investigation by Owner is necessary to verify the conditions before the area is disturbed or circumstances change, Concessionaire shall be deemed to have waived the right to make a Claim with respect to the Relief Event to the extent that Owner is not afforded the opportunity to make such inspection or investigation except in circumstances where emergency action is necessary and precludes such prior inspection or investigation. This requirement applies to the Relief Events described in items (a) through (g) and item (l) of the definition of Relief Event. In addition, Concessionaire shall be deemed to have waived the right to make a Claim with respect to any

impacts of a Relief Event that could have been avoided or mitigated had the PCO Notice been timely delivered.

**15.2.6.5** If Concessionaire fails to identify a Non-Concessionaire Caused Disruption in the relevant O&M Daily Report or if it fails to provide required information regarding a Non-Concessionaire Caused Disruption in its monthly NCD Notice as required under Section 15.2.5, Concessionaire shall have no right to claim excuse from performance or assert entitlement to relief from Deductions with respect to such event.

### **15.2.7 Open Book Basis**

Concessionaire shall share with Owner all data, documents and information, and shall conduct all discussions and negotiations, pertaining to a claimed Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption on an Open Book Basis.

## **15.3 Provisions Relating to Compensation for Certain Relief Events**

### **15.3.1 Differing Site Conditions**

For Relief Events under clause (b) of the Relief Event definition (concerning Differing Site Conditions), subject to Section 6.2, compensation payable by Owner shall be limited as follows:

- (a) Concessionaire shall bear the first \$7,500,000 of aggregate Incremental Costs;
- (b) The Parties shall share equally in the next \$7,500,000 of aggregate Incremental Costs; and
- (c) Owner will be responsible for all aggregate Incremental Costs exceeding \$15,000,000 (to the extent that costs are not fully addressed by clauses (a) and (b) above).

### **15.3.2 Utility-Related Relief Events**

**15.3.2.1 Materially Inaccurate Utility Information.** For Relief Events under clause (e) of the Relief Event definition, compensation payable by Owner shall be limited as follows:

- (a) Concessionaire shall bear the first \$2,750,000 of aggregate Incremental Costs (including payments by Concessionaire to Utility Owners) that would not have been required had the information provided been accurate;
- (b) The Parties shall share equally in the next \$2,750,000 of aggregate Incremental Costs;
- (c) Owner will be responsible for all aggregate Incremental Costs exceeding \$5,500,000 to the extent that costs are not fully addressed by clauses (a) and (b) above; and
- (d) Owner will be responsible for Delay Costs and Delay Interest as provided in Sections 15.6 and 15.7.

In the event that any Utility Owner has agreed to be responsible for costs incurred due to Materially Inaccurate Utility Information, the Parties shall take appropriate steps to seek recovery from the Utility Owner. If Owner receives payment from the Utility Owner on account of costs incurred by Concessionaire, such amounts will be paid to Concessionaire and the amounts reimbursed will not be considered "Incremental Costs" for purposes of this Section 15.3.2.1.

**15.3.2.2 Utility Owner Delays.** For Relief Events under clause (o) of the Relief Event definition, compensation payable by Owner shall be limited as follows:

- (a) Until the \$5,000,000 limit identified in clause (c) below has been reached, Owner will be responsible for Delay Interest as provided in Section 15.7 only with respect to Owner's 50% share of the Utility Owner Delay;
- (b) Concessionaire shall bear the first \$750,000 of aggregate Incremental Costs directly attributable to the Utility Owner Delays;
- (c) The Parties shall share equally in aggregate Incremental Costs in excess of \$750,000 until the total Incremental Costs plus interest on Project Debt directly attributable to Utility Owner Delays (including Delay Interest as well as interest paid by Concessionaire with respect to its 50% share of the Utility Owner Delay) reach \$5,000,000; and
- (d) Once the \$5,000,000 limit identified in clause (c) above has been reached, Owner will be responsible for Delay Interest and all aggregate Incremental Costs incurred directly attributable to the Utility Owner Delays, to the extent that such costs are not fully addressed by clauses (a), (b) and (c) above.

### **15.3.3 Hazardous Materials Relief Events**

**15.3.3.1 Hazardous Materials Remediation During Demolition.** With respect to Relief Events under clause (f) of the Relief Event definition (Hazardous Waste required by applicable Law to be recycled, treated, stored or disposed at a "Designated Facility" as defined in COMAR 26.13.01.03, discovered during or in connection with the demolition of buildings, fixtures, in-ground utilities or other improvements, in the categories for which unit prices are provided in Exhibit 4B, Table 2), the Parties shall share the risk as follows:

- (a) Concessionaire shall bear the first \$595,000 of aggregate costs of such Hazardous Materials Management relating to demolition, determined based on actual quantities and applicable unit prices;
- (b) The Parties shall share equally in the next \$198,333.33 of aggregate costs of such Hazardous Materials Management relating to demolition, determined based on actual quantities and applicable unit prices; and
- (c) Owner will be responsible for costs of such Hazardous Materials Management relating to demolition that are not fully addressed by Sections 15.3.3.1(a) and 15.3.3.1(b), determined based on actual quantities and applicable unit prices.

No compensation will be allowed under this Section 15.3.3.1 for any Work relating to Hazardous Materials Management relating to demolition except to the extent that such Work is

covered by the definition of the relevant unit-priced items. No time extension will be allowed with respect to Relief Events under clause (f) of the Relief Event definition.

**15.3.3.2 Unanticipated Hazardous Materials.** With respect to Relief Events under clause (g) of the Relief Event definition (that is, discovery of certain unanticipated Pre-Existing Hazardous Materials or sudden spills), Owner will be responsible for certain costs of Hazardous Materials Management, determined as follows:

(a) If the Hazardous Materials Relief Event concerns a type of Hazardous Materials for which a unit price is provided but the conditions associated with such Hazardous Materials differ materially from those forming the basis for the original unit pricing, compensation shall be determined based on actual quantities and the specified unit prices, as equitably adjusted to account for the differences in conditions.

(b) If the Hazardous Materials Relief Event concerns Hazardous Materials for which unit prices are not provided, compensation is limited to reasonable Incremental Costs of Hazardous Materials Management directly attributable to such discovery, as documented and justified by Concessionaire in accordance with Exhibit 13A.

**15.3.3.3 General Limitations.** Concessionaire's rights to compensation with respect to Hazardous Materials Relief Events are limited as specified in Section 7.8.2 and this Section 15.3.3. Nothing in this Section 15.3.3 shall affect Owner's and Concessionaire's respective responsibilities and liabilities under Section 7.8.

#### **15.3.4 Non-Discriminatory Change in O&M Standards**

##### **15.3.4.1 Capital Asset Work.**

(a) Subject to Section 15.3.4.1(b), Owner will compensate Concessionaire for Incremental Costs of Work to obtain or modify capital assets (including Renewal Work) required as a direct result of a Non-Discriminatory Change in O&M Standards or change in federal Law and which is either (i) not contemplated by the Operating Plan, Maintenance Plan or Asset Management Plan; or (ii) directed by Owner to be undertaken earlier than contemplated by the Operating Plan, Maintenance Plan or Asset Management Plan; provided that Concessionaire is not be entitled to compensation for costs incurred with respect to Work under clause (i) or acceleration of development under clause (ii) if Concessionaire would be unable to meet the Performance Requirements without such Work.

(b) Incremental Costs under Section 15.3.4.1(a) shall be determined with reference to (i) the actual, reasonable costs incurred and (ii) the avoided Renewal Work (Lifecycle) costs that would have been incurred had the capital asset Work been undertaken as contemplated by the Operating Plan, Maintenance Plan or Asset Management Plan. Concessionaire shall obtain prior written authorization from Owner before undertaking any Work under Section 15.3.4.1(a), and may not seek a Change Order with respect to any Work undertaken without prior written authorization.

##### **15.3.4.2 Incremental Operations Costs.**

(a) If during a Contract Year the total Incremental Costs directly attributable to all Non-Discriminatory Changes in O&M Standards, excluding costs covered by Section 15.3.4.1, exceed \$100,000 (in Base Date dollars), Owner will



compensate Concessionaire for 50% of the excess amount up to \$200,000 (in Base Date dollars) incurred during such year, and will compensate Concessionaire for 100% of Incremental Costs exceeding \$200,000 incurred during such year (in Base Date dollars).

(b) Conversely, if during a Contract Year the net savings to Concessionaire directly attributable to all Non-Discriminatory Changes in O&M Standards exceed \$100,000 (in Base Date dollars), Owner will be entitled to a credit against the Availability Payments equal to 50% of the net savings up to \$200,000 (in Base Date dollars) incurred during such year and 100% of the net savings exceeding \$200,000 incurred during such year.

(c) At the beginning of each Contract Year, the Parties shall escalate and document the revised threshold limits for the risk sharing under this Section 15.3.4.2 based on the General Escalation Factor (ESCG<sub>n</sub>) for that year.

### **15.3.5 Relief Event Damage or Destruction to Project Improvements**

For the Relief Events under clauses (l) and (m) of the Relief Event definition (concerning damage or destruction to Project improvements or assets due to Force Majeure Events), subject to Section 8.10.2.1, and notwithstanding the principle in the Contract Documents that Concessionaire is not entitled to Incremental Costs arising out of, relating to or resulting from Force Majeure Events:

**15.3.5.1 Costs Covered by Builder's Risk Insurance.** During the Design-Build Period, if the event in question is required to be covered by builder's risk insurance under this Agreement, Concessionaire shall bear all costs of repair, restoration or replacement of damage or destruction to the improvements, subject to the right to receive insurance proceeds and the right to receive reimbursement from Owner for reasonable costs of repair, restoration or replacement of the improvements exceeding the required insurance limits (or actual insurance limits, if higher).

**15.3.5.2 Costs Not Covered by Builder's Risk Insurance.** During the Design-Build Period, if the event in question is not required to be covered by builder's risk insurance under this Agreement, Owner will reimburse Concessionaire for reasonable costs of repair, restoration or replacement of the improvements except to the extent that proceeds of other insurance (required under this Agreement or otherwise held or placed by any Concessionaire-Related Entity for the Project) are available to pay such costs.

**15.3.5.3 O&M Damage Deductible.** During the O&M Period, Incremental Costs incurred to repair, restore or replace Project capital assets required as the result of such Relief Events will be reimbursed by Owner only after the O&M Damage Deductible under Section 8.8.3.5(b) has been exceeded. Once the deductible limit is reached, Owner will compensate Concessionaire for eligible Incremental Costs of such repair, restoration or replacement in excess of the deductible limit (excluding such costs covered by insurance, and excluding deductibles and self-insured retention).

### **15.3.6 Compensation for Relief Events in General**

Subject to the limitations in this Article 15 and Exhibit 13A, upon the occurrence of a Relief Event, Concessionaire will be allowed compensation for Incremental Costs incurred. In addition, upon the occurrence of certain types of Relief Events, Concessionaire may be entitled to compensation pursuant to Sections 15.6 through 15.8, and upon the occurrence of Extended

Delays during the Design-Build Period, Concessionaire may be entitled to compensation pursuant to Section 15.9.

#### **15.3.7 Sales Tax on LRVs.**

With respect to a Relief Event under clause (p) of the Relief Event definition (concerning assessment of sales or use tax on LRVs delivered to Concessionaire), compensation payable to Concessionaire shall be limited to the dollar amount of such sales or use tax, without markup, and may be invoiced no earlier than payment to the taxing Governmental Authority by or on behalf of Concessionaire.

### **15.4 Time Extension**

#### **15.4.1 General**

Concessionaire shall be entitled to extension of applicable Contract Deadlines by the period that a Relief Event or Force Majeure Event results in a delay to the Critical Path required to achieve Revenue Service Availability or Final Completion, as applicable, beyond the original Contract Deadline, subject to the limitations set forth in this Article 15 and satisfaction of relevant conditions or requirements set forth in the Contract Documents, including provision of a time impact analysis under Section 15.2.3.1(f) regarding responsibility for concurrent delays and undertaking appropriate measures to mitigate delays under Section 15.11.

#### **15.4.2 Extension of Long Stop Date for Certain TIFIA Loan Terms**

If the credit agreement for the TIFIA Loan fills in the blanks in clause (a)(ii) of the definition of "Development Default" in the TIFIA Term Sheet with a number greater than zero (i.e. if the TIFIA Loan provides that Concessionaire will be in default for failure to achieve "Substantial Completion" earlier than 12 months after the RSA Deadline), then the Long Stop Date shall be extended by the same number of months. For example, if the blank is filled in with the number 3, then the Long Stop Date will be extended by three months.

### **15.5 Excuse from Compliance**

**15.5.1** Except as expressly provided in this Agreement, where a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, the obligations of each Party in accordance with this Agreement which are affected by the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption will be suspended, but only to the extent that, and for so long as the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption prevents that Party from meeting its obligations in accordance with this Agreement.

**15.5.2** A Party's failure to perform its obligations in accordance with this Agreement which are suspended in accordance with Section 15.5.1:

- (a) Will not be a breach of this Agreement, a Concessionaire Default, a Default Termination Event or give rise to a right to terminate other than either Party's right to terminate this Agreement under Section 19.2 for an Extended Delay;
- (b) Subject to Sections 15.5.4 through 15.5.8, will not result in the accrual of Noncompliance Points;
- (c) Subject to Sections 15.5.4 through 15.5.8, will not result in Deductions being applied or OTP Factors being allocated in accordance with Section 15.5.1 in the

case of a suspension as a result of (i) a Relief Event; (ii) an event set out in clause (a), (i), (j) or (l) of the definition of Non-Concessionaire Caused Disruption; or (iii) the initial 48 hours of any Grace Period Event or combination of Grace Period Event(s) during a 30-day period (each a “Relevant Event”);

(d) Subject to Section 15.5.3 and 15.5.6 and notwithstanding the non-accrual of Noncompliance Points under Section 15.5.2(b), during a 30-day period in which a suspension occurs due to a Grace Period Event, following expiration of the Grace Period, Deductions may be applied or OTP Factors may be allocated.

**15.5.3** The total of any Deductions applied under Section 15.5.2(d) and OTP Factors allocated under Section 15.5.6 may not reduce the Availability Payment below the sum of (a) the Partial Service Payment and (b) the value of scheduled principal repayments and interest on Concessionaire’s Project Debt obligations for the relevant period.

**15.5.4** If any Activity Noncompliance Occurrence is directly attributable to a Relevant Event, the obligations of the Concessionaire will be suspended by extending the Response Time, Rectification Time or Application (Maximum Exposure) Time applicable to such Activity Noncompliance Occurrence. If no Response Time, Rectification Time or Application (Maximum Exposure) Time applies to the Activity Noncompliance Occurrence, the corresponding Activity Noncompliance Event will be deferred. The extension or deferral shall be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of the relevant Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption on Concessionaire’s ability to respond to or rectify (as applicable), availability of temporary remedial measures, and need for rapid action due to impact of the Activity Noncompliance Occurrence on safety or traffic movement.

**15.5.5** Subject to Sections 15.5.7 and 15.5.8, if any Operations Availability Noncompliance Event is directly attributable to a Relevant Event, the Concessionaire will not be allocated OTP Factors.

**15.5.6** Subject to Sections 15.5.7 and 15.5.8, if any Operations Availability Noncompliance Event is directly attributable to a Grace Period Event and continues after expiration of the Grace Period, then:

(a) for the first 13 days following the expiration of the Grace Period only 10% of the applicable OTP Factors may be allocated to Concessionaire;

(b) for the next 15 days following the time period under Section 15.5.6(a), only 5% of the applicable OTP Factors may be allocated to Concessionaire; and

(c) if the Operations Availability Noncompliance Event continues beyond the time period under Section 15.5.6(b), a new Operations Availability Noncompliance Event will be deemed to start on the day after expiry of such time period and the Operations Availability Noncompliance Event will be subject to a new Grace Period and OTP Factor reductions in accordance with Sections 15.5.6(a) and (b) until the Operations Availability Noncompliance Event ceases to be directly attributable to the Grace Period Event.

**15.5.7** Concessionaire will not be entitled to a waiver or reduction of OTP Factors under Sections 15.5.5 and 15.5.6, if Concessionaire fails to take appropriate action to rectify the Operations Availability Noncompliance Event and restore Normal Service as quickly as possible and, if applicable, within the times and in the manner stipulated in the approved Operating Plan,

the approved Alternate Service Plan and the requirements of Part 3, Section 3.2 of the Technical Provisions.

**15.5.8** With respect to events covered by business interruption insurance required under this Agreement or otherwise obtained by Concessionaire, the waiver or reduction of OTP Factors under Sections 15.5.5 and 15.5.6 and the benefit of the 48-hour Grace Period shall apply only during the waiting period under said insurance and during any period after the limits of such policy are exhausted.

**15.5.9** Nothing in this Section 15.5 entitles Concessionaire to any relief from its obligations in accordance with this Agreement which are not affected by the Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption.

**15.5.10** Neither Party shall be excused from timely payment of monetary obligations under this Agreement based on the occurrence of a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption.

## **15.6 Reimbursement of Delay Costs**

If the Revenue Service Availability Date is extended due to a Relief Event under items (a) through (g), (h)(1) and item (n) of the definition of Relief Event, Delay Costs (if any) payable to Concessionaire will be determined in accordance with Exhibit 13A. If, after Owner pays Delay Costs, determined in accordance with Exhibit 13A, Concessionaire receives delay in start-up or business interruption insurance proceeds from Insurance Policies required under this Agreement or otherwise obtained by Concessionaire, then Concessionaire shall, by written notice, inform Owner of the amount(s) received, and Owner will be entitled to reimbursement from Concessionaire of the amounts paid by Owner, to the extent of the duplicative recovery.

## **15.7 Reimbursement of Delay Interest**

**15.7.1** The Parties acknowledge that, if the Revenue Service Availability Date is delayed, Concessionaire may be liable to its Lenders for interest accruing during the RSA Extension Period. Except as otherwise provided in Section 15.7.2 or 15.7.3, during any RSA Extension Period, and if Concessionaire's expenses include Delay Interest, Owner will issue a Change Order allowing Concessionaire to be reimbursed for Delay Interest monthly in arrears. No other expenses incurred with respect to the Project Debt will be allowed except in accordance with Section 15.9 concerning Extended Delays. No compensation will be made for loss of anticipated profits or return on equity.

**15.7.2** If the delay is attributable to an event or occurrence for which delay in startup insurance is required under the Contract Documents, Concessionaire shall have no right to be reimbursed for Delay Interest with respect to such event or occurrence, regardless of whether the proceeds available are sufficient to cover the full interest expense incurred during the delay period. In addition, if interest payable during the delay period is recoverable under any other insurance policies required under this Agreement or otherwise obtained by Concessionaire for the Project, Owner's obligation to pay Delay Interest shall be reduced by the insurance proceeds available to make such payments.

**15.7.3** If the Revenue Service Availability Date is concurrently delayed by an event or occurrence that does not qualify as a Relief Event or Force Majeure Event, the RSA Extension Period will not include the period of concurrent delay and therefore Delay Interest will not be reimbursable during the period of concurrent delay.

**15.7.4** If reimbursement of Delay Interest by Owner during the RSA Extension Period would result in a windfall to Concessionaire (for example, if the term of the debt is fixed and as a result of the payment of Delay Interest the obligation will be paid off earlier in the O&M Period than otherwise or if the only Incremental Cost incurred by Concessionaire was the cost of the undrawn lending commitment), Owner shall be entitled to a credit against future Availability Payments to avoid such windfall.

**15.7.5** Notices and requests concerning Delay Interest under this Section 15.7 shall be submitted in accordance with Section 15.2, and Concessionaire shall be required to prove the existence, cause, effect, and timing of any delays due to Relief Events and Force Majeure Events in accordance with Section 15.2.

## **15.8 Return on Equity Invested for Specific Relief Events**

Subject to the limitations in this Article 15 and Exhibit 13A, to the extent that the Critical Path is delayed solely due to an Owner-Caused Delay or delay arising out of a Discriminatory Change in Law (that is, without any concurrent cause), then in addition to compensation otherwise allowed under this Article 15, Concessionaire shall be entitled to compensation to return the Equity IRR to the rate that would have been in effect but for such delay in the Critical Path and resulting delay in commencement of Availability Payments, but in no case greater than the rate of the Original Equity IRR. Such compensation shall be calculated by first updating the most recent Financial Model to account for all other Modifications to the extent not previously incorporated, and then further updating the updated Financial Model to account for the effect of such Owner-Caused Delay or Discriminatory Change in Law. The Availability Payments shall be increased as necessary to eliminate the difference in the Equity IRR between the two updates.

## **15.9 Extended Delays During Design-Build Period**

**15.9.1** The Parties acknowledge that principal payments under the Project Debt are scheduled to commence after the originally-scheduled RSA Deadline, and the Project Debt allows such commencement date to be extended as the RSA Deadline is extended, up to at least 365 days after the originally scheduled RSA Deadline.

**15.9.2** If an Extended Delay occurs, each Party has certain termination rights under Section 19.2. If Concessionaire issues a conditional election to terminate this Agreement due to an Extended Delay, and if Owner elects to continue this Agreement in accordance with Section 19.2, then:

**15.9.2.1** If the RSA Date has not occurred before 366 days after the original RSA Deadline, then for the purposes specified in this Section 15.9.2 only, the RSA Date shall be deemed to be the later of (a) 366 days after the original RSA Deadline or (b) the date on which Revenue Service Availability would have been achieved but for the Critical Path delays caused by Force Majeure and Relief Events for which a time extension is allowable under this Agreement (the "Extended Delay Payment Date").

**15.9.2.2** After the Extended Delay Payment Date, based on an invoice submitted under Section 13.1 identifying principal payments on the Project Debt scheduled to be paid from the RSA Payment, Owner shall pay a portion of the RSA Payment sufficient to enable such principal payments to be made.

**15.9.2.3** In addition, during the period starting on the Extended Delay Payment Date, Owner shall make Availability Payments under this Section 15.9.2 consistent

with the procedures and timing under the Contract Documents, as if Concessionaire were performing the Work during the O&M Period, reduced by an amount equal to Concessionaire's avoided costs (including avoided operations, maintenance and financing costs, if any). Owner acknowledges that Special Lifecycle Payments are not avoidable costs.

**15.9.2.4** Any remaining portion of the RSA Payment will be made in accordance with Section 13.1 following issuance of the Independent Engineer's Certificate of Revenue Service Availability under Section 7.10.2. After the O&M Commencement Date occurs, the final Availability Payment under this Section 15.9.2 will be made, and all subsequent Availability Payments will be made in accordance with Section 13.2 until the end of the Term.

**15.9.2.5** Notwithstanding anything to the contrary in Section 2.4, the Term will end 30 years after the Extended Delay Payment Date.

**15.9.3** Concessionaire acknowledges and agrees that, if the RSA Date is delayed beyond the originally scheduled RSA Deadline due to a delay in the Critical Path that does not constitute grounds for an extension of the RSA Deadline under this Agreement, the RSA Extension Period will not include the period of delay attributable to such inexcusable delays.

**15.9.4** Notices and requests concerning Extended Delays under this Section 15.8 shall be submitted in accordance with Section 15.2, and Concessionaire shall be required to prove the existence, cause, effect, and timing of any delays due to Relief Events and Force Majeure Events in accordance with Section 15.2.

## **15.10 Insurance; Claims Against Third Parties**

**15.10.1** In coordination with Owner and without prejudice to Owner's right to pursue such claims, Concessionaire will be entitled to exercise all rights and remedies available at law to claim for and recover casualty and other damages to the Project from third parties, including the amount of any deductibles under casualty or property insurance policies.

**15.10.2** Requests under this Article 15 (including for Incremental Costs, Delay Costs, Delay Interest, or Availability Payments and debt service under Section 15.9), shall be net of all insurance available to Concessionaire, or deemed to be self-insured by Concessionaire under Section 11.1.4.6, with respect to the Relief Event or Force Majeure Event giving rise to the additional compensation.

**15.10.3** Subject to Sections 15.4 and 15.11, each request for compensation under Section 15.6 or 15.7 shall be net of all delay in start-up or business interruption insurance available to Concessionaire (if any). Proceeds from delay in start-up or business interruption insurance payable to Owner shall not reduce the amount of compensation due Concessionaire under Sections 15.6 and 15.7.

**15.10.4** Except for circumstances governed by Section 11.1.7.2, if (a) a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs that gives rise to a Loss of the type required to be covered by any Insurance Policy and (b) such Insurance Policy is not in full force and effect (with premiums paid) at the time that such Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, then Owner will owe no compensation to Concessionaire under this Article 15 or otherwise. If Insurance Policies that cover such Losses are in full force and effect (with premiums paid) at the time that such Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption occurs, and the proceeds of such Insurance Policies are less than the amount of compensation which would have been paid under this Article 15, then after applicable deductibles under this Article 15 have been applied, if

any, Concessionaire may make a request under this Article 15 for the difference (i.e., the value of the Loss net of the insurance amount paid to Concessionaire and other applicable deductions under this Agreement). In no event will Owner compensate Concessionaire for amounts relating to a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption that, when combined with insurance, would exceed the total amount of compensation that would be paid under any part of this Article 15.

#### **15.11 Mitigation of Consequences of any Relief Event, Force Majeure Event, Non-Concessionaire Caused Disruption**

**15.11.1** Concessionaire shall take all steps reasonably necessary to prevent or mitigate the consequences of any Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, including all steps that would generally be taken in accordance with Good Industry Practice.

**15.11.2** Without limiting the effect of Section 15.11.1, Concessionaire shall not be entitled to make any request for compensation or a time extension for Incremental Costs or Critical Path delays that could have been reasonably avoided through re-sequencing and re-scheduling of the Work and/or other work-around measures (subject to the understanding that the costs of such workaround measures are allowable if justified by equal or greater savings in amounts otherwise payable by Owner for Incremental Costs, Delay Costs and Delay Interest).

**15.11.3** Whenever a Relief Event or Force Majeure Event occurs that results in a delay to the Critical Path, Concessionaire's Request for Change Order shall include an analysis of potential re-sequencing, re-scheduling and other work-around measures and a comparison of the estimated costs of the work-around to the estimated savings in the Compensation Amount that would result. Concessionaire shall cooperate with Owner to identify the re-sequencing, re-scheduling and other work-around measures that will maximize mitigation of costs to Owner taking into account the cost of potential re-sequencing, re-scheduling and other work-around measures. Owner will compensate Concessionaire for the reasonable Incremental Costs of re-sequencing, re-scheduling and other work-around measures identified in accordance with this provision, in the same manner as for Incremental Costs and Delay Costs under Exhibit 13A.

#### **15.12 Limitations on Change Orders**

**15.12.1** Change Orders under this Article 15 shall exclude:

(a) Third party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of Owner in the regular course of business;

(b) Unallowable costs under the following provisions of the federal Contract Cost Principles, 48 CFR § 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical and professional activity costs), 31.205-44 (training and education costs), and 31.205-47 (costs related to legal and other proceedings);

(c) Amounts paid or to be paid to Affiliates in excess of the pricing Concessionaire could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor;

(d) Except as allowed under Exhibit 13A, those costs incurred in investigating, analyzing, asserting, pursuing or enforcing any potential Claim or Dispute, including legal, accounting, financial advisory and technical advisory fees and expenses, and including such costs in connection with preparing PCO Notices, NCD Notices, Requests for Change Order and final documentation of Claims with respect to Relief Events, Force Majeure Events and Non-Concessionaire Caused Disruptions; and

(e) Any amounts covered by insurance required under Exhibit 7A as set out in Section 15.10.

**15.12.2** Change Orders under this Article 15 shall:

(a) Be in writing;

(b) Take into account any savings in costs or time resulting from the Relief Event or Force Majeure Event; and

(c) Be subject to Concessionaire's obligation to mitigate under Section 15.11.

**15.12.3** Notwithstanding anything in the Contract Documents to the contrary, Concessionaire shall not be entitled to submit a claim for Incremental Costs, Delay Costs, Delay Interest, an extension or other relief that (a) could have been reasonably avoided through proper sequencing, scheduling and coordination of the Work in accordance with the Contract Documents or (b) arises out of or relates to Concessionaire's oversight and coordination of the Work between or among Contractors or others in the Project area.

### **15.13 Sole Entitlement; Release of Claims**

**15.13.1** The relief provided under the Contract Documents (whether through this Article 15, Articles 14 and 19 or the Dispute Resolution Procedures) for a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption shall represent Concessionaire's sole right to compensation, extensions of time, excuse from compliance and other relief to Concessionaire from the adverse effects of a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption.

**15.13.2** Nothing in the Technical Provisions shall be construed to create any right of Concessionaire to a claim for additional relief outside of this Article 15 and Articles 14 and 19 and otherwise at law.

**15.13.3** As a condition precedent to Owner's obligation to pay any Compensation Amount, grant an extension of time, excuse compliance or provide any other relief, Concessionaire shall execute a full, unconditional, irrevocable waiver and release, in favor of and in a form reasonably acceptable to Owner, of any other Claims, Losses or rights to relief arising out of such Relief Event, Force Majeure Event, or Non-Concessionaire Caused Disruption that is not the subject of a Dispute.



**15.13.4** Each Change Order shall include the waiver and release required under Section 15.13.3, excluding only such Claims, Losses and rights to relief that are specifically identified as in dispute.

**15.13.5** Concessionaire shall not be entitled to any compensation or damages under this Agreement or at Law from the adverse effects of (a) a Force Majeure Event, except monetary relief available with respect to Force Majeure Events under clauses (l) and (m) of the definition of Relief Event or as otherwise set out under Section 15.5, and (b) a Non-Concessionaire Caused Disruption except as set out under Section 15.5.

#### **15.14 Alternative Arrangements**

Without limiting Owner's step-in rights under this Agreement, during the period of suspension of O&M Work due to occurrence of a Force Majeure Event, Owner may make alternative arrangements for the performance of any suspended obligations, without incurring any liability to Concessionaire.

## **ARTICLE 16. ACTIVITY NONCOMPLIANCE OCCURRENCES, NONCOMPLIANCE EVENTS AND NONCOMPLIANCE POINTS**

### **16.1 Noncompliance Points System**

A Noncompliance Point system will be used to measure Concessionaire performance levels and trigger the remedies stated or referenced in this Article 16, in parallel with the Payment Mechanism. This Article 16 solely pertains to specific remedies available to Owner on account of assessment of Noncompliance Points in conjunction with the occurrence of Noncompliance Events occurring during the O&M Period and does not affect Deductions from Monthly Availability Payments in Exhibit 4D or any other rights of Owner under this Agreement.

### **16.2 Assessment Notification and Cure Process**

#### **16.2.1 Notification Initiated by Concessionaire**

**16.2.1.1** As an integral part of Concessionaire's self-monitoring obligations, Concessionaire shall establish and maintain an electronic database of Activity Noncompliance Occurrences, Activity Noncompliance Events and Operations Availability Noncompliance Events, and shall enter each Activity Noncompliance Occurrence, Activity Noncompliance Event and Operations Availability Noncompliance Event into the database in real time upon discovery. The format and design of the database shall be subject to Owner's approval. At a minimum, the database shall:

- (a) Include a description of each Activity Noncompliance Occurrence, Activity Noncompliance Event and Operations Availability Noncompliance Event in reasonable detail;
- (b) Identify the location of the Activity Noncompliance Occurrence (if applicable);
- (c) Identify the date and time of each Activity Noncompliance Occurrence, Activity Noncompliance Event and Operations Availability Noncompliance Event;
- (d) Identify the applicable Response Time, Rectification Time and Application (Maximum Exposure) Time of the Activity Noncompliance Occurrence, if any, stated in the Activity Noncompliance Occurrence Table;
- (e) Indicate the status of the Activity Noncompliance Occurrence, Activity Noncompliance Event and Operations Availability Noncompliance Event;
- (f) Indicate date and time of Response and/or Rectification for any Activity Noncompliance Occurrence;
- (g) Indicate the Trip related to the Operations Availability Noncompliance Event;
- (h) Include a description of the Operations Availability Noncompliance Event; and

(i) If known, identify any expected exemption under Section 15.5 for each Activity Noncompliance Occurrence, Activity Noncompliance Event and Operations Availability Noncompliance Event.

**16.2.1.2** Concessionaire shall ensure that Owner has electronic access to the database at all times including the ability to enter Activity Noncompliance Occurrences and Noncompliance Events into the electronic database as provided in Section 16.2.1.1. Concessionaire shall retain each entry into the database until at least four years after the date of cure.

**16.2.1.3** Concessionaire shall prepare monthly Performance Monitoring Reports and submit them to Owner. Each Performance Monitoring Report shall include a report of all Activity Noncompliance Occurrences, Activity Noncompliance Events and Operations Availability Noncompliance Events occurring during the preceding month. Owner may require more frequent reports of Activity Noncompliance Events, Activity Noncompliance Events and Operations Availability Noncompliance Events. The monthly Performance Monitoring Report shall include all the same information required in the electronic database and shall identify each Activity Noncompliance Event for which Response and/or Rectification has not yet occurred. The monthly Performance Monitoring Report will also include a report of all Operations Availability Noncompliance Events and corresponding OTP Factors that apply for the month as well as the calculation of the Monthly Operations Performance Factor and all the Daily Operations Performance Factors for the month.

**16.2.1.4** Within a reasonable time after receiving the monthly Performance Monitoring Report (or more frequent report), Owner will deliver to Concessionaire a notice setting forth: (a) for each Activity Noncompliance Occurrence the applicable Response Time, Rectification Time and Application (Maximum Exposure) Time (if any), Owner's determination whether the Activity Noncompliance Occurrence was responded to or rectified (including whether such response or rectification occurred during the applicable Response Time, Rectification Time and Application (Maximum Exposure) Time (if any), and the Noncompliance Points to be assessed with respect to such event; and (b) for each Operations Availability Noncompliance Event, the resulting OTP Factors and the calculation of the DOPF for each day and MOPF for the month and the Noncompliance Points to be assessed with respect to such calculation (a "Notice of Determination").

## **16.2.2 Activity Noncompliance Occurrence Notification Initiated by Owner**

Upon occurrence of any Activity Noncompliance Occurrence that Concessionaire has not already entered into the electronic database, Owner may enter any Activity Noncompliance Occurrence into the database or deliver to Concessionaire a Notice of Determination stating the Activity Noncompliance Occurrence, the applicable Response Time, Rectification Time and Application (Maximum Exposure) Time (if any), Owner's determination whether the Activity Noncompliance Occurrence was responded to or rectified (as applicable) during the applicable Response Time, Rectification Time or Application (Maximum Exposure) Time (if any), and the Noncompliance Points to be assessed with respect to any corresponding Activity Noncompliance Event. Owner may deliver the Notice of Determination via the electronic database, and delivery shall be deemed given upon proper entry of the information into the electronic database.

### **16.2.3 Activity Noncompliance Occurrence Response Time, Rectification Times and Application (Maximum Exposure) Time**

**16.2.3.1** Concessionaire shall respond to each Activity Noncompliance Occurrence by the end of the Response Time (if any) for each such Activity Noncompliance Occurrence.

**16.2.3.2** Concessionaire shall rectify each Activity Noncompliance Occurrence by the end of the Rectification Time (if any) for each such Activity Noncompliance Occurrence.

**16.2.3.3** For each Activity Noncompliance Occurrence identified, Concessionaire's Response Time or Rectification Time (if any) with respect to the Activity Noncompliance Occurrence shall be deemed to start on the date and time Concessionaire first obtained knowledge or had reason to know of the Activity Noncompliance Occurrence regardless of whether Owner has delivered a notice to Concessionaire or entered the Activity Noncompliance Occurrence into the electronic database.

**16.2.3.4** If the Activity Noncompliance Occurrence is not rectified by the end of the Rectification Time:

(a) A new and separate Activity Noncompliance Occurrence will be deemed to have occurred without necessity for further notice;

(b) An additional rectification period equal to the duration of the Application (Maximum Exposure) Time shall apply; and

(c) If the Activity Noncompliance Occurrence is not rectified by the end of the Application (Maximum Exposure) Time, further Deductions shall be applied and Noncompliance Points shall be assessed in accordance with Exhibit 4D.

**16.2.3.5** If the Activity Noncompliance Occurrence is not rectified by the end of the Application (Maximum Exposure) Time, the provisions of Section 16.2.3.4 will apply again until Concessionaire has demonstrated to Owner's reasonable satisfaction the Activity Noncompliance Occurrence has been rectified.

**16.2.3.6** Regardless of whether an event is considered a separate Noncompliance Event for purposes of assessing Noncompliance Points and Deductions, it is considered to be a continuing event for purposes of Owner's step-in rights under Section 17.2.4 and its work suspension rights under Section 17.2.7.

**16.2.3.7** The Application (Maximum Exposure) Time begins at the end of the Rectification Time or any previous Application (Maximum Exposure) Time (as applicable).

**16.2.3.8** For each Activity Noncompliance Occurrence identified which is not responded to or rectified (as applicable), the Noncompliance Points shall first be assessed at the end of the first Response Time or Rectification Time, and shall be assessed again at the end of each subsequent Application (Maximum Exposure) Time, as described in Section 16.2.3.4.

**16.2.3.9** The relevant Rectification Times and Application (Maximum Exposure) Times stated in the Activity Noncompliance Occurrence Table shall be the only rectification period for the Activity Noncompliance Occurrence; and if such Rectification Time or

Application (Maximum Exposure) differs from any cure period set forth in Section 17.1.2 that might otherwise apply to the Activity Noncompliance Occurrence, the Rectification Time or Application (Maximum Exposure) Time (as applicable) stated in the Activity Noncompliance Occurrence Table shall control.

#### **16.2.4 Activity Noncompliance Occurrence Notification of Response or Rectification**

**16.2.4.1** With respect to any Activity Noncompliance Occurrence for which it is being assessed Noncompliance Points, when Concessionaire determines that its Response or Rectification has been completed, Concessionaire shall make an entry in the electronic database that (a) identifies the Activity Noncompliance Occurrence, (b) states that Concessionaire has completed Response or Rectification (as applicable) and (c) briefly describes the applicable Response or Rectification, including any modifications to the Project Management Plan or O&M Management Plan to prevent future similar Activity Noncompliance Occurrences. Concessionaire shall include the same information in the next monthly Performance Monitoring Report.

**16.2.4.2** Owner may inspect the electronic database and any related factual information to verify completion of the Response or Rectification (as applicable). If satisfied that the Activity Noncompliance Occurrence is fully responded to or rectified (as applicable), Owner shall deliver to Concessionaire a certification of the applicable Response or Rectification either by entry into the database or by notice within a reasonable time from the date that Owner has completed its inspection to verify completion of the Response or Rectification.

**16.2.4.3** Owner may reject any Concessionaire database entry regarding Response or Rectification (as applicable) if Owner determines that Concessionaire has not fully responded to or rectified the Activity Noncompliance Occurrence. Upon making this determination, Owner will deliver a notice of rejection to Concessionaire either by entry into the database or by separate notice.

### **16.3 Assessment of Noncompliance Points**

Owner may assess Noncompliance Points in accordance with Exhibit 4D, Part E if a Noncompliance Event has occurred and (a) the electronic database or monthly Performance Monitoring Report indicates a Noncompliance Event has occurred, (b) Owner is notified or otherwise becomes aware of a Noncompliance Event, or (c) Owner serves Notice of Determination under Section 16.2.2. Owner's right to assess such points is subject to the following:

**16.3.1** The date of assessment shall be deemed to be the date of the Trip for an Operations Availability Noncompliance Event and be the date of the end of the first Response Time or Rectification Time (as applicable), and the date of the end of each Application (Maximum Exposure) Time, regardless of the date of the initial Notice of Determination under Section 16.2.2 for an Activity Noncompliance Occurrence.

**16.3.2** Owner will not assess Noncompliance Points under more than one assessment category for any particular Activity Noncompliance Event. The Owner may assess Noncompliance Points for the Activity Noncompliance Event and for any related Operations Availability Noncompliance Event.

**16.3.3** A failure by Concessionaire to keep record of or report to Owner an Activity Noncompliance Occurrence or Noncompliance Event as and when required under

Section 16.2.1.1 or 16.2.1.2 constitutes a separate and distinct failure to perform and shall incur the number of Noncompliance Points (a) in the case of an Activity Noncompliance Occurrence, that would have been occurred had such Activity Noncompliance Occurrence become a Noncompliance Event; and (b) in the case of a Noncompliance Event, that are incurred for such Noncompliance Event. The Noncompliance Points for failure to report are in addition to those incurred as a result of the Activity Noncompliance Occurrence or Noncompliance Event. Where Owner enters an Activity Noncompliance Occurrence or Noncompliance Event into the electronic database or provides notice to Concessionaire under Section 16.2.2, additional Noncompliance Points will not be incurred except where Concessionaire has failed to record or report an Activity Noncompliance Occurrence or Noncompliance Event as and when required under Section 16.2.1.1 or 16.2.1.2.

**16.3.4** The number of points listed in Exhibit 4D, Appendix C, Section 1 for any particular category of Activity Noncompliance Event is the maximum number of Noncompliance Points that may be assessed for each event or circumstance that is an Activity Noncompliance Event. Owner may, but is not obligated to, assess less than the maximum number of Noncompliance Points for any particular Activity or Operations Availability Noncompliance Event.

#### **16.4 Records Regarding Assessment of Noncompliance Points**

Concessionaire shall keep and provide Owner with current records of the number of assessed Noncompliance Points for each Noncompliance Event, the date of each assessment, and the date when the Noncompliance Event is responded to or rectified (as applicable).

#### **16.5 Owner Remedies for Certain Noncompliance Events**

##### **16.5.1 Monetary Deductions**

In addition to Noncompliance Points, Noncompliance Events shall also result in Deductions from Monthly Availability Payments as stated in Exhibit 4D, Part C. Concessionaire acknowledges that damages incurred by Owner due to Concessionaire's failure to comply with the availability and performance standards for which Deductions are allowed under this Agreement would be difficult and impracticable to measure and prove, and that the Deductions allowed constitute reasonable compensation to Owner for such damages.

##### **16.5.2 Increased Oversight**

Owner has the right to increase Oversight as specified in Section 5.5.2 if Concessionaire accrues Noncompliance Points in excess of the amount stated in Section 5.5.2.

##### **16.5.3 Remedial Plan**

Owner may require development and implementation of a Remedial Plan under Section 16.6 under the circumstances specified in Section 16.6.

##### **16.5.4 Owner Step-In Rights**

Owner has certain "step-in" rights under Section 17.2.4 relating to accumulation of Noncompliance Points as specified in Section 17.2.4.

### **16.5.5 Replacement of O&M Contractor**

Subject to applicable cure period and related provisions under any Direct Agreement, if applicable, Owner has the right to require Concessionaire to replace the O&M Contractor under Section 16.8 upon accumulation of Noncompliance Points as specified in Section 16.8.

## **16.6 Remedial Plan Delivery and Implementation**

**16.6.1** Concessionaire acknowledges and agrees that any uncured Concessionaire Default will undermine the confidence and trust essential to the success of the public-private arrangement under this Agreement and will have a material, cumulative adverse impact on the value of this Agreement to Owner. Nevertheless, with respect to certain types of Concessionaire Defaults, Owner will defer exercise of its termination remedy under Section 19.3 so as to allow Concessionaire to take action under this Section 16.6, but Concessionaire acknowledges and agrees that Owner has the right to terminate if Concessionaire fails to take action in accordance with this Section 16.6.

**16.6.2** In order to mitigate such adverse impacts, if:

(a) Concessionaire fails to cure a Remedial Plan Default within the initial cure period for such default specified in Section 17.1.2; or

(b) Concessionaire accumulates (i) 2,400 Noncompliance Points for Operations Availability Noncompliance Events in any one Payment Period, or (ii) 1,440 Noncompliance Points for Activity Noncompliance Events in any one Payment Period, or (iii) a combination of 4,800 Noncompliance Points for all Noncompliance Events over the course of three consecutive Payment Periods (determined on a rolling basis);

then Owner may require Concessionaire to prepare and submit a remedial plan for Owner approval.

**16.6.3** Within 15 days after Concessionaire's receipt of notice from Owner under Section 16.6.2 requiring a Remedial Plan to be submitted, Concessionaire shall prepare a remedial plan, and submit it to Owner for approval. The Remedial Plan shall include a schedule for specific actions to be taken by Concessionaire to improve its performance and shall provide for Concessionaire to take appropriate action to improve Concessionaire's quality management practices, plans and procedures. As a condition to approval by Owner, Concessionaire shall revise the plan to include all remedial actions required by Owner, which may include requirements to revise and restate management plans, to implement changes to organizational and management structure, to undertake enhanced monitoring and inspections, to change Key Personnel and other important personnel, to replace of Contractors, and to deliver security to Owner.

**16.6.4** Following approval of a Remedial Plan by Owner, Concessionaire shall implement all remedial actions required by the plan, with the goals of:

(a) Improving Concessionaire's performance;

(b) Reducing in the next Payment Period the assessed Noncompliance Points under Section 16.3 by at least 50% when compared to the prior Contract Month; and

(c) Ensuring that any Remedial Plan Default will not continue or be repeated.

**16.6.5** Upon Concessionaire's satisfaction of the requirements in Section 16.6.4, (a) the uncured Remedial Plan Default under Section 16.6.2(a) will be cured and (b) with respect to events described under Section 16.6.2(b), Owner will reduce by 25% the number of accumulated Noncompliance Points assessed under Section 16.3 that resulted in the requirement to implement a Remedial Plan. With respect to events described under Section 16.6.2(b), the reduction in accumulated Noncompliance Points will be allocated to the Noncompliance Points that accumulated as a result of the Noncompliance Events that the Remedial Plan has corrected.

**16.6.6** Concessionaire's failure to comply with this Section 16.6 (including delivery of a draft Remedial Plan within the specified time period, making all required revisions to the draft plan, and implementation of remedial actions in accordance with the plan) shall constitute a material Concessionaire Default which Owner may determine is a Default Termination Event under Section 19.3.1 without allowing any additional cure period.

## **16.7 Special Provisions Relating to Owner Step-In**

If Owner exercises a step-in right under Section 17.2.4 with respect to any portion of the Project (the "affected Project portion"), the following provisions shall apply.

**16.7.1** While Owner is in control of the Work for the affected Project portion (the "step-in or suspension period"), neither the condition of the affected Project portion nor the performance of or failure to perform Work respecting the affected Project portion shall result in a new Noncompliance Event, assessment of new Noncompliance Points or new monetary deductions under Section 16.5.

**16.7.2** All Response Times, Rectification Times and Application (Maximum Exposure) Times that are available for Noncompliance Events respecting the affected Project portion and that arose previously and remain pending as of the date the step-in or suspension period commences shall be deemed forfeited by Concessionaire and Concessionaire shall have no right to Respond or Rectify.

**16.7.3** During the step-in or suspension period for the affected Project portion, Sections 16.2.3.4 through 16.2.3.8 shall not be applied to Noncompliance Events that arose before the date such step-in or suspension period commences.

**16.7.4** The step-in or suspension period for the affected Project portion shall be disregarded for purposes of accumulating Noncompliance Points and determining the existence of any Remedial Plan Default. Accordingly, such step-in or suspension period shall not be included in counting the consecutive time periods in Exhibit 4D and time periods shall be treated consecutive notwithstanding an intervening step-in or suspension period.

**16.7.5** No Deductions shall be applied for Noncompliance Events which first occur in the affected Project portion during the step-in or suspension period.

## **16.8 Rectification by Replacement of O&M Contractor**

**16.8.1** If at any time Concessionaire accrues 14,040 or more Noncompliance Points over the course of six consecutive Payment Periods (determined on a rolling basis), then Owner may, by notice (a "Replacement Notice") to Concessionaire, require Concessionaire to replace



the O&M Contractor. Owner's exercise of such right is in addition to all other rights and remedies available to Owner under the Contract Documents, and shall not be grounds for any Claim by Concessionaire against Owner.

**16.8.2** Upon receiving notice from Owner that Owner has exercised its rights under this Section 16.8, Concessionaire shall replace the O&M Contractor, at Concessionaire's risk and with approval from Lender(s) (if required under any (a) Security Document(s) (b) Funding Agreement relating to the TIFIA Loan, (c) other senior Funding Agreement, (d) senior loan indenture or (e) other similar document), and cause the replacement O&M Contractor, as approved by Owner and by Lender(s), if required, to start Work within 60 days of such notice. Owner shall have the right to approve or disapprove use of any proposed replacement O&M Contractor before the commencement of its Work. For purposes of determining whether accumulated points constitute an Event of Default under Section 17.1.1(t), 17.1.1(u) or 17.1.1(v), upon start of work by the replacement O&M Contractor, the total accumulated points associated with O&M Work performed by the departing O&M Contractor, as determined by Owner, will automatically be reduced by 50%.

**16.8.3** If Owner provides such notice to Concessionaire, then Concessionaire (together with the replacement O&M Contractor) shall prepare and submit a remedial plan in accordance with Section 16.6.2.

## **16.9 Resolution of Disputes Regarding Noncompliance Points**

**16.9.1** Concessionaire may object to the assessment of Noncompliance Points or the starting point for or duration of the Response Time, Rectification Time or Application (Maximum Exposure) Time (as applicable) respecting any Activity Noncompliance Event or occurrence and duration of any Operations Availability Noncompliance Event by delivering to Owner notice of such objection within five days after Owner delivers its Notice of Determination.

**16.9.2** Concessionaire may object to Owner's rejection of any certification of completion of Response or Rectification (as applicable) given under Section 16.2.4.3 by delivering to Owner notice of such objection within 15 days after Owner delivers its notice of rejection.

**16.9.3** If for any reason Concessionaire fails to deliver its notice of objection within the applicable time period, Concessionaire shall be deemed to have accepted the statements and determinations in the applicable notice, and shall be forever barred from challenging them.

**16.9.4** If Concessionaire gives timely notice of objection and the Parties are unable to reach agreement on any matter in dispute within 10 days of such objection, either Party may refer the matter within seven days for resolution under the Dispute Resolution Procedures.

**16.9.5** In the case of any Dispute as to the number of Noncompliance Points to assign for Activity Noncompliance Events, the sole issue for decision shall be how many Noncompliance Points should be assigned in comparison with the number of Noncompliance Points in the Activity Noncompliance Occurrence Table for Activity Noncompliance Events of equivalent severity.

**16.9.6** Pending the resolution of any Dispute arising under this Section 16.9, the provisions of this Article 16 shall take effect as if the matter were not in dispute. If the final decision regarding the Dispute is that (a) the Noncompliance Points should not have been assessed, (b) the number of Noncompliance Points must be adjusted, (c) the starting point or

duration of the cure period must be adjusted, or (d) a Noncompliance Event has been cured, then the respective adjustments to these elements shall be made.

## ARTICLE 17. DEFAULT; REMEDIES

### 17.1 Default by Concessionaire; Cure Periods

#### 17.1.1 Concessionaire Default

Subject to Section 15.5.10, Concessionaire shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "Concessionaire Default"):

(a) Subject to Sections 4.4.6 and 19.6.1, Concessionaire fails to achieve Financial Close by the Financial Close Deadline;

(b) Concessionaire fails to commence Work promptly following Financial Close or to diligently prosecute the Work to completion in accordance with the Contract Documents;

(c) Concessionaire abandons all or a material part of the Project, which abandonment is deemed to occur if (i) Concessionaire demonstrates through statements, acts or omissions an intent not to continue, for any reason other than a Relief Event or Force Majeure Event that materially impairs Concessionaire's ability to continue, to design, construct, operate or maintain all or a material part of the Project or (ii) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event or Force Majeure Event) on the Project or a material part thereof is performed for a continuous period of more than 45 days unless due to Concessionaire's compliance with an Owner suspension order issued under this Agreement;

(d) Concessionaire fails to achieve (i) Revenue Service Availability by the Long Stop Date, or (ii) Final Completion by the Final Completion Deadline;

(e) Concessionaire (i) fails to make any payment owing to Owner under the Contract Documents when due, (ii) fails to collect, deposit and account for fare revenues as required by the Contract Documents, or (iii) fails to deposit other funds into any custodial account, trust account or other reserve or account as required by the Contract Documents;

(f) Subject to Section 21.3, (i) any representation or warranty in the Contract Documents, or SOQ (which representations and warranties of Concessionaire are incorporated into the Proposal explicitly or by reference) made by Concessionaire is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made, or (ii) any certificate, schedule, report, instrument or other document delivered by or on behalf of Concessionaire to Owner under the Contract Documents is false in any material respect, materially misleading or inaccurate in any material respect when made or omits material information when made;

(g) Subject to Section 11.1.7, Concessionaire fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other payment or performance security as required under the Contract Documents for the benefit of relevant parties, or Concessionaire fails to comply with any requirement of the Contract Documents pertaining to the amount, terms or coverage of the insurance or security or

fails to pay the associated premiums, deductibles, retain self-insured retentions, co-insurance or any other such amounts as and when due;

(h) (i) Concessionaire makes, attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of the Contract Documents, the Project or Concessionaire's Interest in violation of the limitations on assignment or transfer under this Agreement, (ii) there occurs an Equity Transfer or a Change of Ownership not permitted under this Agreement, or (iii) any other violation of the limitations on assignment or transfer under this Agreement occurs;

(i) Unless excused due to occurrence of a Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, Concessionaire fails to timely observe or perform, or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by Concessionaire under the Contract Documents, including failure to pay for or perform the Design Work, Construction Work, O&M Work or any portion thereof in accordance with the Contract Documents, provided that any failure to provide Option LRVs by the applicable deadline and any failure that constitutes a Noncompliance Event or Activity Noncompliance Occurrence is not considered a default under this paragraph (i) although such failure may become an Event of Default in accordance with paragraph (k), (t), (u) or (v) below;

(j) Unless continued performance of this Agreement is permitted under the terms of a debarment agreement with the State, and after any rights of appeal have been exhausted, if Concessionaire, any Equity Member, any Controlling Affiliate of Concessionaire, any Prime Contractor or LRV Supplier (i) is determined disqualified, suspended or debarred, or otherwise excluded from bidding, proposing or contracting with a federal or a State department or agency or (ii) has not dismissed any Subcontractor whose work is not substantially complete and who is determined disqualified, suspended or debarred, or otherwise excluded from bidding, or proposing or contracting with a federal or a State department or agency.

(k) If a Remedial Plan is required under the terms of Section 16.6.2, (i) Concessionaire fails to timely deliver to Owner a Remedial Plan meeting the requirements of said section or (ii) Concessionaire fails to fully comply with the schedule or specific elements of, or actions required under, the approved Remedial Plan;

(l) Concessionaire fails to comply with Owner's order to suspend Work issued in accordance with Section 9.7.4, 11.1.2.4, 17.2.3.4 or 17.2.7 within the time reasonably allowed in such order;

(m) Concessionaire commences a voluntary case seeking liquidation, reorganization or other relief with respect to Concessionaire or Concessionaire's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of its, or any substantial part of its, assets; becomes insolvent, or generally does not pay its debts as they become due; provides notice of its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

(n) An involuntary case is commenced against Concessionaire seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with

creditors, a readjustment of debts or other relief with respect to such Concessionaire or Concessionaire's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by it in good faith or shall remain undismissed and unstayed for a period of 60 days;

(o) In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Concessionaire or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law, this Agreement or any of the other Contract Documents, is rejected, including a rejection under 11 U.S.C. Section 365 or any successor statute;

(p) Any voluntary or involuntary case or other act or event described in clause (m) or (n) shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (i) any Equity Member, partner or joint venture member of Concessionaire (unless said Person has fully met all financial obligations owing to Concessionaire in the form of a Committed Investment and payments or transfers of money or property previously made to or for the benefit of Concessionaire are not subject to Sections 544, 547, 548, or 550 of the Bankruptcy Code or any similar applicable state or federal law respecting the avoidance or recovery of preferences or fraudulent transfers, including any applicable enactment of the Uniform Fraudulent Transfer Act), (ii) any Equity Member, partner or joint venture member of Concessionaire for whom transfer of ownership or management authority would constitute a Change of Ownership, or (iii) any Guarantor of material Concessionaire obligations to Owner under the Contract Documents, unless another Guarantor of the same material Concessionaire obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty;

(q) Concessionaire draws against any custodial account, trust account, allowance or other reserve or account in violation of the Contract Documents or makes a false or materially misleading representation in connection with a draw against any such account, allowance or reserve;

(r) Concessionaire fails to comply with any applicable Governmental Approval or Law;

(s) Any use of the Project that violates requirements of applicable Governmental Approvals or Laws or otherwise is not permitted under the Contract Documents;

(t) Concessionaire receives a total of 14,640 or more Noncompliance Points over the course of three consecutive Payment Periods (determined on a rolling basis);

(u) Concessionaire receives a total of 24,240 or more Noncompliance Points over the course of six consecutive Payment Periods (determined on a rolling basis); or

(v) Concessionaire receives a total of 33,720 or more Noncompliance Points over the course of 12 consecutive Payment Periods (determined on a rolling basis).

### **17.1.2 Cure Periods**

The following list identifies Concessionaire's rights to receive notice and opportunity to cure before Owner may exercise its right to terminate this Agreement, and identifies other Concessionaire Defaults that are not subject to cure:

**17.1.2.1** Respecting a Concessionaire Default under Section 17.1.1(k)(i), a cure period of 10 days after Owner delivers to Concessionaire Notice of Concessionaire Default;

**17.1.2.2** Respecting a Concessionaire Default under Section 17.1.1(b), Section 17.1.1(c), 17.1.1(e), 17.1.1(g), 17.1.1(h), 17.1.1(q), 17.1.1(j)(ii), 17.1.1(k)(ii), 17.1.1(r) or 17.1.1(s), a cure period of 30 days after Owner delivers to Concessionaire Notice of Concessionaire Default; provided that Owner may effect cure, at Concessionaire's expense, if a Concessionaire Default under Section 17.1.1(g) continues beyond five days after such notice is delivered;

**17.1.2.3** Respecting a Concessionaire Default under Section 17.1.1(f) or 17.1.1(i), a cure period of 30 days after Owner delivers to Concessionaire Notice of Concessionaire Default; provided that

(a) if the nature of such Concessionaire Default is such that the cure cannot with diligence be completed within such time period and Concessionaire has commenced meaningful steps to cure immediately after receiving the default notice, Concessionaire shall have such additional period of time, up to a maximum cure period of 150 days, as is reasonably necessary to diligently effect cure; and

(b) as to Section 17.1.1(f), cure will be regarded as complete when the adverse effects of the breach are cured;

**17.1.2.4** Respecting a Concessionaire Default under Section 17.1.1(m), 17.1.1(n) or 17.1.1(o), no cure period is allowed, and, except for any notices to Lenders contemplated under any executed Direct Agreement, there shall be no right to notice of such Concessionaire Default;

**17.1.2.5** Respecting a Concessionaire Default under Section 17.1.1(a), 17.1.1(d), 17.1.1(l), or 17.1.1(t) through 17.1.1(v), no cure period is allowed;

**17.1.2.6** Respecting a Concessionaire Default under Section 17.1.1(p)(i) or (iii), a period of 10 days from the date of Concessionaire Default to commence diligent efforts to cure, and 30 days to effect cure of such default by (a) providing a letter of credit or payment to Owner or the Collateral Agent for the benefit of the Project, in the amount of, as applicable, (i) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of Concessionaire or (ii) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor, or (b) providing a replacement Equity Member or Guarantor, as applicable, satisfactory to Owner; and

**17.1.2.7** Respecting any potential Concessionaire Default under Section 17.1.1(j), Concessionaire shall take appropriate steps to obtain, or to require the

affected Equity Member, Controlling Affiliate or Contractor to obtain, a debarment agreement with the State in connection with any pending action for disqualification, suspension or debarment or any pending agreement for voluntary exclusion from bidding, proposing or contracting. If a debarment agreement is obtained that permits continued performance under this Agreement, then the disqualification, suspension, debarment or agreement for exclusion shall not be considered a Concessionaire Default. If such a debarment agreement is not obtained, Concessionaire shall have the following cure rights:

(a) With respect to a Concessionaire Default under Section 17.1.1(j)(i) involving Concessionaire, Concessionaire shall have 60 days after the effective date of the disqualification, suspension, debarment or agreement for exclusion to (i) obtain a debarment agreement allowing continued performance or (ii) otherwise cure the default;

(b) With respect to a Concessionaire Default under Section 17.1.1(j)(i) involving an Equity Member or Controlling Affiliate, Concessionaire shall have 60 days after the effective date of the disqualification, suspension, debarment or agreement for exclusion (i) to remove the affected Equity Member or Controlling Affiliate and obtain Owner's approval of the Change of Ownership to the extent required under Article 22, (ii) to obtain a debarment agreement allowing continued performance or (iii) otherwise cure the default; and

(c) With respect to a Concessionaire Default under Section 17.1.1(j)(i) involving a Prime Contractor or LRV Supplier, Concessionaire shall have 60 days after the effective date of the disqualification, suspension, debarment or agreement for exclusion to obtain a debarment agreement allowing continued performance or otherwise cure the default. If Concessionaire is unable to obtain a debarment agreement or otherwise cure the default within such 60-day period, it shall have an additional period of time, up to a maximum cure period of 150 days (for Contractors other than the LRV Supplier) or up to a maximum cure period of two years (for the LRV Supplier), to cure the default by (i) removing the affected Contractor from the Project and (ii) obtaining Owner's approval of any replacement Contractor or plan to self-perform the Work to the extent required under Section 9.3.1 or 9.10.

### **17.1.3 Default Relating to Noncompliance Events with Deduction Remedy**

Notwithstanding anything to the contrary in this Article 17, if a Noncompliance Event occurs for which Owner is entitled to assess Deductions under Exhibit 4D, Owner will not declare a default with respect to such Noncompliance Event; provided that this limitation shall not affect:

(a) Owner's right to declare a default under Section 17.1.1(t), 17.1.1(u) or 17.1.1(v) even though Owner has the right to make Deductions relating to the same Noncompliance Events for which Noncompliance Points are assessed; and

(b) Owner's right to declare a default for any other Concessionaire Default for which Owner is not entitled to Deductions under Exhibit 4D.

## **17.2 Owner Remedies for Concessionaire Default**

### **17.2.1 Termination**

In the event of a Concessionaire Default under Section 17.1.1(a), Owner may terminate this Agreement as provided in Section 19.6. In the event of a Concessionaire Default that is or becomes a Default Termination Event under Section 19.3.1, Owner may terminate this Agreement as provided in Section 19.3. In addition to the other rights afforded to Owner under this Agreement, such termination under Section 19.3.1 shall automatically terminate all of Concessionaire's rights under Article 2, whereupon the Parties shall proceed in accordance with Section 19.7.

### **17.2.2 Immediate Owner Entry and Cure of Wrongful Use**

Without notice and without awaiting lapse of the period to cure, in the event of any Concessionaire Default under Section 17.1.1(s) (wrongful use of Project), Owner may enter and take control of the relevant portion of the Project to restore the permitted uses and reopen and continue traffic operations for the benefit of the public, until such breach is cured or Owner terminates this Agreement. Concessionaire shall pay to Owner on demand Owner's Recoverable Costs in connection with such action, which payment will be reimbursed by Owner if a determination is ultimately made that no Concessionaire Default occurred, promptly following such a determination. So long as Owner undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a Concessionaire Default, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose Owner to any liability to Concessionaire, other than the reimbursement obligation described above, and shall not entitle Concessionaire to any other remedy except if Owner's action constitutes gross negligence, recklessness or willful misconduct. Concessionaire acknowledges that Owner has a high priority, paramount public interest in maintaining the authorized uses of the Project and continuous public access to the Project. Owner's good faith determination that such action is needed shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Owner will promptly relinquish control and possession of the relevant portion of the Project to Concessionaire once Owner determines that such Concessionaire Default has been cured.

### **17.2.3 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance**

**17.2.3.1** If at any time Concessionaire or its Surety fails to meet any Safety Standard or timely perform Safety Compliance or if Owner and Concessionaire cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to Owner, Owner may undertake or direct Concessionaire to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by Owner or with the Safety Compliance Order. If at any time a condition or deficiency of the Project violates any Law respecting health, safety or right of use and access, including the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 *et seq.*, and regulations of the United States Occupational Safety and Health Administration (OSHA), Owner may take any immediate corrective actions required.

**17.2.3.2** Subject to Section 17.2.3.3, to the extent that any work done under Section 17.2.3.1 is undertaken by Owner and is reasonably necessary to comply with Safety Standards, perform validly issued Safety Compliance Orders or correct a violation of Law respecting health, safety or right of use and access, Concessionaire shall pay to Owner on



demand the costs of such work including Owner's Recoverable Costs in connection with such work, and Owner (whether it undertakes the work or has directed Concessionaire to undertake the work) shall have no obligation or liability to compensate Concessionaire for any Losses Concessionaire suffers or incurs arising from, resulting to or resulting from such work.

**17.2.3.3** To the extent that Owner requires Concessionaire to perform Work under Section 17.2.3.1 that is not reasonably necessary to comply with Safety Standards, perform validly issued Safety Compliance Orders or correct a violation of Law respecting health, safety or right of use and access, such requirement shall be considered an Owner Change, and Concessionaire's obligation to pay Owner's Recoverable Costs shall not include Owner's costs relating to the Owner Change.

**17.2.3.4** Notwithstanding anything to the contrary contained in this Agreement and without limiting Owner's other rights and remedies under this Agreement, if, in the good faith judgment of Owner, (a) Concessionaire has failed to meet any Safety Standards or perform Safety Compliance and the failure results in an Emergency or danger to persons or property, and (b) Concessionaire is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger, Owner may without notice and without awaiting lapse of the period to cure any breach, (i) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Concessionaire shall pay to Owner on demand the cost of such action, including Owner's Recoverable Costs, or (ii) suspend Construction Work and/or close or cause to be closed any and all portions of Project affected by the Emergency or danger.

**17.2.3.5** So long as Owner undertakes any action under Section 17.2.3.4 in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose Owner to any liability to Concessionaire and shall not entitle Concessionaire to any other remedy, except if Owner's action was undertaken in bad faith or constitutes gross negligence, recklessness or willful misconduct.

**17.2.3.6** Concessionaire acknowledges that Owner has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent and connecting areas. Owner's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by Owner, Owner will allow the Construction Work to continue or such portions of the Project to reopen, as applicable.

## **17.2.4 Owner Step-in Rights**

**17.2.4.1** In accordance with this Section 17.2.4, but subject to the terms of any Direct Agreement, if Concessionaire has not fully and completely cured a Concessionaire Default by the expiration of any cure period, Owner may pay and perform all or any portion of Concessionaire's obligations (a) under the Contract Documents that are the subject of such Concessionaire Default and (b) under any other then-existing breaches or failures to perform for which Concessionaire received prior notice from Owner but has not commenced or does not continue diligent efforts to cure.

**17.2.4.2** Owner may, to the extent reasonably required for or incident to curing Concessionaire Default or such other breaches or failures to perform:

- such Work;
- (a) Perform or attempt to perform, or caused to be performed,
- Project;
- (b) Employ security guards and other safeguards to protect the
- (c) Spend such sums as Owner deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such Work, without obligation or liability to Concessionaire or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment;
- (d) In accordance with Section 17.2.6, draw on and use proceeds from the Performance Security and any other available security or source of funds available to Concessionaire for the purposes set forth in this Section 17.2.4.2 including amounts held in an operating account, to the extent such instruments provide recourse to pay such sums, provided Owner's right to access amounts held in an operating account shall not include a security interest in such funds nor shall the exercise of such right by Owner interfere with the right of the Lenders, if any, under the Security Documents and the Direct Agreement to access such funds;
- (e) Execute all applications, certificates and other documents as may be required;
- (f) Make decisions respecting, assume control over and continue Work as may be reasonably required;
- (g) Modify or terminate any contractual arrangements in Concessionaire's Contracts in Owner's discretion, without liability for termination fees, costs or other charges in accordance with the terms of those Contracts, including the requirements for each Contract listed in Section 9.3.2;
- (h) Meet with, coordinate with, direct and instruct Contractors and Suppliers, process invoices and applications for payment from Contractors and Suppliers, pay Contractors and Suppliers, and resolve claims of Contractors, Subcontractors and suppliers;
- (i) Take any and all other actions it may consider necessary to effect cure and perform the Work; and
- (j) Prosecute and defend any action or proceeding incident to the Work.

**17.2.4.3** Concessionaire shall reimburse Owner on demand for its Recoverable Costs incurred in connection with the performance of any act or Work authorized by this Section 17.2.4.

**17.2.4.4** In addition to its continuing ownership of the Project ROW and rights to have access to the Site throughout the Term, including the rights described in Section 5.6, Owner and its Authorized Representatives, contractors, subcontractors, vendors and employees shall have the right to enter onto all Project-Specific Locations, exercisable at any time or times without notice, for the purpose of carrying out Owner's step-in rights under

Section 17.2.2 and this Section 17.2.4. Concessionaire grants Owner a perpetual, non-rescindable right of entry onto the Project-Specific Locations for such purpose.

**17.2.4.5** If Owner exercises any right to pay or perform under this Section 17.2.4, it nevertheless shall have no liability to Concessionaire for the sufficiency, adequacy or quality of any such payment or performance, or for any effect of such payment or performance on the Work or the Project, unless caused by the gross negligence, recklessness or willful misconduct of Owner. Owner and its Authorized Representatives, contractors, subcontractors, vendors and employees shall have no liability to Concessionaire for any inconvenience or disturbance arising out of any entry onto the Site or Project-Specific Locations as contemplated by Section 17.2.2 or 17.2.4, provided that the foregoing shall not absolve any Person of liability as a matter of law for its gross negligence, recklessness or willful misconduct.

**17.2.4.6** Owner's rights under this Section 17.2.4 (but not Owner's rights under Section 17.2.2 regarding Owner's immediate right of entry and right to cure wrongful use of the Project) are subject to the right of any Surety to assume performance and completion of all bonded work under a performance bond issued as Performance Security.

**17.2.4.7** In the case of a Concessionaire Default which would either then or, following the applicable grace period or the giving of notice or both, constitute a Default Termination Event enabling Owner to terminate or suspend its obligations under this Agreement, Owner's rights under this Section 17.2.4 are subject to Lender rights to cure under any Direct Agreement between Owner and such Lender. Subject to the terms of the Direct Agreement, Owner may nevertheless continue exercise of its step-in rights until, under the terms of any such Direct Agreement then in effect, the Lender obtains possession and control and notifies Owner that it stands ready to commence good faith, diligent curative action. In the case of any other Concessionaire Default, Owner's rights under this Section 17.2.4 are subject to the exercise of step-in rights or other cure rights (not involving step-in) by the Collateral Agent under the Direct Agreement (pursuant to senior Security Documents, which includes liens securing the TIFIA Loan), provided that the Collateral Agent (a) delivers to Owner notice of the Collateral Agent's decision to exercise step-in rights, and commences the good faith, diligent exercise of such step-in rights, within the applicable cure period, and (b) continues such good faith, diligent exercise of remedies until Concessionaire Default is fully and completely cured, in each case, subject to Collateral Agent's decision to cure in lieu of stepping in with respect to certain Concessionaire Defaults, under the terms and subject to the conditions of the Direct Agreement.

**17.2.4.8** If Owner takes action described in this Section 17.2.4 and it is later finally determined that Owner lacked the right to do so because there did not occur a Concessionaire Default or because Concessionaire had previously fully cured the default in accordance with this Agreement, then Owner's action shall be treated as an Owner Change.

**17.2.4.9** This Section 17.2.4 also applies in the event that Concessionaire is assessed (a) 3,600 Noncompliance Points for Operations Availability Noncompliance Events in any one Payment Period, or (b) 1920 Noncompliance Points for Activity Noncompliance Events in any one Payment Period, or (c) a combination of 7,200 Noncompliance Points for any Noncompliance Events over the course of three consecutive Payment Periods (determined on a rolling basis). In any such event, the term "cure" as used in this Section 17.2.4 shall be construed to include "response" and "rectification" and the term "cure period" shall be construed to include "Response Time" and "Rectification Time".

### **17.2.5 Damages; Offset**

**17.2.5.1** Except as limited by Owner's agreement to liquidate certain damages as specified in the Contract Documents, and subject to the limitations in Section 17.6, Owner shall be entitled to recover any and all damages available at law on account of the occurrence of a Concessionaire Default. Concessionaire shall owe any such damages that accrue after the occurrence of Concessionaire Default regardless of when Notice of Concessionaire Default is given or whether Concessionaire Default is subsequently cured.

**17.2.5.2** Where this Agreement is not terminated, the damages recoverable by Owner under Section 17.2.5.1 include (a) costs Owner incurs to complete the D&C Work in excess of unpaid amounts owing for such Work by Owner under this Agreement, (b) compensation and reimbursements due but unpaid to Owner under the Contract Documents, (c) costs to remedy any defective part of the Work, (d) costs, premiums, brokers' commissions, charges or other expenses incurred by Owner arising out of, relating to or resulting from such Concessionaire Default, and (e) costs to rectify any breach or failure to perform by Concessionaire and/or to bring the condition of the Project to that required by the Contract Documents.

**17.2.5.3** Where this Agreement is terminated, the damages recoverable by Owner under Section 17.2.5.1 include the present value of (a) any compensation and reimbursements due but unpaid to Owner under the Contract Documents on or before the Early Termination Date, (b) actual and projected costs to remedy any defective part of the Work, (c) actual and projected costs to rectify any breach or failure to perform by Concessionaire and/or to bring the condition of the Project to the standard it would have been in if Concessionaire had complied with its obligations to carry out and complete the Work in accordance with the Contract Documents, (d) actual and projected costs to Owner to terminate, take over the Project, re-procure and replace Concessionaire, (e) actual and projected delay costs, (f) actual and projected increases in costs to Owner to complete the Project if not completed as of the Early Termination Date, and (g) actual and projected increases in costs to Owner to operate and maintain the Project over the balance of the Term (as if termination had not occurred) following the Early Termination Date.

**17.2.5.4** Damages owed to Owner under this Section 17.2.5 shall bear interest at the Late Payment Rate from and after the date any amount becomes due to Owner until the date paid.

**17.2.5.5** Owner may deduct and offset any damages, or other amounts, owing to it under the Contract Documents from and against any amounts Owner may owe to Concessionaire, excluding the Special Lifecycle Payments.

**17.2.5.6** Without limiting Section 17.2.5.5, but excluding Special Lifecycle Payments:

(a) Periodic payments owing by Owner under Section 13.1 are subject to deduction and offset for the amount of any damages attributable to Concessionaire (including damages attributable to any Concessionaire Default that concerns the D&C Work and is the subject of a notice delivered to Concessionaire before the date such payments are owing); and

(b) The Availability Payments are subject to deduction and offset for the amount of any damages attributable to Concessionaire (including damages

attributable to any Concessionaire Default), provided that in certain cases damages are liquidated by the Deductions under Exhibit 4D.

**17.2.5.7** Subject to Section 17.2.5.5, if the amount of damages owing to Owner from Concessionaire is not liquidated or known with certainty at the time the payment is due, Owner may deduct and offset up to 105% of the amount it reasonably estimates will be due, in which case the Parties shall adjust such deduction or offset when the amount of damages owing to Owner becomes known with certainty, with interest at the Late Payment Rate payable by Owner on excess amounts withheld and interest at the same rate payable by Concessionaire on any shortfall.

**17.2.5.8** Subject to Section 17.2.5.5, Owner's right of offset includes all amounts paid by Owner to satisfy, discharge and defend against any claim of lien, stop notice, equitable lien or any other demand for payment or security made or filed with Owner, Owner's property or the Project by any Person claiming that any Concessionaire-Related Entity has failed to perform its contractual obligations or to make payment for any obligation incurred for or in connection with the Work, provided that no such offset shall be made if Concessionaire has filed surety bonds fully releasing Owner and Owner's property from such claim or lien under applicable Law.

## **17.2.6 Performance Security**

**17.2.6.1** Subject to Sections 17.2.6.2 and 17.2.6.4, upon the occurrence of a Concessionaire Default and expiration, without full and complete cure, of the applicable cure period, if any, under Section 17.1.2, without waiving or releasing Concessionaire from any obligations or limiting other remedies that may be available to Owner, Owner may make demand upon and enforce any bond provided as Performance Security, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other payment or performance security available to Owner under this Agreement with respect to such Concessionaire Default in any order. Owner will apply the proceeds of any such action to the satisfaction of Concessionaire's obligations under this Agreement, including payment of amounts due to Owner.

**17.2.6.2** If Owner is an additional obligee under a bond for Performance Security, or is a transferee beneficiary under any letter of credit or guaranty, then Owner will forbear from exercising remedies as additional obligee or transferee beneficiary so long as Concessionaire or the Collateral Agent commences the good faith, diligent exercise of remedies within 10 days after Owner delivers notice to Concessionaire and the Collateral Agent of Owner's intent to make a claim under such security, letter of credit or guaranty and subsequently continues such good faith, diligent exercise of remedies until the default is cured.

**17.2.6.3** Section 17.2.6.2, shall not apply where access to a bond, letter of credit, guaranty or other payment or performance security is for the purpose of satisfying damages owing to Owner, in which case Owner shall be entitled to make demand, draw, enforce and collect regardless of whether Concessionaire Default is subsequently cured.

**17.2.6.4** Owner will notify Concessionaire at the same time or promptly after it takes any action to make demand upon, draw on, enforce or collect any Performance Security.

## **17.2.7 Suspension of Work**

**17.2.7.1** In addition to any other right to suspend the Work under the Contract Documents, Owner may suspend, in whole or in part, the Work by notice to Concessionaire, due to any of the following, regardless of whether a Concessionaire Default has been declared or any cure period (other than a cure period expressly stated in this Section 17.2.7.1) has not yet lapsed:

(a) Failure to perform the Work in compliance with the Contract Documents, where such failure is not substantially cured within 15 days after Owner delivers notice thereof to Concessionaire, provided that Owner's right to suspend for an Activity Noncompliance Occurrence or a Noncompliance Event shall be limited to circumstances where Concessionaire fails to timely deliver and implement a Remedial Plan in accordance with Section 16.6;

(b) Failure to comply with any Law or Governmental Approval (including failure to implement protective measures for Threatened and Endangered Species, failure to handle, preserve and protect paleontological and cultural (including archaeological and historic) resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

(c) Performance of Design Work before achieving all conditions in Section 7.4.4, or performance of Construction Work before all conditions precedent to commencement of Construction Work have been met;

(d) Discovery of Nonconforming Work not corrected within 15 days after Owner delivers notice of such Nonconforming Work to Concessionaire or, if correction will require more than 15 days, failure of Concessionaire to deliver to Owner, within 15 days of said notice, a plan acceptable to Owner for correction of the Nonconforming Work or to diligently execute and complete such plan;

(e) Concessionaire has failed to pay in full when due sums owing any Contractor for services, materials or equipment, except only for retainage provided in the relevant Contract and amounts in dispute;

(f) Failure to provide proof of required insurance coverage under Section 11.1.2.4 (which suspension is also available in the case of such failure following a request rather than Notice of Concessionaire Default in accordance with Section 11.1.2.4);

(g) Failure to deliver or maintain Payment Bonds or Performance Security;

(h) The existence of conditions unsafe for workers, other Project personnel or the general public, including failures to comply with Safety Standards or perform Safety Compliance in accordance with Section 17.2.3 (and in any such case the order of suspension may be issued without awaiting any cure period);

(i) Failure to carry out and comply with Directive Letters, where such failure is not substantially cured within 15 days after Owner delivers notice thereof to Concessionaire; and

(j) For the reasons specified in Sections 9.7.4, 11.1.2.4(g) and 17.2.3.4.

**17.2.7.2** In addition to the protections from liability under Section 17.2.3.4, Owner shall have no liability to Concessionaire, and Concessionaire shall have no right to make any Claim against Owner due to any suspension under Section 17.2.7.1.

**17.2.7.3** Owner shall have the right and authority to order suspension of Work, in whole or in part, for reasons other than those in Section 17.2.7.1. If Owner purports to order suspension of Work under Section 17.2.7.1 but it is finally determined under the Dispute Resolution Procedures that there exist no grounds under Section 17.2.7.1 for such suspension, then it shall be deemed a suspension under this Section 17.2.7.3. If Owner orders (or is deemed to order) suspension of Work under this Section 17.2.7.3 and such suspension is an Owner-Caused Delay, then Concessionaire shall be entitled to submit a Claim for Incremental Costs, Delay Costs, compensation for losses due to delays in commencement of Availability Payments and for additional interest costs due to delayed receipt of the Progress Payment, Contract Deadline extensions and performance relief to the extent permitted under Articles 14 and 15.

**17.2.7.4** Concessionaire shall promptly comply with any such suspension order, even if Concessionaire disputes the grounds for suspension. Concessionaire shall promptly recommence the Work upon receipt of notice from Owner directing Concessionaire to resume work. Owner will lift the suspension order promptly after Concessionaire fully cures and corrects the applicable breach or failure to perform or any other reason for the suspension order ceases to apply.

**17.2.7.5** In case of suspension of work for any cause, Concessionaire shall:

(a) Be responsible for the Project and shall take such precautions as may be necessary to prevent loss or damage to the Work, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at Concessionaire's expense; and

(b) Properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings and soddings furnished under this Agreement, and shall take adequate precautions to protect new growth and other important vegetative growth against injury.

## **17.2.8 Other Rights and Remedies**

Subject to Section 19.9, Owner shall also be entitled to exercise any other rights and remedies available under this Agreement, or available at law.

## **17.2.9 Cumulative, Non-Exclusive Remedies**

Subject to Sections 19.9.2 and 21.3, and subject to the stipulated remedial measures for the breaches and failures to perform for which Noncompliance Points may be assessed, each right of Owner under this Agreement shall be cumulative and shall be in addition to every other right provided under this Agreement or at law, and the exercise or beginning of the exercise by Owner of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Owner of any or all other such rights or remedies.

## **17.3 Default by Owner; Cure Periods**

### **17.3.1 Owner Default**

Owner shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each an "Owner Default"):

(a) Owner fails to make any payment due to Concessionaire under this Agreement when due, provided that such payment is not subject to a Dispute; or

(b) Subject to Section 21.3, any representation or warranty made by Owner under Section 21.2 is false, misleading or inaccurate in any material respect when made or omits material information when made.

### **17.3.2 Cure Periods**

Owner shall have the following cure periods to cure Owner Defaults:

**17.3.2.1** Respecting an Owner Default under Section 17.3.1(a), a period of 45 days after Concessionaire delivers to Owner notice of the Owner Default; and

**17.3.2.2** Respecting an Owner Default under Section 17.3.1(b), a period of 90 days after Concessionaire delivers to Owner notice of the Owner Default; provided that (a) if the Owner Default is of such a nature that the cure cannot with diligence be completed within such time period and Owner has commenced meaningful steps to cure promptly after receiving the default notice, Owner shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure, and (b) cure will be regarded as complete when the adverse effects of the breach are cured.

## **17.4 Concessionaire Remedies for Owner Breach**

### **17.4.1 Termination**

Refer to Section 19.4 for provisions regarding Concessionaire's right to terminate for Owner Default.

### **17.4.2 Interest for Late Payment**

If Owner fails to make payments owing to Concessionaire under Article 13, then Concessionaire shall be entitled to interest in accordance with Section 13.4. The right to be paid interest shall constitute Concessionaire's sole remedy for late payment until such time as Concessionaire is entitled to exercise the remedies specified in Section 17.4.3 or 19.4.

### **17.4.3 Concessionaire Right to Suspend**

Concessionaire may suspend Work based on Owner's failure to pay undisputed amounts owing to Concessionaire of \$1,000,000 or more, or based on Owner's failure to comply with its obligations under Section 13.6.3, subject to the following:

**17.4.3.1** Concessionaire shall provide Owner with notice regarding its intent to suspend at least 30 days before implementing the suspension, and may implement the suspension only if the breach remains uncured as of the suspension date. If the suspension is



based on payment failure, the notice provided under Section 17.3.2.1 may also serve as notice under this Section 17.4.3.

**17.4.3.2** A suspension by Concessionaire under this Section 17.4.3 shall be deemed to be a suspension of work order issued by Owner for its convenience under Section 17.2.7.3. The suspension order shall be deemed lifted upon Concessionaire's receipt of payment in full of all undisputed amounts owing, in the case of a suspension due to payment failure, or upon Concessionaire's receipt of evidence that funds are available, in the case of suspension due to Owner's failure to comply with its obligations under Section 13.6.3.

#### **17.4.4 Limitations on Remedies**

**17.4.4.1** Concessionaire shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against Owner, except for (a) any sustainable action for relief in the nature of that formerly available in mandamus, (b) any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Concessionaire Intellectual Property in violation of the licenses granted, or to specifically enforce Owner's duty of confidentiality, under Section 23.4, (c) declaratory relief under the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the Contract Documents, or (d) declaratory relief under the Dispute Resolution Procedures declaring specific terms that shall bind the Parties, but only where this Agreement expressly calls for such a method of resolving a Dispute.

**17.4.4.2** If Owner wrongfully withholds an approval or consent required under this Agreement, or wrongfully issues an objection to or disapproval of a Submittal or other matter under this Agreement, Concessionaire's sole remedies against Owner shall be compensation and extensions of time, each to the extent provided in Articles 14 and 15. Concessionaire shall have no right to suspend Work.

**17.4.4.3** Concessionaire's remedies for certain breaches of warranties are limited as provided in Section 21.3.

**17.4.5** Subject to Section 17.4.4 and except as specifically provided otherwise in this Agreement (including Sections 15.1.2, 17.4.2, 17.6 and 19.9), upon breach of this Agreement by Owner Concessionaire may exercise any remedies available at law or in equity.

#### **17.5 No Duplicative Payment**

Notwithstanding any other provisions of this Agreement to the contrary, neither Party shall be entitled to recover compensation or make a claim under this Agreement with respect to any loss that it has incurred to the extent that it has already been compensated with respect to that loss under this Agreement or otherwise.

#### **17.6 Limitation on Consequential Damages**

**17.6.1** Subject to Section 17.6.2, to the maximum extent allowed by Law, neither Party shall be liable to the other for Consequential Damages relating to this Agreement. This limitation shall apply to actions brought under any theory of law, including actions in tort (including negligence) as well as in contract.

**17.6.2** The limitation on Consequential Damages under Section 17.6.1 shall not limit a Party's obligation to make payments as expressly stated in the Contract Documents, including payment of Owner's Recoverable Costs, liquidated damages and interest on late

payments, or Owner's right to assess Deductions in accordance with the Contract Documents. Furthermore, the limitation on Concessionaire's liability shall not apply to or limit:

(a) Owner's right to recover Losses (including defense costs) to the extent covered by (i) the proceeds of insurance required to be carried under Section 11.1, (ii) the proceeds of insurance actually carried by or insuring Concessionaire under policies solely with respect to the Project and the Work, regardless of whether required to be carried under Section 11.1, or (iii) an obligation for Concessionaire to self-insure the Loss as provided in Section 11.1.4.6;

(b) Owner's right to recover Losses (including defense costs) arising out of fraud, criminal conduct, intentional misconduct, recklessness, bad faith or gross negligence on the part of any Concessionaire-Related Entity;

(c) Owner's right to enforce Concessionaire's indemnity under Section 11.5.1(g);

(d) Owner's right to enforce Concessionaire's indemnities, with respect to third party claims only, under in Sections 7.8.1.4(f), 10.3.2, 11.5.1(a) to 11.5.1(f), 11.5.1(h) and 11.5.1(i), 11.5.2, 11.5.3 and 23.3.5;

(e) Owner's right to reduce Availability Payments as specified in the Contract Documents;

(f) Costs and expenses actually incurred by Owner in responding to traffic, utility and similar incidents attributable to the Work; or

(g) Fines, fees and criminal penalties assessed against any Concessionaire-Related Entity by the State or any other Governmental Entity acting under its respective regulatory or police powers (and, with respect to Owner, not acting in its capacity as a Party to this Agreement).

**17.6.3** Notwithstanding the foregoing, Owner's right to recover lost revenues from Concessionaire under this Agreement (including farebox revenues) is limited to the right to make Deductions from Availability Payments and the right to recover Losses attributable to fraud, criminal conduct or intentional misconduct by a Concessionaire-Related Entity.

## **ARTICLE 18. LENDERS' RIGHTS**

### **18.1 Third Party Rights**

This Agreement is exclusively for the benefit of Owner and Concessionaire, and shall not provide any Lender with any remedy, claim, liability, reimbursement, cause of action or other right, except for the rights of any Lender as provided in any Direct Agreement.

### **18.2 Direct Agreement Priority**

The rights of Owner under Articles 17 and 19 are subject to the terms of any Direct Agreement.

## **ARTICLE 19. TERMINATION**

### **19.1 Termination for Convenience; Condemnation**

**19.1.1** Owner may terminate this Agreement in whole, but not in part, if Owner determines, in its discretion, that termination is in Owner's best interest (a "Termination for Convenience"). Termination of this Agreement shall not relieve Concessionaire or any Guarantor or Surety of its obligation for any claims arising before termination.

**19.1.2** Owner may exercise Termination for Convenience by delivering to Concessionaire a Notice of Termination for Convenience specifying the election to terminate. Termination for Convenience shall be effective as and when provided in Section 2 of Exhibit 13B.

**19.1.3** In the event of a Termination for Convenience, Concessionaire will be entitled to compensation determined in accordance with Section 2 of Exhibit 13B. Payment will be due and payable as and when provided in Section 2 of Exhibit 13B.

**19.1.4** If either MTA or MDOT confiscates, sequesters, condemns or appropriates the Concessionaire's Interest or any material part thereof, compensation payable to Concessionaire with respect to such action shall be determined on the same basis as a Termination for Convenience under this Agreement.

### **19.2 Termination for Extended Delay or Insurance Unavailability**

#### **19.2.1 Notice of Conditional Election to Terminate – Extended Delay**

Either Party, following consultation with the other Party, may deliver to the other Party notice of its conditional election to terminate this Agreement if an Extended Delay has occurred and is continuing. The notice shall state the notifying Party's intent to terminate this Agreement and describe the Extended Delay and consequences thereof in reasonable detail. If the notice is provided by Concessionaire, it shall include an estimate, with supporting documentation, regarding the total amount due to Concessionaire under Section 19.2.4.1.

#### **19.2.2 Notice of Conditional Election to Terminate – Insurance Unavailability**

If it becomes apparent that insurance required under the Contract Documents is not available as described in the definition of "Insurance Unavailability", Owner may deliver to Concessionaire notice of its conditional election to terminate this Agreement for Insurance Unavailability. Such notice shall include reasonable details regarding the affected coverages and associated risks, as well as the estimated cost of premiums if Commercially Reasonable Insurance Rates are not available.

#### **19.2.3 Concessionaire Options upon Owner Notice**

**19.2.3.1** If Owner gives notice of conditional election to terminate this Agreement under Section 19.2.1 or 19.2.2, then Concessionaire shall either accept such notice or give notice to Owner to continue performing its obligations under this Agreement subject to Section 19.2.3.2 or 19.2.3.3, as applicable, and without limiting any of Owner's other rights under this Agreement. Concessionaire shall deliver to Owner notice of Concessionaire's choice within 30 days after its receipt of notice from Owner. Concessionaire may also dispute Owner's right to terminate, in which case the notice shall state that Concessionaire elects to continue to

perform its obligations under this Agreement pending resolution of the Dispute subject to the provisions of Section 19.2.3.2 or 19.2.3.3. If Concessionaire does not deliver such notice within such 30-day period, then Concessionaire shall be deemed to have accepted Owner's election to terminate this Agreement.

**19.2.3.2** If Concessionaire delivers timely notice (1) choosing to continue performing its obligations under this Agreement following receipt of a conditional election to terminate for an Extended Delay, without disputing Owner's right to terminate or (2) disputing Owner's right to terminate under Section 19.2.3.1, then:

(a) Owner shall have no obligation to compensate Concessionaire for any costs of restoration, repair or replacement arising out of, relating to or resulting from the Extended Delay;

(b) Owner shall have no obligation to compensate Concessionaire for any loss of Availability Payments and/or, if applicable, for any other Incremental Costs or Delay Costs arising out of, relating to or resulting from the continuation of the Extended Delay beyond the date of Owner's notice;

(c) If the Extended Delay commences before the Revenue Service Availability Date and results in a delay to the Critical Path, then the provisions of this Agreement concerning time extensions and payment of Delay Interest for delays due to Force Majeure Events shall apply; and

(d) This Agreement shall continue in full force and effect and Owner's election to terminate for an Extended Delay shall not take effect.

**19.2.3.3** If Concessionaire delivers timely notice (1) choosing to continue performing its obligations under this Agreement following receipt of a conditional election to terminate for Insurance Unavailability, without disputing Owner's right to terminate or (2) disputing Owner's right to terminate under Section 19.2.3.1, then:

(a) Subject to Section 19.2.3.3(b), Owner shall have no liability to any Concessionaire-Related Entity, Collateral Agent or Lender for harm or loss from the risks that are the subject of Insurance Unavailability;

(b) Concessionaire may request that Owner reimburse Concessionaire up to the full amount of insurance coverage that Concessionaire would have been obligated to carry had such coverage been commercially available, and on the terms, and subject to the conditions, of such insurance coverage (as set out in the applicable sections of Exhibit 7A) except to the extent caused by the fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the Contract Documents of or by any Concessionaire-Related Entity, Collateral Agent or Lender;

(c) Concessionaire shall credit to Owner, as part of the insurance adjustment to the Payment Mechanism under Exhibit 4D, all insurance premiums reflected in the most recent Financial Model Update that are the subject of, and during the period of, Insurance Unavailability;

(d) Concessionaire shall promptly and diligently repair and restore all damage and destruction to the Project arising out of, relating to or resulting from Losses born of risks that are not covered by insurance due to Insurance

Unavailability, in order to put the Project in a safe, good and sound condition in compliance with all applicable requirements of the Contract Documents; and

(e) Subject to Section 19.2.9, this Agreement shall continue in full force and effect and Owner's election to terminate on the basis of Insurance Unavailability shall not take effect.

**19.2.3.4** If Concessionaire delivers timely notice choosing to continue performing its obligations under this Agreement, and disputing Owner's right to terminate under this Section 19.2.3, and it is ultimately determined that Owner had the right to terminate, the provisions of Section 19.2.3.2 or 19.2.3.3 shall apply, as applicable. If it is ultimately determined that Owner did not have the right to terminate, the rights and obligations of the Parties shall be determined based on the Force Majeure and Relief Event provisions of this Agreement, as applicable:

#### **19.2.4 Owner Options upon Concessionaire Notice (Extended Delay)**

If Concessionaire gives notice of conditional election to terminate as provided in Section 19.2.1, then Owner may either accept such notice or continue this Agreement in effect by delivering to Concessionaire notice of Owner's choice within 30 days after Concessionaire delivers its notice. If Owner wishes to dispute Concessionaire's right to terminate, then it shall include in its notice both Owner's choice and a notice of dispute, in which case Owner's choice will be contingent upon resolution of the Dispute in favor of Concessionaire. If Owner does not deliver such notice within such 30-day period, then it shall be deemed to have accepted Concessionaire's election to terminate this Agreement. If Owner delivers timely notice choosing to continue this Agreement in effect, then the following provisions shall apply in addition to Owner's obligations under Section 15.9.2.

**19.2.4.1** For an Extended Delay under clause (b) of the definition of Extended DB Force Majeure Event or Extended OM Force Majeure Event, Owner will pay or reimburse Concessionaire an amount equal to (without double counting):

(a) The Incremental Costs to repair, restore or replace any physical loss or damage to the Project and Delay Costs, if any, directly caused by the Extended Delay which are not excluded under Section 15.3.6 and are incurred after the date Concessionaire delivers its notice of conditional election to terminate; plus

(b) The sum of (i) the greater of (A) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried under Section 11.1 and provides coverage to pay, reimburse or provide for any of the foregoing costs and losses or (B) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring Concessionaire under policies solely with respect to the Project and the Work, regardless of whether required to be carried under Section 11.1, and that provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, and (ii) the foregoing costs and losses that Concessionaire is deemed to have self-insured under Section 11.1.4.6.

**19.2.4.2** Concessionaire's rights to an extension of time, compensation, excuse from compliance and other relief under Articles 14 and 15 shall continue to apply with respect to the Extended Delay.

**19.2.4.3** This Agreement shall continue in full force and effect and Concessionaire's election to terminate for an Extended Delay shall not take effect.

### **19.2.5 Unconditional Right to Terminate**

If any Extended Delay results in 365 or more days of Critical Path delay, either Party may deliver to the other Party a notice of its unconditional election to terminate this Agreement, in which case neither Party shall have any further option to continue this Agreement in effect. Notwithstanding the foregoing, if Concessionaire previously provided a notice of conditional election to terminate under Section 19.2.1 and Owner opted to continue this Agreement in effect, Concessionaire's right to issue a notice of unconditional election to terminate will not accrue unless and until an additional 365 days of Extended Delays have accumulated after the date of Concessionaire's notice of conditional election to terminate.

### **19.2.6 No Waiver**

No election by Owner under Section 19.2.4 to continue this Agreement in effect shall prejudice or waive Owner's right to give a notice of conditional election to terminate with respect to the same or any other Extended Delay or Insurance Unavailability.

### **19.2.7 Concurrent Notices**

If Owner and Concessionaire deliver concurrent notices of conditional election to terminate under this Section 19.2, Concessionaire's notice shall prevail. Notices shall be deemed to be concurrent if each Party sends its notice before actually receiving the notice from the other Party. Knowledge of the other Party's notice obtained before actual receipt of the notice shall have no effect on determining whether concurrent notice has occurred.

### **19.2.8 Early Termination Date and Amount**

If either Party accepts the other Party's conditional election to terminate, or if either Party delivers notice of its unconditional election to terminate under Section 19.2.5 or 19.2.9, then this Agreement shall be deemed terminated on an Early Termination Date as described in Section 3 of Exhibit 13B; and Concessionaire will be entitled to compensation determined in accordance with Section 3 of Exhibit 13B. Payment will be due and payable as and when provided in Section 3 of Exhibit 13B.

### **19.2.9 Special Provision Regarding Insurance Unavailability**

In addition to the other provisions in this Section 19.2, and without limitation on such provisions that pertain to Insurance Unavailability, if Owner delivers to Concessionaire notice of its conditional election to terminate this Agreement for Insurance Unavailability under Section 19.2.2, and if Concessionaire delivers timely notice choosing to continue to perform its obligations under this Agreement thereafter under Section 19.2.3.1, and if during the period of such Insurance Unavailability (during which Owner is the insurer of last resort), the Project suffers a Loss for which the Insurance Policy that was the subject of the Insurance Unavailability would have been in place, but for the Insurance Unavailability, and such Loss (or a reasonable estimate of such Loss, determined by Owner) exceeds \$50,000,000, then Owner shall have the unconditional right to terminate this Agreement for Insurance Unavailability by notice to Concessionaire.

## **19.3 Termination for Concessionaire Default**

### **19.3.1 Concessionaire Defaults Triggering Owner Termination Rights**

Concessionaire acknowledges and agrees that any Concessionaire Default under Sections 17.1.1(b) through 17.1.1(v) would result in material and substantial harm to Owner's rights and interests under this Agreement and therefore constitutes a material Concessionaire Default justifying termination of the Agreement, unless fully and completely cured within the applicable cure period, if any, in Section 17.1.2, any extended cure period available under Section 16.6 or any cure period available to a Lender under a Direct Agreement. A Concessionaire Default shall be considered a "Default Termination Event" if not fully and completely cured prior to expiration of the relevant cure period (if any), or immediately if the Concessionaire Default is not subject to cure. Any Default Termination Event shall, subject to the provisions of any Direct Agreement and Section 21.3, entitle Owner, at its sole election, to terminate this Agreement and the other Contract Documents by delivering notice of termination to (a) Concessionaire and (b) if applicable, the Collateral Agent under the Direct Agreement. Termination shall be effective as and when provided in Section 4 of Exhibit 13B.

### **19.3.2 Compensation to Concessionaire**

If Owner issues notice of termination of this Agreement due to a Default Termination Event, or if Concessionaire terminates this Agreement on grounds or in circumstances beyond Concessionaire's termination rights under this Agreement, Concessionaire will be entitled to compensation to the extent (if any), and only to the extent, provided in Section 4 of Exhibit 13B. Payment (if any) shall be due and payable as and when provided in Section 4 of Exhibit 13B.

### **19.3.3 Finality**

If Owner issues notice of termination of this Agreement due to a Default Termination Event, termination shall be effective and final regardless of whether Owner is correct in determining that it has the right to terminate for Concessionaire Default. If it is determined that Owner lacked such right, then such termination shall be treated as a Termination for Convenience as provided in Section 19.1 for the purpose of determining the Termination Compensation due.

## **19.4 Concessionaire Rights to Terminate**

**19.4.1** Concessionaire shall have the right to terminate this Agreement in the event of an Owner Default under Section 17.3.1(a) involving an undisputed payment of \$1 million or more if Owner has failed to cure such default following delivery of the warning notices described in this Section 19.4.1. Concessionaire shall provide a warning notice to Owner at least 15 days before terminating, which notice may not be delivered until 30 days after delivery of the notice under Section 17.3.2.1. Concessionaire shall provide a second warning notice to Owner at least five days before terminating, which notice may not be delivered until 10 days after delivery of the first warning notice. If Owner fails to effect cure within five days after the date of delivery of the second warning notice, Concessionaire shall have the right to terminate this Agreement by delivery of notice to that effect to Owner delivered at any time before the default is cured.

**19.4.2** If any order to suspend all or a material portion of the Work is issued (or deemed issued) by Owner for its convenience under Section 17.2.7.3 and continues for a period of 270 days or more, Concessionaire may terminate this Agreement, effective immediately upon delivery of notice of termination to Owner delivered at any time before the suspension is lifted.



**19.4.3** If Concessionaire's Financial Proposal includes a TIFIA Loan, and (a) USDOT requires execution of the "New Starts Full Funding Grant Agreement" as a requirement for draw on such TIFIA Loan, (b) Owner fails to execute the "New Starts Full Funding Grant Agreement" prior to May 17, 2018, and (c) Owner and Concessionaire have not agreed, in writing, and subject to any approval rights of Lenders then holding Project Debt (other than the TIFIA Loan), upon alternative arrangements with respect to the "New Starts Grant Agreement" prior to April 2, 2018, then Concessionaire may terminate this Agreement, effective immediately upon Owner's receipt of Concessionaire's notice of termination delivered at any time on or after such date.

**19.4.4** In the event of termination under this Section 19.4, Concessionaire will be entitled to compensation determined in accordance with Section 2 of Exhibit 13B. Payment shall be due and payable as and when provided in said Section 2. Any Dispute arising out of the determination of such compensation shall be resolved under the Dispute Resolution Procedures.

**19.4.5** Concessionaire may not terminate under this Section 19.4 if, at the time Concessionaire's right to terminate would arise, circumstances exist entitling either Party to terminate under Section 19.2, 19.3, 19.5 or 19.6.

## **19.5 Termination Due to Court Ruling**

**19.5.1.1** If grounds for Termination Due to Court Ruling exist, either Party has the right to terminate. Any Party that wishes to terminate shall consult with the other before delivering a termination notice. Any notice of Termination Due to Court Ruling shall be effective 10 business days after delivery unless (a) a later date is specified in the notice, (b) the notice is withdrawn or (c) with said 10-day period the other Party delivers an objection to the first Party contesting the first Party's right to terminate. Any disagreement regarding the right to terminate shall be resolved under the Dispute Resolution Procedures.

**19.5.1.2** Once Termination Due to Court Ruling becomes effective, Owner and Concessionaire shall work together to implement Sections 19.7, 19.8, and 19.11.

**19.5.2** Notwithstanding Section 19.5.1.2, if a Termination Due to Court Ruling occurs, Concessionaire shall be entitled to compensation only to the extent provided in Section 3 of Exhibit 13B.

## **19.6 Termination if Financial Close Fails to Occur**

**19.6.1** Concessionaire or Owner may terminate this Agreement without fault or penalty if Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable to any of the contingencies in Section 4.4.6. Termination shall take effect at the date specified in the notification from Concessionaire or Owner to the other party, unless the Parties otherwise agree. In the event of such a termination:

**19.6.1.1** All the Contract Documents shall be deemed terminated as of the Financial Close Deadline, except those Contract Documents (or provisions within) that expressly survive termination of the Contract Documents;

**19.6.1.2** Owner and Concessionaire shall take all actions specified to occur on or about the Termination Date in Section 19.7; and

**19.6.1.3** Concessionaire shall be entitled to compensation to the extent, and only to the extent, provided in Section 5 of Exhibit 13B. Payment shall be due and payable as and when provided in said Section 5. Any Dispute arising out of the determination of such compensation shall be resolved under the Dispute Resolution Procedures.

**19.6.2** If Concessionaire fails to achieve Financial Close by the Financial Close Deadline, such failure is not directly attributable to any of the contingencies in Section 4.4.6, and neither Party is then entitled to terminate this Agreement under Section 19.5, then the following terms apply.

**19.6.2.1** Owner shall have the right to terminate this Agreement upon five days' prior notice to Concessionaire, without need for any other notice and without any additional cure period, unless Concessionaire achieves Financial Close in accordance with the conditions in Section 4.4.4 within such five-day period.

**19.6.2.2** In the event of such termination, Concessionaire shall be liable for and pay to Owner liquidated damages for such failure in the amount of the Financial Close Security. Such liquidated damages shall constitute Owner's sole right to damages on account of such failure.

**19.6.2.3** Upon or after the effective date of termination, Owner shall be entitled to collect the liquidated damages owing under this Section 19.6 through a draw on or forfeiture of the Financial Close Security, as applicable, without prior notice to or demand upon Concessionaire.

**19.6.3** Concessionaire acknowledges that the time period Owner has provided to Concessionaire to achieve Financial Close is ample and reasonable, and that such liquidated damages are reasonable in order to compensate Owner for damages it will incur as a result of the lost opportunity to Owner represented by the Contract Documents. Such damages include the harm from the difficulty, and substantial additional expense, to Owner, to procure and deliver, operate and maintain the Project through other means, loss of or substantial delay in use, enjoyment and benefit of the Project by the general public, and injury to the credibility and reputation of Owner's transportation improvement program, with policy makers, other Governmental Entities and the general public who depend on and expect availability of service. Concessionaire further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

**19.6.4** Owner shall not be obligated to make any payment to Concessionaire if this Agreement is terminated for failure to reach Financial Close, other than the payments allowed under Section 5 of Exhibit 13B. Furthermore, even if no payments are owing under Exhibit 13B, if Owner has issued a limited NTP allowing specified Work to proceed before Financial Close, and such NTP establishes terms for payment for such Work by Owner, Concessionaire's failure to reach Financial Close shall not obviate Owner's obligation to pay for Work authorized by the limited NTP. In all other respects, Concessionaire bears the risk that Financial Close may not occur and, as between Owner and Concessionaire, Concessionaire will be solely responsible for costs that it incurs relating to the Project before Financial Close.

## **19.7 Termination Procedures and Duties**

The provisions of this Section 19.7 shall apply upon expiration of the Term or earlier termination of this Agreement. Concessionaire shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts

due Concessionaire or Owner on account of termination. If Owner determines that Concessionaire has failed to comply with the provisions of this Section 19.7, then upon notice from Owner to Concessionaire making reference to this Section 19.7, Concessionaire acknowledges and agrees that it shall be deemed to have, surrendered its access rights in accordance with the Contract Documents.

#### **19.7.1 Performance of Work Pending Early Termination Date**

In any case where notice of termination precedes the effective Early Termination Date, Concessionaire shall continue performing the Work in accordance with all the standards, requirements and terms of the Contract Documents.

#### **19.7.2 Transition Plan**

**19.7.2.1** Within 90 days before expiration of the Term, or, if applicable, within three days after Concessionaire receives or delivers a notice of termination, Concessionaire shall meet and confer with Owner for the purpose of developing a transition plan for the orderly transition of Work, demobilization and transfer of Project management, maintenance, operation, care, custody and control to Owner. The Parties shall use diligent efforts to complete preparation of the transition plan within 30 days before expiration of the Term or, if applicable, within 15 days after the date Concessionaire receives or delivers the notice of termination.

**19.7.2.2** The transition plan shall include a plan to promptly deliver to Owner or its designee possession of all the property, data and documents described in Sections 19.7.5.1 and 19.7.5.2.

**19.7.2.3** The transition plan shall include an estimate of costs and expenses to be incurred by both Parties in connection with implementation of the transition plan. Neither Party shall be liable for the other Party's transition costs and expenses, regardless of the reason for termination.

**19.7.2.4** The transition plan shall be in form and substance acceptable to Owner and shall include and be consistent with the other provisions and procedures in this Section 19.7, all of which procedures Concessionaire shall follow, regardless of any delay in preparation or acceptance of the transition plan. If required by Owner, the transition plan shall provide for Concessionaire to continue to perform specified Work during the period between the Termination Date and the effective date of the release and discharge, following payment of Termination Compensation under Section 19.9.2 (the "Termination Compensation Date").

#### **19.7.3 Relinquishment and Possession of Project**

**19.7.3.1** On or as soon as possible after the Termination Date as provided in the approved transition plan, Concessionaire shall relinquish and surrender care, custody and control of the Project, to Owner, and shall cause all persons and entities claiming under or through Concessionaire to do likewise (except as may be set forth in any Direct Agreement), in at least the condition required by the Handback Requirements.

**19.7.3.2** On the later of the Termination Date or the date Concessionaire relinquishes all care, custody and control (having fully performed its obligations under this Section 19.7), Owner shall have the exclusive right to, and shall assume responsibility at its expense for, care, custody and control of the Project and the Project ROW, subject to any rights

to damages against Concessionaire where the termination is due to a Default Termination Event.

**19.7.3.3** If the transition plan developed under Section 19.7.2 requires Concessionaire to perform any obligations under this Agreement after the Termination Date, this Agreement will remain in full force and effect only to the extent necessary for Concessionaire to perform such obligations, and Owner shall pay the Concessionaire the Post-Termination Services Amount in accordance with Exhibit 13B. On the Termination Date, or such later date as is agreed in the approved transition plan, Owner grants to Concessionaire a right to access the Project ROW for the limited purpose of carrying out Concessionaire's obligations contemplated by this Section 19.7, including execution of the transition plan contemplated in Section 19.7.2. This right of access is subject to rescission by Owner for Concessionaire's failure to perform any of its obligations under this Agreement after the Termination Date, and shall automatically expire upon Concessionaire's fulfillment of such obligations.

#### **19.7.4 Continuance or Termination of Key Contracts Before Work Completion**

**19.7.4.1** Subject to the terms of any Direct Agreement, if Concessionaire has not completed the Work, in whole or in part, as of the Termination Date, Owner may elect, by notice to Concessionaire delivered within 30 days after the Termination Date, either to continue in effect some or all of the Key Contracts or to require their termination. Owner may elect to keep certain Key Contracts in effect and require termination of other Key Contracts. If Owner does not deliver notice of election within such time period, Owner shall be deemed to elect to require termination of all Key Contracts. If Owner elects to continue any Key Contracts, then Concessionaire shall execute and deliver to Owner a written assignment, in form and substance acceptable to Owner, of all Concessionaire's interest in such Key Contracts, and Owner will assume in writing Concessionaire's obligations under the Key Contracts that arise from and after the later of the Termination Date or the effective date of assignment.

**19.7.4.2** If Owner elects (or is deemed to elect) to require termination of any Key Contracts, then Concessionaire shall:

- (a) Take such steps as are necessary to terminate the relevant Key Contracts, including notifying each Key Contractor that its Key Contract is being terminated and that each of them is to stop Work on the date and to the extent specified in the notice of termination and stop and cancel orders for materials, services or facilities, unless otherwise approved by Owner;
- (b) Promptly and orderly demobilize and secure in a safe manner the Site in a manner satisfactory to Owner, remove all debris and waste materials and complete any Hazardous Materials Management Work already in process, except as otherwise approved by Owner;
- (c) Take such other actions as are necessary or appropriate to mitigate further costs;
- (d) Subject to Owner's reasonable prior approval, settle all outstanding liabilities and all claims arising out of, relating to or resulting from such Key Contracts;
- (e) As a condition to Owner's obligation to make payments to Concessionaire under Article 19 and under the requirements of the transition plan, cause each of the Key Contractors to execute and deliver to Owner a written assignment, in

form and substance acceptable to Owner, of all of their interest in (i) all Governmental Approvals, Utility Agreements and other third party agreements and permits pertaining to the Project or the Work (excluding Subcontracts); provided that Owner assumes in writing all of the Key Contractor's obligations under said approvals, agreements and permits that arise after the Termination Date, and (ii) all warranties, to the extent assignable, claims and causes of action held by each of them against Subcontractors and other third parties pertaining to the Project or the Work, provided that Concessionaire shall retain the right to pursue any cause of action against the Subcontractor or other third parties for damages incurred by Concessionaire; and

(f) As a condition to Owner's obligation to make payments to Concessionaire under Article 19 and under the requirements of the transition plan, carry out such other directions as Owner may give for termination of the Work in accordance with the transition plan.

### **19.7.5 Other Close-Out Activities**

**19.7.5.1** Within 90 days before expiration of the Term, or within 30 days after any earlier notice of termination is delivered, Concessionaire shall provide Owner with a true and complete list of all materials, goods, machinery, equipment, hardware, parts, supplies and other tangible property in inventory or storage (whether then held by Concessionaire or any Person on behalf of or for the account of Concessionaire) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Project. In addition, on or as soon after the Termination Date as is possible or as is provided in the approved transition plan, Concessionaire shall transfer title through bills of sale or other documents of title, as directed by Owner, and deliver to Owner or Owner's Authorized Representative, all such materials, goods, machinery, equipment, hardware, parts, supplies and other property, provided Owner assumes in writing all of Concessionaire's obligations under any contracts relating to the foregoing that arise after the later of the Termination Date or the effective date of the transfer.

**19.7.5.2** Subject to Sections 23.4 and 23.5, within 90 days before the expiration of the Term, or within 30 days after any earlier notice of termination is delivered, Concessionaire shall provide Owner with a true and complete list of all the data and documents identified in this Section 19.7.5.2. On or as soon after the Termination Date or as is provided in the approved transition plan, Concessionaire shall deliver to Owner the following:

(a) If required by Owner, an executed bill of sale or other written instrument, in form and substance acceptable to Owner, assigning and transferring to Owner all interest of Concessionaire and its Contractors;

(b) All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, Design Documents, Record Documents, plans, surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments, free of any Intellectual Property rights or claims of Concessionaire or any Contractor other than the licenses to Concessionaire Intellectual Property granted under Sections 23.4.3 and 23.4.10.1;

(c) All samples, borings, boring logs, geotechnical data and similar data and information relating to the Project or Project ROW;

(d) All Books and Records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Project or the Project ROW; and

(e) All Intellectual Property, documents evidencing licenses of Concessionaire Intellectual Property to Owner, other work product and other materials relating to all such Intellectual Property and Concessionaire Intellectual Property; provided that the transfer of any such Intellectual Property shall be subject to Sections 23.4 and 23.5.

**19.7.5.3** Concessionaire shall take all action that may be necessary, or that Owner may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, equipment, hardware, parts, supplies, data, documentation and other property.

**19.7.5.4** On or as soon as possible after the Termination Date or as provided in the approved transition plan, Concessionaire shall execute and deliver to Owner a written assignment, in form and substance acceptable to Owner, all of Concessionaire's interest in any Intellectual Property Escrows or similar arrangements for the protection of Source Code and Source Code Documentation of others used for or relating to the Project or the Work.

**19.7.5.5** On or as soon as possible after the Termination Date or as provided in the approved transition plan, Concessionaire shall execute and deliver to Owner a written assignment, in form and substance acceptable to Owner, of all Concessionaire's interest in all warranties, claims and causes of action held by Concessionaire against third parties in connection with the Project or the Work, including claims under casualty and business interruption insurance, except to the extent that Owner has already received credit for such matters in calculating Termination Compensation amounts, in which case they may be pursued by Concessionaire for its own account.

**19.7.5.6** Concessionaire shall otherwise assist Owner in such manner as Owner may require before and for a reasonable period following the Termination Date to ensure the orderly transition of management, maintenance, operation, care, custody and control of the Project, to Owner, and shall, if appropriate and if requested by Owner, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to the surrender of Project management, maintenance, operation, care, custody and control.

**19.7.5.7** For a period of four years following the Termination Date, Concessionaire shall maintain a secure archive copy of all electronic data transferred to Owner.

## **19.7.6 Compensation; Proration of Costs**

**19.7.6.1** From and after the Termination Date, except as otherwise stated in Exhibit 13B, Concessionaire shall cease to have any right to (a) Availability Payments except for those accrued and owing before the Termination Date and (b) any other compensation, except with respect to compensation that remains due to Concessionaire under this Agreement, if any.

**19.7.6.2** Within 90 days after the Termination Date, the Parties shall adjust and prorate as of the Termination Date costs of operation and maintenance of the Project, including utility costs and deposits. If the Parties do not have complete or accurate information by such date, they shall make the adjustment and proration using a good faith estimate, and promptly readjust when the complete and accurate information is obtained. The Parties acknowledge that certain adjustments or readjustments may depend on receipt of bills, invoices

or other information from a third party, and that the third party may delay in providing such information. Any readjustment necessary only because of error in calculation and not due to lack of complete and accurate information shall be irrevocably waived unless the Party seeking readjustment delivers request therefor to the other Party within 90 days after the Termination Date.

## **19.8 Effect of Termination**

Except to the extent set out in Section 19.7.3.3, and regardless of Owner's prior actual or constructive knowledge thereof:

(a) No Contract or agreement to which Concessionaire is a party as of the Termination Date shall bind Owner, unless Owner elects to assume such Contract or agreement; and

(b) Except in the case of Owner's express written assumption, no such Contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Project following Concessionaire's relinquishment to Owner of Project care, custody and control, or to any claim, legal or equitable, against Owner.

## **19.9 Liability after Termination; Final Release**

**19.9.1** No termination of this Agreement shall excuse either Party from any liability arising out of, related to or resulting from any default as provided in this Agreement that occurred before termination. Notwithstanding the foregoing, any termination of this Agreement under Section 19.2, 19.3, 19.5 or 19.6 shall automatically extinguish any claim of Concessionaire to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date due to Relief Events that occurred before termination.

**19.9.2** Except as otherwise expressly provided in this Agreement, if this Agreement is earlier terminated for any reason, then Owner's payment to Concessionaire of the amounts required under this Agreement (if any) shall constitute full and final satisfaction of, and upon payment Owner shall be forever released and discharged from, any and all claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Concessionaire may have against Owner arising out of, relating to or resulting from this Agreement or termination thereof, the other Contract Documents, or the Project, excluding any proceedings that are pending as of 30 days after the effective date of termination, remain unresolved at the time of such payment, and are not related to termination or Termination Compensation. Upon such payment, Concessionaire shall execute and deliver to Owner all such releases and discharges as Owner may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

## **19.10 Exclusive Termination Rights**

This Article 19 and Exhibit 13B contain the entire and exclusive provisions and rights of Owner and Concessionaire regarding termination of this Agreement, and each Party waives, to the maximum extent permitted by Law, any and all other rights to terminate at law.

### **19.11 Access to Information**

Concessionaire shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with Owner all data, documents and information pertaining to the termination, on an Open Book Basis.

### **19.12 Transfer of Employees Upon Termination**

Following expiration of the Term or any early termination of this Agreement, Owner or any contractor designated by Owner to perform operations and/or maintenance services for the Project (or portion thereof, as identified by Owner) may make offers of employment to staff retained by or through Concessionaire or any Contractor. Insofar as such offers extend to the employees of the O&M Contractor, Concessionaire shall not hinder or obstruct (and shall cause the O&M Contractor not to hinder or obstruct) the transfer of such employees who wish to accept such offers of employment and so transfer their employment to Owner or any such successor contractor.



## **ARTICLE 20. PARTNERING AND DISPUTE RESOLUTION PROCEDURES**

### **20.1 Partnering**

**20.1.1** Owner, Concessionaire, Contractors and other stakeholders, as appropriate, shall participate in a structured partnering process. The partnering process will be structured to draw on the strengths of each organization through open communication, teamwork and cooperative action to identify and achieve mutual goals. The objective is to create an atmosphere of trust and honest dialogue among all stakeholders. Partnering will not change the legal relationship of the Parties nor relieve any Party from any of the terms of the Contract Documents.

**20.1.2** Owner's and Concessionaire's Authorized Representatives will organize a partnering project team and implement a partnering process with reference to the guidelines for partnering in the Partnering Field Guide at [www.mdqi.org](http://www.mdqi.org), or successor site, provided that:

(a) The jointly selected member of the Technical DRB may act as facilitator for partnering meetings; and

(b) The partnering process shall include the Parties and members of the DRBs attending at least semi-annual Project meetings at which the Parties will provide an update on the status of the Project for the DRB members.

**20.1.3** The objectives of the partnering process are to:

(a) Identify potential problem areas, issues and differences of opinion early;

(b) Develop and implement procedures for resolving them in order to prevent them from becoming Disputes;

(c) Achieve and maintain effective and efficient performance and completion of Work in accordance with the Contract Documents; and

(d) Create mutual trust and respect for each party's respective roles and interests in the Project while recognizing the risk allocation inherent in the Contract Documents.

Concessionaire, Owner and other relevant parties shall meet regularly (e.g., as a "partnering team") throughout the life of the Project at partnering meetings to discuss specific interface issues, oversight interface issues, division of responsibilities, communication channels, and other matters as the parties agree.

**20.1.4** Each party shall bear its own costs associated with participation in partnering and proceedings before the Dispute Resolution Board under Section 20.2, with the cost of facilitators and DRB members and similar meeting costs shared equally between Concessionaire and Owner.

### **20.2 Dispute Resolution Board**

**20.2.1** The Parties will designate a Technical DRB to address technical issues, and a Financial DRB to address financial issues arising during the Term. A Dispute may be referred

to either, both or a joint session of the DRBs, depending on the nature of the issues in dispute. In the case of an individual session of the Technical DRB or Financial DRB, the DRB will be composed of three independent members, one selected by Concessionaire, one selected by Owner, and the third selected by the first two members. In the case of a joint session of the Technical DRB and Financial DRB, the DRB will be composed of (a) three members selected as for an individual session above; or (b) where the Parties agree, five independent members, two selected by Concessionaire, two selected by Owner, and the fifth selected by the first four members.

**20.2.2** The Parties will have the right to submit written evidence to the DRB regarding the Dispute, and will be given an opportunity to respond to the evidence presented by the other, including participating in a hearing to the extent the DRB calls one in relation to a particular Dispute. The DRB will have 60 days to provide notice of its decision and summary of reasons for the decision reached.

**20.2.3** A limited category of Disputes will be outside of the jurisdiction of the DRBs and will be directly referred to the MDOT Secretary for resolution rather than a DRB. The following Disputes are outside of the jurisdiction of the DRBs: (a) the interpretation or application of Owner codes and standards over which Owner has jurisdiction for enforcement in its capacity as a regulator, and (b) Disputes involving interpretation of federal or State Law or policies.

**20.2.4** The decision of the DRB is not binding. Unless both Parties agree in writing to the contrary, the decision of the DRB shall not be admissible in any judicial proceeding. Referral of a matter to the DRB is not mandatory and does not waive the requirements of Section 20.3 to file timely notice of Claim(s).

## **20.3 Claims**

### **20.3.1 Presentation of a Claim**

**20.3.1.1** A Claim shall be submitted to the Contracting Officer, or his or her Authorized Representative for decision. As a condition to initiation of the Claims process for Claims regarding the payment of money or extension of time, Concessionaire must first have submitted a Modification Request under Section 14.2.1(a) or a PCO Notice, NCD Notice and/or Request for Change Order under Article 15. Concessionaire shall file a Notice of Claim with the Contracting Officer within 30 days after the basis for a potential Claim is known or should have been known, whichever is earlier. Within 90 days of the filing of a Notice of Claim (or such extended period as may be approved in writing by the Contracting Officer), Concessionaire shall submit the Claim to the Contracting Officer.

**20.3.1.2** A Claim shall contain:

- (a) An explanation of the Claim, including reference to all contract provisions upon which it is based;
- (b) The amount of the Claim;
- (c) The facts upon which the Claim is based;
- (d) All pertinent data and correspondence that the contractor relies upon to substantiate the Claim;

(e) Itemized supporting data for the elements of cost requested in the Claim that the contractor contends it has incurred or it will incur. This shall contain sufficient documentary support of actual costs to permit analysis by Owner of materials, labor, equipment, subcontract and overhead costs; and

(f) A certification by Concessionaire's Authorized Representative that, to the best of his or her knowledge and belief, the Claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the costs and/or delay for which the person believes Owner is liable.

**20.3.1.3** A Notice of Claim that is not filed within 30 days after the basis for the claim is known or should have been known, whichever is earlier, shall be dismissed.

**20.3.1.4** A Claim that is not filed within 90 days of the filing of a Notice of Claim, or within the time period extended by the Contracting Officer, shall be dismissed.

## **20.3.2 Resolution of Claims by Contracting Officer**

**20.3.2.1** The Contracting Officer or his or her Authorized Representative will render an Initial Decision on all Claims within 90 days of receipt of Concessionaire's Claim unless otherwise agreed to by the Parties. The Initial Decision shall be furnished to Concessionaire, by email with a hard copy delivered by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

**20.3.2.2** Pending resolution of a Claim, Concessionaire shall proceed diligently with the performance of this Agreement.

## **20.3.3 Appeal of Claims**

**20.3.3.1** Within 15 days of receipt of an Initial Decision, Concessionaire may appeal the Initial Decision to the MDOT Secretary or designee. The notice of appeal shall include simple, concise and direct statements of grounds for each of its Claims, with appropriate reference to provisions of the Contract Documents, for each Claim and the dollar amount claimed.

**20.3.3.2** A notice of appeal that is not filed within 15 days of receipt of the Initial Decision shall be dismissed and the Initial Decision shall be the final decision of MDOT.

**20.3.3.3** The notice of appeal shall include the following information:

- (a) A statement of facts which forms the basis for the Claim;
- (b) The action or non-action of Owner which forms the basis for the Appeal;
- (c) An identification of the specific provision of the Contract Documents or other authority which forms the basis for the Appeal; and
- (d) The relief requested.

**20.3.3.4** The MDOT Secretary may request that Concessionaire produce documents, books, or other tangible things in support of the Claim. Within 30 days after receipt

of such a request, Concessionaire shall produce the documents requested or identify appropriate grounds for not producing the documents.

**20.3.3.5 Hearing –**

(a) Upon written request, and in the discretion of the MDOT Secretary, Concessionaire may be afforded a de novo review of the Contracting Officer decision and shall be affording an opportunity to be heard and to offer evidence in support of the Claim.

(b) The Contracting Officer may be afforded an opportunity to present evidence in support of the initial decision.

(c) The hearing shall take the form of a quasi-judicial proceeding. Either Party may:

(i) Call witnesses;

(ii) Offer relevant, material evidence;

(iii) Cross-examine any witness; or

(iv) Present summation and argument. The MDOT Secretary may request summation(s) to be in writing.

(d) At the request of any party, the hearing may be recorded and transcribed.

**20.3.3.6** The MDOT Secretary shall make a record of all matters relating to the Appeal, including:

(a) Claim;

(b) The Initial Decision;

(c) All documentary evidence received by the MDOT Secretary;

(d) The written transcript, if any, of a hearing;

(e) The final decision of the MDOT Secretary; and

(f) Any other documentation in the custody of Owner relevant to the Appeal.

**20.3.3.7** The MDOT Secretary may delegate the responsibilities under this section to a designee.

**20.3.3.8** The decision by the MDOT Secretary (or designee) shall, unless otherwise agreed upon by the MDOT Secretary and the Parties, be issued within 180 days from the later of the hearing under Section 20.3.3.5 or receipt of all information requested from the parties under this Section 20.3.3.

**20.3.3.9** The decision by the MDOT Secretary (or designee) shall be the final decision of MDOT and shall be a prerequisite to any judicial review of any Claim by

Concessionaire against Owner. Within 30 days after receipt of the decision of MDOT Secretary (or designee), Concessionaire may commence an action in law against Owner in any court of competent jurisdiction.

## **20.4 Continuation of Disputed Work and Payments**

At all times pending resolution of any Dispute:

**20.4.1** Concessionaire and all Contractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court of competent jurisdiction or otherwise approved by Owner. Concessionaire acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken pending resolution of any Dispute with respect to the disputed Work, even if Concessionaire's position in connection with the Dispute ultimately prevails.

**20.4.2** The Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the O&M Management Plan(s), the Governmental Approvals and applicable Law.

**20.4.3** Concessionaire shall keep complete records that provide a clear distinction between the incurred direct and indirect costs of disputed Work and that of undisputed Work.

## **ARTICLE 21. REPRESENTATIONS AND WARRANTIES**

### **21.1 Concessionaire Representations and Warranties**

Concessionaire represents to Owner as follows:

**21.1.1** The Financial Model Formulas (a) were prepared by or on behalf of Concessionaire in good faith, (b) are the same financial formulas that Concessionaire utilized and is utilizing in the Financial Model, in making its decision to enter into this Agreement and in making disclosures to potential equity investors and Lenders under the Initial Funding Agreements, and (c) as of the Effective Date are mathematically and formulaically correct and suitable for making reasonable projections.

**21.1.2** The Financial Model (a) was prepared by or on behalf of Concessionaire in good faith, (b) was audited and verified by an independent recognized model auditor immediately before the Effective Date and such audit will be updated within 48 hours after Financial Close, (c) fully discloses all cost revenue and other financial assumptions and projections that Concessionaire has used or is using in making its decision to enter into this Agreement and in making disclosures to potential equity investors and Lenders under the Initial Funding Agreements and (d) as of the Effective Date represents the projections that Concessionaire believes in good faith are the most realistic and reasonable for the Project; subject to the understanding that such projections are based upon a number of estimates and assumptions and are subject to significant business, economic and competitive uncertainties and contingencies, and that Concessionaire's stated belief regarding the projections does not constitute a representation that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

**21.1.3** As of the Effective Date, Concessionaire has reviewed all applicable Laws relating to Taxes, and has taken into account all requirements imposed by such Laws in preparing the Financial Model.

**21.1.4** As of the Setting Date, based upon review of information provided by Owner and other reasonable investigations undertaken by Concessionaire consistent with Good Industry Practice, Concessionaire has evaluated the constraints affecting equipping and supply of LRVs development, design, construction of the Project, including the Project ROW limits, surface and subsurface conditions discoverable through such investigation, the terms of the Owner-Provided Approvals and requirements of applicable Laws, and, based on the foregoing, Concessionaire has reasonable grounds for believing and does believe that the Project can be developed, designed, constructed and equipped and LRVs can be supplied.

**21.1.5** Concessionaire, consistent with Good Industry Practice, conducted an investigation of parcels to which it had access and other available information regarding conditions at the Site before the Setting Date, and as a result of such investigation, Concessionaire is familiar with and accepts the physical requirements of the Work, subject to Concessionaire's rights regarding Relief Events or Force Majeure Events as specified in this Agreement.

**21.1.6** Before the Effective Date, Concessionaire familiarized itself with the requirements of all applicable Laws and the conditions of any required Governmental Approvals.

**21.1.7** Concessionaire shall comply with Section 21.1.5 at its sole cost and without any additional compensation, any extension of time, excuse from compliance or other relief on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract Documents or would have an adverse effect on costs, except to the extent Concessionaire is entitled to relief as specified in Article 15. As of the Effective Date, Concessionaire has no reason to believe that any Governmental Approval required to be obtained by Concessionaire will not be granted in due course and will remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

**21.1.8** All Work shall be performed by, or under the supervision of, Persons who hold all necessary licenses, certifications, registrations, permits or approvals to practice in the State, by personnel who are, experienced, competent and skilled in their respective trades or professions, who are qualified to perform the Work in accordance with the Contract Documents; and all Persons performing Design Work shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

**21.1.9** Concessionaire is a limited liability company, duly organized and validly existing under the laws of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute, and deliver this Agreement and to perform each and all of the obligations of Concessionaire provided for under this Agreement. Concessionaire is duly qualified to do business and is in good standing in the State as of the Effective Date, and will remain duly qualified and in good standing throughout the Term and for as long as any obligations remain outstanding under the Contract Documents.

**21.1.10** The execution, delivery and performance of this Agreement has been duly authorized by all necessary action of Concessionaire's governing body, each person executing this Agreement has been duly authorized to execute and deliver each such document on behalf of Concessionaire and this Agreement has been duly executed and delivered by Concessionaire.

**21.1.11** No default under, violation of, or conflict with the governing instruments of Concessionaire or any agreement, judgment or decree to which Concessionaire is a party or is bound will result from (a) the execution and delivery by Concessionaire of this Agreement, or (b) performance by Concessionaire of its obligations under this Agreement.

**21.1.12** The execution and delivery by Concessionaire of this Agreement, and the performance by Concessionaire of its obligations under this Agreement will not conflict with any Laws applicable to Concessionaire that are valid and in effect on the date of execution and delivery. As of the Effective Date, Concessionaire is not in breach of any applicable Law that would have a material adverse effect on the Work or the performance of any of its obligations under the Contract Documents.

**21.1.13** This Agreement constitutes the legal, valid and binding obligation of Concessionaire, enforceable against Concessionaire in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

**21.1.14** As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Concessionaire which challenges Concessionaire's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement or which

challenges the authority of the representative of Concessionaire executing this Agreement; and Concessionaire has disclosed to Owner before the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Concessionaire is aware. No current, pending or outstanding criminal, civil, or enforcement actions have been initiated against Concessionaire by Owner or the State, and Concessionaire agrees that it will immediately notify Owner if any such action is initiated during the Term.

**21.1.15** As of the Proposal Date Concessionaire disclosed to Owner in writing all organizational conflicts of interest of Concessionaire and its Contractors of which Concessionaire was actually aware; and between the Proposal Date and the Effective Date Concessionaire has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Concessionaire or its Contractors identified in its Proposal, which have not been approved in writing by Owner. For this purpose, organizational conflict of interest has the meaning in the FTA's Best Practices Procurement Manual.

**21.1.16** As of the effective date of the relevant Key Contract, (a) each Key Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business, and is in good standing, in the State, (b) the ownership interests (including options, warrants and other rights to acquire ownership interests) of each such entity that is a single purpose entity formed for the Project are held by those Persons identified in a written certification delivered by Concessionaire to Owner before the such effective date; (c) each such entity has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Concessionaire; (d) each such entity has (i) obtained and will maintain all required registrations, licenses, certifications, permits and approvals required under applicable Law as of such date and (ii) expertise, qualifications, experience, competence, and skills and is qualified to perform the Work for which it is responsible; (e) each such Entity will be required by the applicable Key Contract to comply with all health, safety and environmental Laws in the performance of any work activities for, or on behalf of, Concessionaire for the benefit of Owner; and (f) no such entity is in breach of any applicable Law that would have a material adverse effect on any aspect of the Work.

**21.1.17** Concessionaire has not employed or retained, and Concessionaire shall not employ or retain, any Person other than employees, agents, attorneys, consultants and advisors of Concessionaire or a Concessionaire-Related Entity, to solicit or secure this Agreement, and that it has not paid or agreed to pay any Person any fee or any other consideration contingent on the making of this Agreement which would be in violation of Section 9.15. For breach or violation of this representation, Owner shall have the right to terminate this Agreement without liability, or in its discretion, to deduct from payments otherwise owing under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee. Notwithstanding the foregoing, if Owner determines that Concessionaire, a Concessionaire-Related Entity or a Lender to Concessionaire acted in good faith, did not directly contribute to any such illegal act or breach of this representation and had no knowledge of the illegal act or breach of this representation as of the Effective Date, then such Person may be entitled to obtain Project Adjusted Costs reasonably incurred and remaining unpaid.

**21.1.18** Concessionaire warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by any Concessionaire-Related Entity that become part of the Project or are purchased for Owner for the operation, maintenance or repair of the Project, free and clear of all liens or other charges of any kind or nature. All such materials, equipment, devices, or processes shall be



delivered free of any rightful claim of any third party for infringement of any patent or copyright. Refer to Section 2.3.2 for provisions regarding transfer of title to Owner;

**21.1.19** Concessionaire warrants that the individual signing this Agreement on behalf of Concessionaire is the properly authorized representative, agent, member or officer of Concessionaire, that he/she has not, nor has any other member, employee, representative, agent or officer of Concessionaire, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

**21.1.20** Meridiam Infrastructure Purple Line, LLC is a limited liability company, duly organized and validly existing under the laws of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to perform each and all of the obligations of an Equity Member provided for under this Agreement.

**21.1.21** Fluor Enterprises, Inc. is a corporation, duly organized and validly existing under the laws of California, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to perform each and all of the obligations of an Equity Member provided for under this Agreement.

**21.1.22** Star America Purple Line, LLC is a limited liability company, duly organized and validly existing under the laws of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to perform each and all of the obligations of an Equity Member provided for under this Agreement.

See the Contract Affidavit in Exhibit 14 for additional representations and affirmations by Concessionaire and its Equity Members.

## **21.2 Owner Representations and Warranties**

Owner represents to Concessionaire as follows:

**21.2.1** As of the Effective Date, Owner has full power, right and authority to execute, deliver and perform its obligations under this Agreement;

**21.2.2** Each person executing this Agreement on behalf of Owner is duly authorized to execute and deliver this Agreement, and this Agreement has been duly executed and delivered by Owner;

**21.2.3** This Agreement has each been duly authorized by Owner, and constitutes a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms;

**21.2.4** As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Owner which challenges Owner's authority to execute, deliver and perform this Agreement, or which challenges the validity or enforceability of, this Agreement or which challenges the authority of Owner officials executing this Agreement; and Owner has disclosed any pending action, suit, proceeding, investigation or litigation against Owner (including filed but un-served complaints of which Owner's senior officials are aware) relating to this Agreement or the Project;

**21.2.5** Neither the execution and delivery by Owner of this Agreement, nor the consummation of the transactions contemplated under this Agreement, is in conflict with or has resulted or will result in a default under or a violation of the enabling legislation of Owner or any agreement, judgment or decree to which Owner is a party or is bound;

**21.2.6** The execution and delivery by Owner of this Agreement, and the performance by Owner of its obligations under this Agreement, will not conflict with any Laws applicable to Owner that are valid and in effect on the date of execution and delivery. Owner is not in breach of any applicable Law that would have a material adverse effect on the performance of any of its obligations under the Contract Documents;

**21.2.7** No consent of any party and no Governmental Approval is required to be made in connection with Owner's execution and delivery of this Agreement, other than consents and approvals already obtained; and

**21.2.8** Owner agrees to administer the funding for the Project so as to ensure that federal funds do not exceed 80% of "Eligible Project Costs" as defined in the TIFIA Term Sheet.

### **21.3 Special Remedies for Mutual Breach of Warranty**

Notwithstanding any other provision of this Agreement, if any circumstance or event occurs that constitutes or results in a concurrent breach by both Concessionaire and Owner of similar warranties referenced in Section 17.1.1(f) or 17.3.1(b) but does not also constitute or result in any other breach or default by either Party, then the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the Contract Documents in accordance with Section 26.12, or Termination Due to Court Ruling in accordance with Section 19.5 and Exhibit 13B.

### **21.4 Certain Concessionaire Representations and Warranties and "Bring-Down" of Certain Owner Representation and Warranties at Financial Close**

**21.4.1** On the date of Financial Close, Concessionaire shall execute and deliver to Owner a certificate substantially in the form included in Exhibit 5C updating certain of Concessionaire's representations and warranties in this Article 21 and effective as of the date of Financial Close (which date shall be the effective date of the Initial Funding Agreements) and making certain additional representations and warranties. Failure to execute and deliver such certificate shall be a Concessionaire Default.

**21.4.2** On the date of Financial Close, Owner will execute and deliver to Concessionaire a certificate updating certain of Owner's representations and warranties in this Article 21 and effective as of the date of Financial Close. Failure to execute and deliver such certificate shall be an Owner Default.

## **ARTICLE 22. ASSIGNMENT AND TRANSFER**

### **22.1 Restriction on Change of Ownership Composition of Concessionaire**

Concessionaire shall provide all information and complete all such actions required by Owner to enable Owner to comply with the statutory requirements of the Act and/or seek Owner and Board of Public Works approval in connection with any Change of Ownership.

### **22.2 Additional Restrictions on Changes**

**22.2.1** Concessionaire shall not voluntarily or involuntarily effect or allow any Change of Ownership unless (a) it has been approved by Owner in writing and is otherwise in compliance with Section 22.1, including any restrictions that may be imposed by Owner and/or the Board of Public Works under Section 22.1, or (b) it is a Change of Ownership identified in Section 22.3.

**22.2.2** Any purported voluntary or involuntary assignment, sale, assignment, financing, grant of security interest, hypothecation, conveyance, transfer of interest, pledge, mortgage, encumbrance, grant of right of entry, or grant of other use, special use or right to, management or control of the Project or Concessionaire's Interest or other change ("Equity Change(s)") in violation of this Article 22 shall be null and void *ab initio*, and Owner, at its option, may declare any such attempted action to be a material Concessionaire Default.

**22.2.3** Except for those Equity Changes identified in Section 22.3, Concessionaire shall provide a written request for approval, accompanied by all information Owner may deem relevant to the request for approval. Owner may evaluate and require qualification of any entity(ies) involved, including a determination of whether the Equity Change would increase or decrease project risk for Owner, positively or negatively affect the ability of Concessionaire or Project to perform, and a review and approval of the identity, financial resources, qualifications, experience, technical capacity, potential conflicts of interest, and responsibility of any entity(ies) involved.

**22.2.4** Certain remote Equity Changes are pre-approved under, and subject to the conditions in, Section 22.3. In addition, Owner may consider requests for an Equity Change prior to two years after the Revenue Service Availability Date when such Equity Change is in the best interest of Owner and Owner receives a 50% share in any positive net proceeds at the time of the Equity Change; provided, however, that any consideration of Concessionaire requests for Equity Changes prior to two years after the Revenue Service Availability Date remains subject to the restrictions in Section 22.1 and Sections 22.2.1 through 22.2.3.

### **22.3 Remote Equity Changes and Equity Changes Required for Financing**

Equity Changes of the types listed in Section 22.3.4 are pre-approved Changes of Ownership by the Board of Public Works, but remain subject to compliance with the conditions specified in this Section 22.3.

**22.3.1** Section 22.3 changes do not apply to any change that would result in any interest being gained in the Project by any suspended or debarred entity, including entities subject to an agreement for voluntary exclusion, or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or Maryland state department or agency.

**22.3.2** Concessionaire shall provide written notice to Owner, accompanied by sufficient documentation evidencing the change in form and substance acceptable to Owner, including (a) the names of the transferor and transferee, (b) evidence that the transfer or transaction satisfies the requirements of this Section 22.3 and (c) if applicable, documentation that the transferee, without condition, assumes all of Concessionaire's obligations, duties and liabilities under this Agreement, the other Contract Documents and the Principal Project Documents then in effect and agrees to perform and observe all provisions of such documents applicable to Concessionaire. However, no notice is required for the transfers described in Sections 22.3.4(c) or (f).

**22.3.3** Any notice by Concessionaire under Section 22.3.4(d) or (e) shall be provided at least 30 days in advance of any proposed change permitted under this Section 22.3.

**22.3.4** Pre-approved Changes of Ownership under Section 10A-202(e) of the Act and this Section 22.3 are limited to the following:

(a) Execution and delivery of Funding Agreements and Security Documents, in strict compliance with applicable prescriptions in this Agreement, and/or any other grant to a Lender for security as permitted by this Agreement; provided that, in all cases, Concessionaire retains responsibility for the performance of Concessionaire's obligations under the Contract Documents;

(b) (i) A transfer of custody and control of the Project to a Step-In Party in accordance with the Direct Agreement, until the earlier of delivery of a Step-out Notice and pending approval or explicit disapproval of a Substituted Entity under such Direct Agreement, (ii) a transfer to a Substituted Entity approved by Owner in accordance with such Direct Agreement or (iii) any other exercise of Lender remedies under the Direct Agreement, including foreclosure;

(c) A bona fide open market transaction involving beneficial interests in the ultimate parent organization of an Equity Member (but not if the Equity Member is the ultimate parent organization);

(d) A bona fide upstream business reorganization, consolidation or other transfer in equity of a parent entity with an interest in Concessionaire where the transferor and transferee are under the same ultimate parent organization with ultimate power to direct or control or cause the direction or control of the management of Concessionaire and so long as there occurs no change in such entity as part of such reorganization, consolidation or other transfer in equity;

(e) A transfer of interests between managed funds that are under common ownership or control so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Concessionaire;

(f) A change due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including transactions involving an initial public offering; and

(g) The exercise of minority veto or minority voting rights (whether provided by applicable Law, by Concessionaire's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Concessionaire; provided that if such minority veto or minority

voting rights are provided by bona fide shareholder or similar agreements, and Owner has received copies of such agreements.

**22.3.5** Nothing in Section 22.3 shall be construed to permit any Equity Transfer by any Equity Member to any non-Affiliate, without prior approval by the Board of Public Works and Owner in accordance with Section 22.1.

## **22.4 Assignment by Owner**

Owner may assign all or any portion of its right, title and interest in the Contract Documents, Payment Bonds and Performance Security, guarantees, letters of credit and other security for payment or performance, (a) with 10 days' prior notice to Concessionaire but without Concessionaire's consent, to any other Governmental Entity of the State that succeeds to the governmental powers and authority of Owner by operation of law and (b) to others with the prior written consent of Concessionaire.

## **22.5 Assumption**

Each transferee of Concessionaire's Interest, including any Person who acquires Concessionaire's Interest through foreclosure, transfer in lieu of foreclosure or similar proceeding, shall execute and deliver to Owner an assumption agreement in form acceptable to Owner, providing that the transferee takes Concessionaire's Interest subject to, and shall be bound by, the Project Management Plan, including the Concessionaire's Design Quality Plan and Construction Quality Plan, the O&M Management Plan, the Key Contracts, the Utility Agreements, the Governmental Approvals, all agreements between the transferor and third parties, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by Owner.

## **22.6 Change of Organization or Name**

**22.6.1** Concessionaire shall not change the legal form of its organization in a manner that adversely affects Owner's rights, protections and remedies under the Contract Documents without the prior written approval of Owner.

**22.6.2** If either Party changes its name, such Party agrees to promptly furnish the other Party with notice of change of name and appropriate supporting documentation.

## **ARTICLE 23. RECORDS AND AUDITS; INTELLECTUAL PROPERTY**

### **23.1 Maintenance and Inspection of Records**

**23.1.1** Concessionaire shall undertake the following with respect to its Books and Records:

(a) Keep and maintain said Books and Records, including copies of all original documents delivered to Owner, in the City of Baltimore, in Montgomery or Prince George's County, Maryland or in another location approved by Owner in writing, and notify Owner where the Books and Records are kept;

(b) Keep and maintain Books and Records in accordance with applicable provisions of the Contract Documents, including the Technical Provisions, applicable provisions of the Project Management Plan and O&M Management Plan, and in accordance with Good Industry Practice;

(c) Make all Books and Records available for inspection by Owner and its Authorized Representatives, designees and legal counsel in Concessionaire's principal offices in Maryland, or in accordance with each Intellectual Property Escrow, at all times during normal business hours, or at other reasonable times during the Term;

(d) Provide to Owner, or make available to Owner for review in accordance with each Intellectual Property Escrow, copies of any Books and Records as and when reasonably requested by Owner. Owner may inspect upon 48 hours' prior notice or without prior notice where there is good faith suspicion of fraud. Owner's right of inspection includes the right to make extracts and take notes and shall not be construed as a waiver by Concessionaire of the attorney-client privilege;

(e) Retain all Books and Records related to the D&C Work until five years after the Final Completion Payment has been made and retain all Books and Records related to the O&M Work until five years after the date of final payment under the Contract Documents, provided that all records which are being audited or which relate to Claims and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such audits, Claims, Disputes and actions are finally resolved; and

(f) Permit Owner, upon 10 days' prior notice to Concessionaire (which notice shall identify the persons Owner requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of Concessionaire under this Agreement with any of the directors, chief executive officer and chief financial officer of Concessionaire or its representatives, for the purpose of enabling Owner to determine whether Concessionaire is in compliance with this Agreement and applicable Law. The interviewees and their employers may have counsel present at the interviews.

**23.1.2** Sections 23.1.1(c), (d) and (f) apply in addition to the Parties' rights under the Dispute Resolution Procedures.

**23.1.3** Concessionaire shall cause each Key Contract and each Major Contract to include the provisions of Section 23.1.1, to the extent applicable, modified as appropriate to reflect the provisions apply to the Contractor's Books and Records.

**23.1.4** Attachment 1 of Exhibit 16 includes additional requirements regarding maintenance and inspection of Books and Records.

## **23.2 Audits**

**23.2.1.1** Owner may review and audit Concessionaire, its Contractors and their respective Books and Records as and when Owner deems necessary for purposes of verifying compliance with the Contract Documents and applicable Law and verifying Claims.

**23.2.1.2** Without limiting Section 23.2.1.1:

(a) Owner may audit Concessionaire's Project Management Plan and O&M Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and O&M Management Plan and its component parts, plans and other documentation;

(b) The audits may be performed by employees of Owner or by an auditor under contract with Owner;

(c) Concessionaire shall provide adequate and appropriate work space for Owner or its representative(s) to conduct audits;

(d) Concessionaire shall allow auditor(s) access to such Books and Records during normal business hours, allow interviews of any employee who might have information related to such Books and Records, and otherwise cooperate with the auditors including furnishing a management representation letter upon request of the auditor; and

(e) Concessionaire shall cause each Contract to include a similar right of Owner to audit records and interview staff of the Contractor, and a similar covenant to cooperate with the auditors.

The foregoing shall not be deemed to waive the right of Concessionaire or Contractor to have counsel or other appropriate representatives present at the interview.

**23.2.2** If any Owner audit results in a correction to the Books and Records, Concessionaire shall pay the reasonable costs of Owner in conducting the audit, but if not, Owner will bear the costs of the audit.

**23.2.3** Failure of Concessionaire, Contractors or their agents to maintain and retain sufficient Books and Records to allow the auditors to verify all or a portion of a Claim or to permit the auditor access to its Books and Records to verify a Claim shall be sufficient basis for Owner to deny recovery by Concessionaire of the Claim to the extent of such failure. At a minimum, the auditors shall be provided access to the following documents relating to the Claim:

- (a) Daily time sheets and supervisor's daily reports;
- (b) Union agreements;
- (c) Insurance, welfare, and benefits records;

- (d) Payroll registers;
- (e) Earnings records;
- (f) Payroll tax forms;
- (g) Material invoices and requisitions;
- (h) Material cost distribution work sheet;
- (i) Equipment records (list of company equipment, rates, etc.);
- (j) Contractors' (including Suppliers') invoices;
- (k) Contractors' and agents' payment certificates;
- (l) Canceled checks (payroll and Suppliers);
- (m) Job cost report;
- (n) Job payroll ledger;
- (o) General ledger;
- (p) Cash disbursements journal;
- (q) All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and
- (r) Work sheets used to prepare the Claim establishing (a) the cost components of the Claim, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals, and (b) the lost revenue components of the Claim.

**23.2.4** Full compliance by Concessionaire with the provisions of Section 23.2.3 is a contractual condition precedent to Concessionaire's right to seek relief on a Claim under Article 14.

**23.2.5** Any rights of the federal government and any agency of the federal government, including FTA, to review and audit Concessionaire, its Contractors and their respective Books and Records are stated in Exhibit 16 and applicable Law. Without limiting the foregoing, the U.S. Comptroller General and his/her representatives may:

**23.2.5.1** Examine any records of Concessionaire or any of its Contractors, or any State or local government agency administering this Agreement, that directly pertain to and involve transactions relating to this Agreement or any Contract; and

**23.2.5.2** Interview any officer or employee of Concessionaire or any of its Contractors, or of any State or local government agency administering this Agreement, regarding such transactions.

**23.2.6** Owner's rights of audit include the right to observe the business operations of Concessionaire and its Contractors to confirm the accuracy of Books and Records.



**23.2.7** Concessionaire shall include in the Project Management Plan and O&M Management Plan internal procedures to facilitate review and audit by Owner and, if applicable, FTA.

**23.2.8** Concessionaire represents and warrants the completeness and accuracy of all information it or its agents provides in connection with Owner audits, and shall cause all Contractors to represent and warrant the completeness and accuracy of all information such Contractors provide in connection with Owner audits.

**23.2.9** Concessionaire's internal and third party quality and compliance auditing responsibilities shall be identified in the Project Management Plan and O&M Management Plan, in accordance with Part 2A, Sections 1 and 14 of the Technical Provisions and other related provisions concerning QA and compliance auditing.

**23.2.10** Nothing in the Contract Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the Maryland Legislative Auditor, in carrying out his or her legal authority. Concessionaire understands and acknowledges that:

**23.2.10.1** The Maryland Legislative Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a Contract;

**23.2.10.2** Acceptance of funds directly under this Agreement or indirectly through a Contract acts as acceptance of the authority of the Maryland Legislative Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and

**23.2.10.3** An entity that is the subject of an audit or investigation must provide the Maryland Legislative Auditor with access to any information such auditor considers relevant to the investigation or audit.

### **23.3 Public Information Act**

**23.3.1** Concessionaire acknowledges and agrees that all Submittals, records, documents, drawings, plans, specifications and other materials in Owner's possession, including any Books and Records submitted by Concessionaire to Owner, may be considered public information subject to disclosure under the Maryland Public Information Act ("PIA").

**23.3.2** Concessionaire may designate conspicuously any documents that it believes contain trade secret or information that would be exempted from disclosure in response to a public records request under the PIA by placing "CONFIDENTIAL" in the header or footer of such page or record affected. Any such designation of trade secret or other basis for exemption shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that authorizes the exemption from disclosure under the PIA.

**23.3.3** If a request is made for disclosure of Books and Records that have been designated by Concessionaire as "CONFIDENTIAL", Owner will notify Concessionaire and may request advice from Owner's counsel before disclosing any such documents in accordance with applicable Law. Concessionaire shall then have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under the PIA or other applicable Law to Owner within the time period specified in the notice issued by Owner (if any) and before the deadlines for release in the PIA and other applicable Law. However, it is the

responsibility of Concessionaire to monitor requests for disclosure and proceedings and make timely filings. Owner may make filings of its own concerning possible disclosure; however, Owner is under no obligation to support Concessionaire's positions. By entering this Agreement, Concessionaire consents to, and expressly waives any right to contest, provision by Owner to Owner's counsel of all, or representative samples of, the Books and Records in accordance with the PIA. Owner shall have no responsibility or obligation for a failure of Concessionaire to respond or to respond timely to any request for disclosure of the Books and Records in accordance with the PIA, and Owner shall not be required to wait for a response before making a disclosure or otherwise taking action under the PIA or other applicable Law. Owner may have liability to Concessionaire for any disclosures due to gross negligence or intentional misconduct by Owner, subject to the Maryland Tort Claims Act. Under no other circumstances will Owner be responsible or liable to Concessionaire or any other party as a result of disclosing any such materials, including materials marked "CONFIDENTIAL", whether the disclosure is deemed required by Law or by an order of court or Owner's general counsel or occurs through inadvertence, mistake or negligence on the part of Owner or its officers, employees, contractors or consultants.

**23.3.4** Nothing contained in this Section 23.3 shall modify or amend requirements and obligations imposed on Owner by the PIA or other applicable Law, and the provisions of the PIA or other Laws shall control to the extent of a conflict between the procedures under this Agreement and applicable Law. Owner will not advise a submitting party or Concessionaire as to the nature or content of documents entitled to protection from disclosure under the PIA or other applicable Laws, as to the interpretation of such Laws, or as to definition of trade secret. Concessionaire is advised to contact its own legal counsel concerning the effect of applicable Laws to Concessionaire's Books and Records and actions to be taken to preserve confidentiality.

**23.3.5** In the event of any proceeding or litigation concerning the disclosure of any Books and Records to third parties, Owner's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or other authority having jurisdiction. Concessionaire shall be responsible for prosecuting or defending any action, acting on its own behalf, concerning such materials at its sole expense and risk; provided, however, that Owner may intervene or participate in the litigation in such manner as it deems necessary or desirable. Concessionaire shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, legal or administrative proceedings, damages, losses, liabilities, response costs, costs and expenses, including any injury to or death of persons or damage to or loss of property (including damage to utility facilities), and including attorneys' and expert witness fees and costs, arising out of, relating to or resulting from Owner's refusal to disclose any material that Concessionaire has designated as a trade secret.

## **23.4 Intellectual Property**

### **23.4.1 Work Made For Hire; Authorized Use**

**23.4.1.1** Except for Concessionaire Intellectual Property, all Intellectual Property, all work product and other related materials, including all Submittals and other materials specifically developed under the Contract Documents, all physical construction and equipment itself and from data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, records, film, tape, articles, memoranda, correspondence and other documents created or collected under the terms of this Agreement or otherwise developed under this Agreement, made by Concessionaire related to the RFP (including the Proposal), exchanges of information during the pre-proposal and post-proposal periods and other work product and other related materials that disclose Intellectual

Property, have been specially ordered and commissioned by Owner, and shall be considered a work-made-for-hire, as that term is defined in Section 101 of Title 17 of the U.S. Code (Copyright Law). To the extent that all such work product and related materials, are determined by a court of competent jurisdiction, the U.S. Copyright Office, or the U.S. Patent & Trademark Office not be a work-made-for-hire or where Owner is not the owner or author, Concessionaire agrees to assign to Owner, or cause all Contractors and Subcontractors, if applicable, all rights, title and interest in all Intellectual Property, excluding Concessionaire Intellectual Property, in such work product and related materials. Concessionaire shall deliver copies of all Concessionaire Intellectual Property owned by Concessionaire and which it uses in performing the O&M Work either to Owner or to an escrow under Section 23.5.

**23.4.1.2** Concessionaire and Concessionaire-Related Entities may not use Owner Intellectual Property or any of the work-made-for-hire described above except in connection with the Work or as otherwise approved by Owner in writing.

**23.4.1.3** During the performance of this Agreement, Concessionaire shall be responsible for any loss of or damage to the Owner Intellectual Property and any of the work-made-for-hire described above while in the possession or control of any Concessionaire-Related Entity. Any such loss or damage shall be restored at Concessionaire's expense.

**23.4.1.4** During the Term and the period of performance of any post-termination obligations, Concessionaire shall provide full and unrestricted access to all of the work-made-for-hire described above, within 24 hours of receipt of notice from Owner requesting such access.

## **23.4.2 Ownership of Concessionaire Intellectual Property**

All Concessionaire Intellectual Property shall remain exclusively the property of Concessionaire, its Affiliates or Contractors, as applicable, subject to Owner's rights as stated in the Contract Documents.

## **23.4.3 License**

Concessionaire grants to Owner a perpetual, nonexclusive, transferable (subject to Sections 23.4.4 and 23.4.5), royalty-free, irrevocable, worldwide, fully paid-up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use in accordance with Section 23.4.6, reproduce, modify, adapt and disclose, the Concessionaire Intellectual Property solely in connection with the Project; provided that Owner may exercise such license only at the following times:

- (a) From and after the expiration or earlier termination of the Term for any reason whatsoever;
- (b) During any time that Owner is exercising its step-in rights under Section 17.2.2 or 17.2.4, in which case Owner may exercise such license only in connection with the Project;
- (c) During any time that a receiver is appointed for Concessionaire, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Concessionaire is the debtor; and
- (d) During any time that Concessionaire has been replaced.

#### **23.4.4 No Right to Sell**

Owner may not sell any Concessionaire Intellectual Property or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any Concessionaire Intellectual Property for any purpose other than as set forth in Section 23.4.6.

#### **23.4.5 Transfer to Successor**

Owner has the right to transfer the license to any Governmental Entity that succeeds to Owner's interests in all or any portion of the Project, or to the power and authority of Owner generally or with respect to all or any portion of the Project. The license is divisible in the event of a transfer of or with respect to a portion of the Project permitted under this Agreement.

#### **23.4.6 Rights of Use**

Owner's right and license to the Concessionaire Intellectual Property under Section 23.4.3 includes use, reproduction, modification, adaptation and disclosure, and sublicense to others relating to interfaces and interconnections between the Project and other facilities, and specifically to grant the owners of such other projects (and any of their agents) a sublicense to use applicable Concessionaire Intellectual Property for and at such interfaces and interconnections, in each case subject to Section 23.4.7.

#### **23.4.7 Covenants**

Owner will:

- (a) Not disclose any Concessionaire Intellectual Property to any third party other than (i) Owner's employees, agents, officers, directors, representatives, consultants and sublicensees who agree to be bound by confidentiality obligations of Owner under this Agreement or (ii) disclosures under the PIA as contemplated by Section 23.3;
- (b) Enter into a commercially reasonable confidentiality agreement if requested by Concessionaire with respect to the licensed Concessionaire Intellectual Property; and
- (c) Include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Concessionaire Intellectual Property and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

#### **23.4.8 No Liability**

Notwithstanding any contrary provision of this Agreement, in no event shall Owner or any of its directors, officers, employees, consultants or agents be liable to Concessionaire, any Affiliate or any Contractor for any damages, including loss of profit, arising out of, relating to or resulting from breach of the duty of confidentiality in Section 23.4.7 unless such breach is the result of gross negligence or intentional misconduct. Concessionaire irrevocably waives all claims to any such damages. The foregoing provisions do not limit Concessionaire's equitable remedies under Section 17.4.5.

### **23.4.9 Right to Use Duplicates**

Concessionaire shall continue to have a full and complete right to use any and all duplicates or other originals of the Concessionaire Intellectual Property in any manner it chooses consistent with Law.

### **23.4.10 Licenses from Third Parties**

The following provisions shall apply with respect to any Proprietary Intellectual Property that is considered Concessionaire Intellectual Property but is owned by a Person other than Concessionaire, including any Affiliate of Concessionaire, except for mass-marketed software products (sometimes referred to as “shrink wrap software”) owned by such a Person where such a license cannot be extended to Owner using commercially reasonable efforts.

**23.4.10.1** Concessionaire shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Concessionaire Intellectual Property in connection with the Project, both for Concessionaire and Owner, perpetual, nonexclusive, transferable, royalty-free, irrevocable, worldwide, fully paid-up licenses to use, reproduce, modify, adapt and disclose such Concessionaire Intellectual Property with identical scope, purpose, duration and applicability as the license granted under Section 23.4.3.

**23.4.10.2** The limitations on sale, transfer, sublicensing and disclosure by Owner in Sections 23.4.4 and 23.4.7 also apply to Owner’s licenses in such Concessionaire Intellectual Property. Concessionaire shall cause all Contracts and Subcontract with owners (other than Concessionaire) of Concessionaire Intellectual Property to acknowledge such owners’ obligations of pertaining to Owner’s rights and disclaimers with respect to such Concessionaire Intellectual Property under Sections 23.4.5, 23.4.6 and 23.4.8 also apply to Owner’s licenses to such Concessionaire Intellectual Property.

**23.4.10.3** Concessionaire shall also either cause to be delivered to Owner copies of such Concessionaire Intellectual Property or obtain from such owner consent to have the relevant Concessionaire Intellectual Property deposited into an Intellectual Property Escrow under the provisions of Section 23.5.

### **23.4.11 Owner Intellectual Property**

Except as stated in this Section 23.4.11:

**23.4.11.1** Concessionaire shall not acquire any license, interest or other right in or to any Owner Intellectual Property, or any work product and other related materials, including all physical construction and equipment itself and from data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, correspondence and other documents created or collected under the terms of any agreement (including this Agreement) or otherwise developed under the terms of any agreement (including this Agreement) and other work product and other related materials that disclose such Owner Intellectual Property, nor shall Concessionaire have any license, interest or other right to any improvements, modifications, enhancements or derivative works to or of the Owner Intellectual Property, whether such improvements, modifications, enhancements or derivative works are developed by Owner, Concessionaire, any Contractor or Subcontractor, individually or jointly.

**23.4.11.2** Subject to the terms and conditions of this Agreement, Owner hereby grants to Concessionaire a revocable, non-exclusive, non-transferable, non-sub-licensable (without Owner's prior written consent) license to use and implement, solely in connection with the performance of the Work and for the Term (including any period of Concessionaire's performance of post-termination or post-expiration obligations), the Owner Intellectual Property. If Concessionaire, any Affiliate, any Contractor or any Subcontractor creates or develops any improvements, modifications, enhancements or derivative works to or of the Owner Intellectual Property, Concessionaire will promptly notify Owner thereof and provide to Owner all data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, correspondence and other documents, information and other work product and other related materials that disclose such Owner Intellectual Property related to such improvements, modifications, enhancements or derivative works. Any and all such improvements, modifications, enhancements or derivative works created or developed by Concessionaire, any Affiliate, any Contractor or any Subcontractor will be deemed to be a Submittal under the terms of this Agreement.

## **23.5 Intellectual Property Escrows**

**23.5.1** Owner and Concessionaire acknowledge that Concessionaire and/or Contractors that supply software, Source Code and Source Code Documentation (including related modifications, updates, revisions, replacements and upgrades) and similar Proprietary Intellectual Property, may not wish to deliver such Proprietary Intellectual Property directly to Owner, as public disclosure could deprive Concessionaire and/or Contractors of commercial value. Concessionaire further acknowledges that Owner nevertheless must be given access to such Proprietary Intellectual Property at any time, and that such Proprietary Intellectual Property is released and delivered to Owner:

**23.5.1.1** In the case of such Proprietary Intellectual Property owned by Concessionaire or any Controlling Affiliate, when (a) this Agreement is terminated for Concessionaire Default, (b) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of Concessionaire occurs, (c) Concessionaire is dissolved or liquidated or (d) Concessionaire fails or ceases to provide services as necessary to permit continued use of such Proprietary Intellectual Property under the applicable license or relevant sublicense; or

**23.5.1.2** In the case of such Proprietary Intellectual Property owned by a Contractor that is not a Controlling Affiliate, when this Agreement is terminated for any reason (excluding termination under Section 19.4.1 relating to certain Owner Defaults) and either (a) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Contractor occurs or (b) the Contractor is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing such Proprietary Intellectual Property that is the subject of a license under Section 23.4.

**23.5.2** Instead of delivering such Proprietary Intellectual Property directly to Owner, Concessionaire may elect to deposit it with a neutral custodian. In such event, Concessionaire shall (a) select, subject to Owner's prior approval, one or more escrow companies or other neutral custodian (each an "Escrow Agent") engaged in the business of receiving and maintaining escrows of Source Code and Source Code Documentation, and (b) establish one or more escrows (each an "Intellectual Property Escrow") with the Escrow Agent on terms reasonably acceptable to Owner and Concessionaire for the deposit, retention, upkeep and release of such Proprietary Intellectual Property. The location of such escrows is limited to Baltimore, Maryland or another location Owner approves. Intellectual Property Escrows also may include Affiliates and Contractors as parties and may include deposit of such Proprietary

Intellectual Property owned by Affiliates and Contractors. Owner shall not be responsible for the fees and costs of the Escrow Agent.

**23.5.3** If Concessionaire elects to deliver such Proprietary Intellectual Property to an Intellectual Property Escrow, Concessionaire shall make such delivery to the Escrow Agent as follows:

**23.5.3.1** For pre-existing software, Source Code and Source Code Documentation, immediately upon execution of this Agreement or, if provided by a Contractor, execution of the relevant Contract;

**23.5.3.2** For software, Source Code and Source Code Documentation incorporated into or used on or for the Project or any portion thereof, by the first to occur of (a) 15 days after it is first incorporated or used, or (b) the Final Completion Date; and

**23.5.3.3** For any Technology Enhancement, update, upgrade or correction of software, Source Code and Source Code Documentation incorporated into or used on or for the Project or any portion of the Project, within 15 days after the end of the calendar quarter in which it is first incorporated or used.

**23.5.4** Owner shall be a named, intended third party beneficiary of each escrow agreement and each Intellectual Property Escrow with direct rights of enforcement against Concessionaire and the Escrow Agent. Each escrow agreement shall provide that neither Concessionaire nor the Escrow Agent shall have any right to amend or supplement it, or waive any provision of the escrow agreement, without Owner's prior approval.

**23.5.5** Intellectual Property Escrows shall provide rights of access and inspection to Owner and its designees at any time, subject to terms reasonably necessary to protect the confidentiality and proprietary nature of the contents of such Intellectual Property Escrows.

**23.5.6** The Intellectual Property Escrows shall survive expiration or earlier termination of this Agreement regardless of the reason, until both Parties mutually agree, in their respective discretion, that the Intellectual Property contained in the Intellectual Property Escrows is of no further use or benefit to the Project.

## **23.6 Cost and Pricing Data**

**23.6.1** Concessionaire has delivered to Owner Cost and Pricing Data with respect to the Proposal, which data is being held in safekeeping by Owner. Concessionaire represents and warrants that the Cost and Pricing Data constitutes all of the information used in determining the cost of the Work for the preparation of its Proposal and, unless Owner agrees or directs, Concessionaire shall not use any other Proposal preparation information in any request for a Modification.

**23.6.2** Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed amendments to the Contract Documents, and concurrently with approval of each Modification, if appropriate, one copy of all documentary information used by Concessionaire in preparation of the quotation or Modification shall be delivered to Owner to be held with the other Cost and Pricing Data.

**23.6.3** Except as otherwise provided in the RFP, Concessionaire shall submit the Cost and Pricing Data in the same format used in connection with the Proposal. It is not intended that Concessionaire or its Contractors perform any significant extra work in the

preparation of the Cost and Pricing Data. However, Concessionaire represents and warrants that the Cost and Pricing Data provided in connection with the Proposal were personally examined before delivery by an authorized officer of Concessionaire and that they meet the requirements of Exhibit C to the ITP, and that the Cost and Pricing Data provided in connection with quotations and Modifications will be personally examined before delivery by an authorized officer of Concessionaire, and that they will meet the requirements of Section 23.6.1.

**23.6.4** The Cost and Pricing Data provided in connection with the Proposal shall clearly detail how the components of the Financial Proposal (and Financial Model) were determined, shall be adequate to enable a complete understanding and interpretation of how Concessionaire arrived at its pricing, and shall be sufficient to allow a cost analysis to be performed under COMAR 21.05.03.05E. The Cost and Pricing Data shall include copies of offers received from all Contractors identified in the Proposal and any other potential Contractors that provided data upon which the Proposal is based. The Cost and Pricing Data provided in connection with quotations and Modifications shall, inter alia, clearly detail how the total price and individual components of that price were determined. In this regard, crews, equipment, quantities and rates of production shall be detailed.

**23.6.5** Estimates of costs shall be further divided into Concessionaire's and its Contractor's usual cost categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and Subcontract costs as appropriate. Plant and equipment and indirect costs shall also be detailed in Concessionaire's usual format. Concessionaire's allocation of plant and equipment, indirect costs, risk contingencies, markup and other items to each direct cost item shall be clearly identified. The Cost and Pricing Data shall itemize the estimated costs of the Payment and Performance Security and the insurance premiums for each coverage required to be provided by Concessionaire under Section 11.2. The Cost and Pricing Data shall include electronic media data files associated with all assumptions, detailed quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and suppliers, quotes for insurance and bond premiums, memoranda, narratives and all other information used by Concessionaire to arrive at the Proposal price or amendment or Modification price.

**23.6.6** Concessionaire shall require each Key Contractor and each other construction Contractor with a Contract price that equals or exceeds \$10,000,000 to submit to Owner a copy of all documentary information used in determining its Contract price (or the price for Contract Work included in any Modification), immediately before executing the Contract and each Modification and Contract amendment, to be held in the same manner as the Cost and Pricing Data and which shall be accessible by Owner in accordance with Section 9.1.4. Each such Contract shall include (a) a representation and warranty from the Contractor, for the benefit of Concessionaire and Owner, stating that its Cost and Pricing Data constitute all the documentary information used in establishing its Contract price, and (b) an agreement by the Contractor to provide a sworn certification in favor of Concessionaire and Owner together with each supplemental set of Cost and Pricing Data, stating that the information contained in such supplemental information is complete, accurate and current. Each Contract that is not subject to the foregoing requirement shall include a provision requiring the Contractor to preserve all documentary information used in establishing its Contract price and to provide such documentation to Owner in connection with any claim made by such Contractor.

**23.6.7** The price under this Agreement, including any Change Order or Modification, including profit or fee, shall be adjusted to exclude any significant price increase occurring because Concessionaire furnished cost or price information which, as of the date agree upon between the parties, was incomplete, inaccurate or not current.



**23.6.8** Owner may at any time conduct a review of the Cost and Pricing Data to determine whether it is complete. In the event Owner determines that any data is missing, Concessionaire shall provide such data within three business days of the request, and at that time it will be date stamped, labeled to identify it as supplementary information, and added to the Cost and Pricing Data. Concessionaire shall have no right to add documents to the Cost and Pricing Data except as otherwise provided in this Agreement.

## **23.7 Access to Cost and Pricing Data and Financial Model; Return of Materials**

**23.7.1** Owner shall maintain the Cost and Pricing Data and the Financial Model and accompanying materials in a secure location, and shall take appropriate measures to ensure that the documents remain confidential. The Cost and Pricing Data and the Financial Model and accompanying materials may be reviewed by Owner during normal business hours, after Owner has executed and delivered to Concessionaire that certain Confidentiality Agreement that was attached to the RFP, executed by Concessionaire and submitted with the Proposal. Owner will notify Concessionaire in writing at least two business days in advance of such review, and shall allow Concessionaire to be present at the review. Owner may make and retain copies of such documents only after it has executed and delivered the Confidentiality Agreement. The Parties recognize that examination of such material may be relevant in understanding the Proposal, reaching Financial Close, negotiation or determination of payment adjustments, extensions of time, compensation, excuse from compliance, Request for Change Proposals, Owner Changes, Modification Requests, Refinancing Gain calculations, calculation of Termination Compensation and resolution or settlement of Claims and Disputes.

**23.7.2** The Cost and Pricing Data and the Financial Model and accompanying materials are, and shall always remain, the property of Concessionaire, subject to Owner's review rights as provided in Section 5.1.4. Owner acknowledges that Concessionaire may consider that the Cost and Pricing Data and the Financial Model and accompanying materials constitute confidential commercial or financial information. This acknowledgment is based upon Owner's understanding that the information contained in the Cost and Pricing Data and the Financial Model and accompanying materials is not known outside Concessionaire's business and the business of its Contractors, is known only to a limited extent and by a limited number of employees of Concessionaire and Contractors, is safeguarded while in the possession of Concessionaire and its Contractors, and may be valuable to Concessionaire's strategies, assumptions and approach to public-private partnerships. Owner further acknowledges that Concessionaire expended money in developing the information included in the Cost and Pricing Data and the Financial Model and accompanying materials, and further acknowledges that it would be difficult for a competitor to replicate the information contained in such documents.

**23.7.3** Concessionaire agrees that the Cost and Pricing Data and Financial Model and accompanying materials are not part of the Contract Documents and that nothing in the Cost and Pricing Data or Financial Model and accompanying materials shall change or modify the Contract Documents.

**23.7.4** Owner will have the right to hold the Cost and Pricing Data and the Financial Model and accompanying materials, subject to this Section 23.7, until all of the following have occurred: (a) 180 days after the end of the Term; (b) all Disputes regarding this Agreement have been resolved; and (c) final payment under the Contract Documents has been made by Owner and accepted by Concessionaire.

**23.7.5** Concessionaire shall maintain originals of the Cost and Pricing Data in accordance with Section 23.6.

**23.7.6** The Parties shall promptly abide by any request from the court or other dispute resolver to receive, review and utilize Cost and Pricing Data and the Financial Model and accompanying materials to assist the dispute resolver in its deliberations.

## **ARTICLE 24. FEDERAL REQUIREMENTS; COMPLIANCE WITH OTHER LAWS**

### **24.1 Compliance with Federal Requirements**

Concessionaire shall comply with, and require its Contractors to comply with, all federal requirements applicable to transportation projects that receive federal credit or funds, including the requirements stated in Exhibit 16.

### **24.2 Federal Status of Project**

#### **24.2.1** Concessionaire acknowledges that:

(a) The Project is proceeding under FTA's "New Starts" program, which requires submission, approval and updating of a project management plan and financial plan;

(b) The Project Management Plan, Concessionaire's Financial Proposal and updates to such Financial Proposal required under the Contract Documents are intended to assist Owner in fulfilling these requirements; and

(c) FTA may have certain approval and oversight rights respecting the Project Management Plan, the Financial Proposal and design and construction standards for the entire Project.

**24.2.2** Concessionaire shall cooperate with FTA in the reasonable exercise of FTA's duties and responsibilities in connection with the Project.

### **24.3 Conflicting Provisions**

In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail.

### **24.4 Compliance with Other Laws**

**24.4.1** Concessionaire shall comply with all applicable federal, state and local Laws, and all provisions required by such laws to be included in this Agreement are incorporated by reference into this Agreement.

## **ARTICLE 25. ADVERTISING AND OTHER BUSINESS OPPORTUNITIES**

### **25.1 No Interest in Project and Project ROW**

Concessionaire's rights and interests in the Project and Project ROW are limited to such rights and interests that are required for performing the Work and Concessionaire's timely fulfillment of its obligations under the Contract Documents. Concessionaire's rights and interests exclude any Airspace which is not necessary and required for such purposes.

### **25.2 Advertising and Business Opportunities**

#### **25.2.1 Owner reserves all rights and opportunities:**

(a) Relating to advertising on the Project and, as between Concessionaire and Owner, within the O&M Limits, including use of Project physical assets (for example, Stations, LRVs, etc.) for advertising purposes; and

(b) To develop and pursue itself or through others worldwide, entrepreneurial, commercial and business activities that are ancillary or collateral to the use and operation of the Project and Project ROW. The rights and opportunities reserved to Owner under this Section 25.2.1(b) include the rights described in Section 25.2.1(a) and any sponsorships, naming rights, etc. (collectively, "Business Opportunities").

**25.2.2** Concessionaire shall cooperate and grant all necessary access to Owner and any third party designees authorized by Owner in connection with Owner's exercise of its rights relating to advertising and Business Opportunities. Concessionaire shall be compensated for reasonable costs and expenses incurred directly by Concessionaire in installing and maintaining facilities for advertising or Business Opportunities (other than routine maintenance), through a Change Order issued under Article 14.

**25.2.3** Except as authorized by Owner, Concessionaire shall not engage in, and shall not permit:

(a) Any advertising within the O&M Limits (including on or within LRVs);

(b) Use of occupation of the Project for any Business Opportunities; and

(c) Operation of any business on LRVs, at Stations or within the Project ROW, including (i) the sale of products or services (including any newsstand or concession stand for the sale of food, beverages or gifts or other retail or rental services); or (ii) the sale or rental of any wire, cable, transmission or receiving device or any other utility on, or transmission or receipt of any electronic communication to or from, any part of the Project.

**25.2.4** Concessionaire may request Owner to consider Business Opportunities. If Owner consents, the parties shall execute a Modification memorializing the agreement reached, including as to any revenue and cost sharing. Unless otherwise expressly stated in the Modification, Owner shall be entitled to all revenues generated by Business Opportunities arising out of, relating to or resulting from the Project or in the Airspace. Notwithstanding the foregoing, Concessionaire shall be compensated for reasonable costs and expenses it incurs that are directly attributable to implementation of such Business Opportunities (other than

routine maintenance), through a Change Order issued under Article 14 as well as any support efforts the Change Order requires Concessionaire to provide.

**25.2.5** Unless expressly approved by Owner, Concessionaire may not allow any Person to use or occupy the Project for any ancillary or collateral purpose.

### **25.3 Remedies**

If a Concessionaire Default concerns a breach of the provisions of Section 25.2, then, in addition to any other remedies available to Owner under this Agreement or applicable Law, Owner shall be entitled to receive from Concessionaire an amount equal to all profits from the prohibited activity, together with interest thereon at the Late Payment Rate from the date of collection until the date payment is made. In addition, Owner may require Concessionaire to restore the System to its original condition or to transfer to Owner all of Concessionaire's interest in the prohibited assets and improvements and revenues derived therefrom, or any combination of the foregoing.

## **ARTICLE 26. MISCELLANEOUS**

### **26.1 Taxes**

Concessionaire shall pay all applicable Taxes before the due date (or delinquency date if applicable). Concessionaire is solely responsible for and has no right to make any Claim due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes.

### **26.2 Amendments**

The Contract Documents may be amended only by a written instrument duly executed by or on behalf of the Parties, except to the extent expressly provided otherwise in this Agreement (e.g., Sections 7.2.6, 8.1.2, 14.1 and 14.3).

### **26.3 Waiver**

**26.3.1** The failure of a Party to exercise or delay in exercising any right under this Agreement shall not:

(a) Constitute a waiver of such right or any other right under the Contract Documents; or

(b) Relieve the other Party from performance of its obligations under the Contract Documents except as otherwise provided in the Contract Documents.

**26.3.2** No waiver of any right under this Agreement shall be effective unless made in a writing duly executed by a duly authorized representative of the Party charged with the waiver.

**26.3.3** Any waiver under Section 26.3.2 shall be limited to the specific instance and shall not constitute a waiver of such right in the future or of any other right under this Agreement.

**26.3.4** Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

**26.3.5** No waiver of any right under this Agreement shall be deemed to have occurred as the result of any acceptance by Owner, any payment for or acceptance of the whole or any part of the Work, any extension of time, or any possession taken by Owner.

### **26.4 Independent Contractor; No Joint Venture or Partnership**

**26.4.1** Concessionaire is an independent contractor. In no event shall the relationship between Owner and Concessionaire be construed as creating any relationship whatsoever between Owner and Concessionaire's employees or agents. Except as otherwise provided in the Contract Documents, Concessionaire has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that Concessionaire or any Contractor hires to perform or assist in performing the Work.

**26.4.2** Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between Owner and Concessionaire; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term “public-private partnership” may be used on occasion to refer to contractual relationships of the type created by this Agreement, use of said term does not indicate any intention by the Parties to form or hold themselves out as a de jure or de facto partnership, joint venture or similar relationship, to share net profits or net losses, or to give Owner control or joint control over Concessionaire’s financial decisions or discretionary actions concerning the Project and Work.

**26.4.3** Neither Concessionaire nor any of its employees or agents is or shall be deemed to be an employee or agent of Owner. Concessionaire shall not have, or be deemed to have, power or authority to make any commitments on Owner’s behalf or to execute agreements in the name of or on behalf of Owner. Concessionaire shall not enter into any agreement with any Governmental Entity, Utility, property owner or other third party having regulatory jurisdiction over any aspect of the Project or Work or having any property interest affected by the Project or the Work that in any way purports to obligate Owner, or states or implies that Owner has an obligation to the third party, to undertake any activity, unless Owner otherwise approves.

## **26.5 Financial Disclosure**

Concessionaire shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland which requires that every business that enters into Contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these Contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

## **26.6 Successors and Assigns**

The Contract Documents shall be binding upon and inure to the benefit of Owner and Concessionaire and each of their permitted successors, assigns and legal representatives.

## **26.7 Designation of Representatives, Contracting Officer; Cooperation with Representatives**

**26.7.1** Owner and Concessionaire shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the Contract Documents (“Authorized Representative”). Owner shall designate an individual who shall be authorized to act in the role of “Contracting Officer” under this Agreement (the “Contracting Officer”). Exhibit 3 provides the initial Authorized Representative and Contracting Officer designations. A Party may change such designations by written notice in accordance with Section 26.12.

**26.7.2** Concessionaire shall cooperate with Owner and all representatives of Owner designated as described above in performance of their obligations under the Contract Documents.

## **26.8 Survival**

Concessionaire's and Owner's representations and warranties, the dispute resolution provisions contained in Article 20, the indemnifications, limitations and releases contained in Sections 7.8.1.4(f) and 11.5, the express obligations of the Parties following termination (including those in Sections 11.1.8.3, Articles 19 and 22, any Direct Agreement and Exhibit 13B), and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work. The jurisdiction of the DRB shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of, relating to or resulting from the Contract Documents that are subject to its jurisdiction.

## **26.9 Limitation on Third Party Beneficiaries**

Except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain Lenders under any Direct Agreement) identify third parties and state that they are entitled to benefits, (a) it is not intended by any of the provisions of the Contract Documents to create any third party beneficiary to this Agreement or to authorize anyone not a Party to maintain a suit for personal injury or property damage under this Agreement, and (b) the duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and a Contractor or any Person other than Concessionaire.

## **26.10 No Personal Liability of Public Employees**

In carrying out any of the provisions of the Contract Documents, or in exercising any right granted to them under the Contract Documents, there shall be no liability upon the Secretary, Administrator or other authorized representatives of Owner, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

## **26.11 Governing Law; Venue**

**26.11.1** Concessionaire consents to jurisdiction in the courts of the State of Maryland or the U.S. District Court for the District of Maryland in the circumstances set out in this Section 26.11.1, with respect to any claim that Owner may have against Concessionaire arising out of, relating to or resulting from any matter relating to this Agreement. Concessionaire waives any defense of *forum non conveniens*.

**26.11.2** This Agreement shall be construed and interpreted in accordance with the laws of the State of Maryland, except to the extent that United States federal law otherwise applies. Disputes arising out of, relating to or resulting from this Agreement shall be determined by a competent State court in the State of Maryland, unless a Maryland court lacks jurisdiction over the action, in which case the matter shall be submitted to the U.S. District Court for the District of Maryland, assuming it has jurisdiction. These courts, and the courts with jurisdiction to review the decisions of said courts, shall be the only courts with any authority to determine any such dispute.

**26.11.3** Neither Party shall commence any action in any other court or attempt to remove an action to any other court.



**26.11.4** The Parties acknowledge and agree that any violation of this Section 26.11 may be specifically enforced by mandatory injunction because money damages would be an inadequate remedy.

**26.11.5** Subject to such waivers of immunity as may be applicable under the laws of the State of Maryland, nothing in this Agreement may be considered as a waiver by Owner or the State of their rights of sovereign immunity or under the Eleventh Amendment of the U.S. Constitution.

## **26.12 Notices and Communications**

**26.12.1** Notices under the Contract Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone.

**26.12.2** Notices under Section 26.12.1 shall be sent to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

**26.12.3** All notices to Concessionaire shall be delivered to the following addresses or as otherwise directed by Concessionaire's Authorized Representative:

Name: Christophe Petit  
Title: President  
Address: 165 Roslyn Road, Roslyn Heights, NY 11577  
Telephone: 516-882-4100  
Facsimile: 516-882-4058  
E-mail Address: cpetit@starinfrapartners.com

Name: Mark Melson  
Title: Chief Operating Officer  
Address: 165 Roslyn Road, Roslyn Heights, NY 11577  
Telephone: 516-882-4096  
Facsimile: 516-882-4058  
E-mail Address: mmelson@starinfrapartners.com

Name: Benjamin Goldberg  
Title: Chief Compliance Manager  
Address: 605 3rd Ave, Floor 28, New York, NY 10128  
Telephone: 212-798-8625  
Facsimile: 212-798-8690  
E-mail Address: b.goldberg@meridiam.com

Name: Jean-Michel Martinez  
Title: Senior Investment Director (Asset Management)  
Address: 605 3rd Ave, Floor 28, New York, NY 10128  
Telephone: 212-798-8579  
Facsimile: 212-798-8690  
E-mail Address: jm.martinez@meridiam.com

Name: Terence M. Easton  
Title: Vice President, Sales  
Address: 3 Polaris Way, Aliso Viejo, CA 92698

Telephone: (949) 349-6327  
Facsimile: (949) 349-5605  
E-mail Address: Terence.Easton@Fluor.com

Name: Spencer C. Weiss  
Title: Vice President and Managing General Counsel  
Address: 100 Fluor Daniel Drive, C102B, Greenville, South Carolina 29607  
Telephone: (864) 281-8088  
Facsimile: (864) 281-6868  
E-mail Address: Spencer.Weiss@Fluor.com

**26.12.4** All notices to Owner shall be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by Owner's Authorized Representative:

Maryland Transit Administration  
Transit Development & Delivery  
100 S. Charles Street, Tower II, Suite 700  
Baltimore, Maryland 21201  
Attention: Contracting Officer  
Telephone: 443-451-3723  
Facsimile: 410-685-2605  
E-mail: contractingofficer@purplelinemd.com

In addition, copies of all Notices to Proceed, notices regarding Disputes, and suspension, termination and default notices shall be delivered to the following persons:

Maryland Transit Administration  
Transit Development & Delivery  
100 S. Charles Street, Tower II, Suite 700  
Baltimore, Maryland 21201  
Attention: Contracting Officer  
Telephone: 443-341-3723  
Facsimile: 410-685-2605  
E-mail: contractingofficer@purplelinemd.com

*and*

Maryland Transit  
Office of the Attorney General  
6 St. Paul Street, 12<sup>th</sup> Floor  
Baltimore, Maryland 21202  
Attention: Chief Counsel  
Telephone: 410-767-5833  
Facsimile: 410-333-2584

**26.12.5** Subject to Section 26.12.6, notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery.

**26.12.6** Notices sent by facsimile after 4:00 p.m. Eastern time and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery

(that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

**26.12.7** Any technical or other communications pertaining to the Work shall be conducted by Concessionaire's Authorized Representative and technical representatives designated by Owner.

**26.12.8** Concessionaire shall promptly provide to Owner a copy of each communication received from any Lender relating to any default or event of default under any Funding Agreement or Security Document.

### **26.13 Severability**

**26.13.1** If any provision or part of the Contract Documents is ruled invalid (including invalidity due to any statutory change or other change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such provision or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Financial Model Update (or, if there has been no Update, the original Financial Model) and Concessionaire's compensation to account for any change in the Work resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such provision or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable provision or part.

**26.13.2** If after the efforts required by Section 26.13.1, there is no interpretation or reformation of the Contract Documents that can reasonably be adopted which will return the Parties to the benefits of their original bargain, then the court order shall be treated as a Termination Due to Court Ruling under Section 19.5.

### **26.14 Construction and Interpretation of Agreement**

**26.14.1** The Contract Documents shall be construed simply, as a whole and in accordance with the fair meaning of the language used and not strictly for or against any Party.

**26.14.2** The Parties acknowledge and agree that (a) the Contract Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers, information and drafts during the Proposal preparation process, (b) each Party has been given the opportunity to independently review the Contract Documents with legal counsel, and (c) each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of a conflict, ambiguity or inconsistency in or Dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be interpreted or construed against the Party preparing it, and instead the Dispute resolver shall consult other customary rules of interpretation and construction.

**26.14.3** Owner's final answers to the questions posed during the Proposal preparation process for the Contract Documents shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

**26.14.4** The captions of the articles, sections and subsections in this Agreement are for convenience only and are not to be treated or construed as part of this Agreement.

**26.14.5** Unless otherwise expressly stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meaning.

**26.14.6** Wherever the word “including”, “includes” or “include” is used in the Contract Documents, it is deemed to be followed by the words “without limitation.” Wherever reference is made in the Contract Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

**26.14.7** References to “days” contained in the Contract Documents shall mean calendar days unless otherwise stated.

**26.14.8** Subject to Section 26.14.9, if the day on or by which any thing is to be done in accordance with this Agreement is not a business day, that thing must be done on the next business day.

**26.14.9** If the Contract Documents require action to be taken in the event of an emergency and otherwise where it is clear that performance is intended to occur on a non-business day, Concessionaire shall be required to perform such obligations, even though the date in question may fall on a non-business day.

**26.14.10** As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

**26.14.11** All monetary amounts and obligations in the Contract Documents are expressed and payable in U.S. dollars.

**26.14.12** Each party must perform its obligations in accordance with this Agreement at its own cost, unless expressly provided otherwise.

**26.14.13** The term “may”, when used in the context of a power or right exercisable by Owner or Owner Authorized Representative, means that Owner or Owner Authorized Representative can exercise that right or power in its discretion. With respect to Change Orders, statements that Concessionaire “may” receive or request a time extension or additional compensation means that Concessionaire’s entitlement to a Change Order is subject to all applicable conditions and limitations contained in the Contract Documents or applicable as a matter of Law with respect to the relief requested, including strict adherence to contractual notification and recordkeeping requirements, limitations on allowable costs, requirements to mitigate damages, requirements to establish that the Critical Path has been delayed, requirements to establish that no Concessionaire-Related Entity caused the occurrence giving rise to the cost or delay or is otherwise at fault, and requirements to otherwise provide satisfactory justification for any claims for a time extension and additional compensation.

**26.14.14** If this Agreement requires calculation of an amount payable to a party there must be no double counting in calculating that amount.

**26.14.15** If any escalation index referenced in the Contract Documents is changed after the Effective Date so that its base year changes, the index shall be converted in

accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics.

#### **26.15 Further Assurances**

Each Party shall promptly execute and deliver to the other Party all such instruments and other documents and assurances as are reasonably requested by the second Party to further evidence its obligations hereunder, including, specifically with respect to Concessionaire, assurances regarding the validity of (a) the assignments of Contracts contained herein and (b) any instruments securing performance hereof.

#### **26.16 Entire Agreement**

Owner and Concessionaire agree and expressly intend for this Agreement and the other Contract Documents to constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible. The Contract Documents contain the entire understanding of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements, understandings, statements, representations and negotiations, in each case oral or written, between the Parties with respect to their subject matter.

#### **26.17 Counterparts**

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

WITNESS:

PURPLE LINE TRANSIT PARTNERS LLC

Mary Ann Mayshaw

Mary Ann Mayshaw

By:   
(Signature)

Terence M. Easton  
(Printed Name)

Authorized Manager  
(Title)

By: \_\_\_\_\_  
(Signature)

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

Authorized Manager  
(Title)

By: \_\_\_\_\_  
(Signature)

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

Authorized Manager  
(Title)

PUBLIC-PRIVATE PARTNERSHIP AGREEMENT  
PURPLE LINE

WITNESS:

PURPLE LINE TRANSIT PARTNERS LLC


\_\_\_\_\_


By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_

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

Authorized Manager \_\_\_\_\_  
(Title)

  
\_\_\_\_\_  
JONATHAN DINGLE

By:   
(Signature)

John M. Dionisio  
\_\_\_\_\_  
(Printed Name)

Authorized Manager \_\_\_\_\_  
(Title)

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_

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

Authorized Manager \_\_\_\_\_  
(Title)

PUBLIC-PRIVATE PARTNERSHIP AGREEMENT  
PURPLE LINE

WITNESS:

PURPLE LINE TRANSIT PARTNERS LLC

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_

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

\_\_\_\_\_  
Authorized Manager  
(Title)

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_

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

\_\_\_\_\_  
Authorized Manager  
(Title)

Sei Mau

Samantha Markella

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
William A. Marino  
(Printed Name)

\_\_\_\_\_  
Authorized Manager  
(Title)

PUBLIC-PRIVATE PARTNERSHIP AGREEMENT  
PURPLE LINE



## **EXHIBIT 1**

### **ABBREVIATIONS AND DEFINITIONS**

Unless otherwise specified, whenever the following abbreviations or terms are used in this Agreement and the other Contract Documents, they have the meanings given below. References in this Exhibit 1 to Sections and Exhibits shall mean sections of and exhibits to the Agreement unless otherwise specified.

A/C	Air Conditioning
AA	Alternative Analysis
AASHTO	American Association of State Highway and Transportation Officials
ABA	Architectural Barriers Act
AC	Alternating Current
ACI	American Concrete Institute
ACS	Access Control System
ADA	Americans with Disabilities Act
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AGC	Associated General Contractors of America
AHA	Activity Hazard Analysis
AHJ	Authority (or Authorities) Having Jurisdiction
AISC	American Institute of Steel Construction, Inc.
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
AP	Availability Payment
APC	Automatic Passenger Counter
APS	Accessible Pedestrian Signal
APTA	American Public Transportation Association
AREMA	American Railway Engineering and Maintenance of Way Association
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	ASTM International (formerly known as the American Society for Testing and Materials)
ATC	Alternative Technical Concept
ATP	Automatic Train Protection
AVI	Automatic Vehicle Identification
AVL	Automatic Vehicle Location
AW	Assigned Weight
AWS	American Welding Society
BLS	Blue Light Station
BOCC	Backup Operations Control Center
BODR	Basis of Design Report
BTU	British Thermal Unit
CAP	Compliance Action Plan
CBRNE	Chemical, Biological, Radiological, Nuclear, and Explosives
CCC	Code Compliance Certificate
CCH	Central Clearing House
CCQP	Concessionaire's Construction Quality Plan
CC	Central Computer (in the context of fair system specifications)
CCT	Capital Crescent Trail
CCTV	Closed-Circuit Television

CDAC	Maryland Capital Debt Affordability Committee, or its successor entity
CDQP	Concessionaire's Design Quality Plan
CEI	Construction Engineering and Inspection
CEL	Certifiable Elements List
CEPP	Comprehensive Environmental Protection Program
CFR	Code of Federal Regulations
CIB	Communications Infrastructure Backbone
CIH	Central Instrument House
CIL	Certifiable Items List
CIP	Controlled Insurance Program
CIS	Customer Information System
CM	Cultural Resources Compliance Manager
CMP	Construction Monitoring Plan
CO	Carbon Monoxide
CODP	Control of Odors and Dust Plan
COMAR	Code of Maryland Regulations
COTS	Commercial Off-the-Shelf
CPI	Consumer Price Index
CPM	Critical Path Method
CPR	Concrete Pavement Restoration
CPS	Countdown Pedestrian Signals
CPTED	Crime Prevention through Environmental Design
CQCM	Construction Quality Control Manager
CQP	Concessionaire's Quality Program
CSC	Customer Service Center
CSE	(Concessionaire's) Safety Engineer
CSHP	Concessionaire's Safety & Health Plan
CSJ	Control Section Job
CSLB	Contractor State License Board
CSP	Concessionaire's Security Plan
CSS	(Concessionaire's) Safety Supervisor
CSXT	CSX Transportation, Inc. or CSX Corporation
CWA	Clean Water Act
CWR	Continuous Welded Rail
DAQ	Delivered Audio Quality.
DBE	Disadvantaged Business Enterprise
DBMS	Database Management System
DC	Direct Current
DCM	Design Criteria Manual
DDMP	Document and Date Management Plan
DDoS	Distributed Denial-of-Service
DHS	Department of Homeland Security, or its successor entity
DLLR	Department of Labor, Licensing and Regulation
DNP3	Distributed Network Protocol
DOJ	Department of Justice
DOPF <sub>n</sub>	Daily Operations Performance Factor (see Exhibit 4D)
DOT	Department of Transportation
DRB	Dispute Resolution Board
DRP	Disaster Recovery Plan
DSS	Decent, Safe and Sanitary
DSU	Delay in Start-Up
DTMF	Dual Tone Multi-Frequency
DVD	Digital Video Disc
DVR	Digital Video Recorder

EB	East Bound Direction of Travel
ECI	Environmental Compliance Inspector
ECMP	Environmental Compliance and Mitigation Plan
EIA	Electronic Industries Association
EMC	Electromagnetic compatibility
EMCS	Energy Management Control System
EMI	Electromagnetic interference
EMP	Emergency Management Panel
EMS	Emergency Medical Services
EOR	Engineer of Record
EP	Extraction Procedure (toxicity)
EPA	Environmental Protection Agency
EPP	Emergency Preparedness Plan
EPTP	Environmental Protection Training Program
ERU	Environmental Review Unit of MDNR
ESA	Endangered Species Act of 1973, 16 U.S.C. §§ 1531 <i>et seq.</i> , as it may be amended also Environmental Site Assessment
ESC	Erosion and Sediment Control
ESD	Environmental Site Design
ET	Environmental Team
ETCS	European Train Control System
ETS	Emergency Trip Station
FAA	Federal Aviation Administration, or its successor entity
FACP	Fire Alarm Control Panel
FAPG	Federal-Aid Policy Guide
FAS	Fire Alarm System
FC	Footcandle
FCC	Federal Communications Commission
FCM	Fracture Critical Member
FDC	Fire Department Connections
FDP	Fiber Distribution Panel
FDR	Foundation Design Reports
FEIS	Final Environmental Impact Statement
FELA	Federal Employer's Liability Act
FEMA	Federal Emergency Management Agency, or its successor entity
FiRST	First Responders Interoperable Radio System Team
FHWA	Federal Highway Administration, or its successor entity
FICA	Federal Insurance Contribution Act
FLS	Fire/Life Safety
FLSSC	Fire/Life Safety and Security Committee
FMP	Fire Management Panel
FMS	Fire Management System
FO	Fiber optic
FOBB	Fiber Optic Backbone
FPVP	Fire Protection Valve Pit
FRA	Federal Railroad Administration
FS	Fare System
FTA	Federal Transit Administration, or its successor entity
FTP	File Transfer Protocol
FUTA	Federal Unemployment Tax Act
FWCA	Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 <i>et seq.</i> , as it may be amended
GAAP	Generally Accepted Accounting Principles
GBR	Geotechnical Baseline Report
GDR	Geotechnical Data Report

GER	Geotechnical Engineering Reports
GigE	Gigabit Ethernet
GIR	Geotechnical Interpretive Reports
GIS	Geographical Information System
GNSS	Global Navigation Satellite System
GPM	Gallons per Minute
GUI	Graphical User Interfaces
HAZWOPER	Hazardous Waste Operations and Emergency Response Standard, under federal OSHA
HCN	Hydrogen Cyanide
HEC	Hydraulic Engineering Circular
HF	Hydrogen Fluoride
HMI	Human-Machine Interface
HMMP	Hazardous Materials Management Plan
HMOSHP	Hazardous Materials Operations, Safety and Health Plan
HMWPE	High Molecular Weight Polyethylene
HVAC	Heating, Ventilation, and Air Conditioning
IAC	Intrusion Access Control
IBC	International Building Code
ICC	International Code Council
ICD	Interface Control Document
ICEA	Insulated Cable Engineers Association
ICM	Interface Control Manual
ICS	Industrial Control Systems
ID	Identification
IDF	Intermediate Distribution Frame
IEC	International Electrotechnical Commission
IED	Interpretive Engineering Decision
IEEE	Institute of Electrical and Electronics Engineers
IESNA	Illuminating Engineer Society of North America (also known as IES)
IFC	International Fire Code
IMC	International Mechanical Code
IP	Internet Protocol
IRC	International Residential Code
IRI	International Roughness Index
IRR	Internal Rate of Return
ISA	International Society of Arboriculture
ISO	International Organization for Standardization
IT	Information Technology
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
IVR	Interactive Voice Response
IWP	Investigative Work Plan
JSG	(MTA) Joint Security Group or successor entity
LAN	Local Area Network
LED	Light Emitting Diode
LEED	Leadership in Energy & Environmental Design
LFRD	Load and Resistance Factor Design
Lmax	Maximum sound level that occurs over a measured interval.
LOD	Limits of Disturbance
LOS	Level of Service
LPI	Lighting Protection Institute
LRFD	Load and Resistance Factor Design
LRT	Light Rail Transit

LRU	Lowest Replaceable Unit
LRV	Light Rail Vehicle
MARC	Maryland Area Regional Commuter
MAS	Maximum Authorized Speed
MBE	Minority Business Enterprise
MBPS	Maryland Building Performance Standards
MCC	Motor Control Center
MCDOT	Montgomery County Department of Transportation, or its successor entity
MCEER	Multidisciplinary Center for Earthquake Engineering Research
MCTS	Master Clock Time System
MDE	Maryland Department of the Environment, or its successor entity For purposes of Part 2B, Section 3.4.19 of the Technical Provisions only, Maximum Design Earthquake
MDF	Main Distribution Frame
MDNR	Maryland Department of Natural Resources
MdMUTCD	Maryland Manual on Uniform Traffic Control Devices
MDOT	Maryland Department of Transportation, or its successor entity
MDSHA	Maryland State Highway Administration, and any entity succeeding to the powers, authorities and responsibilities of MDSHA
MEDCO	Maryland Economic Development Corporation, or its successor entity
MEF	Metro Ethernet Forum
MEP	Mechanical, Electrical and Plumbing
M-NCPPC	Maryland-National Capital Park and Planning Commission
MOA	Memorandum of Agreement
MOPF	Monthly Operations Performance Factor
MOSH	Maryland Occupational Safety & Health
MOT	Maintenance of Traffic
MOTAA	Maintenance of Traffic Alternative Analysis
MOU	Memorandum of Understanding
MOW	Maintenance of Way
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSDS	Material Safety Data Sheets
MSE	Mechanically Stabilized Earth
MTA	Maryland Transit Administration, and any entity succeeding to the powers, authorities and responsibilities of MTA
MTAP	Maryland Transit Administration Police
MTBF	Mean Time Between Failures
MTTR	Mean Time To Repair
MUTCD	FHWA, Manual on Uniform Traffic Control Devices for Streets and Highways
MVA	Maryland Motor Vehicle Administration, or its successor entity
MW	Megawatt
NACE	National Association of Corrosion Engineers
NAD83	North American Datum 83
NAVD	North American Vertical Datum
NB	North Bound Direction of Travel
NBIS	National Bridge Inspection Standards
NCEER	National Center for Earthquake Engineering Research
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 <i>et seq.</i> , as it may be amended
NEPP	New Electronic Payment Program

NESC	National Electrical Safety Code
NETA	International Electrical Testing Association
NFIP	National Flood Insurance Program
NFPA	National Fire Protection Association
NGS	National Geodetic Survey
NIST	National Institute of Standards and Technology
NMS	Network Management System
NMFS	National Marine Fisheries Services
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NRC	Noise Reduction Coefficient
NRCS	Natural Resource Conservation Service
NRHP	National Register of Historic Places
NTAS	National Terrorism Advisory System
NTP	Notice to Proceed
NVR	Network Video Recorder
O&M	Operations and Maintenance
OAMP	Operations, Administration, Maintenance, and Provisioning
OCC	Operations Control Center
OCR	Optical Character Recognition
OCS	Overhead Contact System
ODE	Operating Design Earthquake
OEM	Original Equipment Manufacturers
OFAC	Office of Foreign Assets Control
OMF	Operations and Maintenance Facilities
OMQMP	Operations and Maintenance Quality Management Plan
ORDEP	Off Road Diesel Emission Plan
OSDBU	Office of Small and Disadvantaged Business Utilization
OSHA	Occupational Safety and Health Administration
OSPS	Operating Speed Performance Standard
OSQARM	MTA Office of Safety, Quality Assurance and Risk Management, or its successor entity
OTN	Open Transport Network
OTP	On-Time Performance
P&C	Property and casualty
P3	public-private partnership
PA	Public Address
PABs	Private Activity Bonds
PAT	Passenger Assistance Telephone
PBX	Private Branch Exchange
PCA	Portland Cement Association
PCB	Polychlorinated Biphenyl
PCI	Precast/Prestressed Concrete Institute
PCMO	Project Construction Management Office
PDM	Precedence Diagram Method
PEPCO/Peppo	Potomac Electric Power Company
PGDPW&T	Prince George's County Department of Public Works and Transportation, or its successor entity
PGER	Preliminary Geotechnical Engineering Reports
PHA	Preliminary Hazard Analysis
PIA	Maryland Public Information Act
PICP	Public Information and Communications Plan
PID	Passenger Interface Display

PIN	Personal Identification Number
PIS	Passenger Information System
PLC	Programmable Logic Controller
PMF	Police Monitoring Facility
PMIS	Pavement Management Information System
PMO	Project Management Office
PMP	Project Management Plan
PoE	Power over Ethernet
POTS	Plain Old Telephone Service
PPM	Parts per Million
PPV	Peak Particle Velocity
PQM	Project Operations and Maintenance Quality Manager
PSGS	Painshare/Gainshare
PSLAN	Passenger Station Local Area Network
PSTN	Public Switched Telephone Network
PTFE	Polytetrafluorethylene
PTZ	Pan, Tilt, and Zoom
PUA	Possession and Use Agreement
PUE	Permanent Utilities Easement
PVC	Polyvinyl Chloride
QA/QC	Quality Assurance/ Quality Control
QCP	Quality Check Point
QM	Quality Management
QMP	Quality Management Plan
QMS	Quality Management System
QNC	Quality Activity Noncompliance Event
QoS	Quality of Service
QPM	Quality Program Manager
QVA	Quarterly Volume Adjustment
RAMS	Reliability, Availability, Maintainability, and Safety/Security/Service
RAPP	Rail Activation Program Plan
RFCD	Release for Construction Documents
RFP	Request for Proposals
RLM	Residual Life Methodology
ROD	Record of Decision
ROW	Right of Way
ROW AM	Right of Way Acquisition Manager
ROWIS	Right of Way Information System
RPLS	Registered Professional Land Surveyor
RSA	Revenue Service Availability
RTF	Related Transportation Facilities
RTU	Remote Terminal Unit
SB	South Bound Direction of Travel
SCADA	Supervisory Control and Data Acquisition
SCD	Soil Conservation District
SDPP	Special Deposit and Possession Procedure
SEM	Sequential Excavation Method
SHA	(Maryland) State Highway Administration or MDSHA, or its successor entity
SIFMA	Securities Industry and Financial Markets Association
SIR	Site Investigative Report
SLC	Signaling Line Circuit.
SMACNA	Sheet Metal and Air Conditioning Contractors' National Association, Inc.
SMP	Storm Water Management Plan
SNC	Service Activity Noncompliance Event

SONET	Synchronous Optical Network
SOP	Standard Operation (or Operating) Procedure(s)
SOQ	Concessionaire's Statement of Qualification
SPCC	Spill Prevention and Control Plan
SPT	Standard Penetration Test
SSC	System Security Criteria
SSCC	Safety and Security Certification Committee
SSCP	Safety and Security Certification Plan
SSEPP	System Security and Emergency Preparedness Plan
SSI	Sensitive Security Information
SSMP	Safety & Security Management Plan
SSP	Site Security Plan
SSPP	System Safety Program Plan
SSTC	Silver Spring Transit Center
SSTR	Single Slope Traffic Railing
SSU	Station Synchronization Unit
SSVTL	Safety and Security Verification Tracking Log
SSWG	Safety and Security Working Group
STA	Station
STC	Sound Transmission Class
SUE	Subsurface Utility Engineering
SUTA	State Unemployment Tax Act
SVOC	Semi-volatile Organic Compound
SW3P	Storm Water Pollution Prevention Plan
SWF	Storm Water Facilities
SWM	Storm Water Management
Ttb	Turn back time (see definition below)
TBVM	Total Baseline LRV Miles
TBOH	Total Baseline Operating Hours
TC&C	Train Control and Communications
TCD	Traffic Control Devices
TCE	Temporary Construction Easement
TCLP	Toxicity Characteristic Leaching Procedure
TCM	Train Control and Monitoring
TCP	Traffic Control Plan
TCRP	Transit Cooperative Research Program
TIA	Time Impact Analysis/es
TIFIA	Transportation Infrastructure Finance and Innovation Act, 23 U.S.C. § 601 <i>et seq.</i> , as it may be amended
TIP	Transportation Improvement Plan
TMP	Transportation Management Plan
TPs	Technical Provisions
TPSS	Traction Power Substation
TRIA	Terrorism Risk Insurance Act
TRO	Temporary Restraining Order
TSA	Transportation Security Administration, or its successor entity
Tsc	Traffic signals and traffic congestion (see definition below)
TSLM	Total Scheduled LRV Miles
TSOH	Total Scheduled Operating Hours
TSPP	Transit Signal Priority and Preemption
TSWG	Transit Security Working Group
TTB	Telephone Terminal Board
TTM	Train Traffic Management
TVA	Threat and Vulnerability Assessment



TVM	Ticket Vending Machine
Tvops	Vehicle and operations performance (see definition below)
TVSS	Transient Voltage Surge Suppression
TWC	Train to Wayside Communications
U.S.C.	United States Code
UAO	Utility Agency Owner
UDC	Utility Design Coordinator
UL	Underwriters' Laboratory
UM	Utility Manager
UMAP	Unadjusted Monthly Availability Payment
UMD	University of Maryland
UNO	Unless Notified Otherwise
UPS	Uninterruptible Power Supply
USACE	United States Army Corps of Engineers
USBM	United States Bureau of Mines
USDOT	United States Department of Transportation, or its successor entity
USFWS	United States Fish and Wildlife Service, or its successor entity
USGBC	United States Green Building Council
USGS	United States Geological Survey
USPAP	Uniform Standard of Professional Appraisal Practices
UTC	Coordinated Universal Time
UTM	Universal Transverse Mercator
V ac	Voltage, Alternating Current
V dc	Voltage, Direct Current
VCE	Vertical Circulation Elements
VCS	LRV Communications System
VDW	Video Display Wall
VLAN	Virtual Local Area Network
VMS	Variable Message Sign
VNTSC	Volpe National Transportation Systems Center
VOC	Volatile Organic Compound
VoIP	Voice over Internet Protocol
WAN	Wide Area Network
WB	West Bound Direction of Travel
WBS	Work Breakdown Structure
WMATA	Washington Metropolitan Area Transit Authority, or its successor entity
WPCP	Water Pollution Control Program
WSSC	Washington Suburban Sanitary Commission

**Act** means Title 10A of the State Finance and Procurement Article of the Annotated Code of Maryland (Chapter 5, Acts 2013).

**Activity Noncompliance Event** means any Activity Noncompliance Occurrence which:

- (a) has not been responded to within any applicable Response Time;
- (b) has not been rectified within any applicable Rectification Time; or
- (c) following the expiration of a Rectification Time, has not been rectified within any further Application (Maximum Exposure) Time.

**Activity Noncompliance Occurrence** means each occurrence of an event listed in the Activity Noncompliance Occurrence Table.

**Activity Noncompliance Occurrence Table** means the table in Part 3, Section 2 of the Technical Provisions.

**Actual Benchmark Insurance Policies** has the meaning given in Section 11.1.8.2(a).

**Actual Combined Tsc** means the sum of the eastbound Actual Tsc value and the westbound Actual Tsc value for each of the periods identified in Part 3, Exhibit 3.1 of the Technical Provisions.

**Actual Cumulative Initial Fleet LRV Miles** means the sum of all the actual miles travelled by the Initial Fleet from the first Contract Month to the relevant Contract Month.

**Actual Cumulative Additional Fleet LRV** means the sum of all the actual miles travelled by the Additional LRVs from their in service month to the relevant Contract Month.

**Actual Insurance Policies** has the meaning given in Section 11.1.8.3.

**Actual Tsc** means traffic signal and traffic congestion delay value determined using a Total Trip Run Time test program following the process set out in the Technical Provisions Part 3 Sections 3.15.2.2 through 3.15.2.5.

**Adaptive Signal Control** means a traffic control technology using a highly functional signal timing system designed to improve traffic progression specifically at intersections and along corridors with very unpredictable traffic demand. Adaptive signal control equipment continuously adjusts and distributes traffic signal green time to accommodate variable traffic demands, which enhances traffic movements, improves travel time reliability, and reduces congestion.

**Addition** means an addition to the relevant Monthly Availability Payment in accordance with Part C of Exhibit 4D.

**Additional LRV Lifecycle Payment** means the amount calculated in Section 3.2 of Part B of Exhibit 4D for the relevant Contract Month.

**Additional Properties** means permanent interests in real property that Owner agrees to acquire, in response to a request by Concessionaire as specified in Section 7.5.2, to become part of the Project ROW or for a Utility Easement, subject to the exceptions stated in Section 7.5.2.

**Adjusted Estimated Fair Value** means A minus the sum of B, C, D, E and F, where:

A = the Estimated Fair Value;

B = Owner's Recoverable Costs;

C = all other amounts owing to Owner by Concessionaire under the terms of the Agreement as of the Termination Date and any additional costs reasonably incurred by Owner as a direct result of the Concessionaire Default, including any cumulative negative Post-Termination Services Amount;

D = the Relief Event Costs;

E = Credit Balances and Insurance Proceeds, to the extent that the amounts have not been already received or taken into account in calculating the Estimated Fair Value; and

F = any gains which have accrued, or will accrue, to any Equity Member or Affiliate as a result of the termination of the Agreement or any other Contract Documents.

**Adjusted Resolicited Agreement Price** means A minus the sum of B, C, D, E and F where:

A = The lump sum amount offered by the Replacement Concessionaire as consideration for the Resolicited Agreement, but excluding any portion of the consideration that is allocable to work not included in the scope of this Agreement;

B = Owner's Recoverable Costs;

C = All other amounts owing to Owner by Concessionaire under the terms of the Agreement as at the Termination Date that are not assumed by the Replacement Concessionaire, including any cumulative negative Post-Termination Services Amount and any additional costs reasonably incurred by Owner as a direct result of the Concessionaire Default;

D = the Relief Event Costs;

E = Credit Balances and Insurance Proceeds to the extent that the amounts have not been already received or taken into account during the Resolicitation Process; and

F = any gains which have accrued, or will accrue, to any Equity Member or Affiliate as a result of the termination of the Agreement or any other Contract Documents.

**Aerial Station** means a Station with a platform elevated relative to grade.

**Affiliate** means:

- (a) any Equity Member;
- (b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Concessionaire or any Equity Member; and
- (c) any Person owned in whole or in part by (i) Concessionaire, (ii) any Equity Member or (iii) any Affiliate of Concessionaire under clause (b) of this definition, whether the ownership interest is direct or indirect, beneficial or of record, provided that ownership of less than 10% of the equity interest in a Person shall not give rise to Affiliate status.

For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

**Aggregate Actual Electricity Consumption** means the actual annual total electricity consumption, in kilo-watt hours, as invoiced by the supplier of permanent electrical power.

**Aggregate Electricity Target** means the target annual total electricity consumption, in kilo-watt hours, set forth in Attachment 1 to Appendix E of Exhibit 4D.

**Agreement** means the Public-Private Partnership Agreement to which this Exhibit 1 is attached, including all exhibits, appendices and attachments, as such agreement may be modified from time to time. The Agreement is Book 1.

**Airspace** means any and all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Project ROW and not necessary or required for the Project (including Upgrades) or developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project (including Upgrades) or Concessionaire's timely fulfillment of its obligations under the Contract Documents.

**Allowance** means the Hazardous Materials Remediation Allowance, Excess Liability Allowance, Fare System Allowance, and/or the Art in Transit Allowance.

**Alternate Bus Service** means a bus service implemented during a Service Interruption for all areas of the Purple Line System where Normal Service or Alternate Train Service cannot be provided because of the Service Interruption that: (a) provides at least the same frequency of service as Normal Service in both directions of travel; (b) serves all Stations directly affected by the Service Interruption; (c) uses standard transit coach equipment; and (d) provides sufficient capacity to carry all passengers.

**Alternate Service** means the service required by Part 3, Section 3.2 of the Technical Provisions to be provided by Concessionaire when Normal Service cannot be provided due to a Service Interruption. Alternate Service shall include Alternate Train Service and may include Alternate Bus Service.

**Alternate Train Service** means a Train service implemented during a Service Interruption that is as close as reasonably possible to Normal Service including Normal Service headways in both directions of travel on both sides of the Service Interruption area and minimum achievable or Normal Service headways in both directions of travel through the Service Interruption area (i.e., single tracking) to the extent possible for safe operations under the conditions of the Service Interruption.

**Alternative Technical Concept (ATC)** means each alternative technical concept included in the Proposal in accordance with the RFP, constituting an approved deviation from the requirements of the Technical Provisions included in the RFP, which approval was based on Owner's determination that the concept should result in demonstrated performance, quality and utility of the end product that is equal to or better than the performance, quality and utility of the end product absent the deviation. The ATCs are listed in Section 2 to Exhibit 2.

**Annual Payment** means the Availability Payment for a given Contract Year.

**Appeal** means an appeal filed by Concessionaire with the MDOT Secretary or designee under Section 20.3.3, with respect to an Initial Decision issued by Owner's Authorized Representative.

**Application (Maximum Exposure) Time** means, with respect to any Activity Noncompliance Occurrence, the applicable time period or further time period within which Concessionaire shall

rectify an Activity Noncompliance Occurrence as specified in the “Application (Maximum Exposure) Time” column of the Activity Noncompliance Occurrence Table.

**Approval** (whether or not capitalized) means a written statement by Owner’s Authorized Representative, based on his/her review of specified Work for compliance with requirements of the Contract Documents, indicating that the specified Work has been approved. Approvals will only be given for those submittals, activities, or Work specifically identified for “approval” in the Contract Documents. The term “approve” means “provide approval.”

**Area Median Income** means the average household earnings of all owners and renters residing in a census tract as listed in the Comprehensive Housing Affordability Strategy (CHAS) dataset using the 2006-2010 American Community Survey 5-year average.

**Art in Transit Allowance** means the fund in the amount specified in Exhibit 4A, to be used to pay for certain Work required for Owner’s “art-in-transit” program as further described in Section 7.9.2.

**Asset Management Plan** means the plan required under Part 3, Section 6 of the Technical Provisions.

**At-Grade Station** means a Station with a platform not elevated relative to grade.

**Authority Having Jurisdiction** means an organization, office or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure. The term “Authorities Having Jurisdiction” refers to more than one such organization, office or individual.

**Authorized Representative** means the authorized representative for either Party identified in Exhibit 3 or otherwise designated in accordance with the Agreement.

**Auxiliary Track** means track used for passing, storing, or turning back trains.

**Availability Deductions** means the deduction to Monthly Availability Payment made in accordance with the formula in Section 4.1 of Part C of Exhibit 4D.

**Availability Payment** means the payments to be made by Owner to Concessionaire under Section 13.2, determined on an annual basis in accordance with Exhibit 4D and payable monthly.

**A-Weighted Noise Levels dB(A)** means decibels (referenced to 20 micro-Pascal) as measured with A-weighting network of standard sound level meter.

**Backfill Change Order** has the meaning given in Section 13.10.1.2.

**Backfill Uses** has the meaning given in Section 5 of Exhibit 2.

**Backfill Requirements** has the meaning given in Section 5 of Exhibit 2.

**Backup Operations Control Center (BOCC)** means an alternate control location that can be used to manage, control and monitor the train service and all associated activities in the event that the OCC is not operational or not accessible to personnel.

**Base Case Financial Model** means the financial computer model, including the Financial Model Formulas and the related output, assumptions and information used by or incorporated in the Financial Model Formulas approved by the Parties as of the Effective Date:

- (a) On the basis of which Concessionaire and Owner entered into this Agreement;
- (b) Which include certain financial forecasts, projections and calculations with respect to revenues, expenses, the repayment of Project Debt and Distributions to initial Equity Members that result in achievement of the Equity IRR; and
- (c) Which is consistent with the Pricing Sheets.

**Base Date** means the Proposal Date.

**Base Relevant Insurance Cost** means, for each category of insurance listed in the “Table of Base Relevant Insurance Costs” in Exhibit 7B, the amount stated in the column entitled “Base Relevant Insurance Costs”, which reflects the annual premium, for each category of insurance, in the Proposal to place the relevant Insurance Policy at the Revenue Service Availability Date.

**Baseline Service Plan** means each of the service plans set out in the Pricing Sheets.

**Basis of Design Report (BODR)** means the report described in Part 2A, Section 3.10.2 of the Technical Provisions, concerning design methodology and approach for the D&C Work, key assumptions and operations and maintenance design methodology.

**Baseline Conditions** means the baseline geotechnical conditions specified in Chapters 1 to 4 of the GBR.

**Baseline Schedule** means the CPM schedule developed from the Initial Baseline Schedule for the D&C Work approved by Owner in accordance with Part 2A, Section 9.1.2 of the Technical Provisions, and revisions to such schedule approved by Owner in accordance with Part 2A, Section 9.1.3 of the Technical Provisions.

**Benchmark** means the underlying reference instrument(s) or data source(s), provided by Concessionaire in the Proposal and approved by Owner, used to identify the Benchmark Interest Rates, including LIBOR, swap rates, Treasury securities and SIFMA.

**Benchmark Interest Rate(s)** means the rates identified using the Benchmark and used to calculate the Proposal Interest Rate and Financial Close Interest Rate on each of the Initial Funding Agreements.

**Benchmarking Reference Period** has the meaning given in Section 11.1.8.6.

**Benchmarking Term** has the meaning given in Section 11.1.8.

**Best Management Practices (BMP)** has the meaning in Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA Document 832 R 92-005).

**Bethesda Metro South Entrance** means the new passenger entrance to the Bethesda Metro Station at the south end of the Metrorail Red Line Platform, located under Wisconsin Avenue, as shown in Book 4 Contract Drawings, Drawings A-101 through A-106 inclusive, A301 and as

described in the Bethesda South Entrance Technical Provisions in Book 5 Engineering Data, including a direct connection between the street level at Wisconsin Avenue and Elm Street, the Metrorail Red Line and the Project Transitway. It includes all structural work, MEP, elevators, emergency stairs, associated facilities, including those at the surface along with improvements and reconstruction on Elm Street, to provide the direct connection to the Red Line Mezzanine Level, connecting to a mezzanine to be constructed by others on behalf of WMATA within the existing Metro Station vault.

**Betterment** generally means any upgrading of such Utility during the course of a Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of the facility over that which was provided by the existing Utility; provided that if the Utility Agreement applicable to a particular utility facility includes a definition of the term, the definition in the Utility Agreement shall control. The following are not considered Betterments unless otherwise provided in the applicable Utility Agreement:

- (a) any upgrading which is required for accommodation of the Project;
- (b) replacement devices or materials that are of equivalent standards although not identical;
- (c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) any upgrading required by applicable Law;
- (e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and
- (f) any upgrading required by the Utility Owner's applicable Utility Adjustment Standards.

**Bid Combined Tsc** means the sum of the eastbound Tsc value and the westbound Tsc value in Table AA-5 of Section 3 to Exhibit 2, for each period identified said form.

**Board of Public Works** means the Board of Public Works for the State of Maryland, established under Maryland Constitution 1864, Article VII, Section 1-3 and Maryland Constitution 1867, Article XII, Section 1-3.

**Book** means, unless the context requires otherwise, each part of the Contract Documents identified as a "Book", as it may be amended from time to time.

**Books and Records** means any and all documents, books, records, papers, or other information of any Concessionaire-Related Entity or Affiliate relating to the Project, including (i) all design and construction documents, and all operations and maintenance documents (including drawings, specifications, Submittals, Contracts, Subcontracts, invoices, schedules, meeting minutes, budgets, forecasts and change orders), (ii) all budgets, certificates, claims, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, vehicular traffic information, light rail train operational information analyzed, categorized, characterized,

created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Concessionaire or its Contractors in connection with the Project, (iii) the Base Case Financial Model, Financial Model, subsequent Financial Model Updates and Financial Model Data, and (iv) with respect to all of the above, any information that is stored electronically or on computer-related media. For purposes of the requirements of the Contract Documents to maintain Books and Records, the term "Books and Records" includes documents or information that are subject to the attorney-client privilege, but for purposes of requirements of the Contract Documents to provide access to Books and Records, the term specifically excludes documents or information that are subject to the attorney-client privilege and are identified in a privilege log as attorney-client privileged information.

**Breakage Costs** means any commercially reasonable prepayment premiums or penalties (including customary and reasonable trustee, Collateral Agent and Lender fees but excluding any fees related to legal or other consulting costs), make-whole payments or other prepayment amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements, payable by or on behalf of, or credited against payments owing to, Concessionaire, under any Funding Agreement or Security Document or otherwise as a result of the payment (including pre-payment), redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date (less any breakage benefits), excluding, however, any such amounts included in the principal amount of any Refinancing. The term "Breakage Costs" excludes any such premiums, penalties, payments or other amounts relating to Subordinate Debt.

**Bridge** (whether capitalized or not) means a structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening. For lengths, all dimensions shall be parallel to the center line of the roadway. The dimensions of handrails will not be taken into account in measuring bridge lengths.

Any bridge or highway grade separation structure includes the connecting highways, substructure, superstructure, roadway approaches, entrance plazas, interchanges, overpasses, underpasses, and other structures which Owner may deem necessary together with all property rights, easements, franchises and interests acquired by Owner for the construction and operation of the bridge.

**Brown Station Road Requirements** means those conditions and requirements pertaining to deposits of soils and construction or demolition debris at the Brown Station Road Landfill in Prince George's County, Maryland identified in Section 6 to Exhibit 2.

**Business Day** (whether capitalized or not) means any weekday (i.e., Monday through Friday) except for those weekdays on which banks are not required or authorized by applicable Law to be open in the State.

**Business Opportunity(ies)** has the meaning given in Section 25.2.

**Buy America Requirements** means requirements applicable to FTA-funded projects under 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, as each such statute and regulation may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.



**Capacity Improvement** means any Project expansion, improvement, measure or procedure that both (a) maintains or increases the throughput capacity of the Project or any portion thereof and (b) improves the level of service of the Project. Capacity Improvements could include adding Stations, constructing bridges or other structures, new or improved intelligent transportation systems and applications, and making other improvements that achieve the foregoing conditions.

**Capital Crescent Trail** means the paved trail and related improvements described in Part 1, Section 3.1 of the Technical Provisions.

**Certificate of Compliance** means a certificate, by an individual authorized to certify on behalf of Concessionaire, indicating that all materials incorporated in the Project conform to the requirements of the Contract Documents.

**Certificate of Revenue Service Availability** means the certificate issued by the Independent Engineer when all the conditions for the Project in Section 7.10.2 have been satisfied in accordance with the procedures and within the time frame established in Section 7.10.3.

**Changed D&C Standards** means changes made by the Owner which adopt, change, or replace standards (including Safety Standards), criteria, requirements, conditions, procedures, specifications and other provisions of general application to design and construction of Owner's transportation facilities, which may be implemented through revisions to existing manuals and publications or through new manuals and publications.

**Change in Law** means:

- (a) With respect to the D&C Work, the enactment, adoption, modification, repeal or other change in any Law occurring after the Setting Date (including any change in the judicial or administrative interpretation of any Law) which is materially different from Laws in effect on the Setting Date and which (i) requires a material modification in the Project design, (ii) results in imposition of additional mitigation requirements on the Project respecting impacts on paleontological, biological or cultural (including archaeological and historical) resources, or (iii) prevents renewal of any Governmental Approval; and
- (b) With respect to the O&M Work, the enactment, adoption, modification, repeal or other change in any Law occurring after the Setting Date (including any change in the judicial or administrative interpretation of any Law) which is materially different from Laws in effect on the Setting Date, including any Law requiring payment by Concessionaire of a possessory interest or other ad valorem tax on property owned by the State;

but excluding (1) any such new Law or change which was passed or adopted prior to, but becomes effective after, the Setting Date, (2) any enactment, adoption, modification, repeal or other change in any tax Law of general application, except as specified in item (b) above, (3) any Changed D&C Standards resulting from any such new Law or change (which are separately addressed in Section 7.2), and (4) any modification to the O&M Standards resulting from any such new Law or change.

**Change of Ownership** means any "change in the ownership composition of a public-private partnership" under Section 10A-202(e) of the Act, including (a) any Equity Transfer, or (b) any

other action that results, directly or indirectly, in a change in the power to direct or control or cause the direction or control of the management of the Project, including: (i) a transfer of an interest, direct or indirect, in an Equity Member, Concessionaire, Concessionaire's Interest or (ii) any other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or transaction, or right of entry onto, use of, or right to manage and control the Project, of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise.

**Change Order** means a written order issued by Owner directing the Concessionaire to make changes which the changes clause of the Agreement authorizes Owner to order with or without the consent of the Concessionaire. This written document amends the Contract Documents by adding, deleting or modifying the documents to include price, time, work and conditions not previously addressed within the Contract Documents.

**Change to Service Plan Report** shall mean a report provided by Concessionaire with respect to a proposed change in the Service Plan, including the rationale and justification for change (or referring to a Request for Change Proposal from Owner), information regarding proposed schedule changes and effect on operations, addressing relevant Service Levels and Reliability impacts of the proposed change.

**Claim** means a written demand or assertion by Concessionaire seeking, as a legal right, the payment of money, extension of time or interpretation of the terms of the Contract Documents, which is or potentially could be disputed by Owner, or other relief arising under or relating to this Agreement. Submittal of a PCO Notice or Request for Change Order under Article 15 does not constitute a Claim.

**Closure** means that all or a portion of the Purple Line System is closed or that use thereof by passengers is otherwise restricted for any reason, during the O&M Period.

**Codes and Standards** means the codes, standards, manuals, guidelines and other documents referenced in the Technical Provisions and Book 3 and incorporated into the Contract Documents by such reference.

**Collateral Agent** means the Institutional Lender listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the other Lenders in the Security Documents, or the Institutional Lender designated to act as trustee or agent on behalf of or at the direction of the other Lenders in an intercreditor agreement or other document executed by all Lenders to whom Security Documents are outstanding at the time of execution of such document, a copy of which shall be delivered by Concessionaire to Owner. In the event of any Project Debt issued and held by a single Lender, Collateral Agent means such Lender. The bond trustee for PABs, if an Institutional Lender, may also be the Collateral Agent.

**COMAR (Code of Maryland Regulations)** means the official compilation of all administrative regulations issued by agencies of the state of Maryland.

**Comment** (whether capitalized or not), in the context of review of Submittals, means provision of a markup of the Submittal or separate document identifying any issues or concerns that Owner would like Concessionaire to address. Refer to Part 2A, Section 10.4.2 of the Technical Provisions for additional information.

**Commercial Close** means execution and delivery of the Agreement by the Parties.

**Commercially Reasonable Insurance Rates** means insurance premiums that are less than or equal to the greater of (a) rates that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude are justified by the risk protection afforded, and (b) 200% of the rates indicated for the period in question in the Base Case Financial Model and related Financial Modeling Data.

**Committed Investment** means:

- (a) Any form of direct investment of good and immediately available funds by Equity Members, including the purchase of equity shares in and/or the provision of Subordinate Debt to Concessionaire; or
- (b) An irrevocable written commitment to make the direct investment referenced in clause (a) of this definition, in good and immediately available funds, by a date which is no later than 10 business days before the RSA Deadline, coupled with an on-demand letter of credit issued by or for the account of an Equity Member naming Concessionaire as beneficiary, satisfying the applicable requirements of the Agreement and guaranteeing such commitment.

**Communications Infrastructure Backbone (CIB)** means the communications infrastructure that, along with associated raceway, conduit and cabling, provides the Wide Area Network (WAN) backbone link for communications to and from the OCC, BOCC, Security Center, CIHs, TPSSs, OMF, Station Platforms, and any other Project facilities requiring communication with other locations, the MTA Police Monitoring Facility (PMF) and the MTA Treasury Office.

**Compensation Amount** means the amount of compensation to be paid to Concessionaire, if any, under a Change Order, which may include Incremental Costs, Delay Interest and Delay Costs, as agreed upon or determined through the Dispute Resolution Procedures.

**Comprehensive Environmental Protection Program** means the overarching system by which Concessionaire shall ensure that commitments made during the environmental approval and permitting processes, and other environmental requirements, to be carried forward and reflected, as appropriate, in the design and implemented throughout the Work, as defined in Part 2A, Section 5.4 of the Technical Provisions.

**Concessionaire** means the entity identified as the Concessionaire in the preamble to the Agreement.

**Concessionaire Default** means the occurrence of any one or more of the events or conditions constituting breaches or other defaults by Concessionaire identified in Section 17.1.1.

**Concessionaire's Design Quality Plan (CDQP)** means the deliverable described in Part 2A, Section 14.2 of the Technical Provisions, following approval by Owner.

**Concessionaire FC Notice** means the notice provided by Concessionaire to Owner under Section 4.4.2.1 regarding the date scheduled for Financial Close.

**Concessionaire's Interest** means all right, title and interest of Concessionaire in, to, under or derived from the Agreement and the other Contract Documents.

**Concessionaire Intellectual Property** means Proprietary Intellectual Property of Concessionaire or third parties which is used or otherwise applied in connection with the Project or the Work. Intellectual Property that is created for the Project will be considered Concessionaire Intellectual Property only if such Intellectual Property has applications not restricted to the Project. Concessionaire Intellectual Property includes Source Code and Source Code Documentation with respect to Technology Enhancements.

**Concessionaire-Related Entity(ies)** means (a) Concessionaire, (b) Concessionaire's Equity Members, (c) Contractors (including Suppliers), (d) any other Persons performing any of the Work, (e) any other Persons for whom Concessionaire may be legally or contractually responsible and (f) the employees, agents, officers, directors, representatives, consultants, successors and assigns of any of the foregoing.

**Concessionaire's Quality Program** means the set of Owner-approved plans, procedures, processes and systems for Quality Assurance, management and control of the Project and Work, compliant with the requirements of ISO 9001, prepared, implemented, operated and maintained by Concessionaire, and applicable to Concessionaire and its Contractors. There shall only be one Quality Program for Concessionaire and its Contractors.

**Concessionaire Release** means, with respect to Hazardous Materials, (a) any Release of Hazardous Material, or the exacerbation of any such Release, attributable to the culpable actions, culpable omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Concessionaire-Related Entity; (b) any Release of Hazardous Materials arranged to be brought onto the Site by any Concessionaire-Related Entity; regardless of cause, (c) any migration of Hazardous Materials into, onto, under or from the Project ROW where the source of such Hazardous Materials is a Concessionaire-Related Entity; or (d) any use, containment, storage, management, handling, transport or disposal of any Hazardous Materials, by any Concessionaire-Related Entity in violation of the requirements of the Contract Documents, Good Industry Practice or any applicable Law or Governmental Approval.

**Concessionaire Utility Agreement** means each agreement (if any) entered into between Concessionaire and a Utility Owner that has not entered into an Owner Utility Agreement, in accordance with Section 7.6.2.

**Consequential Damages** means punitive damages (excluding criminal penalties), special damages or consequential damages arising out of breach of this Agreement or in tort (including damages due to negligence), subject to the exclusions listed in Section 17.6.2.

**Construction Documents** means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project included in the Construction Work, in accordance with the Contract Documents.

**Construction Labor & Workforce Development Plan** means Concessionaire's plan related to construction labor and workforce development submitted as part of the Project Management Technical Solutions and incorporated by reference in Exhibit 17.

**Construction Manager** means the Key Person described in Part 2A, Section 2.3.4 of the Technical Provisions.

**Construction Quality Plan (CCQP)** means the deliverable described in Part 2A, Section 14.3 of the Technical Provisions, following approval thereof by Owner.

**Construction Work** means all Work that constitutes building, altering, repairing, improving or demolishing any structure, building, or other improvement to real property (including the Fixed Facilities and Fixed Equipment) included in the Project, including testing and commissioning, but excluding:

- (a) design, architectural, engineering, surveying, professional environmental services and similar services,
- (b) preparing and processing applications for Governmental Approvals,
- (c) coordinating with adjacent property owners and Utility Owners,
- (d) manufacturing and supply of LRVs (provided that Construction Work includes testing and commissioning of LRVs at the Site (excluding Project-Specific Locations)),
- (e) Operations Work, and
- (f) Maintenance services during the O&M Period that (i) are not performed under a Major Construction Contract, and (ii) do not constitute building, altering, performing major repairs to, improving or demolishing any structure, building or other improvement to real property.

**Construction Work Hours** means the total number of hours of work performed on-site by laborers, mechanics and other persons covered by the Davis-Bacon Act and on-site work performed by non-supervisory construction inspectors, administrative personnel, surveyors, and other on-site professional services in support of the Construction Work. With the prior approval of the Owner, Construction Work Hours may also include off-site education or training activities related to the work being performed by the Nationally Targeted Worker provided that regular wages are paid to the Nationally Targeted Worker for each hour of training attended.

**Consumer Price Index (CPI)** means the “All Items Consumer Price Index for All Urban Consumers” (CPI-U), for the U.S. City Average, as published by the United States Department of Labor Bureau of Labor Statistics, base year [1982-84 = 100]. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury’s Inflation Linked Treasuries as described at 62 Federal Register 846-847 (January 6, 1997), or if no such securities are outstanding, will be determined by the parties in accordance with general market practice at the time.

**Contract** means any agreement, and any modification of such agreement, by Concessionaire with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement or modification at a lower tier, between a Contractor and its lower tier Subcontractor or Supplier or a Supplier and its lower-tier Supplier, at all tiers.

**Contract Deadline** means any of the Financial Close Deadline, RSA Deadline, Long Stop Date and Final Completion Deadline. The term “Contract Deadlines” means more than one Contract Deadline.

**Contract Documents** means the Agreement (including Exhibits and Schedules), the Technical Provisions and other documents identified in Section 1.2.

**Contract Drawings** means Book 4.

**Contract Month** generally means each calendar month during the O&M Period, except that (a) the first Contract Month will be the full or partial month that commences on the O&M Commencement Date and (b) the last Contract Month will be the full or partial month that includes the last day of the Term. Where reference is made to a 3-Contract Month period, this means each consecutive three Contract Month period commencing on the O&M Commencement Date.

**Contract Termination Costs** means net costs that have been or will be incurred by Concessionaire as a direct result of termination of the Agreement arising from termination of Contracts, including reasonable and documented demobilization costs, but only to the extent that (a) such costs are incurred in connection with the Project and relate to provision of services or the completion of Work required to be provided by Concessionaire; (b) such costs are incurred under arrangements and/or agreements that (i) are consistent with terms of the Agreement, (ii) have been entered into in the ordinary course of business, (iii) do not provide for payments to or for the benefit of employees that exceed reasonable compensation for services provided, and (iv) in the case of Contracts with Affiliates, are on commercially reasonable terms, and (c) each of Concessionaire and the relevant Contractors has used commercially reasonable efforts to mitigate such costs.

**Contracting Officer** has the meaning given in Section 26.7.1. Owner's initial Contracting Officer is identified in Exhibit 3.

**Contract Year** generally means each consecutive 12 Contract Month period except that the last Contract Year will include the last day of the Term and be a consecutive 13 Contract Month period if the first Contract Month was a partial month.

**Contractor** means any Person with whom Concessionaire has entered into any Contract to perform any part of the Work or provide any materials, equipment or supplies for the Project on behalf of Concessionaire, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers. The term "Contractor" does not include Utility Owners or the Independent Engineer.

**Controllers** mean operations personnel who perform monitoring and/or controlling functions; end users of the control and monitoring system. Includes traffic, traction power, SCADA, maintenance, safety and security controllers, but excludes system administration.

**Controlling Affiliate** means any Person which directly, or indirectly through one or more intermediaries, controls a majority of the voting shares of Concessionaire, or controls the election of a majority of the board of directors, trustees or other persons exercising similar functions for Concessionaire.

For purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting rights or securities, by contract, family relationship or otherwise.

**Corridor** means the light rail right of way and adjoining roadways, sidewalks and landscaped areas physically modified by the Project.

**Cost and Pricing Data** means the data (including calculations, formulas, unit and material prices, and other cost and fee information) assembled by Concessionaire, delivered as specified in the Instructions to Proposers and maintained as specified in Section 23.6, which data supports and explains the basis of Concessionaire's cost estimates for development, design, construction, operations, and maintenance of the Project and provides all cost assumptions for human resources, including salary and benefits during the O&M Period for non-management personnel performing the Work. The term also includes data regarding pricing for Modifications and certain Contracts as described in Section 23.6.

**Crash Wall** (whether capitalized or not) means a concrete wall built to protect a structure and/or its supporting parts and limit damage from a vehicular collision or crash by an LRV or other railroad vehicle.

**Credit Balances and Insurance Proceeds** means all credit balances held by or for the benefit of Concessionaire on the Termination Date and any insurance proceeds or other amounts owing to Concessionaire or to which Concessionaire would have been entitled had insurance been maintained pursuant to the requirements of the Agreement.

**Credit Spread(s)** means the additional rate above the Benchmark Interest Rate used to calculate the yield on each of the debt instruments included in the Initial Project Debt.

**Crime Prevention Through Environmental Design (CPTED)** means an overarching strategy that calls for the application of three fundamental principles: natural surveillance, natural access control and territoriality, and activity support and maintenance.

**Critical Path** means each path shown on the Baseline Schedule for which there is zero Float.

**Critical Path Method (CPM)** is a method of planning and scheduling a construction project where activities are arranged based on activity relationships.

**Culvert** (whether capitalized or not) means any structure not classified as a bridge which provides an opening under any roadway.

**D&C Payment Cap** means the annual and aggregate cap on Progress Payments in Part C of Exhibit 4A.

**D&C Construction Services** means those types of work in Exhibit 12 that are not designated with an asterisk.

**D&C Design Services** means those types of work in Exhibit 12 that are designated with an asterisk.

**D&C Work** means all Work to be performed prior to the RSA Date, as well as any Work remaining to be performed after such date by (a) the Design-Build Contractor or (b) the LRV Supplier for the initial LRV order, which excludes for purposes of clarity the O&M Spare LRV, LRV components and related consumables obtained and supplied during the O&M Period.

**Daily Operations Performance Factor** means the result of the calculation for each day during the O&M Period determined in accordance with Section 2 of Appendix D to Exhibit 4D.

**Daily Report** means the daily report prepared by Concessionaire regarding prior day(s) service delivery, LRV, systems, Station performance and other operations activities.

**Data Flow Diagram** means the interconnections for each of the functions that a system element must perform, including all inputs & outputs, and the characteristics of each path shown.

**Day** (whether capitalized or not) means calendar day, unless otherwise expressly specified.

**DBE Goal** means the goal for percentage of Work to be performed by certified DBEs, which goal is that established by Owner for the Project, as specified in the Agreement.

**DBE Participation Forms** means those forms provided by Owner to Concessionaire relating to compliance with the requirements of Section 9.10.

**DBE Participation Plan** means the participation plan required under Section 9.10.1.5(h).

**Debt Service Coverage Ratio** means "Total Debt Service Coverage Ratio," as defined in the TIFIA Term Sheet.

**Dedicated Alignment** means any section of the alignment which includes either median or side-running operations, where the Trains operate within their own dedicated ROW but cross highways, bikeways, pathways/trails, etc., at frequent designated locations. Access to the operating environment by other vehicles or pedestrians is prohibited except at well-defined, controlled intersections. This type of crossing may or may not be controlled by a traffic signal or other active traffic control device, depending on site specific conditions. The application of traffic control for this alignment type is specifically defined in MdMUTCD, Part 8.

**Deduction** means a deduction from the relevant Monthly Availability Payment in accordance with Part C of Exhibit 4D.

**Default Termination Event** means a Concessionaire Default listed in Section 19.3.1 that is either not subject to cure or is not cured as specified in Section 19.3.1.

**Defect** means a defect, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any element of the Project, which would cause or have the potential to cause one or more of the following:

- (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;
- (b) a structural deterioration of the affected element or any other part of the Project;
- (c) damage to a third party's property or equipment;
- (d) damage to the Environment; or
- (e) failure of the affected element or any other part of the Project to meet a Performance Requirement.



**Delay Costs** means indirect costs incurred by Concessionaire due to a delay, including extended overhead, unabsorbed home office overhead, idle labor and equipment costs, additional storage costs, and labor and material cost escalation, but excluding costs relating to the Project Debt. Delay Costs are allowable only to the extent provided in Section 2 of Exhibit 13A and are allowable only for delays to the Critical Path due to Relief Events under items (a) through (g), (h)(1) and (n) of the definition of Relief Event.

**Delay Interest** means

- (a) interest on the Project Debt (including commitment or standby fees on undrawn loan facilities) that accrues during the RSA Extension Period, but excluding (i) any interest accruing on interest that has been capitalized as a result of any prior or concurrent delays not attributable to a Relief Event or Force Majeure Event and (ii) any interest accruing during a period for which Availability Payments are being made under Section 15.9.2,
- (b) any payments owing on account of standby letters of credit securing Committed Investments that are properly allocable to the RSA Extension Period,
- (c) the Collateral Agent's fees and TIFIA loan servicing fees related to Project Debt amendments, excluding change fees, penalty payments, legal fees or similar costs, and
- (d) any additional payments on account of debt service payable under Section 15.9.

No Delay Interest will be deemed to accrue if the RSA Date is earlier than the RSA Deadline in effect prior to the time extension.

**Design-Build Contract** means that certain agreement between Concessionaire and Purple Line Transit Constructors, LLC, dated prior to or as of the Effective Date, for the design and construction of the Project.

**Design-Build Contract Price** means the price for performing the design and construction of the Project established under the Design-Build Contract.

**Design-Build Contractor** means the Contractor that is a party to the prime Contract for design and construction of the Project.

**Design-Build Period** means that portion of the Term that commences on Commercial Close and ends at 11:59 p.m. on the day immediately preceding the O&M Commencement Date.

**Design Certification** has the meaning given in Part 2A, Section 3.3.1 of the Technical Provisions.

**Design Documents** means those documents that manifest the design for the Project, at all stages, as developed by Concessionaire or any portion, component or element thereof, including design required in connection with the operation and maintenance of the Project and Renewal Work, in each case irrespective as to whether such documents are required by the Contract Documents or are prepared or used by Concessionaire in the Design Work. Design Documents include the Final Design Documents.

**Design Exception** means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and Submittals necessary for, or related to, the design of an element to design criteria that do not meet minimum values or ranges established for that element by applicable design guidelines and the requirements in the Contract Documents.

**Design Manager** has the meaning given in Part 2A, Section 2.3.3 of the Technical Provisions.

**Design Speed** means the speed used to determine the various geometric design features of the roadway and LRT system.

**Design Waiver** has the meaning set forth in Part 2A, Section 3.4 of the Technical Provisions.

**Design Work** means all Work of design, engineering, architecture or other professional services for the Project, including all such Work performed under the LRV Supply Contract, and also includes other D&C Work (except for work under LRV Supply Contract) not encompassed within the definition of Construction Work.

**Desktop Method** means the calculation methodology described in Section 4.2.2 or 4.3.2 of Exhibit 13B, involving a calculation that is not adjusted for market values or conditions.

**Deviation** means any change, deviation, modification, alteration or exception from the Technical Provisions or Technical Documents proposed by Concessionaire. See Sections 7.2.3 and 8.1.3 for the process to be followed in requesting approval of Deviations. See also Part 2A, Section 3.4 of the Technical Provisions.

**Differing Site Conditions** means (1) subsurface or latent physical conditions that are encountered at the Site (excluding Project-Specific Locations) and differ materially from the conditions indicated in the Contract Documents (also known as Type I conditions), and (2) subsurface physical conditions of an unusual nature at the Site (but excluding Project-Specific Locations) differing materially from those ordinarily encountered on and generally recognized as inherent in work of the character provided for in the Agreement (also known as Type II conditions). Claims based on Differing Site Conditions are subject to the limitations stated in Sections 6.2 and 15.3.1(b).

The term “Differing Site Condition” specifically excludes paleontological, biological and cultural (including archaeological and historical) resources, Utilities, Hazardous Materials and any differences in groundwater depth from those noted in the Reference Documents. Type I conditions are considered “indicated in the Contract Documents” only to the extent specified in Section 6.2.2. Relief for Type II conditions is allowed only to the extent specified in Section 6.2.3.

**Direct Agreement** means the agreement substantially in the form of Exhibit 5B, by and among Owner, Concessionaire and the Lender (or if there is more than one Lender, the Collateral Agent on behalf of the Lenders) respecting certain of Lenders’ rights under the Contract Documents.

**Directive Letter** means a letter, issued at any time, by Owner to Concessionaire (a) regarding any matter for which a Change Order can be issued or (b) obligating Concessionaire proceed immediately as directed in the letter in connection with any Dispute regarding the scope of the Work or Concessionaire’s compliance with the requirements of the Contract Documents, in

either case. The term also means action by Owner that is treated as a Directive Letter under Section 17.2.4.8.

**Disadvantaged Business Enterprise (DBE)** has the meaning given in 49 C.F.R. Part 26.

**Discriminatory Change in Law** means any Change in Law (including changes in tax Law) during the Term which is principally directed at and the effect of which is principally borne by Concessionaire, including Concessionaire-Related Entities, or private transit owners or operators in the State, except where such change (a) is in response, in whole or in part, to any failure to perform or breach of the Contract Documents, violation of applicable Law or Governmental Approval, or culpable acts or omissions on the part of any Concessionaire-Related Entity, (b) is a directive by the U.S. Department of Homeland Security or comparable State agency, unless such directive is directed solely at or solely affects the Project and requires specific changes in Concessionaire's normal design, construction, operation or maintenance procedures in order to comply, or (c) is otherwise expressly permitted under the Contract Documents.

**Discriminatory Change in O&M Standards** means the alterations or changes (including additions) to the O&M Standards, including Changed D&C Standards applicable to Design Work and Construction Work included in the O&M Work, if (a) application of such standards to Concessionaire or the Project is materially more onerous than the application of such standards to other comparable Owner projects, or (b) such standards are not applied to other comparable Owner projects. Notwithstanding the foregoing, a more onerous application of changes in O&M Standards to Concessionaire or the Project shall not be considered a Discriminatory Change in O&M Standards if (i) imposed in response to any failure to perform or breach of the Contract Documents, violation of applicable Law or Governmental Approval, culpable act or culpable omission by any Concessionaire-Related Entity; (ii) required for Safety Compliance; (iii) in response to a directive by the U.S. Department of Homeland Security or comparable State agency, unless such directive is directed solely at or solely affects the Project and such application requires specific changes in Concessionaire's normal design, construction, operation or maintenance procedures in order to comply; or (iv) for the purpose of addressing potential safety concerns arising from a specific condition or feature peculiar to the Project due to Concessionaire's design or construction.

**Dispute** means any Claim, dispute, disagreement or controversy between Owner and Concessionaire concerning their respective rights and obligations under the Contract Documents, including concerning any alleged breach or failure to perform and remedies.

**Dispute Resolution Board** means either the technical or financial Dispute Resolution Board established under Section 20.2.

**Dispute Resolution Procedures** means the procedures for resolving Disputes in Sections 20.2 through 20.4.

**Distributions** means any of the following, whether in cash or in kind, and whether made or projected to be made:

- (a) Any:
  - (i) Dividend or other distribution in respect to share or other capital;

- (ii) Payment or other distributions in reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;
  - (iii) Payments (whether of principal, interest, Breakage Costs or otherwise) on Subordinate Debt;
  - (iv) Payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it is neither in the ordinary course of business nor on reasonable commercial terms; and
  - (v) Receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms, or
- (b) The early release of any contingent funding liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

Such dividends, distributions payments or other benefits include proceeds of any Refinancing.

**Drug and Alcohol Laws** means 49 U.S.C. § 5331 (“Alcohol and Controlled Substances Testing”); 49 C.F.R. Part 655 (“Prevention of Alcohol and Prohibitive Drug Misuse and Transit Operations”); COMAR 21.11.08 (“Drug and Alcohol Free Workplace”); 41 U.S.C. § 8103 (“Drug-free Workplace for Federal Grant Recipients”); and all other Laws applicable to the Project now or hereafter in effect, regulating, relating to, or imposing liability or standards of conduct concerning drug and alcohol usage.

**Dwell Time** means the period of time commencing when a Train has come to a complete stop in a Station and ending the moment the Train begins to move to depart from the Station.

**Dynamic Testing** means any test that requires the movement of a LRV.

**Early-Stage Registered Apprentice** means a person registered or who has been registered in an apprenticeship program recognized by the United States Department of Labor or by the Maryland Apprenticeship Training Council and has performed less than 20% of the hours required to complete the apprenticeship.

**Early Termination Date** means the effective date of termination of the Agreement, prior to the stated expiration of the Term, under Section 19.2.8 and Exhibit 13B.

**Economic Empowerment Manager** has the meaning given in Part 2A, Section 2.3.8 of the Technical Provisions.

**Effective Date** means the date of execution, by both Parties, of the Agreement.

**Electronic Municipal Market Access (“EMMA”)** means <http://emma.msrb.org>.

**Electrical Power Usage Report** means report regarding electrical power usage during the O&M Period required to be provided each month under Section 8.9.2, showing usage during the prior month and year to date, in the form required by Attachment 2 to Appendix E of Exhibit 4D.

**Electricity for Other Uses** means all power except for “Traction Power”, defined in Appendix E of Exhibit 4D, used by Concessionaire to fulfill its obligations under the Agreement.

**Eligible Insurer** means an insurance company meeting the requirements of applicable Law, licensed or authorized to do business in the State and rated at least “A - ” by Standard and Poor’s or “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating, both at policy inception and for the duration of its placement of insurance.

**Eligible Surety** means a surety or insurance company, as applicable, meeting the requirements of applicable Law, licensed or authorized to do business in the State and rated at least “A” (excellent or above) according to A.M. Best’s Financial Strength Rating and “XII” or better according to A.M. Best’s Financial Size Rating.

**Emergency** means any unplanned event within the Project ROW that (a) causes or has the potential to cause disruption to movement of LRVs and/or free flow of traffic within the O&M Limits; (b) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property immediately adjacent to the Project or to the safety of Users or the traveling public, (c) has jeopardized the safety of Users or the traveling public; or (d) is recognized or declared by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

**Emergency Guard Rail** means a device installed on tracks at specific locations to limit the lateral displacement of a derailed LRV.

**Emergency Response** means the action taken by Concessionaire, as described in the O&M Plan, to respond to an Emergency within the Project ROW.

**Emergency Services** means law enforcement, fire service, ambulance service and other similar services from agencies with which Concessionaire establishes protocols for Incident or Emergency response, safety and security procedures, which protocols are to be provided in the Incident Management Plan in accordance with Part 2A, Section 20.3.5 of the Technical Provisions.

**Enclosed Station** (whether capitalized or not) means a Station, or portion thereof, that is not open to the atmosphere, and where smoke and heat do not dissipate directly to the atmosphere.

**Endangered Species** means any species listed by the United States Fish and Wildlife Service as threatened or endangered under the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.*, or any species listed as threatened or endangered under the Nongame and Endangered Species Conservation Act, Section 10-2A-01, *et seq.* of the Natural Resources Article of the Annotated Code of Maryland and other applicable Maryland state endangered species and related Laws.

**Energy Management Plan** has the meaning given in Part 2B, Section 9.4.19 of the Technical Provisions.

**Energy Management System** means the energy management system developed by Concessionaire for monitoring, controlling and reporting energy use, as more particularly described in Part 2B, Section 9.4.19.2 of the Technical Provisions.

**Engineer of Record (EOR)** has the meaning given in Part 2A, Section 2.3.2 of the Technical Provisions.

**Engineering Data** means Book 5.

**Environment** means air, soils, submerged lands, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, cultural (including historic and archeological) resources and paleontological resources.

**Environmental Approvals** means all Governmental Approvals arising from or required by any Environmental Law in connection with the Project.

**Environmental Law(s)** means all applicable laws, codes, rules, ordinances, restrictions and regulations adopted by Governmental Entities, now or hereafter in effect, regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials into the environment including into the air, surface water, or ground water or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials, or otherwise relating to the protection of public health, public welfare, public safety or the environment from the presence of or exposure to hazardous, toxic, or dangerous waste, pollutants, contaminants, substances, or materials (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), as amended by the Superfund Amendment and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA"), as amended by the Solid and Hazardous Waste Amendments of 1984; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*; the Hazardous Materials Transportation Uniform Safety Act; the Oil Pollution Act of 1990; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; the Federal Water Pollution Control Act, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; the Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*; and the Natural Resources Article of the Annotated Code of Maryland and implementing regulations; all as amended and supplemented previously or in the future.

**Equipment** (whether capitalized or not) means, depending on the context, (a) the equipment designed, constructed or supplied by the Concessionaire comprising or used in the Project including LRVs or (b) machinery, tools, and apparatus necessary for performance of the Work.

**Equity Bridge Loan** means an on-demand letter of credit (or an equivalent obligation) issued by or for the account of an Equity Member as described in clause (b) of the definition of Committed Investment.

**Equity Change** has the meaning given in Section 22.2.2.

**Equity IRR** means the nominal and blended Post-Tax internal rate of return to the Committed Investment described in clause (a) of the definition of Committed Investment, over the full Term calculated using the Financial Model, where the discount rate, when applied to Committed

Investment cash flows, gives a zero net present value. For purposes of this definition the term “cash flows” refers to Distributions described in clause (a) of the definition of Distributions, minus Committed Investment described in clause (a) of the definition of Committed Investment.

**Equity Member(s)** means any Person with a direct equity interest in Concessionaire.

**Equity Transfer** means any assignment, mortgage, encumbrance, conveyance, sale, or other transfer of equity interest in Concessionaire.

**Escalated Benchmark Insurance Premiums** has the meaning given in Section 11.1.8.6.

**Escalation Index 1** means Consumer Price Index, Not Seasonally Adjusted.

**Escalation Index 2** means Series ID CIU101000000000I, Not Seasonally Adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics.

**Escalation Index 3** means the Series ID WPU00000000, Not Seasonally Adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics.

**Escalation Index 4** means the Series ID PCU336510336510 as published by the United States Department of Labor, Bureau of Labor Statistics.

**Escalation Index 5** means Series ID CUURA311SA0 (the Washington-Baltimore, DC-MD-VA-WV Consumer Price Index), Not Seasonally Adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics.

**Escrow Agent** has the meaning given in Section 23.5.2.

**Estimated Fair Value** means the amount determined pursuant to Section 4.2.2 or 4.3.2 (as applicable) of Exhibit 13B.

**Excess Liability Allowance** means the fund in the amount specified in Exhibit 4A, to be used to pay for the excess liability insurance for Owner, specified in the last paragraph of Exhibit 7A, Part A, Section 1.2(c).

**Excluded Premium Increases** has the meaning given in Section 11.1.8.1.

**Exclusive Alignment** means any section of the alignment which is generally separated from highways and pedestrian access by some horizontal distance or barrier, or is grade separated above or below the adjacent roadway. Exclusive Alignment is designed for LRV use only but may have at-grade street or pedestrian crossings with pre-emption rights for Trains.

**Exempt Refinancing** means:

- (a) Any Refinancing that was fully and specifically identified and taken into account in the Base Case Financial Model;
- (b) (i) Amendments, modifications, supplements or consents to Funding Agreements and Security Documents, and (ii) the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision that, in either case, do not, individually or in the aggregate, provide a financial benefit to Concessionaire;

- (c) Movement of monies between the Project accounts in accordance with the terms of Funding Agreements and Security Documents;
- (d) Any of the following acts by a Lender of senior lien priority Project Debt: (i) the syndication of any of such Lender's rights and interests in the senior Funding Agreements; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, with respect to the senior Funding Agreements in favor of any other Lender of senior lien Project Debt or any other investor; or (iii) the grant by such Lender of any other form of benefit or interest in either the senior Funding Agreements or the revenues or assets of Concessionaire, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor; and
- (e) Periodic resetting and remarketing of tax-exempt or taxable bonds that bear interest at a variable or floating rate and are money market eligible under SEC Rule 2a-7.

**Existing WMATA Assets** means all assets owned or controlled by WMATA in the vicinity of the Site.

**Ex-offender** means a person who is or has been under parole, mandatory release and/or probation supervision, within one year prior to the date of employment on the Project.

**Extended Delay** means (a) an Extended DB Force Majeure Event, (b) an Extended OM Force Majeure Event, (c) any Owner-Caused Delay that has materially prevented or delayed Concessionaire from performing a substantial portion of its obligations under the Agreement for a period of 220 days or more in the aggregate within a period of 365 consecutive days, or (d) a combination of Force Majeure Events, Relief Events and Owner-Caused Delays during the Design-Build Period that have resulted in a delay to the Critical Path of 365 days or more. However, for purposes of determining Owner's right to terminate under Sections 19.2.1 and 19.2.5, the portion of any Extended Delay that is directly attributable to an Owner-Caused Delay shall not be considered.

**Extended Delay Payment Date** has the meaning given in Section 15.9.2.1.

**Extended DB Force Majeure Event** means (a) a single Force Majeure Event or Relief Event (other than Owner Changes and Owner-Caused Delays) that has materially prevented or delayed a Party from performing a substantial portion of its obligations under the Agreement for a period of 180 days or more in the aggregate within a period of 365 consecutive days or (b) has resulted in damage or loss to a material portion of the Project that Owner has determined is not in the public interest to repair or replace.

**Extended OM Force Majeure Event** means, with respect to any rolling 12-month period, (a) any single Force Majeure Event or Relief Event (other than an Owner Change or Owner-Caused Delay) that has/have materially prevented or delayed a Party from performing a substantial portion of its obligations under the Agreement for a period of 180 days or (b) has resulted in damage or loss to a material portion of the Project that Owner has determined is not in the public interest to repair or replace.

**Extra Work** means Work not included in the original scope of the Work.



**Fare System Allowance** means the fund in the amount specified in Exhibit 4A, to be used to pay for certain D&C Work, as specified in Part 2B, Section 19.7 of the Technical Provisions.

**Fare System (FS) Equipment** means equipment and associated components of the fare system provided by Concessionaire in accordance with Part 2B, Section 19 of the Technical Provisions.

**Fare System (FS)** means the equipment, software and firmware enabling the collection, capture, inspection, reconciliation and data collection for fares for the Project.

**Federal Requirements** means the provisions required to be part of FTA-funded construction contracts, including the provisions in Attachment 1 to Exhibit 16.

**Fill** has the meaning given in Section 13.10.2.1.

**Final Completion** means that all D&C Work is complete and all other prerequisites for Final Completion have been met. Final Completion is deemed to have occurred upon satisfaction of all the conditions in Section 7.10.4, as confirmed by Owner's issuance of a certificate in accordance with the procedures and within the time frame established in Sections 7.10.4.4 and 7.10.4.5.

**Final Completion Date** means the date that Final Completion is achieved.

**Final Completion Deadline** means the date by which Concessionaire must achieve Final Completion, as such date may be extended under the terms of the Agreement, initially set at 24 months following the RSA Date.

**Final Completion Payment** means the amount payable to Concessionaire upon Final Completion, as described in Section 7.10.4. The amount of the Final Completion Payment is stated in Exhibit 4A, Part A.

**Final Design** means the general design stage, consistent of all elements, collections of elements, or areas of the Project at 100% design completion, as more fully set forth in Part 2A, Section 3.6 of the Technical Provisions, and depending on the context: the term "Final Design" may refer to (a) the Final Design Documents, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents.

**Final Design Documents** means the complete final construction plans (including plan sheets, specifications, technical memoranda, reports, studies, calculations, drawings, elevations, sections, details and diagrams) and specifications needed for performance of Construction Work, which includes all Submittals specified as required to be part of the Final Design or Final Design Documents under the Technical Provisions.

**Financial Close** means the satisfaction or waiver of all conditions precedent to funding of the Project Debt in Section 4.4.4.

**Financial Close Credit Spread(s)** means the Credit Spread as of the date of the execution of a bond purchase agreement relating to the purchase and sale of PABs or taxable bonds or as otherwise agreed by the Parties.

**Financial Close Deadline** means the date by which Concessionaire is obligated to achieve Financial Close, as such date may be extended under the terms of the Agreement, initially 180 days after the Proposal Date.

**Financial Close Interest Rates** means the Benchmark Interest Rates at the period ending on the earliest of (a) 10:00 a.m. Eastern time on the date of Financial Close, (b) 10:00 a.m. Eastern time on the Financial Close Deadline, (c) the date of execution of any interest rate hedging instrument by Concessionaire or (d) the date of the execution of a bond purchase agreement relating to the purchase and sale of PABs or taxable bonds (the “last date of the Base Interest Rates protection period”) or as otherwise agreed by the Parties.

**Financial Close Security** means the bond or letter of credit in the amount of \$20 million provided by Concessionaire to Owner under Section 4.4.1.

**Financial DRB** means the financial Dispute Resolution Board.

**Financial Model** means the update to the Base Case Financial Model provided at Financial Close, including the Financial Model Formulas and the related output, assumptions and information used by or incorporated in each of the Financial Model Formulas as of Financial Close.

**Financial Model Formulas** means the mathematical formulas submitted in the Financial Proposal and Financial Model, as the same may be changed under Section 3.3, for projecting Equity IRR, which mathematical formulas are used as part of the Base Case Financial Model, the updated Financial Model as of Financial Close and each subsequent Financial Model Update, but without the data and information used by or incorporated in the model or update.

**Financial Model Update** means any update to the Base Case Financial Model prepared in accordance with the Agreement, including the Financial Model as of Financial Close and subsequent updates.

**Financial Modeling Data** means all back-up information regarding the basis for Concessionaire’s estimates, projections and calculations in the Proposal, in the Base Case Financial Model, the Financial Model as of Financial Close and Financial Model Updates of revenues, pricing, costs, expenses, repayment of Project Debt, Distributions and Equity IRR, including:

- (a) Pricing Sheets;
- (b) The assumptions book submitted with the Proposal, fully describing all assumptions underlying the estimates, projections and calculations in the Base Case Financial Model, revisions to the Base Case Financial Model in accordance with Section 3.1.2, and updates to such assumptions book related to Financial Model Updates;
- (c) The step-by-step instructions on the procedure to run and to optimize the Financial Model Formulas and Base Case Financial Model submitted with the Proposal, and updates of the Financial Model Formulas and Base Case Financial Model related to Financial Model Updates; and

- (d) All other supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge, fee and revenue information used by Concessionaire in the creation and derivation of its Proposal or of any Financial Model Update, or related to any update required under Section 3.1.2.1.

**Financial Proposal** means Concessionaire's plan for financing the Project and incorporated by reference in Exhibit 17.

**Fire Management Panel** (FMP) means the local premises fire command center at the local station/building level, complying with the intent of NFPA 72, National Fire Alarm and Signaling Code, and NFPA 130 for fire alarm annunciator panel. The FMP is also the same device referred to by the International Building Code (IBC) and International Fire Code (IFC) as the fire fighter control panel. The term FMP is sometimes also referred to by transit agencies as the emergency management panel (EMP).

**Fiscal Year** means the consecutive 12 month period starting on July 1 and ending on June 30 or any other consecutive 12 month period selected by Concessionaire and approved by Owner.

**Fixed Equipment** means all equipment and other components of the Purple Line System that are affixed to real property within the Project ROW.

**Fixed Facilities** means the track, Stations, buildings, parking lots, storage yard, and similar assets for the Purple Line System within the Project ROW.

**Fleet Defect** means cumulative failures or other Non-Conforming Work with respect to 10% or more of any part, system, or component in the same or similar applications with respect to the LRVs, Option LRVs and associated Equipment only within a consecutive 12-month period, where such items are covered by the LRV Supply Contractor's warranty under the LRV Supply Contract.

**Float** means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect Concessionaire's ability to achieve Revenue Service Availability by the RSA Deadline. Float is generally identified on the Project Schedule as the difference between the early completion times and late completion times for activities. The term includes float contained within an activity as well as any period containing an artificial activity (that is, an activity that is not encompassed within the meaning of the definition of D&C Work).

**Force Majeure Event** means the occurrence of any of the following events, in each case beyond the control of the Parties, to the extent that the event delays the Critical Path (with respect to the D&C Work) or materially and adversely impacts Concessionaire's ability to meet its obligations (with respect to the O&M Work):

- (a) Act of war, invasion, armed conflict, violent act of foreign enemy, military or armed blockade regardless of location, or any military or armed takeover of the Project or the Site;
- (b) Any act of terrorism, riot, insurrection, civil commotion or sabotage that (i) causes direct physical damage to the Project, the Work or the Site or (ii) otherwise

directly causes substantial interruption to Construction Work, manufacturing or assembly of LRVs or O&M Work;

- (c) Nuclear explosion that (i) causes direct physical damage to the Project or the Site, or (ii) causes radioactive contamination of the Project or the Site requiring Hazardous Materials Management, (iii) otherwise directly causes substantial interruption to Construction Work, manufacturing or assembly of LRVs or O&M Work;
- (d) Fire or explosion directly impacting the physical improvements of the Project or performance of Work at the Site;
- (e) Flood, earthquake or landslide (i) resulting in material damage to (A) Project improvements (whether during the Design-Build Period or O&M Period) or (B) the primary LRV assembly facility identified in the Proposal, or (ii) otherwise causing an Unplanned Service Interruption during the O&M Period;
- (f) Any national or regional strike not specific to Concessionaire, acts or omissions of a port or transportation authority, unavailability or shortages of materials that directly causes interruption to construction or direct losses during operation of the Project;
- (g) Quarantine affecting Work to be performed by Concessionaire;
- (h) Unusually severe weather (including tornados and any storm or weather disturbance that is named by the National Oceanic and Atmospheric Administration's National Hurricane Center or similar body) resulting in material damage to (i) Project improvements (whether during the Design-Build Period or O&M Period) or (ii) the primary LRV assembly facility identified in the Proposal;
- (i) Any other event within the Project ROW limits that has a material adverse impact on the Work and that arises from a state of emergency declared by the Maryland Governor, but excluding Emergencies consisting of or arising out of traffic accidents;
- (j) Changes in Law that do not qualify as Relief Events but nevertheless result in a delay to the Critical Path;
- (k) Any delay by a Third Party in performance of its obligations under a Third Party Agreement that is excused due to occurrence of a force majeure event under the terms of the Third Party Agreement;
- (l) Any delay in performance of Utility Work by a Utility Owner excused due to the occurrence of a force majeure event under the terms of the relevant Owner Utility Agreement;
- (m) Any delay in approval of the NPS Special Use Permit beyond 180 days from the date that NPS acknowledges receipt of Concessionaire's complete and conforming application for such permit, meeting NPS quality requirements and including all supplemental information requested by NPS following receipt of the initial application package; and

- (n) Any protest specifically against the Purple Line System during the Design-Build Period that directly causes substantial interruption to Construction Work.

except to the extent that the event or consequences of the event arose out of any act, omission, negligence, recklessness, willful misconduct, breach of contract or violation of applicable laws by any Concessionaire-Related Entity, or could reasonably have been avoided by the exercise of caution, due diligence, or reasonable efforts by any Concessionaire-Related Entity.

**Former Foster Care Youth** means a person who was placed in any U.S. foster care system for at least 1 year after his or her 14th birthday and has not yet reached his or her 21st birthday as of the date of employment on the Project.

**Funding Agreement** means:

- (a) Any loan agreement, funding agreement, account maintenance or control agreement, insurance or reimbursement agreement, intercreditor agreement, subordination agreement, trust indenture, agreement from any Equity Member in favor of any Lender, hedging agreement, interest rate swap agreement, guaranty, indemnity agreement, agreement between any Contractor and any Lender, or other agreement by, with or in favor of any Lender pertaining to Project Debt (including any Refinancing), other than Security Documents;
- (b) Any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Concessionaire for Project Debt (including any Refinancing); and
- (c) Any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.

**Gainshare Adjustment** means a positive Availability Payment adjustment relating to energy use, as specified in Exhibit 4D.

**General Escalation Factor** means the escalation factor calculated in accordance with Section 4 of Part B of Exhibit 4D.

**General Inspection** means an inspection to identify Defects and assess asset condition. Results of a General Inspection shall be used to develop the Renewal Work Schedule, to maintain asset condition and service levels and to develop programs of maintenance and Renewal Work to minimize the effect of O&M Work on Users.

**General Orders and Track Rights** means WMATA's administrative system by which the Concessionaire may request track rights, power outages, and coordination of wayside work.

**Geotechnical Baseline Report (GBR)** means the report as described in Part 2A, Section 4.3 of the Technical Provisions (that is, the report pertaining to the area of the proposed "Plymouth Tunnel").

**Geotechnical Data Report (GDR)** means the report provided in Part 2A, Section 4.3 of the Technical Provisions.

**Global Navigation Satellite System (GNSS)** means is a satellite system that is used to pinpoint the geographic location of a user's receiver anywhere in the world.

**Good Industry Practice** means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced designer, engineer, constructor, LRV manufacturer, other supplier, operator or maintenance provider, as applicable, operating in the United States under the same or similar circumstances and conditions, seeking in good faith to comply with its contractual obligations, the Contract Documents and all applicable Laws and Governmental Approvals. With respect to storm water management for construction activities, Good Industry Practice means Best Management Practices.

**Governmental Approvals** means all permits, licenses, consents, concessions, grants, franchises, authorizations, waivers, variances or other approvals, guidance, protocol(s), mitigation agreement(s), or memoranda of agreement/understanding, and any amendment(s) or modification(s) of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project or the Work.

**Governmental Entity** means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than MDOT or MTA.

**Grace Period** means a period, not to exceed 48 hours during any 30-day period, during which Concessionaire is temporarily excused from assessment of Deductions and OTP Factors based on the occurrence of a Force Majeure Event or Non-Concessionaire Caused Disruption (excluding any event set out in clause (a), (i), (j) or (l) of the definition of Non-Concessionaire Caused Disruption). For example:

1. If during a 30-day period a single Force Majeure Event starts on day one and lasts through day 18, the first 48 hours of such event would be considered the Grace Period. In accordance with Section 15.5.6, only 10% of the applicable OTP Factors would be allocated to Concessionaire for days 3 through 16, and only 5% of the applicable OTP Factors would be allocated for days 17 and 18.
2. If during a 30-day period a Non-Concessionaire Caused Disruption occurs on day 1 that lasts for 24 hours and a Force Majeure Event starts on day 20 and lasts for three days, there will be a Grace Period of 24 hours for the Non-Concessionaire Caused Disruption and of 24 hours for the Force Majeure Event. In accordance with Section 15.5.6, only 10% of the applicable OTP Factors would be allocated to Concessionaire for days 21 and 22.
3. If during a 30-day period ("month 1") a Non-Concessionaire Caused Disruption occurs on day 1 that lasts for 24 hours and a Force Majeure Event subsequently occurs that starts on day 29 and lasts for three days, extending through the end of the first day of the subsequent 30-day period ("month 2"), then:
  - During month 1:
    - o The two-day Grace Period would apply to days 1 (the day of the Non-Concessionaire Caused Disruption) and 29 (the first day of the Force Majeure Event); and

- o In accordance with Section 15.5.6, only 10% of the applicable OTP Factors would be allocated to Concessionaire for service disruptions during day 30 (the second day of the Force Majeure Event).
- During month 2:
  - o the first day of the two-day Grace Period would apply to day 1 (the third day of the Force Majeure Event); and
  - o the remaining Grace Period day would be available for future events during that period.

**Grace Period Event** means a Force Majeure Event or Non-Concessionaire Caused Disruption (excluding any event set out in clause (a), (i), (j) or (l) of the definition of Non-Concessionaire Caused Disruption).

**Grade Crossing Warning Systems** means the collective application of active traffic control devices that inform road users of the approach or presence of LRT traffic at highway crossings. These systems may include devices such as automatic gates, flashing-light signals, traffic control signals, pedestrian signals, audible warning devices, bells, actuated blank-out and variable message signs, and other dynamic traffic control devices.

**Guarantor** means any Person that is the obligor under any guaranty in favor of Owner required or otherwise given under the Agreement, including any guaranty of the Design-Build Contract or any O&M Contract.

**Gude Drive Requirements** means those conditions and requirements pertaining to deposits of soils and construction or demolition debris at the Gude Drive Landfill in Montgomery County, Maryland identified in Section 6 to Exhibit 2.

**Guideway** means the bed for the Tracks, whether elevated, at grade or below grade, included in the System.

**Handback** means delivery of the Project assets by Concessionaire to Owner upon expiration of the Term or Early Termination Date.

**Handback Renewal Work Plan** means the plan prepared and submitted to the Owner in accordance with Part 3, Section 7.2 of the Technical Provisions.

**Handback Requirements** means the terms, conditions, requirements and procedures governing the condition in which Concessionaire is to deliver the Project assets upon Handback, as stated in Part 1, Section 7 of the Technical Provisions.

**Hazardous Material** means any (a) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Environmental Law; (b) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever that is or becomes listed, regulated, or addressed under any Environmental Law; (c) substance, product, waste, pollutant, contaminant or other material of any nature whatsoever which may give rise to liability under clause (a) or (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, or

strict liability or under any reported decisions of a state or federal court; (d) petroleum hydrocarbons excluding de minimis amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles; and (e) hazardous building materials including asbestos or asbestos-containing materials, lead or PCBs in structures and/or other improvements on or in the Site or in subsurface artifacts (other than mineral asbestos naturally occurring in the ground). The term “Hazardous Materials” includes Hazardous Waste and contaminated materials.

**Hazardous Materials Management** means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Project, Project ROW or the Work (including demolition Work), including investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever approach is effective, most cost-efficient and permitted under applicable Law.

**Hazardous Materials Management Plan (HMMP)** means Concessionaire’s plan for Hazardous Materials Management of Hazardous Materials encountered on or brought onto the Project ROW by Concessionaire or any third party, as more particularly set forth in Part 2A, Section 5.4.3 of the Technical Provisions.

**Hazardous Materials Relief Event** means a Relief Event described in clause (f) or (g) of the definition of Relief Event.

**Hazardous Materials Remediation Allowance** means the fund in the amount specified in Exhibit 4A established by Owner, to be used to pay for certain Hazardous Materials Management Work in accordance with Section 7.8.4.

**Hazardous Waste** means waste as defined in 40 C.F.R. Part 261.

**Headway** means the amount of time that elapses between the arrivals of Trains at time points travelling in a specific direction.

**Hiring Goal** means the percentage of on-site Construction Work hours for Nationally Targeted Workers of Economic Disadvantage and Nationally Targeted Workers of Social Disadvantage, jointly or separately.

**Homeless** means a person who resides or has resided in some form of emergency or transitional shelters, domestic violence shelters, runaway youth shelters, or a place not meant for human habitation within one year prior to employment on the Project.

**Identified Contractor** means any Contractor listed in the Proposal to perform any portion of the Work.

**Image Sensing Camera-Based Detection** means video image processing and broadband communications equipment used for traffic management and traffic signal actuation.

**Incident** means any unplanned event within the Project ROW that causes potential or actual disruption to the free flow of LRVs or traffic in the vicinity of, or crossing, the Project ROW.



**Incidental Utility Work** means all of the following work necessary for the construction of the Project:

- (a) Temporary relocations;
- (b) Relocations of Service Lines;
- (c) Protections in Place;
- (d) The adjustment of utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work;
- (e) All work necessary to remove any utilities (whether or not in use as of the Proposal Date) in situations for which leaving the utilities in place is not feasible or not permitted, or for facilities which the Concessionaire proposes be removed to accommodate or permit construction of the Project, regardless of whether replacements for such utilities are being installed in other locations; and
- (f) All work necessary to abandon in place any utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.).

**Incident Response** means the actions taken by Concessionaire, as described in the O&M Plan, to respond to an Incident within the Project ROW.

**Incomplete Trip** means a Train Trip that departs from the starting Terminal Station but does not reach the ending Terminal Station.

**Incremental Cost** means those costs, if any, which Concessionaire incurs that are directly attributable to a particular circumstance and which Concessionaire would not have incurred but for the circumstance. In determining such costs, one would determine the total cost which the Concessionaire would have incurred had the circumstance not occurred, and subtract such amount from the costs actually incurred (including, subject to Section 15.11.3, reasonable mitigation costs). The difference is the “increment”. Incremental Costs includes additional costs of Extra Work and modified Work, as well as costs reasonably incurred under Section 15.12 to mitigate the consequences of any Relief Event, Force Majeure Event or Non-Concessionaire Caused Disruption, and applies both to D&C Work and O&M Work. The term excludes costs incurred with respect to the Project Debt and excludes Delay Costs or any other costs or damages incurred as the result of delays to scheduled D&C Work except to the extent that Owner directs Concessionaire to accelerate the Work to avoid a Critical Path delay.

As an example, if Concessionaire originally had to relocate three underground water lines, and an unanticipated fourth water line is discovered in the same area which can be relocated by the same crew that qualifies as a Relief Event, the Incremental Cost allowable with respect to such Relief Event would be the costs of keeping the crew working the additional time to relocate the fourth water line, and would not include any portion of the expense of moving the crew to the Site in the first place or the expense of demobilizing the crew on completion. If the Critical Path is delayed as the result of such a discovery, and Owner directs acceleration in lieu of allowing a time extension, the Incremental Costs would also include the “but for” costs of acceleration. If the Critical Path is delayed as the result of such discovery but Owner does not direct acceleration, then the Incremental Costs will not include (a) any costs that may be incurred to accelerate the schedule or (b) any additional costs that may be incurred with respect to the

Project Debt or other delay costs and damages, although the Change Order may include compensation for Delay Costs and Delay Interest to the extent allowed under in the Agreement.

**Indemnified Party(ies)** means MTA, MDOT, the State, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees. In the event that any Utility Agreement or Third Party Agreement includes indemnification requirements, the term Indemnified Parties shall include the Utility Owner or Third Party that is a party to that agreement, subject to the proviso that inclusion of the Utility Owner and Third Party in this defined term shall not be deemed to expand the Utility Owner's or Third Party's rights to indemnity as set forth in the Utility Agreement or Third Party Agreement.

**Independent Assurance** means Owner-performed (a) verification sampling and testing on samples taken independently of the quality control samples and (b) evaluation of (i) sampling and testing personnel and (ii) testing equipment (including evaluation of the processes of sampling, testing and testing equipment maintenance of Concessionaire's QC and QA procedures).

**Independent Engineer** means the independent engineering consultant retained by the Owner and Concessionaire in accordance with Section 5.10. Exhibit 5H includes a separate definition of this term which applies only to that document.

**Independent Engineer Agreement** means the agreement to be entered into by Owner, Concessionaire, and Independent Engineer, as described in Section 5.10, as such agreement may be amended, supplemented or replaced from time to time in accordance with the Agreement.

**Information** means (whether capitalized or not), in the context of Submittals, means that the Submittal is provided to Owner for information purposes only without any expectation that Owner will review, comment upon or approve the Submittal.

**Infrastructure Maintenance Plan** means the plans prepared by Concessionaire in accordance with Part 3, Section 1.3.1 of the Technical Provisions.

**Initial Baseline Schedule** means the preliminary CPM schedule submitted with the Proposal, to be used to monitor progress of Work prior to approval of the Baseline Schedule, and to be used as the basis for development of the Baseline Schedule.

**Initial Decision** means the decision issued by the Contracting Officer under Section 20.3.2 in response to a Claim filed by Concessionaire.

**Initial Fleet** means 25 LRVs and, when delivered, the O&M Spare LRV.

**Initial Funding Agreements** means the Funding Agreements establishing the rights and obligations pertaining to the Initial Project Debt, which Funding Agreements are specifically identified in the Contract Documents.

**Initial LRV Lifecycle Payment** means the amount calculated in Section 3.2 of Part B of Exhibit 4D for the relevant Contract Month.

**Initial Project Debt** means the Project Debt originally to finance the Project and Work, in the total face amount at each lien priority, and with the particular Lenders, set forth in the Contract

Documents, which Project Debt is evidenced by the Initial Funding Agreements and secured by the Initial Security Documents.

**Initial Security Documents** means the Security Documents securing the Initial Project Debt, which Security Documents are specifically identified in the Contract Documents.

**Initial Support** means ground support elements of the Work that are installed concurrently with excavation. These elements are considered long-term support used in conjunction with additional ground support elements (Secondary Support).

**Institutional Lender** means:

- (a) The United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;
- (b) Any (i) bank, trust company (whether acting individually or in a fiduciary capacity), savings and loan organization or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or bank qualified to do business as such, as applicable under the laws of the United States of America or any state thereof, or (iii) pension fund, foundation or university or college endowment fund; provided that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions;
- (c) Any “qualified institutional buyer” under Rule 144(a) under the Securities Act of 1933, 15 U.S.C. § 77a, *et seq.*, or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms; or
- (d) Any other financial institution or entity designated by Concessionaire and approved in writing by Owner; provided that such institution or entity, in its activity under the Agreement, is acceptable under then current guidelines and practices of Owner;

provided, however, that each such entity (other than entities described in clause (c) and clause (d) of this definition), or combination of such entities if the Institutional Lender is a combination of such entities, shall have individual or combined assets, as applicable, of not less than \$1 billion. The foregoing dollar minimums shall automatically increase at the beginning of each calendar year by the percentage increase, if any, in the CPI during the immediately preceding calendar year, determined by comparing the CPI most recently published for the immediately preceding year with the CPI most recently published for the second preceding year.

**Instructions to Proposers (ITP)** means the instructions to Proposers included in the RFP.

**Insurance Payment** means the relevant payment identified in Section 5 of Appendix A to Exhibit 4D.

**Insurance Policies** means all of the insurance policies Concessionaire is required to carry under Section 11.1 and Exhibit 7A.

**Insurance Premium Benchmark Amount** has the meaning given in Section 11.1.8.7.

**Insurance Review Report** means the report submitted no later than 60 days after the end of the first three full annual insurance periods after the Final Completion Date in accordance with, and meeting the prescriptions under, Section 11.1.8.2.

**Insurance Unavailability** means either:

- (a) Any Insurance Policy coverage required under Section 11.1 or Exhibit 7A is completely unavailable from insurers meeting the requirements in Section 11.1.7; or
- (b) Provision of all such Insurance Policy coverages has become unavailable at Commercially Reasonable Insurance Rates from insurers meeting the requirements in Section 11.1.8.

For the purpose of clause (b), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for project-financed transit facilities, and Concessionaire shall bear the burden of proving that premium increases are the result of such changes in general market conditions. No increase in insurance premiums attributable to particular conditions of the Project or Project ROW, or to claims or loss experience of any Concessionaire-Related Entity or Affiliate, whether under an Insurance Policy required to be placed under this Agreement or in connection with any unrelated work or activity of Concessionaire-Related Entities or Affiliates, shall be considered in determining whether Insurance Unavailability exists or has occurred.

**Insured Parties** means MTA, MDOT, the State, and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees and any other named insured, Insurance Policy owner or holder under any Insurance Policy prescribed under Exhibit 7A. Except with respect to CSX Transportation, Inc., in the event that any Utility Agreement or Third Party Agreement includes insurance requirements, the term “Insured Parties” shall include the relevant Utility Owner or Third Party for the duration of the term of such agreement and to the extent of insurance required under such agreement. Except with respect to CSX Transportation, Inc., from and after the date of termination or expiration of any such agreement and performance of all obligations of Concessionaire under such agreement that survive termination or expiration, the term “Insured Party” shall no longer include the relevant Utility Owner or Third Party.

**Integration Testing** has the meaning given in Part 2C, Section 1.4 of the Technical Provisions. The term “Integrated Testing” may also be used in variants (e.g., “Integrated Test” and “Integration Test”).

**Intellectual Property** means all current and future legal and/or equitable rights and interests in know-how (including trade secrets and confidential business information which have been recorded in or on any media), patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade names, trade dress, trade secrets, trade secret rights, designs (registered and unregistered), other design rights, logos, utility models, circuit layouts, plant varieties, database rights, business and domain

names (including fictitious business names), inventions (patentable or not), solutions embodied in technology, other intellectual activity, all analogous rights in other jurisdictions and applications (drafted or pending) of or for any of the foregoing, subsisting in or relating to the Work, Project, Project design data or other Project-related data. Intellectual Property includes software used in connection with the Project (including software used for management of Project operations), Source Code and Source Code Documentation, the Financial Model Formulas, Base Case Financial Model, Financial Modeling Data and trade secret information contained in the Financial Proposal. Intellectual Property is distinguished from Submittals, physical construction and equipment itself and from data, sketches, charts, calculations, plans, drawings, layouts, depictions, specifications, manuals, electronic files, artwork, correspondence and other documents created or collected under the terms of the Agreement or otherwise developed under this Agreement, and other work product and other related materials that disclose Intellectual Property.

**Intellectual Property Escrow** has the meaning given in Section 23.5.2.

**Intelligent Transportation System** means the system Concessionaire designs in accordance with Part 2B, Section 5.10 of the Technical Provisions, and in accordance with the standards and guidelines of the AHJ, which Intelligent Transportation System includes all necessary elements to meet such requirements.

**Interactive Voice Response or IVR** means a technology that allows a computer to interact with humans through the use of voice and dual-tone multi-frequency signaling (touch-tone) to automatically access information without human assistance.

**Interface** means a specifically defined functional or logical juncture between two systems. System interfaces shall be open (standardized), proprietary or private, user, man-machine, hardware, software.

**Interface Control Document** means the document setting forth interface standards including the manner in which data shall be transmitted and received between the CSC host and the ETCS.

**Interface Control Manual (ICM)** means the comprehensive manual Concessionaire develops and submits to Owner in accordance with Part 2A, Section 3.9.6 of the Technical Provisions that defines the process by which all interfaces are identified, defined and managed.

**Intermediate Design** means the general design stage consisting of all parts or portions, collections of parts, portions or areas of the Project at approximately 40% to 50% design completion, as described in Part 2A, Section 3.6 of the Technical Provisions, and depending on the context: the term "Intermediate Design" may refer to (a) the Intermediate Design Documents, (b) the design concepts set forth in the Intermediate Design Documents or (c) the process of development of the Intermediate Design Documents.

**Intermediate Design Documents** means those plan sheets, specifications, technical memoranda, reports, studies, calculations, drawings, elevations, sections, details, diagrams and specifications needed for the Intermediate Design, which includes all Submittals specified as required to be part of the Intermediate Design or Intermediate Design Documents under the Technical Provisions.

**Intermediate Transfer Station** means either the Station at Silver Spring Transit Center or the Station at College Park.

**Interpretive Engineering Decision** means an Owner decision under Section 5.8.1 concerning the meaning, scope, interpretation and application of the Technical Provisions.

**Investigative Work Plan** means the plan of investigative and remedial action required by applicable Law, Environmental Approvals or the Hazardous Materials Management Plan to be prepared if Hazardous Materials are encountered or spilled, dumped, discharged or released at any time on, under, within or about the Project ROW.

**Key Contract** means any one of the following:

- (a) All prime Contracts for Construction Work and Design Work;
- (b) The Contract(s) for supply of LRVs and Option LRVs (whether it is a Prime Contract or a Subcontract);
- (c) All prime Contracts for O&M Work;
- (d) All prime project or program management services Contracts; and
- (e) All other prime Contracts with a single Contractor (or a single Contractor and its affiliates) that individually or in the aggregate total in excess of \$25 million on a term (not annual) basis.

The term “Key Contracts” means all such Contracts in the aggregate or more than one of such Contracts. For purposes of this definition, the term “prime” means a direct contractual relationship between Concessionaire and a Contractor.

**Key Contractor** means each Contractor under any Key Contract or all of them, as the context requires.

**Key Personnel** means, collectively, those individuals appointed by Concessionaire and approved by Owner from time to time to fill the “Key Personnel” positions. The specific individuals appointed by Concessionaire and approved by Owner to initially fill certain of the Key Personnel positions are each a “Key Person” and identified in Part 2A, Section 2.3 of the Technical Provisions.

**Known or Suspected Hazardous Materials** means:

- (a) Hazardous Materials that are known to Concessionaire as of the Setting Date or that would have become known to Concessionaire based on a reasonable investigation of the area and information available to Concessionaire as of the Setting Date, consistent with Good Industry Practice; and
- (b) all Hazardous Materials in categories for which unit prices are provided in Exhibit 4B, except where the conditions associated with such Hazardous Materials differ materially from those forming the basis for the original unit pricing.

**Labor Organization** means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

**Labor Peace Agreement** means the agreement relating to the O&M Work described in Section 9.14.1.

**Landfill Change Order** has the meaning given at Section 13.10.2.2.

**Landfill Requirements** means the Gude Drive Requirements and/or Brown Station Road Requirements, as applicable.

**Late Payment Rate** means a floating rate equal to the LIBOR in effect from time to time plus 400 basis points, but not to exceed the Statutory Rate.

**Law or Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or other Dispute), (c) any binding judicial or administrative writ, order, judgment, injunction, award or decree (other than regarding a Claim or other Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by Owner within the scope of its administration of the Contract Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. The term "Laws", however, excludes Governmental Approvals.

**Lead Design Firm** means Atkins North America, Inc..

**Lender** means each of the holders and beneficiaries of Security Documents and their respective successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

**Level of Service (LOS)** means the minimum level of service standards based upon normal, non-perturbed, peak 15-minute conditions by which Concessionaire shall configure Stations, as more particularly described in Part 2B, Section 8.3.7.2.1 of the Technical Provisions.

**LIBOR** means the offered rate per annum (rounded up to the next highest one thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Reuters Screen LIBOR01 Page available at approximately 11:00 a.m., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the basis of a 360-day year for the actual days elapsed.

**Lifecycle Payment** means the relevant portion of each Availability Payment allocable to anticipated costs (and directly related contingencies and reserves) with respect to Renewal Work, as represented in Section 4 of Appendix A to Exhibit 4D, or the Special Lifecycle Payments.

**Light Rail Transit or LRT** means a transit mode that is typically an electric railway with a light volume traffic capacity compared to heavy rail. It is characterized by: (a) passenger rail cars operating singly (or in short, usually two car, trains) on fixed rails in shared or exclusive ROW; (b) low or high platform loading; and (c) LRV power drawn from an overhead electric line via a trolley or pantograph.

**Light Rail Vehicle or LRV** means the rolling stock to be supplied by the Concessionaire for the Project, including all spare LRVs, and refers to the smallest user-carrying unit that can operate independently. The term includes all equipment contained in a LRV.

**Limits of Disturbance** means the limits of disturbance identified in the Record of Decision for the Project issued by FTA.

**Line-by-Line** means, in the context of comparison of insurance premiums for benchmarking purposes, that the premiums will be reviewed separately for each type of insurance coverage rather than reviewing premiums for all of the insurance required under the Agreement. "Stand-alone" Terrorism Insurance Policy/ies are, for purposes of this definition, a separate type of insurance coverage.

**Link Load** means the number of passengers traveling between two Stations for a defined period.

**Liquid Market** is a term relevant to Termination Compensation, and means that there are two or more willing Persons (each of whom is capable of being a Suitable Substitute and of meeting the minimum requirements of a Qualifying Proposer) doing business in the United States or prepared to qualify to do business in the United States that are capable of meeting Owner's requirements for a Replacement Concessionaire and are willing to participate in a competitive procurement for the work and services remaining to be performed by Concessionaire under the Agreement for systems similar to the System, such that a Resolicitation Process can reasonably be expected to result in payment of consideration for the Resolicited Agreement in the range of values that would provide a reasonably likely indicator as to Estimated Fair Value.

**Long Stop Date** means 12 months after the RSA Deadline, as such deadline may be extended from time to time under the Agreement.

**Loss or Losses** means, whether asserted, suffered or incurred by a Party or a third party, any loss, damage, injury, liability, obligation, cost, response cost, expense, including attorneys', accountants' and expert witness fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement), fee, charge, judgment, penalty or fine. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

**LRV Deferral Payment** means each payment to be made by Concessionaire to Owner as consideration for delay of the start date for moving to a higher Service Level under Section 12.4.4.

**LRV Lifecycle Escalation Factor** means the escalation factor calculated in accordance with Section 4 of Part B of Exhibit 4D.

**LRV Miles** means, with respect to a Train Trip, the number of miles specified in the relevant Baseline Service Plan for those trips, being fixed distances based on the physical distance



between the outbound ends of the platform at the Station Stops (and therefore not based on LRV odometer readings) multiplied by the number of LRVs scheduled to be used for that Train Trip.

**LRV Option** means each of the options described in Section 12.1 (LRV Option A, B or C), giving Owner the right to require Concessionaire to provide additional LRVs.

**LRV Option Milestones** means the milestones set out in Part D of Exhibit 4A.

**LRV Option Notice** has the meaning given in Section 12.1.

**LRV Option Price** means the price for Option LRVs determined in accordance with Section 12.1.

**LRV Parent Guarantor** means a Person that provides a parent company guaranty for the LRV Supply Contract in accordance with Section 11.2.2.1.

**LRV Supplier or Light Rail Vehicle Supplier** means CAF USA, Inc. or such other Person as may supply LRVs.

**LRV Supply Contract or Vehicle Supply Contract** means the Contract that obligates the LRV Supplier to supply LRVs for the Project. If the initial order will be supplied through a Subcontract, the term includes that Subcontract as well as any agreement with the LRV Supplier for the LRV Option.

**LRV Supply Milestones** means the milestones set out in Part B of Exhibit 4A.

**Maintenance of Traffic (MOT)** means the comprehensive effort to maintain traffic.

**Maintenance Escalation Factor** means the escalation factor calculated in accordance with Section 4 of Part B of Exhibit 4D.

**Maintenance Manager** has the meaning given in Part 2A, Section 2.3.6 of the Technical Provisions.

**Maintenance Plans** means the plans prepared by Concessionaire in accordance with Part 3, Section 1.3 of the Technical Provisions describing the Maintenance Work and maintenance procedures for the infrastructure, Fixed Facilities, Fixed Equipment, LRVs, Systems and other parts or portions of the Project within the O&M Limits.

**Maintenance Volume Adjustment** means the unit price per LRV Mile for the Baseline Service Plan in effect during the relevant time period as provided in Exhibit 4D.

**Maintenance Work** means Work to be performed during the O&M Period relating to maintenance, repair, preservation, modification, and Renewal Work, but excluding (a) Work to be performed during the O&M Period relating to operation, management and administration of the Project, including operation of the Purple Line System; and (b) Work remaining to be performed by the Design-Build Contractor under the Design-Build Contract following Revenue Service Availability. For purposes of MAPM, Maintenance Work shall exclude Renewal Work.

**Major Construction Contract** means each Contract for performance of Construction Work (including design-build contracts) during the O&M Period with a value of \$100,000 or more.

**Major Quality Activity Noncompliance Event** means each event identified as noncompliance event type “QNC” which is categorized as “major” under the Activity Noncompliance Occurrence Table.

**Major Service Change** means a change in Service Levels as contemplated in Part 3, Section 3.6 of the Technical Provisions.

**Major Service Activity Noncompliance Event** means each event identified as noncompliance event type “SNC” which is categorized as “major” under the Activity Noncompliance Occurrence Table.

**Marginal Cost of Consumption for Contract Year** means the cost per kilo-watt hour of electricity consumed during the relevant Contract Year, calculated by dividing the cost of the aggregate actual electricity consumption by the aggregate actual electricity consumption.

**Market Re-Solicitation Method** means the calculation methodology described in Attachment 1 to Exhibit 13B where the amount payable to Concessionaire is based on a Resolicitation Process.

**Materially Inaccurate** means with respect to the description or identification of a Utility in the Utility Information:

- (a) The existence of an underground utility (excluding appurtenances and Service Lines) that conflicts with the Project shall be considered a material inaccuracy if the utility is not identified at all in the Utility Information.
- (b) The Utility Information regarding the size of an underground utility shall be considered materially inaccurate if one of the following applies, with regard to any difference (whether larger or smaller) between the utility’s actual inside diameter, excluding appurtenances (the “actual size”) and the inside diameter indicated for such utility in the Utility Information (the “stated size”):
  - (i) The utility’s stated size is 12” or less, and the utility’s actual size is 24” or more,
  - (ii) The utility’s stated size is greater than 12” but less than or equal to 36”, and the utility’s actual size differs from the stated size by more than 50% of the stated size,
  - (iii) The utility’s stated size is greater than 36” but less than or equal to 72”, and the utility’s actual size differs from the stated size by more than 25% of the stated size, or
  - (iv) The utility’s stated size is greater than 72”, and the utility’s actual size differs from the stated size by more than 15% of the stated size.
- (c) Inaccuracies in the information regarding the location of an underground utility based on test pit and survey data shall be considered material only if (i) the utility’s actual centerline, at the location of the test pit or survey, is more than two feet distant from the horizontal centerline location shown in that information, and/or (ii) any point or feature of the utility at the location of the test pit or survey

is more than one foot distant from the elevation shown for that point or feature. If no elevation is shown for a particular utility, then vertical location is not grounds for finding material inaccuracy with respect to such utility.

- (d) Inaccuracies in information regarding the location of an underground utility based on utility designation information shall be considered material only if the utility's actual centerline location is more than five feet distant from the horizontal centerline location shown in that information, without regard to vertical location.
- (e) No other inaccuracies in the utility information in the Contract Drawings or Engineering Data shall be considered material.

**Maximum Authorized Speed (MAS)** means the maximum speed at which a Train is permitted to operate on a section of the mainline or yard track.

**Maximum Design Earthquake** means an earthquake event that has a return period of 2,500 years.

**Mean Time Between Failure(s)** means the average time between failures of an element or an individual component, system or subsystem of an element.

**Mean Time To Repair** means the average time between failure of an element or an individual component, system or subsystem of an element and such element or individual component, system or subsystem of an element being returned to full service.

**Measurement Process Plan** is the plan developed under Part 3, Section 3.15 of the Technical Provisions establishing the process for determining Total Trip Run Time and its components.

**Medium Quality Activity Noncompliance Event** means each event identified as noncompliance event type "QNC" which is categorized as "medium" under the Activity Noncompliance Occurrence Table.

**Medium Service Activity Noncompliance Event** means each event identified as noncompliance event type "SNC" which is categorized as "medium" under the Activity Noncompliance Occurrence Table.

**Minor Quality Activity Noncompliance Event** means each event identified as noncompliance event type "QNC" which is categorized as "minor" under the Activity Noncompliance Occurrence Table.

**Minor Service Change** means any changes in Train Service within the parameters that apply to Minor Service Changes identified in Part 3, Section 3.6 of the Technical Provisions.

**Minor Service Activity Noncompliance Event** means each event identified as noncompliance event type "SNC" which is categorized as "minor" under the Activity Noncompliance Occurrence Table.

**Mixed-Traffic Alignment** means any section of the alignment in which Trains operate in mixed traffic, sharing the same alignment space as other types of road vehicles and/or pedestrians including streets, transit malls and pedestrian malls. At intersections with cross streets and

designated pedestrian crossings, traffic signals are used to control vehicle and pedestrian movements.

**Modification** means any written alteration in any provision of the Contract Documents, whether accomplished in accordance with a provision of the Agreement, or by mutual action of the Parties. The term includes Service Level Changes, Change Orders, supplemental agreements and Contract amendments.

**Modification Request** means a request submitted by Concessionaire to Owner as described in Section 14.2.

**Monthly Availability Payment** means the amount payable by Owner to Concessionaire each month with respect to the prior Contract Month, calculated in accordance with Section 1.1 of Part B of Exhibit 4D.

**Monthly Lifecycle Payment** means the portion of each Availability Payment allocable to replacement, refreshment and/or refurbishment of the Fixed Facilities, Fixed Equipment and LRVs (including LRV equipment), calculated in accordance with Section 3.1 of Part B of Exhibit 4D.

**Monthly Operations Performance Factor** means the result of the calculation for each month during the O&M Period determined in accordance with Section 1 of Appendix D to Exhibit 4D.

**Monthly Volume Adjustment Report** means the monthly report prepared by Concessionaire in accordance with Exhibit 4D.

**N+1 Redundancy** means System or device with one extra method or component.

**Nationally Targeted Worker** when used by itself means a person categorized as a Nationally Targeted Worker of Economic Disadvantage or a Nationally Targeted Worker of Social Disadvantage.

**Nationally Targeted Worker of Economic Disadvantage** means an individual domiciled in a ZIP code where one or more census tracts (as of the date of issuance of the RFP) which:

- has at least 40% of all persons earning less than 80% of the Area Median Income; or,
- has an Unemployment Rate that is at least 1% higher than the national local average.

A list of eligible ZIP codes is included in Book 5, Engineering Data.

**Nationally Targeted Worker of Social Disadvantage** means a person: (1) without a GED or high school diploma, (2) receiving Public Financial Assistance, (3) who is an Ex-Offender, (4) who is Homeless, (5) is an Early-Stage Registered Apprentice, or (6) a Former Foster Care Youth.

**National Transit Database** means the FTA national database of statistics for the transit industry established under 49 U.S.C. § 5335(a) or such successor database.

**NCD Notice** has the meaning given in Section 15.2.5.1.

**New Agreement** has the meaning given in the Direct Agreement, relating to replacement agreements entered into by the Collateral Agent or Substituted Entity.

**New Electronic Payment Program (NEPP)** means the new fare system that WMATA is implementing through a contract with Accenture.

**Noncompliance Event** means any Activity Noncompliance Event, any Operations Availability Noncompliance Event and any other event expressly stated to be a Noncompliance Event within the Agreement or each of them as the context requires.

**Noncompliance Points Table** means the table in Section 1 of Appendix C to Exhibit 4D.

**Noncompliance Points** means the points that may be assessed Noncompliance Events determined in accordance with Article 16 and the Activity Noncompliance Occurrence Table.

**Non-Concessionaire Caused Disruption** means any of the following events occurring in the O&M Period:

- (a) an order issued by the Owner or an agent of the Owner which affects service, including an order to slow down or stop train service on the System;
- (b) any change in service required to accommodate performance of work (i) by a Utility Owner pursuant to a permit issued by an Authority Having Jurisdiction as described in Section 7.6.8 or (ii) by a Third Party, provided Owner has agreed in writing to the service change;
- (c) a derailment, grade crossing accident, collision or any other accident involving LRVs;
- (d) obstruction of any grade crossing or the Transitway caused by third parties, excluding obstructions due to vehicular or pedestrian traffic;<sup>1</sup>
- (e) on-board Train passenger activity during Revenue Service Hours that causes interruption to System operations, including requests for an emergency stop of the Train or sick or injured passengers requiring medical attention;
- (f) failure of any Non-Concessionaire Contractor to comply with Concessionaire's reasonable instructions regarding coordination, scheduling, or safety; or any unlawful or negligent act of a Non-Concessionaire Contractor;

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<sup>1</sup> For the avoidance of doubt:

- the following shall be considered obstructions caused by third parties and not due to vehicular or pedestrian traffic in this subsection (d): (i) vehicles parked or disabled in the Transitway, (ii) vehicular traffic perpendicular to the Transitway that blocks the Transitway and intersection for at least one Transitway green phase, and (iii) demonstrations or pedestrians that purposely block the Train by standing in the Transitway; and
- the following shall be considered obstructions due to vehicular or pedestrian traffic in this subsection (d): (1) roadway traffic traveling in the same direction as the Transitway, (2) pedestrians (including passengers) that cause a Train to slow down or stop by crossing the roadway in front of a Train, and (3) unusually high levels of roadway traffic.

- (g) disruptions due to trespassers (including suicide attempts and blockages of the Transitway in connection with an unlawful demonstration) or other criminal action by third parties;
- (h) (i) power network change in voltage or (ii) loss of electrical supply to two or more traction power substations concurrently due to a failure of the electricity supplier, that, in either case, has a material adverse effect on LRT operations;
- (i) actions of governmental authorities or emergency response personnel who require access to the System, interrupting operation of the System,
- (j) delay in or suspension of service required by police or other public official having jurisdiction, or reasonably occurring in anticipation of the response of police or such public official (for example, suspension due to suspicious luggage or package);
- (k) to the extent that the event is not covered by insurance and relief from Deductions is not already provided in the Agreement, disruptions due to
  - i. Relief Events or Force Majeure Events; or
  - ii. excluding facilities providing electrical power to the System (which are addressed in clause (h) above), any unexpected damage to a Utility (A) serving the Project and located within the Project ROW or (B) located within the Transitway or at a Station serving LRVs for the Purple Line System;
- (l) Owner's failure to perform or observe any of its material covenants or obligations under this Agreement or the Contract Documents or to comply with Law or Governmental Approvals; and
- (m) Reduction in service during an unusually severe weather event, to ensure compliance with Safety Standards; so long as Concessionaire notifies Owner, as soon as practicable before or during the event (or if earlier notification is impracticable, promptly after commencing the reduction in service);

except to the extent such event or consequences of the event (i) arose out of (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission by a Concessionaire-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Concessionaire-Related Entity, or (ii) could reasonably have been avoided by Concessionaire.

**Non-Concessionaire Contractor** means any contractor, supplier or other Person performing work in the vicinity of the Project for or through an entity not in ultimate contractual privity (directly or through one or more intermediaries, excluding Owner) with Concessionaire.

**Nonconforming Work** means any Work (including any product of the Work) that does not conform to the requirements of the Contract Documents, the Governmental Approvals, applicable Law, the Design Documents or the Construction Documents, including any failure to comply with Buy America requirements under Exhibit 16 and any Work required to be repaired

or replaced under Part 2C, Section 1.7 of the Technical Provisions in connection with the Reliability Demonstration Test.

**Non-Discriminatory Change in O&M Standards** means any change in the O&M Standards (including changes requiring Technology Enhancements and Changed D&C Standards applicable to Design Work and Construction Work included in the O&M Work) that is not a Discriminatory Change in O&M Standards.

**Non-LRV Lifecycle Escalation Factor** means the escalation factor calculated in accordance with Section 4 of Part B of Exhibit 4D.

**Non-LRV Lifecycle Payment** is the portion of the Monthly Lifecycle Payment associated with all infrastructure except for LRVs as set out in column 2 of Section 4.1 of Appendix A to Exhibit 4D.

**Non-Vital** (whether capitalized or not) is an adjective meaning that a malfunction affecting the referenced piece of equipment or system will not cause the equipment or system to revert to a state that is known to be safe.

**Normal Service** has the meaning specified in Part 3, Sections 3.1 and 3.3 of the Technical Provisions.

**North American Vertical Datum** means the vertical control datum of orthometric height established for vertical control surveying in the United States of America.

**Notice of Claim** means a notice delivered by Concessionaire to Owner's Authorized Representative under Section 20.3.1.1, constituting the first step in the dispute resolution process.

**Notice of Determination** means the notice described in Section 16.2.2, concerning Owner's determination regarding cure of a Noncompliance Event and assessment of Noncompliance Points.

**Notice of Concessionaire Default** means a written notice provided by Owner concerning Owner's determination that a Concessionaire Default has occurred, with respect to any default for which a cure period is allowed under Section 17.1.2.

**Notice of Termination for Convenience** means written notice issued by Owner to Concessionaire terminating the Agreement in whole or in part for convenience.

**Notice to Proceed (NTP)** means a written notice issued by Owner to Concessionaire that authorizes Concessionaire to commence performance of Work as specified therein.

**NPS ROD** has the meaning given in Exhibit 8.

**NPS Special Use Permit** means the special use permit to construct, maintain and operate in the Baltimore-Washington Parkway in the vicinity of MD410 (Riverdale Road) which is required under the NPS ROD, to be obtained by Concessionaire prior to commencement of Construction Work.

**O&M Commencement Date** means the RSA Date unless revenue service commences before the RSA Deadline, in which case the O&M Commencement Date is the date that Revenue Service commences.

**O&M Contract** means each Contract between Concessionaire and an O&M Contractor. There may be more than one O&M Contract concurrently in effect.

**O&M Contractor** means a Prime Contractor responsible for management, direction, supervision or performance of the O&M Work or any significant portion thereof. Each Prime Contractor responsible for operation or maintenance of all or any significant portion of the fare collection system for the Project is considered an “O&M Contractor.” For purposes of this definition, “significant portion” means that the Contractor’s annual contract price equals or is reasonably expected to equal at least 15% of Concessionaire’s annual budget for O&M Work (excluding budgeted costs for Renewal Work).

**O&M Damage Deductible** has the meaning given in Section 8.8.3.5(b).

**O&M Limits** means the limits of the area for which Concessionaire has responsibility to operate and maintain during the O&M Period in accordance with Part 1, Section 7 of the Technical Provisions.

**O&M Management Plan(s)** means those management plans, manuals, policies, procedures and reports identified in Part 3, Section 1.1 of the Technical Provisions *et seq.*

**O&M Period** means that portion of the Term commencing on the O&M Commencement Date and ending on the earlier to occur of (a) early termination of the Agreement or (b) 30 years after the O&M Commencement Date, provided that if the O&M Commencement Date is after the RSA Deadline (that is, if Revenue Service Availability is delayed due to a reason other than a Relief Event or Force Majeure Event), then the O&M Period ends 30 years after the RSA Deadline.

**O&M Period Project Cost Calculation** means the method for calculation of Termination Compensation following termination of the Agreement during the O&M Period due to Concessionaire Default by the “desktop method”, in Section 4.3 of Exhibit 13B.

**O&M Period Project Debt Calculation** means the method for calculation of Termination Compensation following termination of the Agreement during the O&M Period due to Concessionaire Default by the “desktop method”, in Section 4.3 of Exhibit 13B.

**O&M Records** means all data in connection with maintenance, operation, renewals and expansion of the Project including (a) all inspection and inventory records, whether generated by Concessionaire or a third party, (b) any communication to and/or from Owner or a third party, and (c) any information system (as may be introduced or amended by Owner from time to time) in connection with operation, maintenance, renewal or handback of the Project that Owner requires Concessionaire to use or operate.

**O&M Spare LRV** means the LRV supplied by or through Concessionaire as part of the Work that is (a) not part of the Initial Fleet delivered during the Design-Build Period and (b) not an Option LRV.



**O&M Standards** means the Codes and Standards, and the Safety Standards, that are applicable to the O&M Work under the Contract Documents.

**O&M Work** means Work to be performed during the O&M Period, including Technology Enhancements, Operations Work, Maintenance Work, supply of the Renewal Work, but excluding any D&C Work remaining to be performed following Revenue Service Availability.

**Off-Peak Period** means all hours during which Revenue Service is required to be provided on the System, and which are not Peak Period hours.

**Open Book Basis** means review by Owner of documentation showing Concessionaire's underlying assumptions and data associated with the issue in question, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, swap and hedge rates, insurance rates, bonding rates, letter of credit fees, overhead, profit and other items reasonably required by Owner to satisfy itself as to validity or reasonableness.

**Open Station** means any Station, or portion of a Station, that is open to the atmosphere, and where smoke and heat are allowed to disperse directly to the atmosphere.

**Operating Plan** means the plan that Concessionaire develops and submits to Owner in accordance with the requirements in Part 3, Section 1.1 of the Technical Provisions, describing the Project's predetermined operating plan.

**Operating System** means any electrical, mechanical, electronic, communications, control or alarm system that changes state according to the status of the system inputs.

**Operating Volume Adjustment** means the unit price per operating hour for the Baseline Service Plan in effect during the relevant time period as provided in Exhibit 4D.

**Operational Phase Mitigation** means Work performed during the O&M Period to mitigate impacts of EMI at a Research Facility in accordance with the Technical Provisions.

**Operational Phase Mitigation Plan** means the document setting forth Concessionaire's approach to Operational Phase Mitigation in accordance with Part 2B, Section 11.3.5.4 of the Technical Provisions.

**Operational Readiness** means the process leading up to the placement of the Purple Line System into Revenue Service, as more particularly described in Part 2C, Section 4 of the Technical Provisions.

**Operations and Maintenance Quality Management Plan** has the meaning given in Part 3, Section 1.14.2 of the Technical Provisions.

**Operations Availability Deduction(s)** means the amount of financial deductions relating to an Operations Availability Noncompliance Event calculated in accordance with Exhibit 4D.

**Operations Availability Deduction Factor(s)** has the meaning given in Exhibit 4D.

**Operations Availability Noncompliance Event** means an Event listed in Table 1 of Appendix D to Exhibit 4D that causes the accrual of an OTP Factor.

**Operations Control Center (OCC)** means the control location used to manage, control and monitor the Train Service and all associated activities.

**Operations Escalation Factor** means the escalation factor calculated in accordance with Section 4 of Part B of Exhibit 4D.

**Operations Manager** has the meaning given in Part 2A, Section 2.3.5 of the Technical Provisions.

**Operations Manuals** means the manual included as an appendix to the Operating Plan, prepared by Concessionaire in accordance with Part 3, Section 1.1.4 of the Technical Provisions describing the operations procedures for the facilities and roadways within the Project ROW.

**Operations Work** means Work to be performed during the O&M Period, relating to the operation, management and administration of the Project including the Purple Line System that is neither Maintenance Work nor Renewal Work, and excluding work remaining to be performed by the Design-Build Contractor under the Design-Build Contract following Revenue Service Availability. For purposes of the monthly Availability Payment, Operations Work shall be included as MAPO.

**Operating Design Earthquake (ODE)** means an earthquake event that has a return period of 500 years.

**Option LRVs** has the meaning given in Section 12.3.1.

**Option** means the Owner's option to purchase Option LRVs.

**OTP Factors** means those factors set forth in Table 1 of Appendix D to Exhibit 4D.

**Original Equity IRR** means the "Sponsor Equity IRR (pre tax)" listed in the Base Case Financial Model.

**Originating Station** means the Station at which a Train enters Revenue Service and begins a Trip.

**Outstanding Committed Investment** means all payments made by the Equity Members or their Affiliates to Concessionaire in the form of Committed Investment described in clause (a) of the definition of Committed Investment or in the form of Subordinate Debt, to the extent that such amounts have not been repaid by Distributions under clause (a) of the definition of Distributions, provided if the amount established as Outstanding Committed Investment is less than zero, then, for purposes of the calculation of Termination Compensation, Outstanding Committed Investment shall be deemed to be zero.

**Oversight** (whether capitalized or not) means monitoring, inspecting, sampling, measuring, spot-checking, reviewing, attending, observing, testing, investigating, auditing and conducting any other ongoing oversight respecting any part or aspect of the Project or the Work, by any Person so entitled, including all the activities described in Section 5.5.1.2.

**Owner** means the Maryland Transit Administration and the Maryland Department of Transportation, and any entity succeeding to the powers, authorities and responsibilities of either the Maryland Transit Administration or the Maryland Department of Transportation, invoked by or under the Contract Documents.

**Owner-Caused Delay** means any delay to the Critical Path (with respect to the D&C Work) or delay to performance of any material Concessionaire obligation (with respect to the O&M Work) arising from the following matters and no others:

- (a) Any Owner Change;
- (b) Failure or inability of Owner to make real property available by the date specified in the Property Acquisition Schedule (or, with respect to properties identified in Exhibit 2, Section 7, by the date specified therein) and thereafter to maintain availability of said real property in accordance with Section 2.2 so as to allow performance of the Work to proceed;
- (c) Failure of a Third Party or Utility Owner to approve a Project Execution Plan in accordance with the applicable Third Party Agreement or Owner Utility Agreement within the time frame specified in such agreement, or if no time frame is specified, within a reasonable period of time following Concessionaire's submittal to such Third Party or Utility Owner of a Project Execution Plan in final form and meeting all applicable requirements;
- (d) Any suspension of Work order issued (or deemed issued) by Owner for its convenience under Section 17.2.7.3;
- (e) Owner direction to uncover, remove, and restore Work, if Owner (i) had the opportunity to inspect the Work before it was covered, (ii) orders the Work uncovered after the fact, and (iii) the Work exposed proves acceptable;
- (f) Owner's failure to provide responses to Submittals requiring Owner approval within (i) the time periods (if any) indicated in the Contract Documents, or (ii) if no time period is indicated in the Contract Documents, within a reasonable time, provided that determination of a reasonable time under this subparagraph (ii) shall take into consideration, as applicable, (A) the nature, importance and complexity of the Submittal, (B) the number of Submittals or such other items which are then pending for Owner's response, (C) the completeness and accuracy of the Submittal or such other item, and (D) Owner's decision to perform detailed scrutiny or Submittals due to Concessionaire's history of providing Submittals that fail to comply with requirements of the Contract Documents;
- (g) Owner's failure to perform or observe any of its material covenants or obligations under this Agreement or the Contract Documents or to comply with Law or Governmental Approvals;
- (h) An order issued by the Owner which affects service, including an order to slow down or stop train service on the System;

- (i) Failure of any Owner personnel or police personnel to act in accordance with Standard Operating Procedures and/or the system operating rules provided to Owner in writing;
- (j) Any other interruption, slowdown, partial or complete shutdown of service on the System which occurs due to the Owner's operations within the Project ROW;
- (k) Except to the extent provided otherwise in subsection (m) of this definition with respect to the Silver Spring ATC Work, any failure of a Third Party to provide responses to Submittals within the time period indicated in Section 5.1.3 or other time specified in a Third Party Agreement or any other breach of a Third Party Agreement by the Third Party that has a material adverse effect on Concessionaire's performance of a Third Party Agreement Requirement, provided that an Owner-Caused Delay under this subsection (k) shall not commence until two business days after Concessionaire notifies Owner regarding such Third Party failure or breach, identifying its impact on the Critical Path; or
- (l) Any delay to or interference with the Work directly attributable to other projects undertaken by Owner within the Project ROW during the Design-Build Period that are not identified in the Contract Documents; and
- (m) Any delay in obtaining a Governmental Approval required from Montgomery County, WMATA or the Maryland-National Capital Park and Planning Commission (Montgomery County) with respect to the Silver Spring ATC Work beyond 180 days from submission of Concessionaire's complete and conforming application for such approval, meeting the agency's quality requirements;

provided in all cases that (i) the delay is beyond Concessionaire's control and is not due to (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission of a Concessionaire-Related Entity not authorized by the Contract Documents; or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws or Governmental Approvals by any Concessionaire-Related Entity; and (ii) such delay could not reasonably have been avoided by any Concessionaire-Related Entity.

**Owner Change** means any of the following:

- (a) A change in the Work (including changes in the standards applicable to the Work) that Owner has directed Concessionaire to perform as described in Section 14.1;
- (b) Any suspension of Work order issued (or deemed issued) by Owner for its convenience under Section 17.2.7.3;
- (c) Changes in the Work directly attributable to changes in the requirements of any Owner-Provided Approvals after the Proposal Date, except as otherwise provided in Section 6.3.6;
- (d) Any modification to the terms and conditions of any Third Party Agreement or Utility Agreement approved by Owner in writing after the Setting Date (other than modifications after the Setting Date and prior to March 1, 2016, as indicated in

Part 1 of the Technical Provisions as of March 1, 2016) that has a material impact on Concessionaire's obligations under the Contract Documents during the Design-Build Period;

- (e) Any material modification in the Project design or requirement to perform Extra Work directly attributable to (i) Owner's failure to perform or observe any of its material covenants or obligations under this Agreement or the Contract Documents or to comply with Law or Governmental Approvals or (ii) other projects undertaken by Owner within the Project ROW during the Design-Build Period that are not identified in the Contract Documents; and
- (f) Any other change in the Work that the Contract Documents expressly state shall be treated as an "Owner Change".

An Owner Change is a Relief Event, and any delay resulting from an Owner Change is an Owner Caused Delay, in each case, subject to the conditions and limitations in the definitions of "Relief Event" and "Owner-Caused Delay" in this Exhibit 1.

**Owner Default** has the meaning given in Section 17.3.1.

**Owner FC Notice** means the notice (if any) provided by Owner to Concessionaire under Section 4.4.2.1 regarding extension of the date scheduled for Financial Close.

**Owner Intellectual Property** means Intellectual Property owned by or licensed to Owner, other than Concessionaire Intellectual Property.

**Owner-Provided Approvals** means the Governmental Approvals listed in Exhibit 8.

**Owner Utility Agreement** means each agreement between a Utility Owner and Owner described in Part 1, Section 9 of the Technical Provisions.

**P3** means public-private partnership.

**PABs Issuer** means Maryland Economic Development Corporation.

**PABs Issuer MOU** means the Memorandum of Understanding between Maryland Transit Administration and Maryland Economic Development Corporation dated September 2, 2014 related to the issuance of the PABs.

**Painshare Adjustment** means a negative adjustment to the Monthly Availability Payment calculated relating to energy use, as specified in Exhibit 4D.

**Partial Service Payment** means the Insurance Payment, Lifecycle Payment, QVA Payment and PSGS Payment plus the sum of MAPO and MAPM (including QOVA and QMVA as the case may be) for the relevant month multiplied by the ratio of actual LRV miles supplied by the Concessionaire for that month to the Total Baseline LRV Miles for that month. For each period of each day, this calculation will compare actual LRV Miles where the Concessionaire meets the conditions of Part 3, Section 3.2 of the Technical Provisions to the number of originally scheduled LRV Miles for that period.

**Party** means Concessionaire or Owner, as the context may require, and “Parties” means Concessionaire and Owner, collectively.

**Passive Grade Crossing Systems** mean the collective application of traffic control devices that consist of signs and pavement markings only. Such devices are appropriately applied to identify and direct attention to the location of an LRT crossing and advise road users to slow down or stop at the grade crossing as necessary in order to yield to any LRT traffic occupying or in proximity to the grade crossing. By definition, no traffic control devices associated with grade crossing warning systems are present. Signs and markings regulate, warn, and guide highway and path users so they can take appropriate action when approaching grade crossings.

**Payment Bond** means the payment bond(s) to secure payment for labor and materials, as required under the Agreement.

**Payment Mechanism** means the process for determining Availability Payments owing to Concessionaire under this Agreement as set forth in Exhibit 4D.

**Payment Period** means the period covered by each Monthly Availability Payment.

**PCO Notice** means the written notice of a potential Change Order for a Relief Event or Force Majeure Event required to be provided by Concessionaire under Section 15.2.2.

**Peak Hour** means each hour within the Peak Period.

**Peak Passenger Loads** means the number of passengers on board a Train at the Peak Hour maximum load point or at the point along the route in the Peak Hour where passenger loads are the highest.

**Peak Period** means the AM Peak Period and the PM Peak Period (as such terms are defined in Part 3, Exhibit 3.1 of the Technical Provisions) for the relevant Baseline Service.

**Pedestrian Bridge** (whether capitalized or not) means a bridge structure that primarily carries pedestrian traffic with an occasional small maintenance vehicle.

**Performance Inspection** means a detailed inspection of the Project by Concessionaire during the O&M Period in accordance with the Technical Provisions, to verify compliance with the Performance Requirements and other requirements of the Contract Documents.

**Performance Monitoring Report** means any of the Monthly, Quarterly and Annual Performance Monitoring Reports required under Part 3, Section 1.13.3 through Section 1.13.5 of the Technical Provisions.

**Performance Requirements** means the requirements in Part 3 of the Technical Provisions which specify acceptable minimum thresholds of performance by the Concessionaire during the O&M Period.

**Performance Security** means the performance bonds, letters of credit and/or other form of security approved by Owner securing performance of the Work required under the Agreement.

**Permanent Repair** means Rectification following Temporary Repair.

**Permanent Repair Deadline** means a deadline by which Permanent Repair must be made and agreed to by the parties, each acting reasonably, giving Concessionaire a reasonable period within which to carry out the Permanent Repair.

**Permanent Support** means ground support elements that are installed subsequent to excavation which are considered long-term support, and which operate independently of Temporary Support.

**Person** means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Entity, as well as MTA and MDOT.

**Phase I Environmental Site Assessment (ESA) (Phase I or Phase I ESA)** means an environmental assessment conducted in accordance with American Society of Testing and Materials guidelines ASTM E-1527 -05, or any future revision or replacement thereof, to identify possible environmental risks of a particular site and surrounding sites.

**Phase II Environmental Site Assessment (Phase II or Phase II ESA)** means a detailed environmental assessment of contaminated sites conducted in accordance with American Society of Testing and Materials guidelines ASTM test E1903.

**PL Sediment Control and Stormwater Management Program (SC/SMP)** means the program, delegated by MDE to MTA, to act as approving authority for erosion and sediment control and storm water management pursuant to Title 4, Subtitles 2 and 3 of the Environment Article of the Annotated Code of Maryland and the MDE-approved Erosion and Sediment Control and Stormwater Management Review Program Standard Operating Procedures.

**Planned Maintenance** means Maintenance Work that has been properly scheduled and executed in accordance with Part 3, Section 5 of the Technical Provisions.

**Planned Service Interruption** means a Service Interruption due to: (a) Maintenance Work planned by the Concessionaire with at least 60 days' notice to Owner (i.e., submittal of a complete Workblock Request Package to Owner) and approved by Owner; (b) maintenance activities planned by a Utility or Third Party and Approved by Owner; or (c) any other Service Interruption requested by Owner.

**Platform** means the portion of a Station used by passengers for boarding and alighting LRVs and awaiting train arrival.

**Post-Refinancing Financial Model** has the meaning given in Exhibit 5G.

**Post-Tax** means payment of or provision for United States federal and State income tax liability of the Concessionaire and specifically excludes (i) tax payable by the Equity Members, (ii) any foreign income tax and other tax of any kind and (iii) any withholding tax, including any tax that Concessionaire is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt or equity interests in Concessionaire or an Equity Member under 26 U.S.C. Sections 1441 through 1446, notwithstanding 26 U.S.C. Section 1461.

**Post-Termination Services Amount** means for the whole or any part of any month or months for the period from the Termination Date to the time of payment of the Termination

Compensation, an amount equal to the Availability Payment for that month or months, assuming no Noncompliance Points, which would have been payable in that month or months under the Agreement had the Agreement not been terminated less an amount equal to the aggregate of (without double counting):

- (a) For any O&M Work that has been terminated and therefore will not be performed by Concessionaire, the greater of (i) all cost components related to the provision of the O&M Work, excluding costs of lifecycle work, and (ii) the reasonable costs to Owner of alternative provision of the O&M Work pursuant to the standards set out in and otherwise pursuant to the Agreement (whether or not any O&M Work is performed);
- (b) all cost components related to the provision of insurance; and
- (c) Rectification Costs incurred by Owner.

The Post-Termination Services Amount can be an amount that is less than zero.

**Preemption** means a scheme for activation of the street intersection traffic signal phase that is required for passage of Trains whereby the Train phase is always implemented by the time the Train arrives at the intersection.

**Pre-Existing Hazardous Materials** means Hazardous Materials that:

- (a) are located in, on or under, or are emanating from, any parcel within the boundaries of the Site as of the date access to such parcel is provided to Concessionaire; or
- (b) existed in another location as of the date access to such a parcel was provided and thereafter migrated to such parcel,

excluding any Hazardous Materials that are located in, on or under, or are emanating from any Additional Property or Project-Specific Location or which arise as a result of any act or omission of any Concessionaire-Related Entity in connection with any Additional Property or Project-Specific Location.

**Preliminary Design** means the general design stage, elements, collections of elements, or areas of the Project at approximately 20% to 30% design completion, as more fully set forth in Part 2A, Section 3.6 of the Technical Provisions. Depending on the context: the term “Preliminary Design” may refer to (a) the Preliminary Design Documents, (b) the design concepts set forth in the Preliminary Design Documents or (c) the process of development of the Preliminary Design Documents.

**Preliminary Design Documents** means the preliminary plan sheets, specifications, technical memoranda, reports, studies, calculations, drawings, elevations, sections, details, diagrams, and specifications needed for the Preliminary Design, which includes all Submittals specified as required to be part of the Preliminary Design or Preliminary Design Documents under the Technical Provisions.



**Pre-Refinancing Data** means all relevant data in relation to a proposed Refinancing other than a proposed Exempt Refinancing under clause (c) or (d) of the definition of Exempt Refinancing and calculation of the estimated Refinancing Gain, including:

- (a) Details of actual and projected timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the anticipated date of Refinancing, and of projected timing and amounts of the investment of equity and Subordinate Debt, if any, from the anticipated date of Refinancing to the end of the Term;
- (a) Information on the actual and projected cash flows of Concessionaire from the Effective Date to the anticipated date of Refinancing, and of projected cash flows of Concessionaire from the anticipated date of Refinancing to the end of the Term;
- (b) Details of the actual and projected timing and amounts of Distributions from the Effective Date to the anticipated date of Refinancing and of projected timing and amounts of Distributions from the anticipated date of Refinancing to the end of the Term;
- (c) A copy of the Pre-Refinancing Base Case Financial Model as updated by Concessionaire, which shall be identical to any presented to the proposed Refinancing Lender(s);
- (d) A copy of all term sheets or all other relevant documentation and information in relation to the terms of the proposed Refinancing;
- (e) A copy of the proposed Post-Refinancing Base Case Financial Model as updated by Concessionaire, which shall be identical to any presented to the proposed Refinancing Lender(s);
- (f) Information on all relevant assumptions, including tax assumptions taking into account any amounts to be paid to Owner, and where appropriate back up data and tax letters, assumptions and other documentation, for the projections in the Pre-Refinancing and Post-Refinancing Base Case Financial Models as updated by Concessionaire;
- (g) A detailed calculation of the estimated Refinancing Gain and Owner's share thereof (if any) following the procedures in Exhibit 5G; and
- (h) All other information Owner may reasonably request in relation to the proposed Refinancing and related calculations and assumptions.

**Pre-Refinancing Financial Model** has the meaning given in Exhibit 5G.

**Presidential Disaster Declaration** means a declaration of a major disaster by the President of the United States triggering assistance from FEMA in accordance with the Disaster Relief Act of 1974 (Pub. L. No. 93-288, as amended).

**Pricing Sheets** means Proposal Forms O-1 through O-6.

**Prime Contractor** means any Contractor that has a direct contract with Concessionaire.

**Principal Project Document(s)** means the Contract Documents, the Key Contracts and the escrow agreements for Intellectual Property Escrows.

**Priority** means the a scheme for activation of the street intersection traffic signal phase that is required for passage of Trains whereby the Train phase is implemented sooner or extended longer but does not guarantee that the Train will not have to stop.

**Private Activity Bonds or PABs** means bonds, notes or other evidence of indebtedness issued by the PABs Issuer in accordance with the provisions of Internal Revenue Code sections 142(a)(15) and (m).

**Progress Payments** has the meaning given in Section 13.1.1.1.

**Progress Report** means each of the reports described in Part 2A, Section 11 of the Technical Provisions.

**Project** means the Purple Line Light Rail Project described in Part 1 of the Technical Provisions, to be developed by Concessionaire as described in the Technical Provisions and other Contract Documents, including (a) the LRVs, facilities, equipment, subsystems and other components of the Purple Line System, (b) other structures and improvements to be developed by Concessionaire, including Utility improvements, and (c) all other work product of Concessionaire relating to the foregoing. Notwithstanding the foregoing, as used in provisions relating to the O&M Work, the term "Project" excludes facilities developed by Concessionaire during the Design-Build Period that are owned and maintained by third parties as described in Part 1 of the Technical Provisions.

**Project Adjusted Costs** means those costs and expenses that have actually been incurred by or on behalf of Concessionaire directly in connection with the Work, less Progress Payments, RSA Payments, Final Completion Payments and any unscheduled payments (including those related to Relief Events and Change Orders) previously paid by the Owner to Concessionaire. The term "Project Adjusted Costs" excludes capitalized interest and other financing costs, professional and advisory fees (other than fees payable to Contractors for performance of Work), Concessionaire overhead and administrative expenses, wages earned, accrued unused vacation time, and any other employee payments required by law or employment agreement with Concessionaire employees, and demobilization costs.

**Project Commitments** means (a) mitigation measures and other commitments contained in the Owner-Provided Approvals and (b) commitments to Governmental Entities and/or the public identified in Book 5.

**Project Construction Management Office (PCMO)** means the Concessionaire-established temporary Project office facility, described in Part 2A, Section 22 of the Technical Provisions, for purposes of construction administration and inspection.

**Project Debt** means bona fide indebtedness (including subordinated indebtedness) for or with respect to funds borrowed or obligations incurred (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more Security Documents satisfying the terms in Section 4.3. Project Debt includes

principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto and lease financing obligations. Project Debt excludes (a) any indebtedness of Concessionaire or any Equity Member of Concessionaire that is secured by anything less than the entire Concessionaire's Interest, such as indebtedness secured only by an assignment of economic interest in Concessionaire or of rights to cash flow or dividends from Concessionaire, (b) debt that constitutes consideration paid for the sale of the economic rights in Concessionaire or Concessionaire's Equity Members, (c) equity bridge loans, and (d) any increase in indebtedness to the extent resulting from an agreement or other arrangement Concessionaire enters into after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination giving rise to an obligation of Owner to pay Termination Compensation, including Concessionaire's receipt of a Notice of Termination for Convenience and occurrence of an Owner Default of the type entitling Concessionaire to terminate the Agreement. In addition, no debt shall constitute Project Debt unless and until the Collateral Agent provides Owner with notice thereof and the related Funding Agreements and Security Documents in accordance with the relevant Direct Agreement. Project Debt includes any TIFIA financing and obligations arising with respect to such TIFIA financing.

**Project Debt Termination Amount** means A plus B minus the sum of C, D and E, where:

A = All outstanding principal (including principal resulting from the capitalization of interest during the Design-Build Period) of the Project Debt other than Subordinate Debt and accrued but unpaid interest on Project Debt other than Subordinate Debt;

B = All Breakage Costs payable by Concessionaire as a result of prepayment of the outstanding amounts of such Project Debt, subject to the obligation of Concessionaire and each of the Lenders to take reasonable steps to mitigate damages included in the amounts payable;

C = Any amounts payable to or for the benefit of Concessionaire resulting from prepayment of outstanding Project Debt (including credits payable to Concessionaire under swap agreements), unless already accounted for in B;

D = The sum of any amounts included in A or B that did not accumulate as a result of an Owner Default and that are based on or include (i) accrued interest that Concessionaire failed to pay when due, including any such interest that has been added to principal, or (ii) increased rates of interest based on a default, late charges and penalties, including any such items added to principal; and

E = Any portion of Availability Payments previously made by Owner intended to be used to pay Project Debt but not yet applied for that purpose.

**Project Execution Plan or "PEP"** means a separate, detailed plan regarding (a) the prosecution of Utility Work (including performance of Betterments) for a Utility Owner, agreed upon in writing and executed by Concessionaire, Owner and the Utility Owner or (b) the prosecution of Third Party Work for a Third Party, agreed upon in writing and executed by Concessionaire, Owner, and the Third Party. Additional information regarding Project Execution Plans is provided in Part 2A, Section 19.3 of the Technical Provisions, the Third Party Agreements, and the Owner Utility Agreements. Depending on the context, the term "Project

Execution Plan” may refer to an individual plan or to all of the plans in the aggregate. The aggregate Project Execution Plan is part of the Project Management Plan.

**Project Management Office (PMO)** means the Concessionaire-established temporary Project office facility, described in Part 2A, Sections 22 of the Technical Provisions, from which the Concessionaire administers the design and construction of the Project.

**Project Management Plan (PMP)** means the document setting forth Concessionaire’s prescribed approaches to, and plan for, its scope of Work, described in Part 2A, Section 1.1 of the Technical Provisions, as it may be modified and updated from time to time, following approval thereof by Owner.

**Project Manager** means the Key Person described in Part 2A, Section 2.3.1 of the Technical Provisions.

**Project ROW** means any real property (which term is inclusive of all estates and interests in real property), improvements and fixtures within the lines delineating the right of way boundaries in the ROW Maps, as such boundaries may be modified from time to time in accordance with the Contract Documents (including boundary adjustments associated with acquisition of Additional Properties).

**Project Schedule** means the CPM schedule for all D&C Work leading up to and including Revenue Service Availability and Final Completion, and for tracking the performance of such D&C Work, as the same may be revised and updated from time to time in accordance with the Technical Provisions.

**Project-Specific Locations** means (a) the site where LRVs are assembled and (b) areas outside of the Project ROW where activities incidental to construction of the Project are being performed by Contractors, including field office sites, storage sites, staging areas dedicated to the Project, temporary work areas and parking areas, but excluding any permanent locations of Concessionaire or any Contractor.

**Property Acquisition Schedule** means the schedule for acquisition of ROW and other property in Exhibit 9.

**Proposal** means Concessionaire’s response to the RFP. Portions of the Proposal are incorporated by reference in Exhibit 17.

**Proposal Credit Spread(s)** means the Credit Spreads documented on Proposal Form P, Table 7.

**Proposal Date** means December 8, 2015.

**Proposal Interest Rate(s)** means the Benchmark Interest Rates as documented at 10:00 a.m. on November 19, 2015.

**Proprietary Intellectual Property** means Intellectual Property that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent laws or copyright laws.

**Protection in Place** means any action taken to avoid damaging a utility facility which does not involve removing or relocating that facility, including staking the location of a facility, exposing the facility, locating construction equipment so as to avoid impacts to facilities, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered a Protection in Place; whereas temporarily moving power lines to another location after cutting them would be considered a phased Utility Adjustment and not a Protection in Place. The term “Protection in Place” includes both temporary measures and permanent installations meeting the foregoing definition.

**PSGS Payment** means the payment adjustment for changes in electricity usage identified in Appendix E to Exhibit 4D.

**Public Information Act** means Section 10-611, *et seq.* of the State Government Article of the Annotated Code of Maryland.

**Punch List** (whether capitalized or not) means an itemized list of D&C Work which remains to be completed after the RSA Date as a condition to Final Completion, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

**Public Financial Assistance** means assistance provided by the U.S. Temporary Assistance to Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP) at the time of employment or up to two years after employment on the Project.

**Purple Line Mezzanine Connection** means the passenger connection to be provided by Concessionaire as part of the Project between the Purple Line System's Silver Spring Transit Center Station Platform and the southern portion of the WMATA Metrorail Red Line Silver Spring Station Platform. The connection includes the new mezzanine and connecting bridge at the Purple Line Silver Spring Transit Center Station and the new mezzanine over the south end of the platform at the existing Silver Spring Metro Station.

**Purple Line System** means the light rail system described in Part 1 of the Technical Provisions.

**Qualifying Proposal** is a term relevant to Termination Compensation, and means a proposal submitted by a Qualifying Proposer that is responsive to the requirements specified in the solicitation documents for the Resolicited Agreement, including provision of an acceptable technical proposal and payment of a lump sum amount.

**Qualifying Proposer** is a term relevant to Termination Compensation, and means a proposer that meets the minimum requirements specified in the solicitation documents for the Resolicited Agreement, including (i) willingness to accept the terms of the Resolicited Agreement and accept responsibility for the performance of the Concessionaire's remaining obligations under the Contract Documents, (ii) financial ability to pay the lump sum amount proposed as consideration for the Resolicited Agreement; (iii) experience in and technical capability of performing work of the type remaining to be performed under the Contract Documents; and (iv) any other qualifications criteria reasonably established by Owner.

**Quality Activity Noncompliance Event** means a Major Quality Activity Noncompliance Event, Medium Quality Activity Noncompliance Event or a Minor Quality Activity Noncompliance Event, or all of them, as the context requires.

**Quality Assurance (QA)** means all planned and systematic actions by Concessionaire necessary to provide confidence that QC is performed in accordance with the Quality Management Plan, that all Work complies with the Contract Documents and that all materials incorporated in the Work, all equipment and all elements of the Work will perform satisfactorily for the purpose intended. QA actions include monitoring and verification of design through auditing, spot-checking and participation in the review of the Design Documents and Working Plans; and monitoring and verification of construction, manufacturing/process facilities and equipment, on-site equipment and QC documentation through auditing, spot inspections and reconciliation of material acceptance and rejection based on QC testing and Verification Sampling and Testing at production sites and the Site. Quality Assurance also includes documentation of all QA efforts.

**Quality Assurance Oversight (QAO)** means all planned and systematic Oversight actions by Owner necessary to provide confidence that Concessionaire is performing QA and QC in accordance with the Quality Management Plan. The term "Quality Assurance Oversight" also includes consultation and provision of written comments by Owner, documentation of QA activities, any final inspection or similar undertaking and processes carried out to determine Final Completion status.

**Quality Audit** means the audits performed by Concessionaire in connection with its quality audit program, as described in further detail in Part 2A, Section 14.1.14 of the Technical Provisions.

**Quality Control (QC)** means the total of all activities performed by Concessionaire to ensure that the Work meets the requirements of the Contract Documents. For design this includes procedures for design quality, checking, and design review including reviews for constructability, and review and approval of Working Plans. For construction this includes procedures for materials handling and construction quality; inspection, sampling, testing and acceptance/rejection of materials, plants, production and construction; material certifications; calibration and maintenance of equipment; production process control; and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

**Quality Records** means the documentation required to be produced and maintained by Concessionaire-Related Entities in accordance with the Concessionaire's Quality Program.

**Quality Program Manager** has the meaning given in Part 2A, Section 2.3.7 of the Technical Provisions.

**Quarterly Maintenance Volume Adjustment** means the amount of the Quarterly Volume Adjustment calculated in accordance with Section 2.3(c) of Part B of Exhibit 4D.

**Quarterly Operating Volume Adjustment** means the amount of the Quarterly Volume Adjustment calculated in accordance with Section 2.3(b) of Part B of Exhibit 4D.

**Quarterly Volume Adjustment** means the quarterly adjustment to Availability Payments calculated in accordance with Section 2.5(a) of Part B of Exhibit 4D.

**QVA Payment** means the amount calculated in Section 3 of Part B of Exhibit 4D.

**Quarterly Volume Adjustment Report** means the quarterly report prepared by Concessionaire in accordance with Section 2.5(c) of Part B of Exhibit 4D.

**Quarterly Volume Adjustment Review Meeting** means a quarterly meeting between Owner and Concessionaire for the purpose set out in Section 2.5(d) of Part B of Exhibit 4D.

**Rail Activation** means the planning and execution of all activities required to transition the Purple Line System from the Design-Build Period to the O&M Period, as more particularly described in Part 2C, Section 3 of the Technical Provisions.

**Rail Fleet Management Plan** means Concessionaire's plan to manage the LRVs submitted to Owner in accordance with in Part 3, Section 1.2 of the Technical Provisions.

**Rating Agency(ies)** means any credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization ("NRSRO").

**Record Documents** means construction drawings, specifications and related documentation furnished by Concessionaire to reflect the actual conditions and location in detail of Work as constructed and installed, which may be generated initially as marked-up Release for Construction Documents, revised subsequently as finished revised drawings and documents, and updated thereafter as required by the Technical Provisions.

**Record of Decision** means the record of FTA's decision in accordance with NEPA approving the environmental impact statement for the Project.

**Recoverable Costs** means:

- (a) The reasonably required costs of any assistance, action, activity or work undertaken by Owner which Concessionaire is liable for or is obligated to reimburse Owner for under the terms of the Contract Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of Owner staff and employees performing such action, activity or work; plus
- (b) Reasonably required out-of-pocket costs Owner incurs to publicly procure any such third party contractors; plus
- (c) Reasonable fees and costs of attorneys (including the reasonably allocable fees and costs of the Maryland Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or work, including in connection with defending claims by and resolving disputes with third party contractors; plus
- (d) Interest on all the foregoing sums at the Late Payment Rate, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

**Rectification** means, with respect to any Activity Noncompliance Occurrence, fixing the problem so that the future operations comply with the requirements of the Agreement. Without

prejudice to the generality of the foregoing, this shall include (a) restoring any functional capability which has been disabled or otherwise fails to comply with the requirements with respect to the Activity Noncompliance Occurrence; (b) repairing any defect, hazard, or other condition which was not in compliance with such requirements; and (c) formally notifying the Owner's Authorized Representative that Rectification has been completed.

**Rectification Costs** means an amount equal to the reasonable and proper costs incurred or reasonably anticipated to be incurred by Owner in curing or otherwise addressing any default by Concessionaire and procuring performance of Concessionaire's obligations pursuant to the Agreement.

**Rectification Time** means, with respect to any Activity Noncompliance Occurrence, the period within which Rectification of the event must be completed as specified in the "Rectification Time" column of the Activity Noncompliance Occurrence Table, calculated from the date and time Concessionaire first obtained knowledge or had reason to know of the Activity Noncompliance Occurrence regardless of whether Owner has delivered a notice to Concessionaire or entered the Activity Occurrence into the electronic database.

**Reference Documents** means the documents provided with and so designated in the RFP, which are provided for disclosure purposes only and without any warranty as to their accuracy, completeness or fitness for any particular purpose.

**Refinancing** means:

- (a) Any amendment, variation, novation, extension, renewal, supplement, refunding, defeasance or replacement of any Project Debt, Funding Agreement or Security Document (other than any Subordinate Debt and Subordinate Security Documents);
- (b) The issuance by Concessionaire of any indebtedness in addition to the Initial Project Debt, secured or unsecured;
- (c) The disposition of any rights or interests in, or the creation of any rights of participation with respect to, Project Debt, Funding Agreements and Security Documents or the creation or granting by Concessionaire or any Lender of any other form of benefit or interest in either Project Debt, Funding Agreements and Security Documents or Concessionaire's Interest whether by way of security or otherwise; or
- (d) Any other arrangement put in place by Concessionaire or another Person which has an effect similar to any of clauses (a) through (c) above.

**Refinancing Data** means all relevant data in relation to a Refinancing other than an Exempt Refinancing and calculation of the Refinancing Gain, including:

- (a) Details of actual timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the date of Refinancing, and of projected timing and amounts of the investment of equity and Subordinate Debt, if any, from the date of Refinancing to the end of the Term;



- (b) Information on the actual cash flows of Concessionaire from the Effective Date to the date of Refinancing, and of projected cash flows of Concessionaire from the date of Refinancing to the end of the Term;
- (c) Details of the actual timing and amounts of Distributions from the Effective Date to the date of Refinancing and of projected timing and amounts of Distributions from the date of Refinancing to the end of the Term;
- (d) A copy of the final Pre-Refinancing Base Case Financial Model as updated by Concessionaire, which shall be identical to any presented to the Refinancing Lender(s);
- (e) A copy of the final Post-Refinancing Base Case Financial Model as updated by Concessionaire, which shall be identical to any presented to the Refinancing Lender(s);
- (f) Information on all relevant assumptions, including tax assumptions taking into account any amounts to be paid to Owner, and where appropriate back up data and tax letters, assumptions and other documentation (if any), for the projections in the Pre-Refinancing and Post-Refinancing Base Case Financial Models as updated by Concessionaire;
- (g) A detailed calculation of the Refinancing Gain and Owner's share thereof (if any) following the procedures in Exhibit 5G; and
- (h) All other information Owner may reasonably request in relation to the Refinancing and related calculations and assumptions.

**Refinancing Gain** means the amount determined in accordance with Exhibit 5G.

**Refinancing Gain Share** has the meaning given in Exhibit 5G.

**Regression Testing** means testing performed during system integration to verify that items previously tested successfully still work as additional elements are incrementally integrated into the system. Also applies as new items are integrated with existing and "legacy" systems to verify that the prior functionality has not been adversely affected. The latter situation is especially applicable to the Project.

**Related Transportation Facility(ies)** means all existing and future transit systems, bridges, tunnels, highways, streets, rail lines and roads, or other transportation facilities of any mode, including upgrades and expansions thereof, that are or will be connecting with or crossing under or over the Project. For purposes of this definition, "future" transit systems, etc., means those transit systems, etc., identified in any Third Party's formal, approved budget document for capital projects as of the Setting Date.

**Release or Release of Hazardous Materials** means, with respect to Hazardous Materials any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

**Release for Construction Documents (RFCD)** means Design Documents that have been authorized to be used as the basis for Construction Work, in accordance with the design management portion of the approved Project Management Plan, as more fully set forth in Part 2A, Section 3.7 of the Technical Provisions.

**Relevant Event** has the meaning given in Section 15.5.2.

**Reliability** means a measure of how dependable a system is once it is actually in use for system operations.

**Relief Event(s)** means (1) Owner Changes and (2) any of the following events to the extent that the event materially and adversely affects performance of Concessionaire's obligations under the Contract Documents, in each case subject to the requirements, limitations and deductibles in the Agreement regarding entitlement to relief as well as the duty to prevent occurrences and to mitigate consequences of such events:

- (a) Owner-Caused Delay;
- (b) Subject to the limitations specified in Section 6.2, discovery of Differing Site Conditions;
- (c) Subject to the limitations specified in Section 6.2, discovery on or under the Site (excluding Additional Properties and Project-Specific Locations) of any paleontological or cultural (including archaeological and historical) resources;
- (d) Subject to the limitations specified in Section 6.2, discovery at, near or on the Project ROW of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date), to the extent that Concessionaire is required to stop the Work or perform Extra Work as a result of the discovery;
- (e) Subject to the limitations specified in Sections 6.2 and 15.3.2, discovery that the Utility Information is Materially Inaccurate with respect to any underground utility facility (excluding Service Lines), except where the existence of a Utility in the correct location and/or size, as applicable, was known to Concessionaire as of the Setting Date, or would have become known to Concessionaire as of the Setting Date by undertaking reasonable inquiry, prior to the Setting Date, with Utility Owners, including by requesting and reviewing Utility plans provided by Utility Owners;
- (f) Discovery of Hazardous Waste required by applicable Law to be recycled, treated, stored or disposed at a "Designated Facility" as defined in COMAR 26.13.01.03, discovered during or in connection with the demolition of buildings, fixtures or other improvements, in the categories for which unit prices are provided in Table 2 of Exhibit 4B;
- (g) (i) discovery of Pre-Existing Hazardous Materials within the Site, excluding Known or Suspected Hazardous Materials and excluding Hazardous Materials within Additional Properties and Project-Specific Locations, or (ii) any sudden spill of Hazardous Material by a Person other than a Concessionaire-Related Entity not covered by item (f) above which occurs during the Term and

(A) renders use of the Transitway, roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation or (B)(1) is required by applicable Law to be recycled, treated or stored, or (2) is required by applicable Law to be disposed at a "Designated Facility" as defined in COMAR 26.13.01.03;

(h) With respect to D&C Work:

- (1) Discriminatory Changes in Law, and
- (2) any other Change in Law that (A) requires a material modification in the Project design, (B) results in imposition of additional mitigation requirements on the Project respecting (i) impacts on paleontological, biological or cultural (including archaeological and historical) resources or (ii) other environmental impacts, or (C) prevents renewal of any Governmental Approval;

(i) With respect to O&M Work:

- (1) Changes in Law, excluding changes in federal Law other than (A) changes in federal Law to the extent specified in Section 15.3.4, (B) changes in federal Law that materially modify tasks to be performed by operations and maintenance personnel and (C) any change in federal Law requiring execution of a Section 13(c) agreement for the Project;
- (2) Discriminatory Changes in O&M Standards;
- (3) Non-Discriminatory Changes in O&M Standards to the extent specified in Section 15.3.4;
- (4) Changes in Transitway traffic signal timing affecting Station-to-Station run times; and
- (5) Changes in traffic signal Priority or Preemption in the Transitway affecting Station-to-Station run times;

(j) Permanent and planned power network change in voltage by the Utility Owner supplying electricity to the Purple Line System that has a material adverse effect on LRT operations;

(k) Any change in the Work or delay to or interference with the Work directly attributable to projects undertaken by Third Parties within the Project ROW during the Design-Build Period that are not identified in (i) the Contract Documents or (ii) any Third Party's formal, approved budget document for capital projects as of the Setting Date;

(l) During the Design-Build Period, subject to the limitations and obligations specified in Sections 7.13 and 15.3.5, damage to improvements or project assets at the Site (excluding Additional Properties and Project-Specific Locations) due to Force Majeure Events, to the extent that (i) the damage is due to an event that is not of a type required to be covered by insurance under the Contract Documents

(including self-insurance if Owner has agreed to self-insure as specified in the terms of the Agreement where Concessionaire is unable to obtain insurance as described in the Agreement), or (ii) the costs of repair or replacement exceed the insurance limits;

- (m) During the O&M Period, solely for the purposes of determining Owner's responsibility under Section 15.3.5 and, subject to the limitations and obligations specified in Sections 8.8.3 and 8.10.2.2, damage to improvements or project assets due to Force Majeure Events or other events beyond Concessionaire's reasonable control;
- (n) Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any portion of the Work;
- (o) Subject to the limitations specified in Section 7.6.9, occurrence of a Utility Owner Delay; and
- (p) Assessment of sales or use tax on LRV's;

except to the extent that the event or consequences of the event (i) arose out of (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission by a Concessionaire-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Concessionaire-Related Entity, or (ii) could reasonably have been avoided by any Concessionaire-Related Entity.

**Relief Event Costs** means the portion of any previous payments to Concessionaire that compensated Concessionaire for costs attributable to Relief Events which Concessionaire has not yet incurred.

**Remedial Plan** means each plan described in Section 16.6.3.

**Remedial Plan Default** means (a) any Concessionaire Default under Section 17.1.1(b), (e) or (i) that is curable but that Concessionaire fails to cure within the applicable period specified in Section 17.1.2, excluding Activity Noncompliance Occurrences and Noncompliance Events, or (b) a Concessionaire Default under Section 17.1.1 (r) or (s), if Owner determines that the default justifies exercise of the remedies in Section 5.5.2 or 16.6, excluding Activity Noncompliance Occurrences or Noncompliance Events.

**Renewal Work** means the capital replacement, reconstruction, overhaul, refurbishment and reinstatement of the Project within the O&M Limits including the Fixed Facilities, Fixed Equipment, LRVs and other Project assets to be carried out by the Concessionaire during the Term to maintain compliance with the Contract Documents. For the purposes of the monthly Availability Payment, Renewal Work shall be included as the Lifecycle Payment.

**Repeat Testing** is the repeat of a test that was underway at the time a test failure occurred.

**Replacement Concessionaire** is a term relevant to Termination Compensation, and means the Suitable Substitute selected to enter into a replacement concession agreement pursuant to the Resolicitation Process.

**Replacement Notice** has the meaning given in Section 16.9.1.

**Request for Change Order** means the submittal required under Section 15.2.3.1 providing detailed information regarding a proposed Change Order for a Relief Event or Force Majeure Event.

**Request for Change Proposal** means a written notice issued by Owner to Concessionaire setting forth a proposed Owner Change and requesting Concessionaire's assessment of cost and schedule impacts thereof, in Section 14.1.2.

**Request for Proposals (RFP)** means that certain Request for Proposals to Design, Build, Finance, Operate and Maintain the Purple Line Project through a Public-Private Partnership Agreement, issued by Owner on July 28, 2014, as amended.

**Request for Qualifications (RFQ)** means that certain Request for Qualifications to Design, Build, Finance, Operate and Maintain the Purple Line Project issued by Owner on November 8, 2013, as amended.

**Required Minimum Insurance Policies** means the Insurance Policies prescribed under the Contract Documents and subject to the benchmarking provisions, as defined in Section 11.1.8.11(c)(i).

**Research Facility or Facilities** means a scientific or research laboratory or scientific or research equipment located in the following buildings at the University of Maryland, College Park: H.J. Patterson Building (073); Microbiology Building (231); Bio/Psychology Building (144); Biosciences Research Facility (413); Plan Sciences Building (036); Geology Building (237); Physics Building (082); Glen L. Martin Engineering Building (088); Chemistry Building (091); Chemical and Nuclear Engineering Building (#90); JM Patterson Building (083).

**Rescue Refinancing** means any Refinancing that:

- (a) Occurs due to the failure or imminent failure of Concessionaire to comply with any material financial obligation under any Funding Agreement or Security Document;
- (b) Results in the cure of such failure or imminent failure;
- (c) Does not result in an increase in the Equity IRR beyond the Original Equity IRR; and
- (d) Does not result, singly or in the aggregate, in an actual or potential increase of the Project Debt Termination Amount (determined without including any Exempt Refinancings) by more than 10%.

**Residual Life** means, for an element of the Work, the period remaining until the element will next require reconstruction, rehabilitation, restoration, renewal or replacement. The Residual Life of an element would be equal to its originally calculated Useful Life less its age if (a) the element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by Concessionaire and (b) Concessionaire has performed the type of routine maintenance of the element which is normally included as an annually recurring cost in transit facility maintenance and repair budgets, and as a result thereof the element complies

throughout its originally calculated Useful Life with each applicable Performance Requirement. The Residual Life of an element would be different from its originally calculated Useful Life minus its age if any of the foregoing conditions is not true.

**Resolicitation Process** is a term relevant to Termination Compensation, and has the meaning set forth in Section 1.2 of Attachment 1 to Exhibit 13B.

**Resolicited Agreement** is a term relevant to Termination Compensation, and means an agreement on substantially the same terms as the Agreement in effect as at the Early Termination Date and which replaces the Agreement, but with the following amendments:

- (a) If the Early Termination Date is before the RSA Date, then the RSA Deadline will be extended to allow the Replacement Concessionaire to achieve Revenue Service Availability prior to the Long Stop Date;
- (b) The Term of the Resolicited Agreement will be the period commencing on the date on which the Resolicited Agreement becomes effective and ending upon expiration or earlier termination of such agreement;
- (c) Any accrued Noncompliance Points will be canceled; and
- (d) Other amendments deemed advisable by Owner that do not adversely affect Concessionaire or as otherwise agreed between the parties to reflect the Project circumstances as of the Early Termination Date.

**Response** means, with respect to any Activity Noncompliance Occurrence, the following actions by Concessionaire following occurrence of the event:

- (a) establishing the location, investigating the nature and cause of the event and attending the site if necessary;
- (b) appointing a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorize any required action;
- (c) taking any necessary actions to make the non-compliant system or item safe and secure, thereby as a minimum fulfilling all health and safety requirements;
- (d) taking any and all necessary actions to establish temporary measures that mitigate the effect of the event and maintain to the extent possible the normal functioning of the System;
- (e) when necessary, giving the Owner an assessment of the problem, the action taken, details of any work required with timescales and any limitations that this may impose on Operations and Maintenance; and
- (f) formally advising the Operations Control Center that the Response has been completed.

**Response Time** means the time for Concessionaire to complete its Response measured from the date and time Concessionaire first obtained knowledge or had reason to know of the Activity

Noncompliance Occurrence regardless of whether Owner has delivered a notice to Concessionaire or entered the Activity Noncompliance Occurrence into the electronic database as specified in the “Response Time” column of the Activity Noncompliance Occurrence Table.

**Restricted Person** means a Person (or any managing member, general partner or controlling investor of such Person) that, after exhaustion of all rights of appeal, is suspended or debarred from bidding, proposing or contracting with any federal or State department or agency.

**Retaining Wall** (whether capitalized or not) means a wall structure which retains fill with a minimum exposed face height of 4 feet and a minimum overall height from top of footing to top of wall of 5 feet. Wall structures not meeting these minimum height requirements are not considered retaining walls.

**Revenue Service** means operation of the System carrying fare-paying passengers.

**Revenue Service Availability** means that all D&C Work is complete (except for Punch List items that do not affect normal and safe use and operation of the System and any D&C Work that, by its nature, is to be performed after the Revenue Service Availability Date), and all other prerequisites for start of Revenue Service have been met. Revenue Service Availability is deemed to have occurred upon satisfaction of all the conditions for the Project in Section 7.10.2, as confirmed by the Independent Engineer’s issuance of a Certificate of Revenue Service Availability in accordance with the procedures and within the time frame established in Section 7.10.3.

**Revenue Service Availability (RSA) Date** means the date the Independent Engineer issues a Certificate of Revenue Service Availability for the Project.

**Revenue Service Availability (RSA) Deadline** means 2,125 days following the date on which Financial Close occurs, unless (a) Owner issues an agreed limited NTP under Section 7.4.3 and (b) Financial Close occurs prior to June 6, 2016, in which case the RSA Deadline is March 11, 2022, as such deadline may be extended from time to time under the Agreement.

**Revenue Service Availability (RSA) Payment** means the amount payable to Concessionaire upon Revenue Service Availability, as described in Section 7.10.2. The amount of the RSA Payment is stated in Exhibit 4A, Part A.

**Revenue Service Demonstration** means the demonstration conducted by Concessionaire under Part 2C, Section 1.6 of the Technical Provisions to establish compliance with specified requirements.

**Revenue Service Hours** means the daily hours in which Revenue Service is provided from the first pull out to the last pull in, as such terms are commonly used in the LRT industry.

**Revenue Train Hours** means the aggregate time, measured in total train operating hours, when LRVs are available to the general public and there is an expectation of carrying passengers. This includes service running time and layover time but does not include time for deadhead travel or vehicle testing. For example, two trains each operating for one hour of Revenue Service would equal an aggregate total of two revenue train hours.

**Revenue Vehicle Miles** means the aggregate distance, measured in total LRV Miles, when LRVs are available to the general public and there is an expectation of carrying passengers. This includes service running mileage but does not include deadhead travel or vehicle testing.

**Review** (whether capitalized or not), in the context of Submittal review, means examination of the Submittal with the possibility providing comments thereon. As set forth in the Technical Provisions, Concessionaire is required to obtain Owner approval of certain Submittals while others are only subject to review and comment by Owner. Refer to Part 2A, Section 10.4 of the Technical Provisions for additional information.

**Right of Way or ROW** see Project ROW.

**Routine Maintenance** means maintenance activities that are schedule in advance and occur on a regular basis, such as weekly, monthly, quarterly, semi-annually or annually which are normally included as an annually recurring cost in transit facility (and associated equipment) maintenance and repair budgets.

**ROW Maps** means and consists of the “Plats” and the “Right of Way Plans” contained in Book 4 (Contract Drawings) prepared for the Project depicting within the boundary lines shown therein the land or property which Owner has made or will make available for the Project. Information contained on the “Plats” and/or deeds shall supersede any similar information on the “Right of Way Plans.”

**RSA Extension Period** means the period between the original RSA Deadline and ending on the earlier to occur of the extended RSA Deadline or the actual RSA Date, excluding any portion of said period affected by a concurrent delay (that is, a delay that is concurrent with the delay caused by a Relief Event or Force Majeure Event but that is attributable to a cause other than a Relief Event or Force Majeure Event).

**Rule Book** means the appendix to the Operation Plan and Timetable that includes information regarding procedures for normal, abnormal and emergency operations, as more particularly described in Part 3, Section 1.1.1 of the Technical Provisions.

**Safety and Security Certification** means Owner’s certification consistent with FTA’s Circular C5800.1 (as amended, replaced or superseded) that the Purple Line System is operationally ready for Revenue Service and safe and secure for passengers, employees, emergency responders and the general public.

**Safety and Security Certification Plan (SSCP)** means the plan Concessionaire prepares and submits to Owner in accordance with Part 2A, Section 7.6.2 of the Technical Provisions.

**Safety and Security Plan** means Concessionaire’s safety and security plan for the O&M Work, as more particularly described in Part 3, Section 1.9 of the Technical Provisions.

**Safety and Security Management Plan (SSMP)** means the plan Concessionaire prepares and submits to Owner in accordance with Part 2A, Section 7.6 of the Technical Provisions.

**Safety Compliance** means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition or risk of the Project that Owner has reasonably



determined to exist by investigation or analysis (excluding a safety condition that exists despite compliance with the Contract Documents).

**Safety Compliance Order** means a written order or directive from Owner to Concessionaire to correct a specific safety condition or risk involving the Project that Owner has reasonably determined exists through investigation or analysis.

**Safety Orientation Program** means the Concessionaire's detailed plan for the safety orientation of employees, as more particularly described in Part 2A, Section 15.4.4 of the Technical Provisions.

**Safety Sensitive Function** means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors, in accordance with 49 C.F.R. § 655.4:

- (a) Operating a Revenue Service-eligible LRV, including when not in Revenue Service;
- (b) Operating a non-Revenue Service LRV, when required to be operated by a holder of a commercial driver's license;
- (c) Controlling dispatch or movement of a LRV in Revenue Service;
- (d) Maintaining (including repairs, overhaul and rebuilding) a LRV in Revenue Service or other equipment used in Revenue Service, excluding an employer that receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services; and
- (e) Carrying a firearm for security purposes.

**Safety Standards** means those provisions of the Technical Provisions that Owner has identified as such. Safety Standards are considered to be important measures to protect public safety, worker safety or the safety of property and may be so designated based on judgments regarding importance made by FTA or other third parties. As a matter of clarification, provisions of Technical Provisions primarily directed at durability of materials or equipment, where the durability is primarily a matter of lifecycle cost rather than protecting public or worker safety, are not Safety Standards.

**Schedule Activity** means the smallest division of the Work at each WBS Level to be tracked in the Project Schedule. Schedule activities are activities critical in ensuring that Revenue Service Availability is timely achieved, Renewal Work is timely performed and the Handback Requirements are timely met. Schedule Activities include Quality Assurance tasks, environmental tasks, fabrication of structural steel and precast and prestressed concrete structures, material and equipment procurement, Utility Work (whether performed by Concessionaire-Related Entities or others) and delivery to the site or storage locations and maintenance of traffic tasks, as well as O&M Work.

**Schedule of Values** means the estimated cost/planned value for 100% of the D&C Work performed during the Design-Build Period, which documents the WBS and approved Project Schedule, as it may be updated from time to time, in accordance with Part 2A, Section 9.2.1 of the Technical Provisions.

**Scheduled Cumulative Additional Fleet LRV Miles** means the sum of all the Additional Fleet LRV Miles listed in Column B of Section 4.3 of Appendix A to Exhibit 4D from their in service month until the relevant Contract Month.

**Scheduled Cumulative Initial Fleet LRV Miles** means the sum of all the Initial Fleet LRV Miles listed in Column B of Section 4.2 of Appendix A to Exhibit 4D, from Contract Month 1 until the relevant Contract Month.

**Secondary Support** means ground support elements that are installed subsequent to installation of Initial Support and are considered long-term support acting in conjunction with Initial Support.

**Security Center** means the control center used by project security personnel to observe CCTV images, receive access control alarms and generally monitor all security activities on the project.

**Security Document** means any mortgage, deed of trust, pledge, lien, indenture, trust agreement, hypothecation, assignment, collateral assignment, account control agreement, financing statement under the enacted Uniform Commercial Code of any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Lender as security for Project Debt or Concessionaire's obligations pertaining to Project Debt and encumbering the Concessionaire's Interest.

**Sensors** means a device used to measure traffic volumes, density, flow, and related travel speeds. Combined with CCTV systems, sensors provide information to highway operators so appropriate actions can be taken to inform motorists, using other ITS devices, of potential delays and alternate routes.

**Sequential Excavation Method (SEM)** means the open-face tunneling method described in Part 2B, Section 3.4.2.23.1 of the Technical Provisions, also known as the New Austrian Tunneling Method.

**Service Interruption** means any event that requires Normal Service to be suspended on all or part of the Purple Line System.

**Service Level** means the level of transit service required for mainline operations, determined based on required operating hours and headways. Part 3, Exhibit 3.1 of the Technical Provisions identifies operating hour and headway requirements for Service Levels 1, 2 and 3.

**Service Level Change** means a Major Service Change or a Minor Service Change or other change in Service Level, as contemplated under Part 3, Section 3.6 of the Technical Provisions.

**Service Line** means a utility line, the function of which is to connect directly the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another utility line located off such property, which other utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a Utility Owner's facilities to activate or energize a Governmental Entity's local lighting and electrical systems, traffic control systems, street lights, communications systems and/or irrigation systems.

**Service Activity Noncompliance Event** means a Major Service Activity Noncompliance Event, Medium Service Activity Noncompliance Event or a Minor Service Activity Noncompliance Event, or all of them, as the context requires.

**Service Plan** means Concessionaire's plan defining the regularly-scheduled Revenue Service consistent with Part 3, Section 1.1.3 of the Technical Provisions.

**Setting Date** means September 22, 2015.

**Severe Market Disruption** means any occurrence of exceptional circumstances in the financial markets in Europe, the United States of America, Asia and/or Canada that:

- (a) Results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets (for example: (i) an outbreak of hostilities, escalation of hostilities or other national or international calamity or crisis; (ii) with respect to the New York Stock Exchange, or other major United States stock exchange, (A) imposition of a general suspension in trading or (B) the enforced fixing of minimum or maximum prices for trading; (iii) an enforced, declared general banking moratorium by either the federal government or a State of New York Governmental Entity having jurisdiction; or (iv) a material disruption in commercial banking or securities settlement or clearance services in the United States); and
- (b) Materially and adversely affects access by Concessionaire to such markets.

**Shafts** (whether capitalized or not) mean off-line structures which are needed for system operation, access, and egress. Shafts are constructed from the surface in open or decked excavations.

**Short Train** means a train that has less than its scheduled number of LRVs.

**Silver Spring ATC Work** means D&C Work performed under Section 4 of Exhibit 2.

**Site** means:

- (a) during the Design-Build Period, the Project ROW, Utility Easements and other areas within the Limits of Disturbance, and also includes Project-Specific Locations, and
- (b) during the O&M Period, the areas within the O&M Limits,

or either of them, as the context may require.

**Site Investigative Report** means the report summarizing Concessionaire's Hazardous Materials investigative work.

**Small Structure** (whether capitalized or not) means bridge and culvert-type structure carrying vehicles, pedestrians, or other moving loads, and having a clear span length from 5 feet to 20 feet as measured along the traveled roadway, as defined in the MDSHA Structure Inspection and Remedial Engineering Division. An exception to this definition includes structures having a

clear span length from 3 feet to less than 5 feet if there is less fill over the structure than the clear span of the structure.

**Software and Firmware Maintenance Manuals and Programs** means the deliverable described in Part 3, Section 1.6 of the Technical Provisions.

**Sound Transmission Class (STC)** means an integer rating of the ability of a building material to attenuate airborne sound.

**Source Code and Source Code Documentation** mean software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, revisions, additions, substitutions, replacements, updates, upgrades and corrections made to the foregoing items.

**Special Event** means a scheduled activity, such as a sporting event at the University of Maryland or a festival in Washington DC, which will require a deviation from Normal Service, will generate increased ridership on the Project and may affect Project operations because of changes in street traffic conditions. The Owner determines whether and when a Special Event will occur.

**Special Event Service** means an adjustment and/or increase in the amount of service provided relative to Normal Service as defined Part 3, Sections 3.1 and 3.3 of the Technical provisions as a result of Special Event that could involve reduced Headways, extended service periods, and/or changes in operating condition for all or a portion of the Project.

**Special Event Service Support Staff** means additional Concessionaire personnel during a Special Event that is requested by Owner for a particular Special Event and assigned to facilitate ticket vending, passenger information, station crowd management, and train loading and unloading at specific Stations during periods of a particular Special Event Service.

**Special Lifecycle Payment** means, with respect to each Contract Month, the amount scheduled for such Contract Month in Part G of Exhibit 4D, representing amounts required for the payment of debt service on Project Debt incurred by the Concessionaire to finance the O&M Spare LRV, those non-revenue service vehicles, spare parts, spare components, spare equipment, tools, materials, expendables and consumables necessary for operation and maintenance of the Project during the O&M Period that were not delivered to Owner at or prior to Revenue Service Availability as identified in the Operating Plan, Asset Management Plan, Maintenance Plan and Maintenance Manuals.

**Special Tools** (whether capitalized or not) means (a) specialized tools necessary for maintenance or repair of Project elements or equipment (including LRVs), and (b) other tools obtained or developed by Concessionaire or any Contractor for use in performance of the O&M Work. The term excludes tools used in performance of the Work that were not procured for the Project or developed for use on the Project and that were acquired by Concessionaire or

Contractor at its own expense for use on multiple projects. The term “tool” as used in the Contract Documents includes “special tools”.

**Starting Insurance Benchmarking Premiums** means the final, calculated value, on an insurance Line-by-Line basis that is the greater of (a) the premium amounts (as supported by invoices) for all Actual Benchmark Insurance Policies placed for the first full annual insurance period following the Final Completion Date, as adjusted for Excluded Premium Increases and (b) the Base Relevant Insurance Cost.

**State** means the State of Maryland.

**State of Good Repair** means the condition of asset when there is no backlog of deferred Maintenance Work, no asset remains in service beyond its Useful Life unless otherwise approved in the Maintenance Plan, and the performance of the asset (from a reliability and maintainability perspective) does not adversely impact performance of the Purple Line System.

**Statement of Qualification (or SOQ)** means Concessionaire’s Statement of Qualification, provided in response to the Request for Qualifications.

**Statewide Information Security Manual** means the manual setting forth the standards for information technology security applicable to agencies within the executive branch of the State.

**Station** means, depending on the context, (a) any facility and its appurtenances used to load and unload passengers to and from a LRV, as more fully described in the Technical Provisions or (b) WMATA and Owner transit centers, identified in Part 1 of the Technical Provisions. Stations may be located on the surface, underground in a tunnel, or above ground on a Structure.

**Statutory Rate** means the interest rate applicable to late payments by public agencies under Section 15-101, *et seq.* of the State Finance and Procurement Article, Annotated Code of Maryland.

**Step-in Notice** means the notice given by Collateral Agent to Owner under the Direct Agreement, in which the Collateral Agent nominates the Step-in Party.

**Step-in Party** means (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders; or (b) any Person approved by Owner as a Substituted Entity, in each case where such Person is not a Restricted Person.

**Step-out Notice** means the notice given by a Step-in Party of its intent to terminate its obligations to Owner under the Contract Documents respecting the event giving rise to the Step-in Notice, in which event such Step-in Party shall be released from all obligations under the Contract Documents respecting such event, except for any obligation or liability of the Step-in Party arising on or before the effective date in the Step-out Notice.

**Structural Support** (whether capitalized or not) means element of a bridge or ancillary facility that bears load from the superstructure or overhead portions of the structure and transfers it to the foundations. Structural supports include abutments, piers, bents, and columns.

**Structure** (whether capitalized or not) means, as context may require, bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, end walls, buildings, sewers, service

pipes, under drains, foundation drains, steps, fences and other features which may be encountered in the Work and not otherwise classified.

**Subcontract** means each Contract that with a Subcontractor.

**Subcontractor** means each Contractor that is not a Prime Contractor.

**Submittal(s)** means any document, work product or other written or electronic end-product, report or item (excluding notices, correspondence and submittals under Articles 14 through 17) required to be delivered or submitted to Owner under the Contract Documents, the Project Management Plan or the O&M Management Plan.

**Subordinate Debt** means the bona fide indebtedness for funds borrowed that (a) is held by any Equity Member or an Affiliate, or by a purchaser or assignee of such indebtedness held at any previous time by any Equity Member or Affiliate, and (b) is inferior in priority of payment and security to all Project Debt held by Persons that are not Equity Members or Affiliates.

**Subordinate Security Documents** means any Security Documents securing Subordinate Debt.

**Substituted Entity** means a third party proposed by the Collateral Agent and approved by Owner under a Direct Agreement to act in Concessionaire's stead and not merely as a Step-in Party, in each case where such Person is (a) a Suitable Substitute and (b) not a Restricted Person.

**Subsystem** means a group of items satisfying a logical group of functions within a particular system.

**Suitable Substitute** means a Person, approved in writing by Owner in accordance with the Direct Agreement that:

- (a) has the legal capacity, power and authority to become the party to and perform the obligations of Concessionaire under the Agreement;
- (b) is in compliance with Owner's rules, regulations and has adopted written policies regarding organizational conflicts of interest consistent with Owner's conflicts of interest policy;
- (c) has ensured that all of its subcontractors are in compliance with Owner's rules, regulations and has adopted written policies regarding organizational conflicts of interest consistent with Owner's conflicts of interest policy;
- (d) employs individuals having the appropriate qualifications, experience and technical competence to timely perform Concessionaire's obligations under the Contract Documents and the Principal Project Documents; and
- (e) otherwise has the resources available (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Concessionaire under the Contract Documents and the Principal Project Documents.

**Supplier** means any Person not performing work at or on the Site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Concessionaire or to any Contractor in connection with the performance of the Work. Persons that merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

**Support Services** means WMATA engineering reviews, escorts, flagging, support services, allocable administrative costs, construction oversight, repairs necessitated by the Project.

**Surety** means each properly licensed surety company, insurance company or other Person approved by Owner, which has issued a Payment Bond or Performance Security in the form of a performance bond.

**Surplus Lines Insurer** means an insurance company that is approved or authorized to do business on a non-admitted basis in the State that satisfies the same financial ratings and other requirements otherwise applicable to an Eligible Insurer.

**System** means, depending on the context, (a) the Purple Line System or (b) (often used in the lower case) an interacting combination of elements within the Purple Line System that accomplish a defined objective, including hardware, software, firmware, people, information, techniques, facilities, services and other support elements.

**System Architecture** means a description and if applicable, visual representation of a system, organized in a way that provides an understanding about the structure of system, which comprises system components, the externally visible properties of those components, the relationships (e.g. the behavior) between them, and provides a plan from which products can be procured, and subsystems developed to work together and implement the overall system.

**System Elements** means the basic constituents (hardware, software, firmware, facilities, personnel, data, material, services, or techniques) that collectively comprise a system and satisfy one or more requirements in the lowest levels of the system architecture.

**System Reliability Analysis** means an analysis that demonstrates how the reliability and availability goals, assigned as more particularly described in Part 2B, Section 11.3.3 of the Technical Provisions, will be met.

**System Safety Plan** means the Concessionaire's plan to ensure the overall safety of the Project and the Work in accordance with Part 2A, Section 7.4 of the Technical Provisions.

**System Security and Emergency Preparedness Plan (SSEPP)** means Owner's plan, mandated by FTA, as more particularly described in Part 2A, Section 8.8 of the Technical Provisions.

**System Security Plan** means the Concessionaire's plan described in Part 2A, Section 8.4 of the Technical Provisions.

**Systems Maintenance Plan** means the Concessionaire's plan detailing the Maintenance Work for the Systems, as more particularly described in Part 3, Section 1.3.4 of the Technical Provisions.

**Taxes** means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the performance of the Work, Revenues or act, business, status or transaction of Concessionaire, including any interest, penalty or addition to such amounts, and including utility rates or rents, in all cases whether disputed or undisputed.

**Technical Documents** means all the standards, criteria, requirements, conditions, procedures, specifications and other provisions in the manuals and documents identified in the Technical Provisions or Book 3, to the extent described or referenced in any corresponding errata sheets of the Technical Provisions or Book 3, as such provisions may (a) have been generally revised from time to time up to the Proposal Date (or, where applicable, other date specifically in the Agreement) or (b) be changed, added to or replaced in accordance with the Agreement.

**Technical DRB** means the technical Dispute Resolution Board.

**Technical Proposal** means the portions of the Proposal, other than the Financial Proposal, incorporated by reference in Exhibit 17.

**Technical Provisions** means the provisions in Book 2. The Technical Provisions describe the scope of the Work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the Project.

**Technology Enhancements** means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to operational technology, or to any related documentation, that accomplish incidental, performance, structural, or functional improvements. The term “Technology Enhancements” specifically includes modifications, updates, or revisions made to software or any related documentation that correct errors or support new models of input-output devices with which the software is designed to operate, but excludes any such modifications, additions, refinements, substitutions, revisions, replacements or upgrades to LRVs.

**Temporary Relocation** means any (a) interim relocation of any utility (i.e., the installation, removal and disposal of an interim facility) pending installation of a permanent facility in the same or a new location, and (b) removal and reinstallation of the utility in the same place without an interim relocation.

**Temporary Repair** means with respect to the occurrence of an Activity Noncompliance Occurrence, works of a temporary nature that do not constitute Rectification but temporarily allow for safe use of the affected elements of the System and substantially make good the relevant Event for the period until a Permanent Repair can be undertaken.

**Temporary Work** means (whether capitalized or not) any temporary works and structures necessary for the construction of permanent improvements. This includes falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, special erection equipment and the like.



**Temporary Support** means ground support elements that are installed concurrently with excavation. These elements are considered short-term support until Permanent Support is installed. The structural capacity of Temporary Support shall not be considered for permanent conditions.

**Term** means the period commencing on the Effective Date of the Agreement and ending on the date specified in Section 2.4.

**Terminal Station** means the Bethesda or New Carrollton Station.

**Termination Compensation** means the measure of compensation owing from Owner to Concessionaire upon termination of the Agreement prior to the stated expiration of the Term, as determined in accordance with the Agreement.

**Termination Compensation Date** has the meaning given in Section 19.7.2.4.

**Termination for Convenience Amount** means the Termination Compensation payable following a Termination for Convenience, determined on a fair market value basis in accordance with Exhibit 13B.

**Termination Date** means (a) the date of expiration of the Term or (b) if applicable, the Early Termination Date.

**Termination Due to Court Ruling** means any of the following:

- (a) Inability of the Parties to reach agreement regarding modifications to the Contract Documents in accordance with Section 26.13 to return the Parties to the benefits of their original bargain following a court ruling holding that any material provision of the Contract Documents is unenforceable or invalid; or
- (b) Issuance of a final, non-appealable order by a court of competent jurisdiction
  - (i) permanently enjoining or prohibiting performance or completion of the Construction Work for a material portion of the Project, except where such injunction or prohibition is attributable to Concessionaire's acts, omissions, negligence, willful misconduct, fraud, breach of an obligation under the Contract Documents or violation of Law or an applicable Governmental Approval, or
  - (ii) requiring Owner, on its own or in concert with FTA, to undertake additional or supplemental evaluations, studies or other work under Environmental Approvals that, in Owner's discretion, is impracticable in light of the purpose and intent of the Agreement;

**Termination for Convenience** means a termination of the Agreement in whole, but not in part, if Owner determines, in its sole discretion, that termination is in Owner's best interest.

**Test Procedures** means a description of a test to be performed that describes the test configuration, the test equipment required, the personnel required to perform the test, all construction and testing pre-requisites that must be completed before the test can be performed, lists each individual step to be followed in the test, expected result of each step, the pass/fail criteria for each step and a Test Report form on which the results of the test can be recorded.

**Test Program Plan** means a plan describing the planned set of tests to be performed on an LRV, Fixed Equipment, Fixed Facility, Subsystem, System, or an integrated set of Subsystems or Systems.

**Test Report** means a form that lists each step to be performed in a test, the expected results of each step, a location to enter the actual results of each step, a place for the person responsible for performing the test to sign and date the form and a place for any witnesses of the test to sign and date the form.

**Third Party** means Montgomery County, Prince George's County, University of Maryland College Park, WMATA, the Maryland-National Capital Park and Planning Commission, CSX Corporation, CSX Transportation, Inc., and any other Person specifically designated by Owner as a Third Party.

**Third Party Agreement** means the agreements with the Third Parties identified in Part 1, Section 8 of the Technical Provisions.

**Third Party Agreement Requirements** means the requirements applicable to the Third Party Work, including the requirements of the Third Party Agreements incorporated into the Contract Documents under Part 1, Section 8 of the Technical Provisions.

**Third Party Work** means the Work performed by Concessionaire for Third Parties in accordance with Part 1, Section 8 of the Technical Provisions.

**Threat and Vulnerability Assessment (TVA)** means the analysis included in the System Security Plan, as required by the Technical Provisions, that examines threats to and vulnerabilities of the transit system and evaluates the risk and consequences from security threats.

**Threatened or Endangered Species** means any species listed by the USFWS as threatened or endangered under the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered under the State's endangered species act.

**TIFIA Credit Program** means the federal credit assistance program established by the Transportation Infrastructure Finance and Innovation Act, 23 U.S.C. § 601 *et seq.*, as amended.

**TIFIA Event** means any of the following:

- (a) any change to, amendment of or addition to the terms set out in the TIFIA Term Sheet, including the identity of the contractors, the terms of the commercial contracts and the terms of the security packages, that has a materially adverse effect on Concessionaire;
- (b) the unavailability of a TIFIA Loan after Commercial Close up to and including the initial Financial Close Deadline for the Project as of the date of the Concessionaire FC Notice due to no direct fault of Concessionaire or its Affiliates, agents or advisors; or
- (c) the TIFIA Joint Program Office insists on terms materially inconsistent with the TIFIA Term Sheet (other than a change to the TIFIA Rate (for which Owner bears the risk and benefit in accordance with Section 4.4.7.1) or TIFIA Structuring

Assumptions for which Owner bears the risk and benefit in accordance with Section 4.1.4) that Owner reasonably determines will result in a failure to achieve Financial Close by the Financial Close Deadline;

provided, however, that neither (a) nor (c) shall be deemed to be a TIFIA Event if: (i) the change, is agreed to by Concessionaire, (ii) the change is to the TIFIA Rate (for which Owner bears the risk and benefit in accordance with Section 4.4.7.1), (iii) the change is to the TIFIA Structuring Assumptions (for which Owner bears the risk and benefit in accordance with Section 4.1.4), unless the change would require the replacement of some or all of the TIFIA Loan with a new tranche of Initial Project Debt that was not identified in the Financial Proposal, (iv) the change, amendment of or addition to the terms is related to a request by Concessionaire for improvements to the TIFIA Term Sheet on its own behalf or on behalf of its Lenders, and the TIFIA Joint Program Office declined to make such improvements; or (v) if Concessionaire has not used diligent and reasonable efforts to achieve Financial Close, including negotiating in good faith mutually agreeable terms with the TIFIA Joint Program Office and furnishing all required information, including credit ratings, in a timely manner.

**TIFIA Joint Program Office** means the administrator of the TIFIA Credit Program on behalf of the Secretary of the USDOT.

**TIFIA Loan** means a loan from the United States Department of Transportation in accordance with the TIFIA Credit Program.

**TIFIA Rate** means the “TIFIA Interest Rate,” as defined in the TIFIA Term Sheet, as identified by Proposer at the interest rate setting date, 10:00 a.m. on November 19, 2015 and thereafter reset at Financial Close under Section 4.4.7.

**TIFIA Structuring Assumptions** means the following assumptions:

- (a) Maximum debt to equity ratio requirements in the TIFIA Term Sheet;
- (b) The greater of the minimum “Total Debt Service Coverage Ratio” requirement in the TIFIA Term Sheet and the minimum “Total Debt Service Coverage Ratio” set in the rating reports provided by Concessionaire as part of the Proposal and to TIFIA on the date of Financial Close under the applicable provision in its credit agreement with TIFIA derived of the “Conditions Precedent” section of the TIFIA Term Sheet;
- (c) The greater of the minimum “TIFIA Project Life Coverage Ratio” requirement in the TIFIA Term Sheet and the minimum “TIFIA Project Life Coverage Ratio” requirement set in the rating reports provided by Concessionaire as part of the Proposal and to TIFIA on the date of Financial Close under the applicable provision in its credit agreement with TIFIA derived of the “Conditions Precedent” section of the TIFIA Term Sheet;
- (d) Maximum average loan life requirement in the TIFIA Term Sheet;
- (e) No additional reserve funds, except (i) as related to material O&M Work and “lifecycle (renewal) risks” described in the “Note to Draft” of the “Required Reserve funds” section of the TIFIA Term Sheet or (ii) as described in paragraph (i) of this definition below;

- (f) The “Maximum Principal Amount of the TIFIA Loan” in the TIFIA Term Sheet shall be an amount not to exceed 33% of the “Eligible Project Costs,” as defined in the TIFIA Term Sheet;
- (g) For purposes of sizing the “Maximum Principal Amount of the TIFIA Loan” in the TIFIA Term Sheet, the “Eligible Project Costs”, as defined in the TIFIA Term Sheet, include \$581,000,000 of costs incurred, or to be incurred, by Owner
- (h) No change in the TIFIA “Debt Service Reserve Fund” requirement; and
- (i) No additional reserve fund with respect to delivery, testing and commissioning of the Option LRVs, so long as all material risk with respect to delivery, testing and commissioning of the Option LRVs, including the risk of increases in Option LRV and related costs and delay in delivery, (1) is passed through to the LRV Supplier, the Design-Build Contractor or the O&M Contractor, or any combination thereof, pursuant to respective contracts and (2) is supported by performance security acceptable to the TIFIA Joint Program Office.

**TIFIA Term Sheet** means the preliminary indicative term sheet for the TIFIA Loan included in Exhibit 5H.

**Total Baseline Operating Hours or TBOH** means:

- (a) with respect to each Contract Month, the revenue train operating hours specified for that calendar month set out in Table 1 of Part B of Exhibit 4D for the applicable Baseline Service Plan; and
- (b) with respect to each Contract Year, the total revenue train operating hours specified in Table 1 of Part B of Exhibit 4D for the applicable Baseline Service Plan.

**Total Baseline LRV Miles or TBVM** means:

- (a) with respect to each Contract Month, the Revenue Vehicle Miles specified for that Contract Month set out Table 1 of Part B of Exhibit 4D for the applicable Baseline Service Plan; and
- (b) with respect to each Contract Year, the total Revenue Vehicle Miles specified in Table 1 of Part B of Exhibit 4D for the applicable Baseline Service Plan.

**Total LRV Lifecycle Payment** means the payment defined in Section 3.1, Part B of Exhibit 4D.

**Total Scheduled Operating Hours or TSOH** means, with respect to any Contract Month or 3-Contract Month period (as the context requires), the aggregate Revenue Train Hours scheduled for each Train Trip required by the Scheduled Service Plan for that period, relative to the relevant Baseline Service Plan in operation. The operating hours for each Train Trip shall be those specified in the relevant Baseline Service Plan for those trips, together with the scheduled layover time between that Train Trip and the next Train Trip for the same Train.

**Total Scheduled LRV Miles or TSLM** means with respect to any Contract Month or 3-Contract Month period (as the context requires), the aggregate Revenue Vehicle Miles scheduled for

each completed Train Trip required by the Scheduled Service Plan for that period relative to the relevant Baseline Service Plan in operation.

**Total Trip Run Time or Ttot** means the amount of time in minutes it takes a Train to depart an originating Terminal Station at one end of the line to the ending Terminal Station at the other end of the line and includes the turnback time at the ending Termination Station, as determined under Part 2C, Section 4.9 of the Technical Provisions prior to the RSA Date and under Part 3, Section 3.15 of the Technical Provisions from time to time during the O&M Period.

**Tother (also Other)** is a component of Total Trip Run Time and has the meaning in Part 3, Section 3.15 of the Technical Provisions.

**Total Value of D&C Construction Work** means the amount specified in the line item for “Total Value of D&C Construction Work” in Exhibit 4A.

**Track 1** means the right-hand track going up stationing, generally the eastbound track running from Bethesda to New Carrollton.

**Track 2** means the left-hand track going up stationing, generally the westbound track running from New Carrollton to Bethesda.

**Traction Power** means power used as metered at the primary side of the traction power transformer used for providing electricity to the LRVs for locomotion and any power drawn from the secondary side of the traction power.

**Traffic Control Plans (TCP)** means the site-specific design plan that provides necessary details to control traffic through and around the work area.

**Traffic Management Center** is a center for the management and distribution of information to Users on a regional or statewide basis.

**Traffic signals and traffic congestion (Tsc)** means the variable component of Total Trip Run Time based on traffic signals and traffic congestion (including pedestrian delay) conditions, which is initially established based on Table AA-5 of Section 3 to Exhibit 2 and is subject to modification based on measurements of actual conditions under Part 2C, Section 4.9 and Part 3, Section 3.15 of the Technical Provisions. The value is the difference between travel with no delays due to traffic signals and traffic congestion versus travel including delays due to traffic signals and traffic congestion. There will be different Tsc values for each of the periods identified in Part 3, Exhibit 3.1 of the Technical Provisions, for each direction of travel (eastbound and westbound), and Tsc values will also vary by season.

**Train** means a set of one or more LRVs coupled together and operated as a single unit or train set.

**Train Trip** means the travel of one Train from its scheduled Originating Station to the Terminal Station at the opposite end of the line when Trains are operating along the entire line. At times when it is not possible for a Train to travel along the entire length of the line (e.g., in cases of Service Interruptions preventing travel to the Terminal Station), a “Train Trip” means the travel of one Train from its scheduled Originating Station to the Service Interruption area and then return of the Train to the Originating Station.

**Train Control System** means the train control system, where and if necessary, that provides one or all of automatic train protection, automatic train operation and automatic train supervision.

**Train Service** means providing Trains for the Users to travel from one point on the line to another.

**Training and Transition Plan** means Concessionaire's plan transferring O&M Work responsibilities back to Owner at the end of the Term, prepared in accordance with Part 3, Section 7.2.4 of the Technical Provisions.

**Transitway** means the dedicated right-of-way for the Purple Line System.

**Trial Running** is the final step in confirming and demonstrating readiness for Revenue Service, as described in Part 2C, Section 4.7 of the Technical Provisions.

**Trip** means Train Trip.

**Turn back time (Ttb)** is a component of Total Trip Run Time and has the meaning in Part 3, Section 3.15 of the Technical Provisions.

**Unacceptable Hazards/Risks** means hazards that have been evaluated using the hazard categorization and risk management process described in the Owner's System Safety Program Plan (SSPP), including catastrophic and critical hazards identified as "priority 1" or "priority 2" and any "Hazard Risk Assessment Values" of "1" through "9".

**Unadjusted Monthly Availability Payment (UMAP<sub>n</sub>)** means the amount for the relevant Contract Month under Section 1.2 of Part C of Exhibit 4D.

**Underground Station** means any Station where the floor level of the structure, or portions of the structure, is below the level of exit discharge.

**Undertaking** means a project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, or requiring a federal permit, license or approval.

**Unemployment Rate** means national rate of unemployment as defined by the United States Department of Commerce, Bureau of Labor Statistics.

**Uniform Act** means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

**Unplanned Service Interruption** means any Service Interruption that is not a Planned Service Interruption.

**Unsafe Condition** means a condition that gives rise to the imminent possibility of serious injury to workers or the public, of serious damage to property or the environment, or of affecting the safe movement of trains.

**Updated Initial Baseline Schedule** means the CPM Method update to the Initial Baseline Schedule required by Part 2A, Section 9.1.1 of the Technical Provisions.

**Upgrades** means alterations, improvements, modifications or changes that Concessionaire makes to any portion of the Project, as originally designed and constructed, at any time after the RSA Date, except as part of ordinary maintenance or Renewal Work, including Capacity Improvements. Upgrades may include alterations, improvements, modifications or changes that require an amendment or supplement to the final environmental impact documents for the Project or that are to be located outside the boundaries of the original Project ROW. Upgrades exclude Technology Enhancements and any alterations, improvements, modifications or changes undertaken in the use or development of a Business Opportunity.

**U.S. Survey Feet (Foot)** is equal to 0.3048006096 meters.

**Useful Life** means, for an element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

**User(s)** means members of the public lawfully present on or using the Transitway or Alternate Service.

**Utility or utility** means a privately, publicly, or cooperatively owned facility (which term includes lines, systems and other facilities, and includes municipal and/or government facilities) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system as well as streetlights associated with roadways owned by local agencies. However, when used in the context of Adjustments of facilities to accommodate the Project, the term "Utility" or "utility" excludes (a) storm water facilities, and (b) traffic signals, ramp metering systems, flashing beacon systems, and lighting systems for the mainline Project. The necessary appurtenances to each utility facility shall be considered part of the facility, including the utility source, guide poles, Service Lines, supports, etc. Without limitation, any service lateral connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service lateral.

**Utility Adjustment** means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned utility facilities as well as newly-abandoned facilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate the Project or the Work. The term "Utility Adjustment", however, excludes work associated with facilities owned by any railroad. For any utility crossing the Project ROW, the Utility Work for each crossing of the Project ROW by that utility shall be considered a separate Utility Adjustment. For any utility installed longitudinally within the Project ROW, the Utility Work for each continuous segment of that utility located within the Project ROW shall be considered a separate Utility Adjustment. The term "Utility Adjustments" specifically excludes any work relating to storm water facilities providing drainage for the Project ROW. The term "Relocation" used in Owner Utility Agreements has the same meaning as "Utility Adjustment".

**Utility Agreement** means either an Owner Utility Agreement or a Concessionaire Utility Agreement.

**Utility Easement** means a permanent replacement easement, license, franchise, permit and/or other interest required for relocation of a Utility to real property located outside of the right of way boundaries in the ROW Maps.

**Utility Information** means the information regarding Utilities included in the Contract Drawings and Engineering Data. The Utility Information includes survey information and information from record documents regarding existing utilities, utility maps included as an overlay on the survey, and SUE maps depicting existing Utilities potentially impacted by the Project.

**Utility Owner** means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

**Utility Owner Delay** means a delay to the Critical Path directly attributable to (a) a Utility Owner's failure to meet any time parameters for performance in the Utility Agreement(s) to which it is a party or (b) a Utility Owner's unreasonable refusal to approve relocation of a utility facility within the boundaries of the properties identified in Exhibit 9, resulting in a requirement to acquire additional Utility Easements. The term "Utility Owner Delay" does not include any failure to perform by a Utility Owner which is excused under the force majeure provisions of the Utility Agreement, and does not include any requirement to acquire additional Utility Easements resulting from Concessionaire's design.

**Utility Standards** means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Except as may be specifically identified in the Technical Provisions or in Book 3, "Utility Standards" are not Codes and Standards.

**Utility Work** means the design and construction necessary for a Utility Adjustment. Any Utility Work furnished or performed by Concessionaire is part of the D&C Work; any Utility Work furnished or performed by a Utility Owner is not part of the D&C Work.

**Validator** means a machine, integrated with or co-located with the TVMs at each Station entrance, used to validate prepaid tickets.

**Valuation Date** means the date notice of election to terminate is delivered by one or the other Party.

**Vandalism** means an individual's willful and malicious destruction, injury or defacement of the real or personal property of another Person.

**Variable Message Signs (VMS)** means signs used to provide advisory messages to highway users in real-time. When deployed at strategic locations, VMS can be an effective and efficient means of traffic management for congested corridors or areas experiencing recurring delays.

**Vehicle and operations performance (Tvops)** is a component of Total Trip Run Time and has the meaning in Part 3, Section 3.15 of the Technical Provisions.

**Verification Sampling and Testing** means sampling and testing performed to validate the quality of the product. Owner, or its designee, will perform Verification Sampling and Testing as part of its QA Oversight efforts.

**Vital** (whether capitalized or not) is an adjective meaning that a malfunction affecting the referenced piece of equipment or system will cause the equipment or system to revert to a state that is known to be safe.



**VOLM Escalation Factor** means the escalation factor calculated in accordance with Section 4 of Part B of Exhibit 4D.

**VOLO Escalation Factor** means the escalation factor calculated in accordance with Section 4 of Part B of Exhibit 4D.

**Volume Adjustment** means an Operating Volume Adjustment or a Maintenance Volume Adjustment.

**Weekday** (whether capitalized or not) means Monday, Tuesday, Wednesday, Thursday or Friday.

**Work** means the work required to be furnished and provided by Concessionaire under the Contract Documents, including activities to obtain financing as well as all administrative, design, engineering, construction, demolition, supply of LRVs and Fare System Equipment, Utility Adjustments, support services, financing services, operations, maintenance and other work of renewal, reconstruction, repair or reinstatement of Project improvements and equipment, and management services, except for those efforts which the Contract Documents expressly specify will be performed by Persons other than Concessionaire-Related Entities.

**Workblock Request Package** means the submittal requesting track time as specified in Part 3, Section 3.2.2 of the Technical Provisions.

**Work Breakdown Structure** means a deliverable-oriented hierarchical structure that breaks the Work into elements that have distinct identification and that contain specific scope characteristics. Each descending WBS level represents an increasingly detailed delineation of elements of the total Project scope. The WBS will contain elements of Design Work, Construction Work and O&M Work. There shall be clearly identifiable linkage between the WBS and Schedule Activities. The WBS numbering convention shall be compatible with Project Schedule coding and may be compatible with document control coding.

## **EXHIBIT 2**

### **PROPOSAL COMMITMENTS, ATCs, TOTAL TRIP RUN TIME PROPOSAL FORM, SILVER SPRING TRANSIT CENTER PROVISIONS, BACKFILL PROVISIONS, LANDFILL PROVISIONS AND TPSS LOCATION PROVISIONS**

Section 1: List of Proposal Commitments

Section 2: ATCs

Section 3: Total Trip Run Time Proposal Form

Section 4: Silver Spring Transit Center Provisions

Section 5: Backfill Provisions

Section 6: Landfill Provisions

Section 7: TPSS Location Provisions

## **SECTION 1 to EXHIBIT 2**

### **List of Proposal Commitments**

Except and only to the extent that a provision in this Section1 to Exhibit 2 expressly states that it replaces or overrides specifically referenced provisions of the Contract Documents, nothing in this Section 1 shall be construed to replace or override any specification in the Agreement or in the Technical Provisions.

As further clarification, where the Proposal presents Work or products of a higher quality than that shown elsewhere in the Contract Documents, and Owner has accepted the proposed change to the Work and products to that of a higher quality, then the Proposal will take precedence for that specific higher quality Work and products, as applicable.

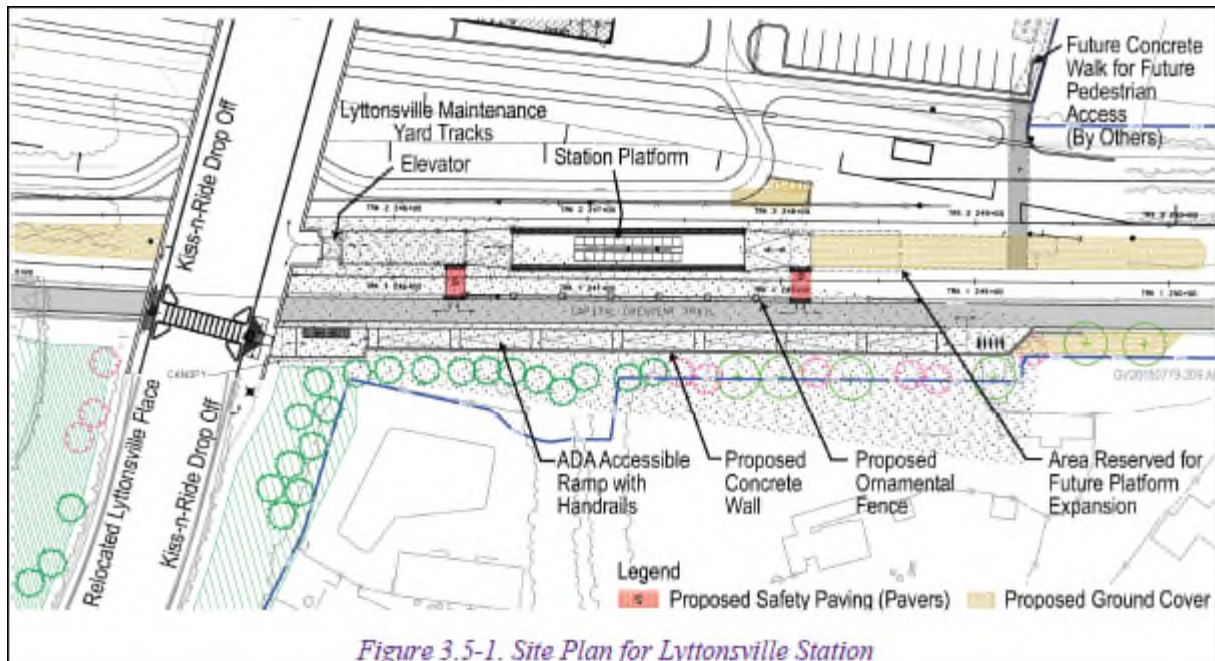
	<b>Proposal Location</b>	<b>Description</b>
Relating to <b><i>Project Management</i></b>		
1	Technical Proposal, Volume 2, Section 2.4.2 (p. 162)	Concessionaire shall cause all Contracts between either the Design-Build Contractor or O&M Contractor and its respective Contractors to include provisions that the Contractor's performance will continue during the pendency of any dispute under the Contract. Concessionaire shall include a provision in the Design-Build Contract and the O&M Contract regarding the obligation of Design-Build Contractor and O&M Contractor to enforce such provisions.
2	Technical Proposal, Volume 2, Section 2.1.2.1 (p. 115)	Concessionaire shall include environmental briefings as part of Concessionaire's weekly internal construction meetings. Owner can attend at its discretion.
3	Technical Proposal, Volume 2, Section 2.2.1.3 (p. 138)	Concessionaire shall designate a "Permit Engineer" no later than 30 days after the date of Financial Close, who shall be responsible to Concessionaire for coordination with regulatory and reviewing agencies and the processing and tracking of all Governmental Approvals with applicable Governmental Entities. The Permit Engineer shall remain on the Project until such time as all regulatory and Environmental Approvals, and all work approved in the Environmental Approvals, have been successfully completed and documented.
4	Technical Proposal, Volume 2, Section 2.6.4 (p. 174)	Concessionaire shall, until the end of the Design-Build Period: (a) engage an International Society of Arboriculture (ISA) certified arborist to monitor and approve Concessionaire's performance of the tree protection activities performed as part of the Work, and (b) make reasonable efforts, in coordination with Owner, to leave priority retention areas undisturbed. In the event that a tree in a priority retention area is removed or damaged due to construction operations, Concessionaire shall replace the tree on a 1:1 basis in accordance with (i) the Maryland State Highway Administration

	Proposal Location	Description
		(SHA) Landscaping Standards, or (ii) if within the Baltimore-Washington Parkway, with the special use permit and the National Capital Region Guidelines for Tree Preservation, as each may be amended from time to time.
5	Technical Proposal, Volume 2, Section 2.4.2.3 (p. 345)	Concessionaire shall design and construct, and thereafter operate and maintain, the Glenridge OMF so as to achieve and maintain a Leadership in Energy and Environmental Design (LEED) "Silver" certification.
6	Technical Proposal, Volume 2, Section 2.1.3.2 (p. 120)	Concessionaire shall establish and maintain, consistent with Concessionaire's approved construction schedule, at Concessionaire's cost, three project construction offices. Concessionaire shall provide space for Owner in each such office consistent with the applicable Technical Provisions.
7	Technical Proposal, Volume 2, Section 2.1.3.2 (p. 123)	Concessionaire shall hold "Safety Toolbox" meetings consistent with Part 2A, Section 15.11.3 of the Technical Provisions at the start of each work shift.
8	Technical Proposal, Volume 1 (Executive Summary, p. 17), Volume 2, Section 2.9.5 (p. 204)	In addition to implementing Concessionaire's Construction Labor and Workforce Development Plan, Concessionaire's Economic Empowerment Manager shall be responsible for establishing Concessionaire's "job center" in Prince George's County. The "job center" shall be open for a minimum of 30 hours per week to Purple Line-related job-seekers information on potential opportunities for employment.
9	Technical Proposal, Volume 2, Sections 2.9.2, 2.9.2.1 (p. 203)	For work self-performed by the Concessionaire, Concessionaire shall include express provisions in agreements with local building trade unions that commit Concessionaire and its trade union counterparties to reduce barriers to employment in the construction industry and facilitate employment of Nationally Targeted Workers.
10	Technical Proposal, Volume 2, Section 2.9.4 (p. 204)	Concessionaire shall pay continuing education expenses of its staff employees, including Nationally Targeted Workers who complete the approved courses.
11	Technical Proposal, Volume 2, Section 2.9.5 (p. 206)	Concessionaire shall cause all Contractors with contract values exceeding \$500,000 to submit to Concessionaire and Owner and to perform an employment plan that illustrates each of their respective projected workforce, employment opportunities, total employment hours, training plans and methodologies.
12	Technical Proposal, Volume 2,	Concessionaire's Utility Coordination Work Plan shall establish a Utility "technical working group" (TWG), to be led by Concessionaire's Utility Manager and comprised of members of

	Proposal Location	Description
	Section 2.2.2.2 (p. 139)	Concessionaire's design and construction team including, at a minimum, Utility Manager, Design Manager and Construction Manager, and representatives from Utility Owners, to the extent such Utility Owners wish to participate. The TWG shall meet with the frequency identified in the Utility Coordination Work Plan. In addition to the requirements of Part 2A, Section 19.2 of the Technical Provisions, the TWG will operate to optimize utility avoidance, Adjustment strategies, and communication processes, further refine the Utility Conflict Matrix and, if Adjustments are planned, assist with the planning and design of the Adjustments.
13	Technical Proposal, Volume 2, Section 2.2.2.5 (p. 141)	Concessionaire shall designate a qualified "Project Controls Manager" no later than 30 days after the date of Financial Close, who shall be responsible for development, revisions and currency of the Project Schedule consistent with the requirements of the Contract, cost engineering and forecasting.
14	Technical Proposal, Volume 2, Section 2.6.4 (p. 174)	Each of the 315 specimen trees in the Critical Protection Zone (CPZ) described in Appendix A to this Section 1 of <u>Exhibit 2</u> shall be preserved in accordance with said Appendix A. Prior to performing Construction Work during the Design-Build Period that could potentially affect any of the specimen trees, Concessionaire shall erect, and thereafter maintain through the Design-Build Period, fencing with signage along the perimeter of the affected portion of the CPZ.
15	Technical Proposal, Volume 2, Appendix O, Section 5.2 ( p. O-8)	<p>Concessionaire shall incorporate into its DBE Participation Plan a program, in collaboration with the USDOT Bonding Program, to create bond worthiness and provide financial guidance to small contractors. Such program will include:</p> <ul style="list-style-type: none"> <li>• Bonding Program Needs Assessment. The initial process and optimum track for success will begin with a needs assessment of interested firms.</li> <li>• Education and Training. Education and training is provided to DBE firms who completed the initial bonding assessment. Training sessions cover a number of topics including: surety education, financial planning and review, business plan support and legal expertise.</li> <li>• Financial Guidance. Financial guidance is provided to participants in the Bonding Program. In addition, the program will collaborate with banks, Corporate Development Corporations (CDC) and Asset Based lenders who can fund against invoices and progress billings.</li> <li>• Connection to Sureties. DBE participants are provided with connections to various sureties.</li> <li>• Program Oversight. Support is provided to DBEs to help enable them to manage contracts to facilitate successful performance, sound financial practices, and profitability.</li> </ul>

	Proposal Location	Description
Relating to <b>Design</b> and <b>Construction</b>		
16	Technical Proposal, Volume 3, Structure Plan BR-52	Concessionaire shall design and construct, and thereafter operate and maintain, an elevator from the Lyttonsville Place Bridge to the Lyttonsville Station Platform, as depicted in (V2 3.5.1, Figure 3.5-1) in the technical proposal and (V3 Station Plan AR1Y01) on the Station Plan both depict the elevator. <sup>1</sup>
17	Technical Proposal,	Concessionaire shall design and construct, and thereafter operate and maintain, the grade-separated access over the rail for vehicles

<sup>1</sup> Technical Proposal, Volume 2, Figure 3.5-1. See also Technical Proposal, Volume 3 ("Station Plan" AR1Y01).



	Proposal Location	Description
	Volume 2, Section 1.1.9.6 (p. 77); Figure 1.1-25 (p. 79)	and cyclists to Glenridge Shopping Center, as shown in Figure 1.1-25 <sup>2</sup> and as described in the Technical Proposal, Volume 2, Section 1.1.9.6, subject to approval of applicable design waivers or design exceptions.
18	Technical Proposal, Volume 2, Table 3.4-1 and Section 4.1.8.1 (p. 319)	Concessionaire shall control noise and vibration caused by the interface of the LRV wheel to the running and restraining rail. To this end, Concessionaire shall design and construct or otherwise obtain and maintain, and thereafter operate and maintain (on a weekly basis), solar-powered wayside rail lubricators at all curved track with a radius equal or less than 500 feet requiring restraining rail attached to inner rail and less than 125 feet requiring restraining rail to the inner and outer rails.
19	Technical Proposal, Volume 2, Table 3.4-1 and Section 3.5.3.6 (p. 253)	Concessionaire shall design and construct a red-brick plaza and expanded waiting area as depicted in (V3 Book 06-Stations ST-8 thru ST-10) and that will match aesthetics of other UMD facilities, subject to approval by the University of Maryland.
20	Technical Proposal, Volume 2, Section 3.6.2.2 (p. 268)	Concessionaire shall design and construct the Baltimore-Washington Parkway Bridges (arch-shaped superstructure within reconstructed southern abutment in a manner that complements the existing bridge design that will remain in place) subject to the conditions of the Owner's approval of the ATC (NPS approval).
21	Technical Proposal, Volume 2, Section 3.8.7 (p.	Concessionaire shall design and construct, and thereafter operate and maintain visual and audible active warning devices at the non-signalized crosswalk on Wayne Avenue at Springvale Road, along with barriers to channel pedestrians to the non-signalized crosswalk.

<sup>2</sup> Technical Proposal, Volume 2, Figure 1.1-25.

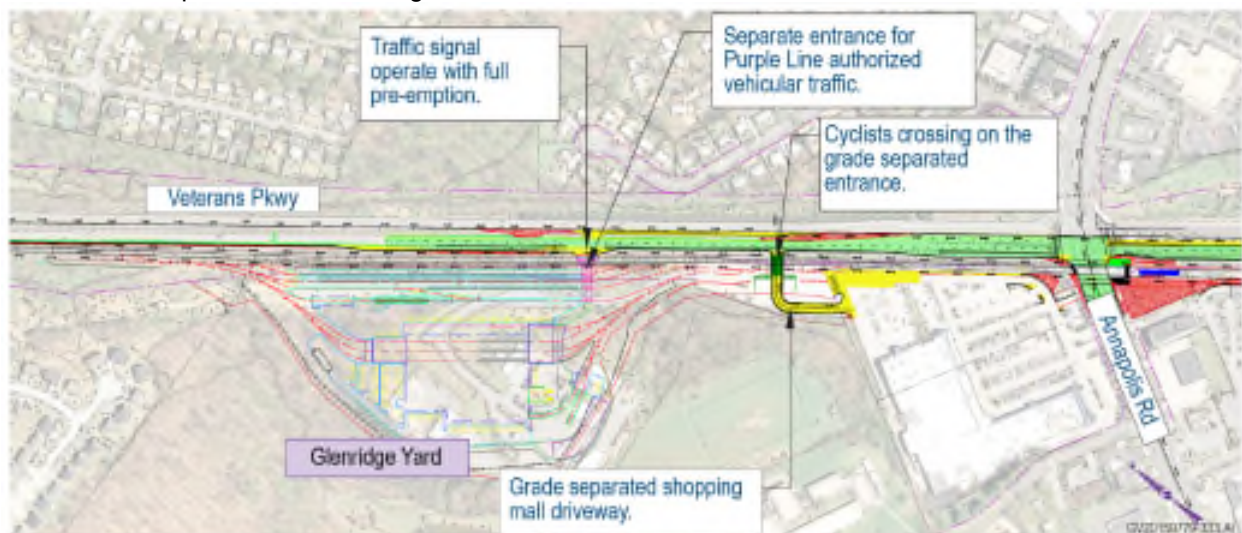


Figure 1.1-25. Glenridge Maintenance Yard Entrance



	Proposal Location	Description
	286)	
22	Technical Proposal, Volume 2, Sections 3.4 (p. 285), 5.1.2.1 (p. 371) and Table 5.1-1 <sup>3</sup>	Concessionaire shall design and construct the Purple Line System to operate with 1500 VDC traction power. All mainline Traction Power Substations (TPSS) shall be rated for nominal 4,000 kW with twin nominal 2,000 kW transformer/rectifiers and redundant PEPCO power feeders at terminal substations.
23	Technical Proposal, Volume 2, Sections 3.4.2 (p. 241), 5.1.3.1 (p. 373), 5.1.9 (p.	Within the University of Maryland campus between stationing 598+00 and 658+00, Concessionaire shall design and construct, and thereafter operate and maintain, traction feeders in concrete encased ductbanks below the center of each track, as such locations are depicted in Figure 5.1-8, except as otherwise approved in writing by Owner in advance, and also a split wire

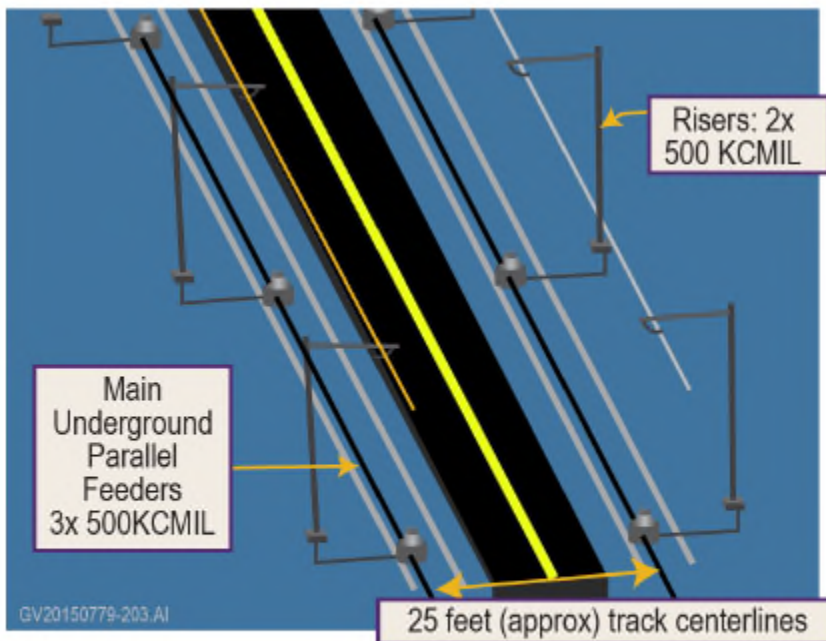
<sup>3</sup> Technical Proposal, Volume 2, Table 5.1-1.

Table 5.1-1. Traction Power Substations				
TPSS No.	Location (TRK1 Sta +/-)	Reference 750V Design (Rectifier Size in kW)	PLTP 1500V Design (Rectifier Size in kW)	Adjacent Public Road
Q01	120+36	2x 2000	2x 2000	Montgomery Avenue
Q02		2000	n/a	
Q03	222+72	2000	4000	Brookville Road
Q04		2000	n/a	
Q05		2000	n/a	
Q06	383+09	2000	4000	Wayne Avenue
Q07		2000	n/a	
Q08	462+00	2000	4000	University Boulevard
Q09		2000	n/a	
Q10		2000	n/a	
Q11	598+40	2000	4000	Campus Drive
Q12		2000	n/a	
Q13	712+06	2000	4000	River Road
Q14		2000	n/a	
Q15		2000	n/a	
Q16	850+59	2000	4000	Patterson Street
Q17		2000	n/a	
Q18	952+02	2x 2000	2x 2000	Ellin Road
Lyttonsville Yard	Yard	2000	800	Brookville Road
Glenridge Yard	Yard	2000	1000 + 500	Veterans Parkway
Glenridge Shop		500	incl. in yard TPSS bldg	Veterans Parkway



	Proposal Location	Description
	384), Figure 5.1-8 <sup>4</sup>	system in order to limit impacts to research facilities on the University of Maryland campus.
24	Technical Proposal, Volume 2, Section 3.2.3 (p. 220) and Figure 3.2-8 (p. 224)	Concessionaire shall provide LRVs with nominally 80% (+/- 2%) low floor area.
25	Technical Proposal, Volume 2, Section 3.2.2 (p. 225)	Concessionaire shall provide LRVs with comfortable and balanced interior lighting, including the use of service-proven LEDs.
26	Technical Proposal, Volume 2, Sections 3.1.1 (p. 210), 3.8.14 (p. 289) and Table 3.8-5 (p. 289)	Concessionaire shall design and construct, and thereafter operate and maintain, jet fans at the Bethesda Station in lieu of axial fans and, consistent with ATC PLTP-18, thus eliminating the exhaust shaft at such location.

<sup>4</sup> Technical Proposal, Volume 2, Figure 5.1-8.



*Figure 5.1-8. Split wire high low traction distribution system*

	<b>Proposal Location</b>	<b>Description</b>
27	Technical Proposal, Volume 2, Section 3.1.3 (p. 214)	Concessionaire shall utilize Light Detection and Ranging (LiDAR) to develop as-built data for the public library located proximate to the Silver Spring Library Station for use in design of that station and the Building Information Modeling (BIM) thereof.
28	Technical Proposal, Volume 2, Section 3.4.6 (p. 244)	Concessionaire shall design and construct those portions of Paint Branch Parkway below WMATA and CSXT Bridges to meet applicable clearance requirements relating to the Purple Line System operating at 1,500 VDC. In addition, Concessionaire shall construct, or otherwise provide, a new lift station with capacity equal to, or greater than, the existing lift station, and remove the existing lift station in accordance with SHA Standard Specifications for Construction and Materials, Section 207.
29	Technical Proposal,	Concessionaire shall include in its configuration of the tracks on the Guideway the features listed in Table 3.4-2 regarding special

	Proposal Location	Description
	Volume 2, Table 3.4-2 <sup>5</sup> (p. 243)	trackwork locations, in each case, without abrogating applicable Technical Provisions.
30	Technical Proposal,	Concessionaire shall design and construct all project canopies with two-sided framed glass as part of the “kit of parts”.

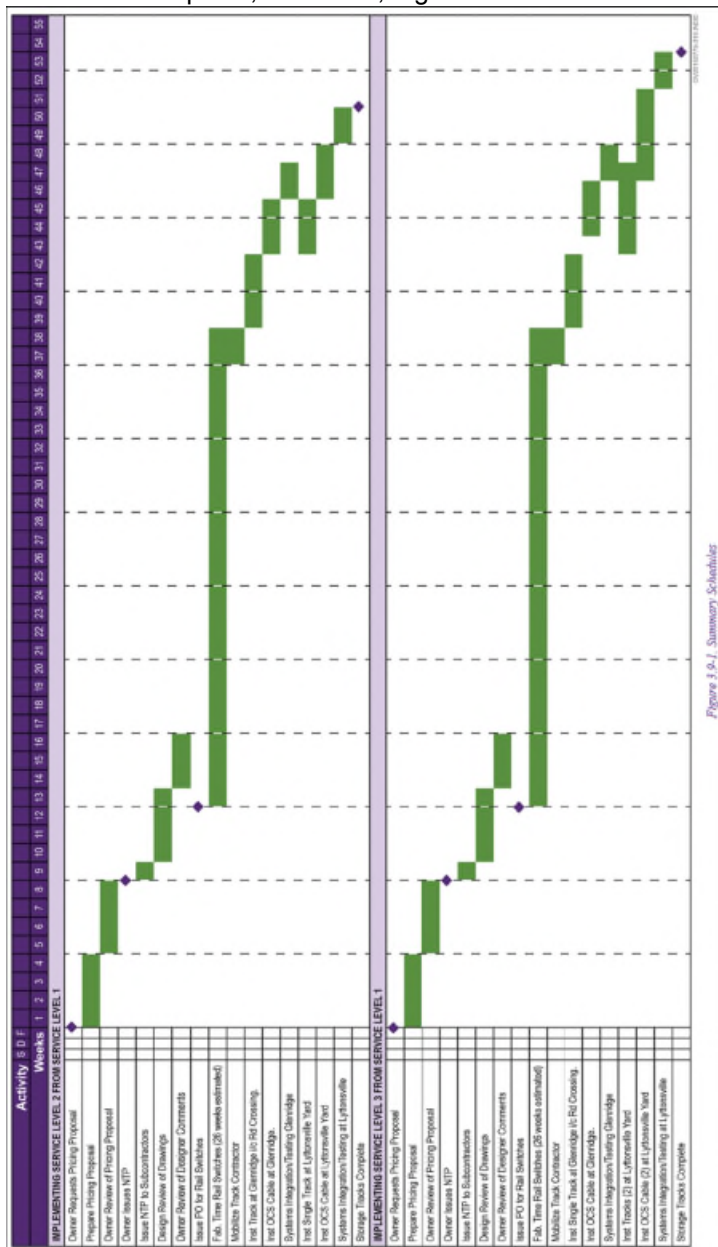
<sup>5</sup> Technical Proposal, Volume 2, Table 3.4-2.

Table 3.4-2. Special Trackwork Locations			
PLTP Design Element	PLTP Element Approximate Location	30% RFP Design Element	Description
No. 10 Universal Crossover	110+00	No. 10 Single Crossovers	Track geometry accommodates universal crossover to increase operational flexibility at end of line station
No. 8 Double Crossover	221+00	No. 8 Double Crossover	Track geometry accommodates universal crossover to increase operational flexibility and access to Lyttonsville Yard lead
No. 8 Turnout to Lyttonsville Yard Lead	222+00	No. 8 Turnout to Lyttonsville Yard Lead	No change
No. 6 Turnout from Lyttonsville Yard Lead	250+00	No. 10 Turnout from Lyttonsville Yard Lead	Modified turnout location to optimize operations and utilization of Lyttonsville Yard
No. 6 Double Crossover	251+00	Single No. 10 Crossover	Speeds will be slow adjacent to the station, so the No. 6 instead of No. 10 does not impact operations, but the double crossover provides additional flexibility to access yard
No. 6 Double Crossover	339+00	No. 6 Double Crossover	No change
No. 10 Double Crossover	412+00	No. 10 Double Crossover	No change
No. 8 Universal Crossover	465+00	No. 8 Universal Crossover	No change
Storage Track with No. 8 Universal Crossover	510+00	2300' No. 8 Pocket Track (Future)	For operations efficiency, PLTC's design provides for 300' of storage track at this location
No. 8 Double Crossover	600+00	No. 8 Double Crossover	No change
No. 6 Single Crossover	645+00	No. 6 Single Crossover	Not implemented
No. 8 Pocket Track	710+00	200' No. 8 Pocket Track	No change
No. 10 Double Crossover	767+00	No. 10 Double Crossover	No change
No. 6 Universal Crossover	873+00	No. 8 Single Crossover	For operations efficiency, PLTC's design provides a universal crossover and the position of the crossover relocated to accommodate the optimization of Glenridge Yard operations
No. 8 Turnout to Glenridge Yard Lead	875+00	No. 10 Turnout to Glenridge Yard Lead	Relocated turnout to accommodate the optimization of Glenridge Yard operations
No. 8 Turnout from Glenridge Yard Lead	897+00	No. 10 Turnout from Glenridge Yard Lead	Relocated turnout to accommodate the optimization of Glenridge Yard operations
No. 8 Single Crossover	898+00	No. 8 Single Crossover	Relocated turnout to accommodate the optimization of Glenridge Yard operations
No. 6 Double Crossover	953+00	No. 6 Double Crossover	As part of ATC PLTP-20, the crossover has been moved to the approach side of the platform

	Proposal Location	Description
	Volume 2, Sections 3.5, 3.5.1.6, 3.5.2.6 and 3.5.3.6	
31	Technical Proposal, Volume 2, Sections 3.6.1.1 (p. 255) and 3.6.1.4 (p. 263)	<p>Concessionaire shall dewater while performing excavation of the Plymouth Tunnel utilizing a combination of dewatering wells drilled within the Plymouth Tunnel as the excavation advances:</p> <ul style="list-style-type: none"> <li>• 120-foot probe holes drilled from the face of the top heading;</li> <li>• 20-foot face drain holes drilled every 9 feet along the length of the tunnel, at an angle of 30-degrees above horizontal;</li> <li>• 30-foot deep top heading side drains drilled every 50 feet along the length of the tunnel, at a sub-vertical angle from the top heading, down through the bench and below the tunnel invert; and</li> </ul> <p>50-foot invert drains drilled every 50 feet along the length of the tunnel, at a 30-degree angle down below the invert of the tunnel;</p>
32	Technical Proposal, Volume 2, Section 3.6.1.3 (p. 259)	Concessionaire shall design and construct, and thereafter operate and maintain, noise barriers along the perimeter of staging areas at the Plymouth Tunnel on those sides facing residences.
33	Technical Proposal, Volume 2, Section 3.6.1.3 (p. 260)	Concessionaire shall drill, rather than drive, piles for support of excavation for the open-cut sections of the Plymouth Tunnel.
34	Technical Proposal, Volume 2, Section 3.7.3.3 (p. 278)	Concessionaire shall design and construct or otherwise obtain and maintain, shields on luminaires that are located within 75 feet of a residential structure in order to minimize light spillage onto surrounding properties and limit to .01 foot-candles horizontally and vertically.
35	Technical Proposal,	Concessionaire shall adhere to the summary schedule for changes from SL1 to SL2 or SL3 as depicted in Figure 3.9-1, provided that

	Proposal Location	Description
	Volume 2, Figure 3.9-1 <sup>6</sup>	any such change is directed after the RSA Date.
Relating to <b>Operations, Operating Plan, Safety</b>		
36	Technical Proposal, Volume 2, Section 5.1.3.1 (p. 374)	Concessionaire shall design and construct, and thereafter operate and maintain remote-controlled section tie disconnect switches across all OCS section-to-section boundaries.

<sup>6</sup> Technical Proposal, Volume 2, Figure 3.9-1.





	Proposal Location	Description
37	Technical Proposal, Volume 2, Section 1.1.1.2 (p. 6)	Concessionaire shall conduct annual rider surveys and incorporate performance feedback in ongoing employee customer service training for the Term, and provide Owner access to raw data and summaries in its discretion.
38	Technical Proposal, Volume 2, Section 1.1.2.4 (p. 25)	Commencing upon Trial Running, Concessionaire shall station "Field Supervisors" on Campus Drive who will take field actions to balance student safety and train movements during scheduled class changes and special events.
39	Technical Proposal, Volume 2, Section 2.1.5.1 (p. 101)	As part of the Concessionaire's Safety Plan it shall establish a "Safety and Security Certification Committee" (SSCC) to which meetings Owner will be invited to participate. The SSCC shall meet with the frequency identified in the Safety Plan. The SSCC shall provide documentation and verification to Owner's SSCC.
40	Technical Proposal, Volume 2, Sections 2.7.1, .2 and Figure 2.7-1 <sup>7</sup> (pp. 179-187), 5.4.2 (p. 399)	Concessionaire shall provide and utilize an integrated "Operations Management Information System" (OMIS) to integrate all O&M data collection and reporting functions. The O&M data collection shall include, but not be limited to, real-time and historic information filling all O&M reporting requirements including operations, dispatch and LRV statistics, operational systems' performance, operator event logs, incident response, maintenance activities, and activity noncompliance and operations availability noncompliance logs and associated close-out information. OMIS shall be operational no later than the start of Trial Running.
Relating to <b><i>Maintenance, Rehabilitation and Handback</i></b>		
41	Technical Proposal, Volume 2,	As part of its Operating Plan Concessionaire shall also incorporate, as applicable, the American Public Transportation Association's (APTA) "Roadway Worker Protection" program requirements, as

<sup>7</sup> Technical Proposal, Volume 2, Figure 2.7-1.



Figure 2.7-1. PLTO's Integrated IT Reporting Architecture

	Proposal Location	Description
	Section 4.3.6.3 (p. 361)	amended from time to time.
42	Technical Proposal, Volume 2, Table 4.1-4 <sup>8</sup> (p. 329)	Concessionaire shall inspect the system elements identified in Table 4.1-4 at the frequencies established therein, subject to modification based upon original equipment manufacturer specifications or modifications.
43	Technical Proposal,	During the O&M Period, Concessionaire shall conduct all capital asset replacement work, including planned technology

<sup>8</sup> Technical Proposal, Volume 2, Table 3.1-4.

Traction Electrification System			Signaling/Train Control System			Communications/SCADA System Field and O&M Equipment		
Description	Frequency		Description	Frequency		Description	Frequency	
AC Voltage Breakers	Annually		Highway	Monthly		Emergency Control Panel	Annually	
Rectifier Transformers	Annually		Pedestrian	Monthly		Fire Alarm Control System	Annually	
Rectifiers	Annually		Gate Arm Mechanisms	Monthly		Smoke Detectors	Annually	
DC Breakers	Annually		Flare Units	Quarterly		Heat Detectors	Annually	
Breaker & Front of Cubicles	Annually		Ground Test	Monthly		Telephones	Annually	
DC Cubicles (Rear)	Annually		Vehicle Detector Loop	Monthly		Passenger Assist Intercom (PA)	Six Months	
Auxiliary Transformers (Including O&M)	Annually		Motor Switches, Vehicle Track Terminals	Monthly		Loop Monitoring Equipment	Six Months	
PT Compensation	Quarterly		Point Selection and Lock Rod Test	Six Months		Radio System	Annually	
Batteries	Quarterly		Distribution Test	Monthly		Radio Tower Equipment	Annually	
SCADA-Complete Test	Annually		Signals	Monthly		Central Radio Server	Annually	
Fire Alarm Test/Repair	Quarterly		Control System	Quarterly		OCC Operator Radio H&M	Annually	
Wayside Power Supply Cabinets	Quarterly		Relays and Electromagnetic Appliances	Annually		Handhelds	Annually	
All Components	Quarterly		Vital Relays	Four Years		LEV Units (2 per vehicle)	Annually	
Emergency Systems	Quarterly		Timing Relays	Annually		Head-End Units	Annually	
CMF Backup Generator and all components	Six Months or per OEM		Track Circuits	Annually		Track Units	Annually	
Blue Light System	Quarterly		Time Circuits	Two Years		Cable Transmission System	Annually	
Power Feeder Systems	Annually		Time Circuits	Two Years		Channel Banks	Annually	
TP Distribution System	Annually		Rail Joint & Switch Insulation	As required		Power Supplies	Annually	
Utility Power Feeder System	Annually		Track Connections/Impedance Bonds	As required		Main Distribution Frame	Annually	
Customer's Traction Power Feeder System	Annually		Insulation Detection Circuits	Annually		Fiber Housing	Annually	
Boat Feed Taps	Six Months		Railroad Worker Secondary Warning System	Monthly		Closed Circuit Television (CCTV)	Annually	
Earthling	Annually		Turn-Station Entrance Flashes	Annually		Cameras	Annually	
Electrical Insulation	Annually		Route Locking	Four Years		Fire Alarm Panels	Annually	
DC Disconnect Switches	Annually		Time Locking	Four Years		Switches	Annually	
a. Pole Mounted	Six Months		Approach Locking	Four Years		Video Recording Equipment	Annually	
b. Pad Mounted	Six Months		Traffic Locking	Four Years		Public Address System	Annually	
c. Isolation Switches	Six Months		Indicator Locking	Four Years		Amplifiers	Annually	
DC Lighting Amplifiers	Annually		Track Circuits	Two Years		Workstation	Annually	
Insulators	Six Months		Wayside Signals	As required		Power Supplies	Annually	
Fixed/Auto Tension Components	Six Months		Cable Tests	Ten Years		Speakers	Annually	
Single and dual contact wires	Six Months		Yard Switch Machines (Rear)	Quarterly		Masts	Annually	
Poles	Annually		Yard Switch Machines (Front)	Quarterly		Pay/Disk Units	Annually	
			Train Controls (On Board Equipment)	Quarterly		Variable Message Signs (VMS)	Annually	
			AV/PTP System/Driver Terminal	Quarterly		Variable Message Signs	Annually	
			LEV Radio	Quarterly		SCADA	Annually	
			LEV Wi-Fi	Quarterly		Remote Terminal Unit (RTU)	Annually	
			Power Supplies, Batteries, Inverters/Battery Chargers	Monthly		Communications Batteries	Six Months	
			Inverter/Battery Chargers	Monthly		Inverter/Battery Chargers	Bi-Annually	
			Signal Batteries	Monthly		Card Readers	Annually	
			Site Inspections	Monthly		Door Looking Mechanism	Annually	
						Batteries	Annually	

	Proposal Location	Description
	Volume 2, Appendix J <sup>9</sup>	enhancements and upgrades and other maintenance, subject to adjustment under the Owner-approved Asset Management Plan.

<sup>9</sup> Technical Proposal, Volume 2, Appendix J.

Major Categ	Subcategory	Element/Activity	2021 Year	2022 Year	2023 Year	2024 Year	2025 Year	2026 Year	2027 Year	2028 Year	2029 Year	2030 Year	2031 Year	2032 Year	2033 Year	2034 Year	2035 Year	2036 Year	2037 Year	2038 Year	2039 Year	2040 Year	2041 Year	2042 Year	2043 Year	2044 Year	2045 Year	2046 Year	2047 Year	2048 Year	2049 Year	2050 Year
Vehicles	Mileage Based Overhauls	360,000 mile Overhaul – Vehs 1-9																														
Vehicles	Mileage Based Overhauls	360,000 mile Overhaul – Vehs 10-18																														
Vehicles	Mileage Based Overhauls	360,000 mile Overhaul – Vehs 19-26																														
Vehicles	Mileage Based Overhauls	720,000 mile Overhaul – Vehs 1-9																														
Vehicles	Mileage Based Overhauls	720,000 mile Overhaul – Vehs 10-18																														
Vehicles	Mileage Based Overhauls	720,000 mile Overhaul – Vehs 19-26																														
Vehicles	Mileage Based Overhauls	1,080,000 mile Overhaul – Vehs 1-9																														
Vehicles	Mileage Based Overhauls	1,080,000 mile Overhaul – Vehs 10-18																														
Vehicles	Mileage Based Overhauls	1,080,000 mile Overhaul – Vehs 19-26																														
Vehicles	Wheels	Dismount & mount Carbide ATP System																														
Vehicles	Upgrades	Train to Wayside Communications System																														
Vehicles	Upgrades	LRV Comms System																														
Vehicles	Upgrades	AVL System																														
Track	Alignment & Leveling	Turnouts																														
Track	Alignment & Leveling	Ballasted Track EB																														
Track	Alignment & Leveling	Ballasted Track WB																														
Track	Rail Replacement	Moderate Radius Curves																														
Track	Rail Replacement	Tight Radius Curves																														
Track	Special Trackwork	Rapid Ballasted and DF Track No. 6, 8 & 10 turnouts																														
Track	Special Trackwork	Rapid Ballasted No. 4 fully guarded turnout																														
Track	Special Trackwork	Rapid Embedded No. 10 turnout																														
Track	Special Trackwork	Field Welding-Frogs																														
Track	Rail Grinding	Mainline (Excl. turnouts)																														
Track	Rail Grinding	Turnouts																														
Track	Grade Crossings	Replace Grade Crossing																														
Systems	Train Control/Signaling	Gate Mechanism																														
Systems	Train Control/Signaling	Gate Arms and Lights (LED)																														
Systems	Train Control/Signaling	Cable Signal Coupler																														
Systems	Train Control/Signaling	LRV Antenna/AVM Router																														
Systems	Train Control/Signaling	Onboard Speakers & Signs																														
Systems	Train Control/Signaling	Onboard Radio Unit																														
Systems	Train Control/Signaling	Track Chirp/Floor Patch Panels Out of Non-Vib Relay																														
Systems	Train Control/Signaling	Lamps (LED)																														
Systems	Train Control/Signaling	Switch Heaters																														
Systems	Train Control/Signaling	Wayside Signal Components																														
Systems	Train Control/Signaling	On Board Components																														
Systems	Train Control/Signaling	Switch Machine																														
Systems	Train Control/Signaling	Impedance Bond/LCP/Vital Microprocessor Syst																														
Systems	Train Control/Signaling	Track Transceiver/Vital Relay																														
Systems	Tract Power Supply/Distrib	TPSS PLC's Software																														
Systems	Tract Power Supply/Distrib	DC Relays																														
Systems	Tract Power Supply/Distrib	MOS SCADA Units																														
Systems	Tract Power Supply/Distrib	Surge Arrestors																														
Systems	Tract Power Supply/Distrib	Battery charger																														
Systems	Tract Power Supply/Distrib	Feeder breaker points & fuses																														
Systems	Tract Power Supply/Distrib	Section Isolator																														
Systems	Tract Power Supply/Distrib	TPSS Switchgear																														
Systems	Tract Power Supply/Distrib	Feeder Breakers																														



	Proposal Location	Description
Relating to <b>Systems integration</b>		
44	Technical Proposal, Volume 2, Section 5.1.2.1	Concessionaire shall design and construct, and thereafter operate and maintain, redundant traction power transformer/rectifier units at TPSS Q01 and Q18 (adjacent to terminal Stations Bethesda and New Carrollton).

Major Category	Subcategory	Element/Activity	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050
Systems	Overhead Contact Sys	Overhead Contact Wire																														
Systems	Overhead Contact Sys	Overhead Contact Wire Replacement																														
Systems	Communications	Camera																														
Systems	Communications	VMS sign																														
Systems	Communications	PAC/MS backbone system																														
Systems	Communications	Telephone/VoIP central system																														
Systems	Communications	Telephones																														
Systems	Communications	Radio, hand held																														
Systems	Communications	Radio, Non Revenue Vehicles																														
Systems	Communications	Fiber optic network devices (comms backbone)																														
Systems	Communications	Master code																														
Systems	Control and Monitoring	Software Upgrades, CCS and AVL																														
Systems	Control and Monitoring	IT peripherals																														
Systems	Control and Monitoring	UPS																														
Systems	Control and Monitoring	Overview Display																														
Systems	Control and Monitoring	Workstations (computer)																														
Systems	Control and Monitoring	Roilers																														
Systems	Control and Monitoring	Server																														
Systems	Control and Monitoring	Network Storage Device																														
Systems	Control and Monitoring	Energy Mgt. Control System																														
Systems	Fire Detection/Alarms	Fire Alarm Control Panel																														
Systems	Fire Detection/Alarms	Fire Alarm Control Peripherals																														
Systems	Fire Detection/Alarms	Passenger Assist Intercom posts																														
Systems	Safety & Security	Access Control System & Peripherals																														
Systems	Safety & Security	CCTV Backhaul System																														
Systems	Safety & Security	CCTV NVR																														
Systems	Safety & Security	SCADA RTUs																														
Facilities	OMF - Germidgo	Car Wash																														
Facilities	OMF - Germidgo	Roof																														
Facilities	OMF - Germidgo	Carpet and Furnishings																														
Facilities	OMF - Germidgo	Fire Protection System																														
Facilities	OMF - Germidgo	Shop Equipment																														
Facilities	OMF - Germidgo	Parking Lot Seal Coat																														
Facilities	OMF - Germidgo	HVAC Systems																														
Facilities	OMF - Germidgo	Interior Painting																														
Facilities	OMF - Germidgo	Generators																														
Facilities	OMF - Lyttonville	Roof																														
Facilities	OMF - Lyttonville	Furniture and Furnishings																														
Facilities	OMF - Lyttonville	HVAC Systems																														
Facilities	OMF - Lyttonville	Fire Protection System																														
Facilities	OMF - Lyttonville	Interior Painting																														
Facilities	OMF - Lyttonville	Parking Lot Seal Coat																														
Stations	Stations	Elevator Cab Refresh																														
Stations	Stations	Escalator Overhaul																														
Stations	Fare Collection	Software Upgrades																														
Stations	Fare Collection	TVMS																														
Stations	Fare Collection	Refurbish/Replace Validators																														
Stations	Fare Collection	Refurbish/Replace																														
Stations	Systems	Re-build Tunnel Fans																														
Guideway	Pavement	Asphalt Roadway																														
Guideway	Bridges	Paint Steel Bridges																														
Guideway	Bridges	Joint Replacement																														
Traffic/ITS	Traffic Lights																															
Traffic/ITS	Traffic Controllers	Upgrade																														
IT	OMS Systems	Server Replacement																														
IT	OMS Systems	Software Upgrades																														
IT	Computers	Desktop/Laptop Replacements																														
Equip	Non Revenue Vehicles	SUVs and Maintenance Trucks																														
Equip	Non Revenue Vehicles	Specialty Trucks																														

	Proposal Location	Description
	(p. 372)	
45	Technical Proposal, Volume 2, Section 5.1.2.1 and Table 5.1-2 (p. 373)	Concessionaire shall design and construct, and thereafter operate and maintain, architectural treatments around all TPSSs as depicted in Table 5.1-2 <sup>10</sup> . Concessionaire shall ensure that the color for each TPSS is appropriate to each TPSS location.
46	Technical Proposal, Volume 2, Section 5.1.1.1 (pp. 368, 371)	Concessionaire shall design and construct, and thereafter operate and maintain, a yard train control system as depicted in Figure T-SS, which shall at a minimum shall address: <ul style="list-style-type: none"> <li>• Non-vital and non-redundant signaling</li> <li>• Line of sight train movement</li> <li>• Track switches – motorized and manual</li> <li>• Train detection</li> <li>• Vehicle ID tracking</li> <li>• Selected use of switch heaters</li> </ul>
47	Technical Proposal, Volume 2, Section 5.1.4.1 (p. 378)	Concessionaire shall design and construct or otherwise obtain and maintain, and thereafter operate and maintain wayside emergency telephones (WETs) at blue light station locations which shall be located in accordance with NFPA-130 (2014), Articles 6.4.2.1 and A.6.4.2.1 and as follows: <ol style="list-style-type: none"> <li>(1) At the ends of station platforms. At side platform stations, telephones shall be provided on both platforms.</li> <li>(2) At cross passages – not applicable.</li> <li>(3) At emergency access points including, as a minimum, exclusive right-of-way access gates, transition points between at-grade and aerial alignment sections, and at tunnel portals.</li> <li>(4) At traction power substations.</li> </ol>

<sup>10</sup> Technical Proposal, Volume 2, Table 5.1-2.

Table 5.1-2. Traction Power Substation Architectural Treatments							
TPSS No.	Ornamental Fence	Shade Tree	Evergreen Tree	Flowering Tree	Shrub	Other	Fencing
Q01	CDR	CDR	CDR				
Q03		CDR	CDR				APT
Q06	CDR	CDR	CDR				
Q08	CDR		CDR				
Q11	CDR		CDR		CDR		
Q13			CDR	CDR	CDR		APT
Q16			CDR			CDR	APT
Q18							APT
Lyttonville Yard							APT
Glenridge Yard & Shop							APT

Notes: CDR = Contract Drawing requirement; APT = Additional proposed treatment

	Proposal Location	Description
		(5) In underground trainways – not applicable.
48	Technical Proposal, Volume 2, Section 5.1.4.1 (p. 378)	<p>Concessionaire shall design and construct, and thereafter operate and maintain, the following wireless data networks for train to wayside communications:</p> <p>(a) MDOT Wi-Fi network (802.11 compliant) that connects to the MDOT CIB, and</p> <p>(b) a separate Wi-Fi network (802.11 compliant) for the Purple Line System that connects to the Purple Line CIB.</p>
50	Technical Proposal, Volume 2, Section 5 (p. 367)	Concessionaire shall implement and document the following plan structure as part of its systems engineering process: system engineering and management; requirements management; interface management; systems integration; verification and validation; reliability, availability and maintainability; system safety and security; and configuration management. The Owner at its discretion may request to review any such plans.
51	Technical Proposal, Volume 2, Sections 5.1.1.1 (p. 370), 4.1.8.1 (p. 319)	Concessionaire shall conduct regular ultrasonic rail inspections, commencing on the first anniversary of the commencement date of Trial Running, in no case less frequently than annually.
52	Technical Proposal, Volume 2, Section 5.1.5.1 (p. 380)	<p>Concessionaire shall design and construct, and thereafter operate and maintain, a project SCADA system that includes the ability to monitor energy consumption, power performance, and water consumption.</p> <p>Concessionaire shall utilize energy consumption, water consumption, energy demands and power performance data to manage Project water and energy use commencing no later than the commencement of Trial Running with respect to the following facilities:</p> <ul style="list-style-type: none"> <li>• TPSSs</li> <li>• Stations</li> <li>• OMFs</li> <li>• central instrument houses</li> <li>• Tunnels</li> <li>• Ethernet TCP/IP connectivity and interface to MODBUS, DNP 3.0, and BACNet communications protocols</li> </ul>
53	Technical Proposal, Volume 2, Section 5.1.5.1	Concessionaire shall control and monitor traction power utilizing the project SCADA system.

	Proposal Location	Description
	(pp. 380-1)	
54	Technical Proposal, Volume 2, Sections 4.2.1.3 (p. 341) and 5.1.5.4 (p. 481)	Concessionaire shall obtain and maintain both a diesel powered generator (600 kW) with a fuel capacity sized for 24 hours and UPS battery bank (225 kW) for no less than 90 minutes to support the OCC and Security Center.
55	Technical Proposal, Volume 2, Section 5.2.2 (p. 386)	Concessionaire shall design and construct and thereafter, with respect to the O&M limits only, operate and maintain the Project such that the ITS is a stand-alone system, completely separate from the Purple Line and MDOT CIBs and lighting systems.
56	Technical Proposal, Volume 2, Section 5.2.2 (p. 386)	Concessionaire shall design the Purple Line System for expansion of the ITS infrastructure by constructing and maintaining a high-capacity fiber optic cable backbone along the rail alignment from Dixon Avenue to Harkins Road with a spare conduit for future use. In areas where sidewalk and roadway improvements are not proposed, with Owner's prior approval, Concessionaire shall design and construct and, only with respect to the specified backbone communications links identified in Part 3, Section 5.4.1 of the Technical Provisions, also thereafter operate and maintain, wireless radios and antennas to complete the specified backbone communications link.
57	Technical Proposal, Volume 2, Section 5.3 (p. 388), Appendix T	Concessionaire shall conduct early systems integration and testing of the Purple Line System, planned for the 2.1 mile section between the Glenridge OMF and New Carrollton Station. The test track section will be fully-functional, including two stations, traffic signals with both transit signal priority and pre-emption, two gated grade crossings, three traction power substations and a functional OCC.
58	Technical Proposal, Volume 2, Section 5.4.1.1 (p. 393) and Table 5.4-2	No later than approval of the Rail Activation Program Plan, Concessionaire shall appoint members to a "Rail Activation Management Team" chaired by the Operations General Manager, and comprised of representatives from the O&M Contractor, Design-Build Contractor and meetings of which Owner may attend at its discretion. The purpose of the Rail Activation Management Team is to manage and coordinate the transition from construction of the Purple Line System through Rail Activation to achievement of Revenue Service Availability. Collective membership in the Rail Activation Management Team shall, at a minimum, have actual experience and expertise in each of the following areas: <ul style="list-style-type: none"> <li>• Vehicle Maintenance</li> <li>• Quality Assurance</li> <li>• Systems Maintenance</li> <li>• Training</li> </ul>



	Proposal Location	Description
		<ul style="list-style-type: none"> <li>• Operations</li> <li>• Finance and Administration</li> <li>• Safety and Security</li> <li>• IT Systems and Data Capture</li> </ul>
59	Technical Proposal, Volume 2, Section 3.2 (p. 219)	All LRVs (including the O&M Spare LRV and Option LRVs) shall meet ASME RT-1-2009, Safety Standard for Structural Requirements for Light Rail Vehicles, consistent with the requirements of Part 2B, Section 12.4.3 of the Technical Provisions.
60	Technical Proposal, Volume 2, Figure 3.2-8 (p. 224)	All LRVs (including the O&M Spare LRV and Option LRVs) shall feature the aesthetics substantially the same as those depicted in Technical Proposal, Volume 2, Figure 3.2-8, appended to this table as Appendix B, as deviations from these aesthetics require prior, written approval from Owner.
61	Technical Proposal, Volume 2, Section 3.8.1; see also Table 5.1-1 <sup>11</sup> and Appendix T, Figure T-TS.	Concessionaire will not design and construct TPSSs in locations associated with Q02, Q04, Q05, Q07, Q09, Q10, Q12, Q14, Q15 and Q17, consistent with Technical Proposal, Volume 2, Table 5.1-1.

<sup>11</sup> Technical Proposal, Volume 2, Table 5.1-1.

Table 5.1-1. Traction Power Substations				
TPSS No.	Location (TRK1 Sta +/-)	Reference 750V Design (Rectifier Size in kW)	PLTP 1500V Design (Rectifier Size in kW)	Adjacent Public Road
Q01	120+36	2x 2000	2x 2000	Montgomery Avenue
Q02		2000	n/a	
Q03	222+72	2000	4000	Brookville Road
Q04		2000	n/a	
Q05		2000	n/a	
Q06	383+09	2000	4000	Wayne Avenue
Q07		2000	n/a	
Q08	462+00	2000	4000	University Boulevard
Q09		2000	n/a	
Q10		2000	n/a	
Q11	598+40	2000	4000	Campus Drive
Q12		2000	n/a	
Q13	712+06	2000	4000	River Road
Q14		2000	n/a	
Q15		2000	n/a	
Q16	850+59	2000	4000	Patterson Street
Q17		2000	n/a	
Q18	952+02	2x 2000	2x 2000	Ellin Road
Lyttonsville Yard	Yard	2000	800	Brookville Road
Glenridge Yard	Yard	2000	1000 + 500	Veterans Parkway
Glenridge Shop		500	incl. in yard TPSS bldg	Veterans Parkway

	Proposal Location	Description
62	Technical Proposal, Volume 2, Figure 4.2-13 <sup>12</sup> (p. 344)	The Lyttonsville OMF shall feature all aesthetics depicted in Technical Proposal, Volume 2, Figure 4.2-13 (p. 344). Deviations from these aesthetics require Owner's prior, written approval.
63	Technical Proposal,	The Glenridge OMF shall feature all aesthetics depicted in Technical Proposal, Volume 2, Figure 4.2-10 (p. 344). Deviations

<sup>12</sup> Technical Proposal, Volume 2, Figure 4.2-13.



*Figure 4.2-13. Lyttonsville OMF, Rendered Image*

	Proposal Location	Description
	Volume 2, Figure 4.2-10 <sup>13</sup>	from these aesthetics require Owner's prior, written approval.

<sup>13</sup> Technical Proposal, Volume 2, Figure 4.2-10.



*Glenridge Entrance Side*



*Glenridge Rear Side*

*Figure 4.2-10. Glenridge OMF, Rendered Images*

## **Appendix A**

***[insert excerpt from Forest Stand Delineation Report]***



Table 3-57 GENERAL CHARACTERISTICS OF STAND 56		
Successional stage	Early	
Dominant species/co-dominant species	Red maple	<i>Acer rubrum</i>
	Black locust	<i>Robinia pseudocacia</i>
	Black cherry	<i>Prunus serotina</i>
Size class of dominant species	2-19.9 inches DBH	
Basal area	105 square feet/acre	
Percent canopy closure	100%	
Common understory species	Amur honeysuckle	<i>Lonicera mackii</i>
	Japanese honeysuckle	<i>Lonicera japonica</i>
	Allegheny blackberry	<i>Rubus allegheniensis</i>
	Virginia creeper	<i>Parthenocissus quinquefolia</i>
	Poison ivy	<i>Toxicodendron radicans</i>
Percent understory cover	70%	
Common herbaceous species	Common chickweed	<i>Stellaria media</i>
	Japanese honeysuckle	<i>Lonicera japonica</i>
	Sticky-willy	<i>Gallium aparine</i>
	Hairy bittercress	<i>Cardamine hirsuta</i>
	Trumpet creeper	<i>Campsis radicans</i>
Percent herbaceous cover	80%	
Invasive exotic species	Multiflora rose	<i>Rosa multiflora</i>
	English ivy	<i>Hedera helix</i>
	Amur honeysuckle	<i>Lonicera mackii</i>
	Common chickweed	<i>Stellaria media</i>
	Japanese honeysuckle	<i>Lonicera japonica</i>
Percent invasive cover	55% in plot	
Number of standing dead trees greater than 6" DBH	15 per acre	
Quality	Poor	
Specimen trees <sup>1</sup>	None	
Priority ranking	Priority 3	

<sup>1</sup>See Table 3-58 for list of specimen trees per stand.

### 3.3 TREE INVENTORY

A specimen tree is defined by MDNR as a tree exhibiting a diameter at breast height (DBH) of 30 inches or greater or trees having 75% or more of the diameter of the current State champion (MDNR, 1997). A total of 30 species of specimen trees and 301 individuals were identified within the FSD study area. Table 3-58 presents the size, species, and condition of each tree, and the Environmental Features Maps (Appendix B) present the location and size of each tree.

Table 3-58 SPECIMEN TREES					
Tree ID	Common Name	Scientific Name	DBH (inches)	Condition	Map No.
1	red maple	<i>Acer rubrum</i>	37.0	Poor	1

Table 3-58 SPECIMEN TREES					
2	red maple	<i>Acer rubrum</i>	47.0	Fair	1
3	slippery elm	<i>Ulmus rubra</i>	50.0	Good	1
4	black walnut	<i>Juglans nigra</i>	31.7	Good	1
5	black walnut	<i>Juglans nigra</i>	30.5	Good	1
6	tulip poplar	<i>Liriodendron tulipifera</i>	40.0	Fair	1
7	black walnut	<i>Juglans nigra</i>	34.0	Good	1
8	tulip poplar	<i>Liriodendron tulipifera</i>	40.0	Fair	1
9	tulip poplar	<i>Liriodendron tulipifera</i>	32.0	Good	1
10	tulip poplar	<i>Liriodendron tulipifera</i>	37.2	Good	1
11	tulip poplar	<i>Liriodendron tulipifera</i>	35.0	Good	1
12	tulip poplar	<i>Liriodendron tulipifera</i>	45.0	Good	1
13	tulip poplar	<i>Liriodendron tulipifera</i>	37.1	Good	1
14	tulip poplar	<i>Liriodendron tulipifera</i>	33.6	Good	1
15	tulip poplar	<i>Liriodendron tulipifera</i>	38.9	Fair	1
16	pin oak	<i>Quercus palustris</i>	34.4	Good	1
17	tulip poplar	<i>Liriodendron tulipifera</i>	35.0	Good	1
18	tulip poplar	<i>Liriodendron tulipifera</i>	31.0	Good	1
19	red maple	<i>Acer rubrum</i>	35.0	Good	1
20	eastern cottonwood	<i>Populus deltoides</i>	41.0	Fair	2
21	red maple	<i>Acer rubrum</i>	36.1	Fair	2
22	American sycamore	<i>Platanus occidentalis</i>	38.6	Good	2
23	willow oak	<i>Quercus phellos</i>	34.0	Good	2
24	tulip poplar	<i>Liriodendron tulipifera</i>	38.2	Good	2
25	tulip poplar	<i>Liriodendron tulipifera</i>	33.3	Fair	2
26	tulip poplar	<i>Liriodendron tulipifera</i>	36.7	Fair	2
27	tulip poplar	<i>Liriodendron tulipifera</i>	45.7	Good	2
28	tulip poplar	<i>Liriodendron tulipifera</i>	42.7	Good	2
29	tulip poplar	<i>Liriodendron tulipifera</i>	32.8	Good	2
30	tulip poplar	<i>Liriodendron tulipifera</i>	40.8	Good	2
31	American sycamore	<i>Platanus occidentalis</i>	38.7	Good	2
32	black oak	<i>Quercus velutina</i>	36.0	Good	2
33	willow oak	<i>Quercus phellos</i>	30.0	Good	2
34	tulip poplar	<i>Liriodendron tulipifera</i>	35.0	Good	2
35	white pine	<i>Pinus strobus</i>	30.0	Good	2
36	tulip poplar	<i>Liriodendron tulipifera</i>	30.0	Good	2
37	tulip poplar	<i>Liriodendron tulipifera</i>	30.0	Good	2
38	tulip poplar	<i>Liriodendron tulipifera</i>	32.0	Good	2
39	tulip poplar	<i>Liriodendron tulipifera</i>	38.0	Good	2
40	tulip poplar	<i>Liriodendron tulipifera</i>	38.0	Good	2
41	tulip poplar	<i>Liriodendron tulipifera</i>	44.5	Good	2

Table 3-58 SPECIMEN TREES					
42	American sycamore	<i>Platanus occidentalis</i>	46.7	Good	2
43	American sycamore	<i>Platanus occidentalis</i>	46.0	Poor	2
44	silver maple	<i>Acer saccharinum</i>	41.7	Fair	2 & 3
45	silver maple	<i>Acer saccharinum</i>	38.2	Fair	2 & 3
46	silver maple	<i>Acer saccharinum</i>	49.5	Fair	2 & 3
47	eastern cottonwood	<i>Populus deltoides</i>	43.5	Good	2 & 3
48	eastern cottonwood	<i>Populus deltoides</i>	43.4	Fair	2 & 3
49	silver maple	<i>Acer saccharinum</i>	59.6	Fair	3
50	silver maple	<i>Acer saccharinum</i>	41.6	Fair	3
51	black locust	<i>Robinia pseudoacacia</i>	36.1	Fair	3
52	black locust	<i>Robinia pseudoacacia</i>	34.7	Poor	3
53	silver maple	<i>Acer saccharinum</i>	43.7	Fair	3
54	silver maple	<i>Acer saccharinum</i>	41.3	Poor	3
55	silver maple	<i>Acer saccharinum</i>	35.5	Fair	3
56	black locust	<i>Robinia pseudoacacia</i>	37.4	Poor	3
57	black locust	<i>Robinia pseudoacacia</i>	44.3	Fair	3
58	silver maple	<i>Acer saccharinum</i>	38.4	Good	3
59	American sycamore	<i>Platanus occidentalis</i>	38.8	Good	3
60	silver maple	<i>Acer saccharinum</i>	42.0	Fair	3
61	silver maple	<i>Acer saccharinum</i>	35.5	Poor	3
62	tulip poplar	<i>Liriodendron tulipifera</i>	35.0	Good	3
63	black walnut	<i>Juglans nigra</i>	33.9	Good	3
64	black locust	<i>Robinia pseudoacacia</i>	33.7	Fair	3
65	American sycamore	<i>Platanus occidentalis</i>	34.5	Good	3
66	American sycamore	<i>Platanus occidentalis</i>	36.0	Fair	3
67	northern catalpa	<i>Catalpa speciosa</i>	34.3	Poor	3
68	American sycamore	<i>Platanus occidentalis</i>	36.7	Good	3
69	silver maple	<i>Acer saccharinum</i>	33.5	Fair	3
70	black locust	<i>Robinia pseudoacacia</i>	32.0	Fair	3
71	black cherry	<i>Prunus serotina</i>	30.0	Fair	3
72	eastern cottonwood	<i>Populus deltoides</i>	32.1	Fair	3
73	silver maple	<i>Acer saccharinum</i>	35.0	Fair	3
74	silver maple	<i>Acer saccharinum</i>	43.5	Fair	3
75	silver maple	<i>Acer saccharinum</i>	50.0	Good	3
76	eastern cottonwood	<i>Populus deltoides</i>	33.2	Good	3
77	eastern cottonwood	<i>Populus deltoides</i>	31.0	Fair	3
78	tulip poplar	<i>Liriodendron tulipifera</i>	35.9	Good	3
79	silver maple	<i>Acer saccharinum</i>	43.0	Good	3
80	silver maple	<i>Acer saccharinum</i>	47.4	Fair	3
81	silver maple	<i>Acer saccharinum</i>	48.2	Fair	3

Table 3-58 SPECIMEN TREES					
82	eastern cottonwood	<i>Populus deltoides</i>	34.1	Fair	3
83	silver maple	<i>Acer saccharinum</i>	37.5	Fair	3
84	black walnut	<i>Juglans nigra</i>	41.5	Good	3
85	tulip poplar	<i>Liriodendron tulipifera</i>	35.3/38.7	Good	3
86	tulip poplar	<i>Liriodendron tulipifera</i>	31.8	Good	3
87	tulip poplar	<i>Liriodendron tulipifera</i>	30.1	Good	3
88	tulip poplar	<i>Liriodendron tulipifera</i>	34.2	Good	3
89	tulip poplar	<i>Liriodendron tulipifera</i>	31.3	Good	3
90	tulip poplar	<i>Liriodendron tulipifera</i>	32.8	Good	3
91	tulip poplar	<i>Liriodendron tulipifera</i>	30.7	Good	3
92	tulip poplar	<i>Liriodendron tulipifera</i>	42.0	Good	3
93	tulip poplar	<i>Liriodendron tulipifera</i>	34.5	Good	3
94	tulip poplar	<i>Liriodendron tulipifera</i>	32.6	Good	3
95	tulip poplar	<i>Liriodendron tulipifera</i>	40.2/40.1	Good	3
96	tulip poplar	<i>Liriodendron tulipifera</i>	32.5	Good	3
97	tulip poplar	<i>Liriodendron tulipifera</i>	34.4	Good	3
98	tulip poplar	<i>Liriodendron tulipifera</i>	38.2	Good	3
99	tulip poplar	<i>Liriodendron tulipifera</i>	42.1	Good	3
100	tulip poplar	<i>Liriodendron tulipifera</i>	35.2	Good	3
101	tulip poplar	<i>Liriodendron tulipifera</i>	33.4	Fair	3
102	tulip poplar	<i>Liriodendron tulipifera</i>	31.8	Good	3
103	tulip poplar	<i>Liriodendron tulipifera</i>	32.3	Good	3
104	tulip poplar	<i>Liriodendron tulipifera</i>	37.9	Good	3
105	tulip poplar	<i>Liriodendron tulipifera</i>	46.3	Good	3
106	tulip poplar	<i>Liriodendron tulipifera</i>	30.0	Good	3
107	tulip poplar	<i>Liriodendron tulipifera</i>	30.0	Good	3
108	tulip poplar	<i>Liriodendron tulipifera</i>	32.5/32.0	Fair	3 & 4
109	tulip poplar	<i>Liriodendron tulipifera</i>	31.3	Good	3 & 4
110	American sycamore	<i>Platanus occidentalis</i>	33.0	Good	4
111	American sycamore	<i>Platanus occidentalis</i>	31.1	Fair	4
112	American sycamore	<i>Platanus occidentalis</i>	32.9	Good	4
113	tulip poplar	<i>Liriodendron tulipifera</i>	39.8	Good	4
114	tulip poplar	<i>Liriodendron tulipifera</i>	44.6	Good	4
115	tulip poplar	<i>Liriodendron tulipifera</i>	39.0	Poor	4
116	green ash	<i>Fraxinus pennsylvanica</i>	35.9	Good	4
117	tulip poplar	<i>Liriodendron tulipifera</i>	32.5	Good	4
118	tulip poplar	<i>Liriodendron tulipifera</i>	31.5	Fair	4
119	tulip poplar	<i>Liriodendron tulipifera</i>	34.0	Fair	4
120	tulip poplar	<i>Liriodendron tulipifera</i>	37.0	Fair	4
121	tulip poplar	<i>Liriodendron tulipifera</i>	31.0	Good	4

Table 3-58 SPECIMEN TREES					
122	tulip poplar	<i>Liriodendron tulipifera</i>	36.7	Good	4
123	tulip poplar	<i>Liriodendron tulipifera</i>	42.6	Good	4
124	tulip poplar	<i>Liriodendron tulipifera</i>	30.5	Good	4
125	American sycamore	<i>Platanus occidentalis</i>	58.0	Fair	4
126	American sycamore	<i>Platanus occidentalis</i>	31.1	Good	4
127	American sycamore	<i>Platanus occidentalis</i>	41.0	Fair	4
128	box elder	<i>Acer negundo</i>	33.2	Fair	4
129	eastern cottonwood	<i>Populus deltoides</i>	36.0	Fair	4
130	tulip poplar	<i>Liriodendron tulipifera</i>	33.4	Good	4
131	tulip poplar	<i>Liriodendron tulipifera</i>	35.5	Fair	4
132	black locust	<i>Robinia pseudoacacia</i>	31.9	Fair	4
133	black locust	<i>Robinia pseudoacacia</i>	30.2	Fair	4
134	black locust	<i>Robinia pseudoacacia</i>	37.7	Fair	4
135	slippery elm	<i>Ulmus rubra</i>	30.6	Poor	4
136	tulip poplar	<i>Liriodendron tulipifera</i>	32.5	Good	4
137	tulip poplar	<i>Liriodendron tulipifera</i>	31.7	Fair	4
138	tulip poplar	<i>Liriodendron tulipifera</i>	31.9	Good	4 & 5
139	tulip poplar	<i>Liriodendron tulipifera</i>	33.0	Good	4 & 5
140	tulip poplar	<i>Liriodendron tulipifera</i>	38.6	Good	4 & 5
141	tulip poplar	<i>Liriodendron tulipifera</i>	34.7	Good	4 & 5
142	black locust	<i>Robinia pseudoacacia</i>	31.5	Fair	5
143	tulip poplar	<i>Liriodendron tulipifera</i>	41.6	Good	5
144	tulip poplar	<i>Liriodendron tulipifera</i>	36.3	Good	5
145	tulip poplar	<i>Liriodendron tulipifera</i>	52.0	Good	5
146	tulip poplar	<i>Liriodendron tulipifera</i>	31.8	Good	5
147	tulip poplar	<i>Liriodendron tulipifera</i>	30.6	Good	5
148	tulip poplar	<i>Liriodendron tulipifera</i>	38.6	Good	5
149	tulip poplar	<i>Liriodendron tulipifera</i>	30.5	Good	5
150	tulip poplar	<i>Liriodendron tulipifera</i>	36.1	Fair	5
151	tulip poplar	<i>Liriodendron tulipifera</i>	35.1	Good	5
152	shingle oak	<i>Quercus imbricaria</i>	36.9	Good	5
153	pin oak	<i>Quercus palustris</i>	54.2	Fair	5
154	tulip poplar	<i>Liriodendron tulipifera</i>	40.1	Poor	5
155	American sycamore	<i>Platanus occidentalis</i>	32.5	Poor	5
156	silver maple	<i>Acer saccharinum</i>	50.4	Good	6
157	tulip poplar	<i>Liriodendron tulipifera</i>	55.0	Good	6
158	black oak	<i>Quercus velutina</i>	34.3	Fair	6
159	tulip poplar	<i>Liriodendron tulipifera</i>	38.8	Good	6
160	tulip poplar	<i>Liriodendron tulipifera</i>	43.5	Fair	6
161	American sycamore	<i>Platanus occidentalis</i>	32.2	Fair	6

Table 3-58 SPECIMEN TREES					
162	tulip poplar	<i>Liriodendron tulipifera</i>	38.7	Poor	6
163	tulip poplar	<i>Liriodendron tulipifera</i>	34.6	Poor	6
164	tulip poplar	<i>Liriodendron tulipifera</i>	42.0	Fair	6
165	tulip poplar	<i>Liriodendron tulipifera</i>	30.9	Fair	6
166	tulip poplar	<i>Liriodendron tulipifera</i>	36.5	Fair	6
167	tulip poplar	<i>Liriodendron tulipifera</i>	33.0	Poor	6
168	tulip poplar	<i>Liriodendron tulipifera</i>	32.5	Poor	6
169	tulip poplar	<i>Liriodendron tulipifera</i>	39.0	Good	6
170	tulip poplar	<i>Liriodendron tulipifera</i>	34.0	Good	6
171	tulip poplar	<i>Liriodendron tulipifera</i>	32.4	Fair	6
172	tulip poplar	<i>Liriodendron tulipifera</i>	47.9	Fair	6
173	tulip poplar	<i>Liriodendron tulipifera</i>	38.7	Fair	6
174	tulip poplar	<i>Liriodendron tulipifera</i>	47.7	Fair	6
175	tulip poplar	<i>Liriodendron tulipifera</i>	31.8	Good	6
176	tulip poplar	<i>Liriodendron tulipifera</i>	45.8	Fair	6
177	American sycamore	<i>Platanus occidentalis</i>	40.5	Fair	6
178	tulip poplar	<i>Liriodendron tulipifera</i>	31.8	Good	6
179	tulip poplar	<i>Liriodendron tulipifera</i>	33.8	Good	6
180	tulip poplar	<i>Liriodendron tulipifera</i>	41.0	Good	6
181	silver maple	<i>Acer saccharinum</i>	32.6	Fair	6 & 7
182	tulip poplar	<i>Liriodendron tulipifera</i>	37.0	Good	7
183	silver maple	<i>Acer saccharinum</i>	42.3	Fair	7
184	tulip poplar	<i>Liriodendron tulipifera</i>	33.7	Good	7
185	silver maple	<i>Acer saccharinum</i>	32.5	Good	7
186	silver maple	<i>Acer saccharinum</i>	33.7	Good	7
187	silver maple	<i>Acer saccharinum</i>	36.2	Fair	7
188	silver maple	<i>Acer saccharinum</i>	47.1	Poor	7
189	pin oak	<i>Quercus palustris</i>	34.6	Good	7
190	green ash	<i>Fraxinus pennsylvanica</i>	43.4	Good	7
191	pin oak	<i>Quercus palustris</i>	34.5	Good	7
192	pin oak	<i>Quercus palustris</i>	31.6	Good	7
193	pin oak	<i>Quercus palustris</i>	35.8	Good	8
194	pin oak	<i>Quercus palustris</i>	34.8	Good	8
195	pin oak	<i>Quercus palustris</i>	32.6	Good	8
196	pin oak	<i>Quercus palustris</i>	34.7	Good	8
197	pin oak	<i>Quercus palustris</i>	38.2	Good	8
198	pin oak	<i>Quercus palustris</i>	36.7	Good	8
199	sweetbay magnolia	<i>Magnolia virginiana</i>	40.2	Good	8
200	silver maple	<i>Acer saccharinum</i>	32.1	Fair	8
201	silver maple	<i>Acer saccharinum</i>	44.3	Fair	8

Table 3-58 SPECIMEN TREES					
202	silver maple	<i>Acer saccharinum</i>	32.4	Good	8
203	silver maple	<i>Acer saccharinum</i>	40.9	Good	8
204	black locust	<i>Robinia pseudoacacia</i>	32.0	Good	8
205	cedar	<i>Cupressaceae</i> sp.	33.5	Good	8
206	bald cypress	<i>Taxodium mucronatum</i>	39.7	Good	8
207	silver maple	<i>Acer saccharinum</i>	46.5	Good	8
208	pin oak	<i>Quercus palustris</i>	36.6	Good	8 & 9
209	pin oak	<i>Quercus palustris</i>	31.4	Good	8 & 9
210	pin oak	<i>Quercus palustris</i>	36.1	Good	8 & 9
211	tulip poplar	<i>Liriodendron tulipifera</i>	41.0	Good	9
212	pin oak	<i>Quercus palustris</i>	33.1	Good	9
213	red maple	<i>Acer rubrum</i>	30.2	Good	9
214	tulip poplar	<i>Liriodendron tulipifera</i>	36.5	Good	9
215	silver maple	<i>Acer saccharinum</i>	41.0	Good	9
216	pin oak	<i>Quercus palustris</i>	41.7	Good	9
217	tulip poplar	<i>Liriodendron tulipifera</i>	40.0	Good	9
218	silver maple	<i>Acer saccharinum</i>	35.5	Fair	9
219	pin oak	<i>Quercus palustris</i>	35.7	Good	9
220	willow oak	<i>Quercus phellos</i>	38.6	Good	9
221	silver maple	<i>Acer saccharinum</i>	32.0	Fair	9
222	southern red oak	<i>Quercus falcata</i>	45.0	Good	9
223	shingle oak	<i>Quercus imbricaria</i>	32.0	Good	9
224	tulip poplar	<i>Liriodendron tulipifera</i>	41.2	Good	9
225	river birch	<i>Betula nigra</i>	32.7	Fair	9
226	tulip poplar	<i>Liriodendron tulipifera</i>	34.8	Good	9
227	tulip poplar	<i>Liriodendron tulipifera</i>	37.6	Good	9
228	tulip poplar	<i>Liriodendron tulipifera</i>	33.9	Good	9
229	pin oak	<i>Quercus palustris</i>	39.6	Good	9
230	pin oak	<i>Quercus palustris</i>	30.0	Good	9
231	pin oak	<i>Quercus palustris</i>	37.5	Good	9
232	tulip poplar	<i>Liriodendron tulipifera</i>	40.0	Good	10
233	tulip poplar	<i>Liriodendron tulipifera</i>	33.8	Fair	10
234	tulip poplar	<i>Liriodendron tulipifera</i>	32.8	Fair	10
235	tulip poplar	<i>Liriodendron tulipifera</i>	34.0	Good	10 & 11
236	black cherry	<i>Prunus serotina</i>	45.1	Fair	11
237	honeylocust	<i>Gleditsia triacanthos</i>	33.0/31.0	Poor	11
238	white oak	<i>Quercus alba</i>	33.5	Good	10 & 11
239	white oak	<i>Quercus alba</i>	32.0	Fair	11
240	pin oak	<i>Quercus palustris</i>	35.3	Good	11
241	pin oak	<i>Quercus palustris</i>	30.7	Good	11

Table 3-58 SPECIMEN TREES					
242	oak sp.	<i>Quercus</i> sp.	31.2	Good	11
243	pin oak	<i>Quercus palustris</i>	30.0	Fair	12
244	pin oak	<i>Quercus palustris</i>	35.0	Fair	12
245	northern red oak	<i>Quercus rubra</i>	35.1	Good	14
246	green ash	<i>Fraxinus pennsylvanica</i>	34.7	Good	14
247	tulip poplar	<i>Liriodendron tulipifera</i>	37.3	Good	14
248	American sycamore	<i>Platanus occidentalis</i>	34.8	Fair	14
249	American sycamore	<i>Platanus occidentalis</i>	32.5	Fair	14
250	red maple	<i>Acer rubrum</i>	31.9	Poor	14
251	American sycamore	<i>Platanus occidentalis</i>	36.6	Fair	14
252	willow oak	<i>Quercus phellos</i>	33.8	Fair	14
253	willow oak	<i>Quercus phellos</i>	33.5	Fair	14
254	willow oak	<i>Quercus phellos</i>	32.4	Good	14
255	pin oak	<i>Quercus palustris</i>	37.8	Good	14
256	pin oak	<i>Quercus palustris</i>	39.6	Good	14
257	pin oak	<i>Quercus palustris</i>	36.6	Good	14
258	pin oak	<i>Quercus palustris</i>	33.5	Fair	14 & 15
259	pin oak	<i>Quercus palustris</i>	31.7	Good	14 & 15
260	pin oak	<i>Quercus palustris</i>	39.1	Fair	14 & 15
261	willow oak	<i>Quercus phellos</i>	32.0	Good	15
262	willow oak	<i>Quercus phellos</i>	31.0	Fair	15
263	northern catalpa	<i>Catalpa speciosa</i>	53.5	Good	15
264	bald cypress	<i>Taxodium mucronatum</i>	34.6	Good	15
265	pin oak	<i>Quercus palustris</i>	32.5	Good	15
266	sweetgum	<i>Liquidambar styraciflua</i>	31.9	Good	15
267	willow oak	<i>Quercus phellos</i>	30.0	Fair	15
268	sawtooth oak	<i>Quercus acutissima</i>	37.2	Good	15 & 16
269	willow oak	<i>Quercus phellos</i>	33.2	Good	16
270	willow oak	<i>Quercus phellos</i>	33.3	Good	16
271	willow oak	<i>Quercus phellos</i>	41.5	Good	16
272	willow oak	<i>Quercus phellos</i>	34.9	Good	16
273	willow oak	<i>Quercus phellos</i>	39.0	Good	16
274	willow oak	<i>Quercus phellos</i>	31.4	Good	16
275	willow oak	<i>Quercus phellos</i>	47.4	Good	16
276	willow oak	<i>Quercus phellos</i>	38.1	Good	16
277	willow oak	<i>Quercus phellos</i>	31.2	Good	16
278	honey locust	<i>Gleditsia triacanthos</i>	30.4	Fair	16
279	willow oak	<i>Quercus phellos</i>	39.3	Good	16
280	willow oak	<i>Quercus phellos</i>	37.0	Good	16
281	willow oak	<i>Quercus phellos</i>	31.9	Good	16



Table 3-58 SPECIMEN TREES					
282	pin oak	<i>Quercus palustris</i>	32.8	Good	16
283	pin oak	<i>Quercus palustris</i>	44.7	Good	16
284	willow oak	<i>Quercus phellos</i>	33.3	Good	16
285	white oak	<i>Quercus alba</i>	36.4	Good	18
286	loblolly pine	<i>Pinus taeda</i>	31.8	Fair	18
287	white oak	<i>Quercus alba</i>	32.7	Fair	18
288	white oak	<i>Quercus alba</i>	32.8	Fair	18
289	white oak	<i>Quercus alba</i>	34.0	Fair	18
290	white oak	<i>Quercus alba</i>	31.0	Good	18
291	white oak	<i>Quercus alba</i>	33.9	Good	18
292	southern red oak	<i>Quercus falcata</i>	34.0	Fair	18
293	tulip poplar	<i>Liriodendron tulipifera</i>	36.4	Fair	19
294	red maple	<i>Acer rubrum</i>	31.0	Poor	19
295	red maple	<i>Acer rubrum</i>	31.4	Fair	19
296	tulip poplar	<i>Liriodendron tulipifera</i>	43.4	Fair	19
297	tulip poplar	<i>Liriodendron tulipifera</i>	42.4	Poor	19
298	tulip poplar	<i>Liriodendron tulipifera</i>	34.4	Good	19
299	tulip poplar	<i>Liriodendron tulipifera</i>	38.4	Good	19
300	willow oak	<i>Quercus phellos</i>	43.0	Good	19
301	sweetgum	<i>Liquidambar styraciflua</i>	32.0	Fair	19
302	eastern cottonwood	<i>Populus deltoides</i>	36.1	Fair	19
303	tulip poplar	<i>Liriodendron tulipifera</i>	31.0	Good	20
304	swamp white oak	<i>Quercus bicolor</i>	47.5	Good	20
305	northern red oak	<i>Quercus rubra</i>	31.5	Fair	20
306	willow oak	<i>Quercus phellos</i>	48.0	Fair	21
307	white oak	<i>Quercus alba</i>	44.8	Good	21
308	pin oak	<i>Quercus palustris</i>	47.7	Good	21
309	chestnut oak	<i>Quercus prinus</i>	36.2	Good	23
310	willow oak	<i>Quercus phellos</i>	43.4	Good	23
311	tulip poplar	<i>Liriodendron tulipifera</i>	31.5	Good	23
312	tulip poplar	<i>Liriodendron tulipifera</i>	32.0	Good	23
313	tulip poplar	<i>Liriodendron tulipifera</i>	44.0	Good	23
314	white oak	<i>Quercus alba</i>	38.0	Good	24
315	northern red oak	<i>Quercus rubra</i>	47.5	Good	24

## 4 CONCLUSIONS

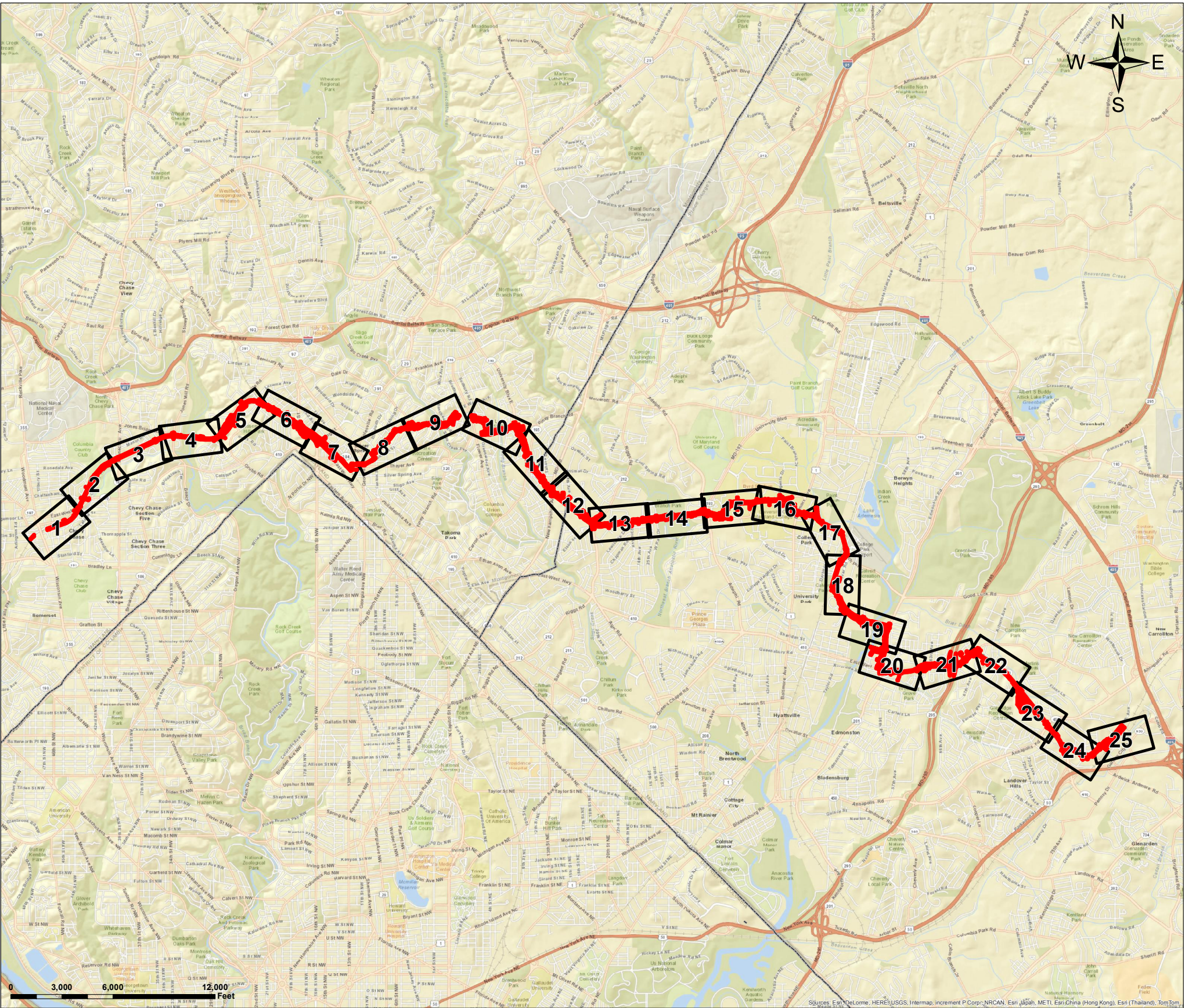
A total of 56 forest stands, totaling 52 acres, were identified with the FSD study area (See Table 4-1). A total of 54 acres of the forest stands are located in Prince George's County, and 46 acres



PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP

Montgomery and Prince George's Counties, Maryland

March 2014



Legend

- MAP SHEETS
- FSD STUDY AREA
- COUNTY BOUNDARY

THIS PLAN WAS PREPARED BY:  
BRIDGETTE GARNER  
COASTAL RESOURCES, INC.  
MARYLAND DEPARTMENT OF NATURAL RESOURCES  
QUALIFIED PROFESSIONAL (2009)

*Bridgette Garner*

3/7/2014

BRIDGETTE GARNER  
COASTAL RESOURCES, INC.

DATE

REVISIONS		
REV.NO.	DATE	DESCRIPTIONS

COMMENTS		
NO.	DATE	DESCRIPTION

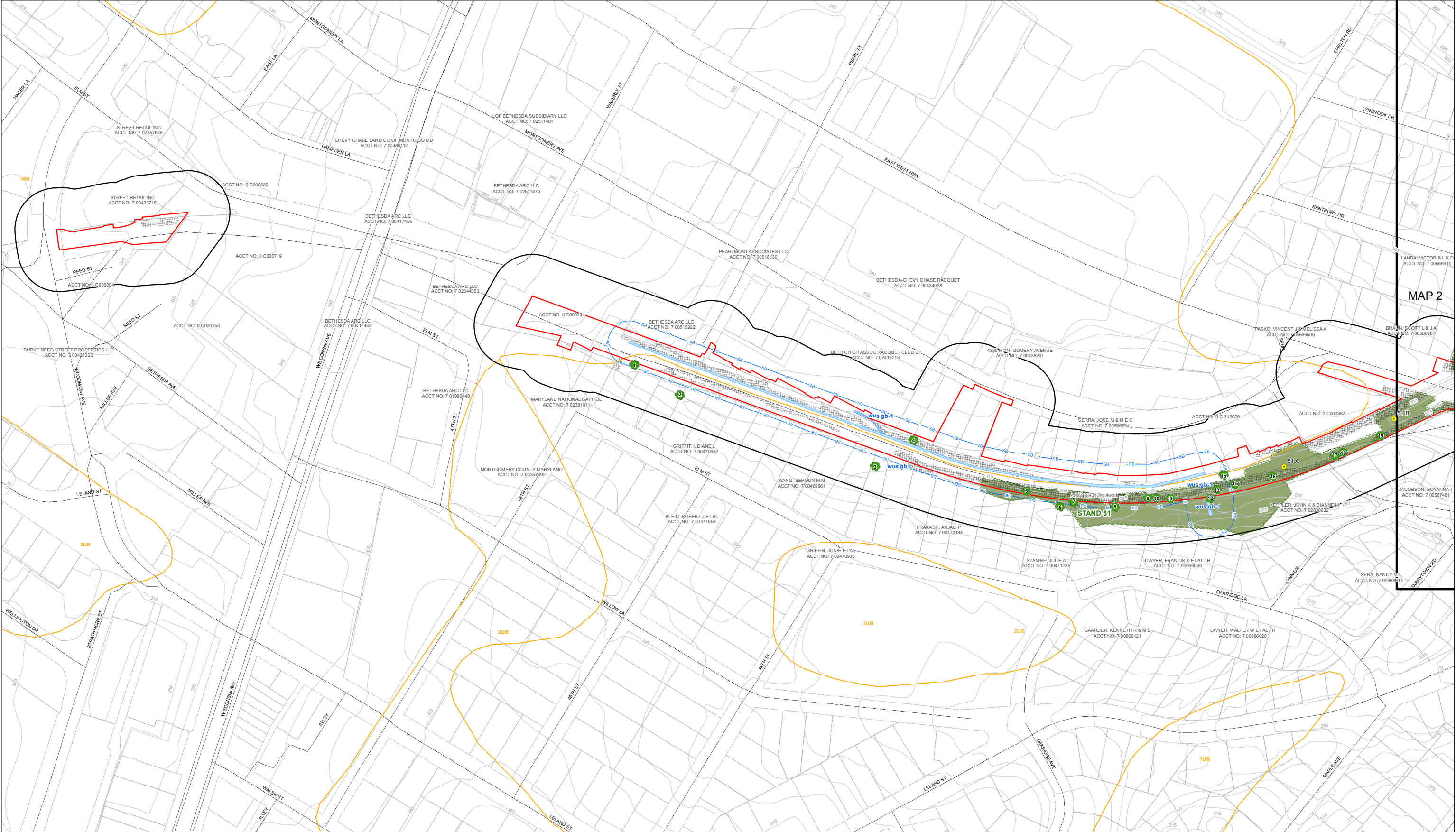


PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP

Montgomery and Prince George's Counties, Maryland

COVER SHEET





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COASTAL RESOURCES, INC.

3/7/2014  
DATE

1 Inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	ROADWAY	INTERMITTENT/PERENNIAL STREAM	OPEN WATER
FEIS LOD	FOREST STAND	EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
PROPERTY BOUNDARY	SPECIMEN TREE	DELINEATED WETLAND	25% SLOPES
EXISTING CONTOUR	SAMPLE PLOT	25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
		50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

**VICINITY MAP**  
1 in = 2 miles

**Purple Line**

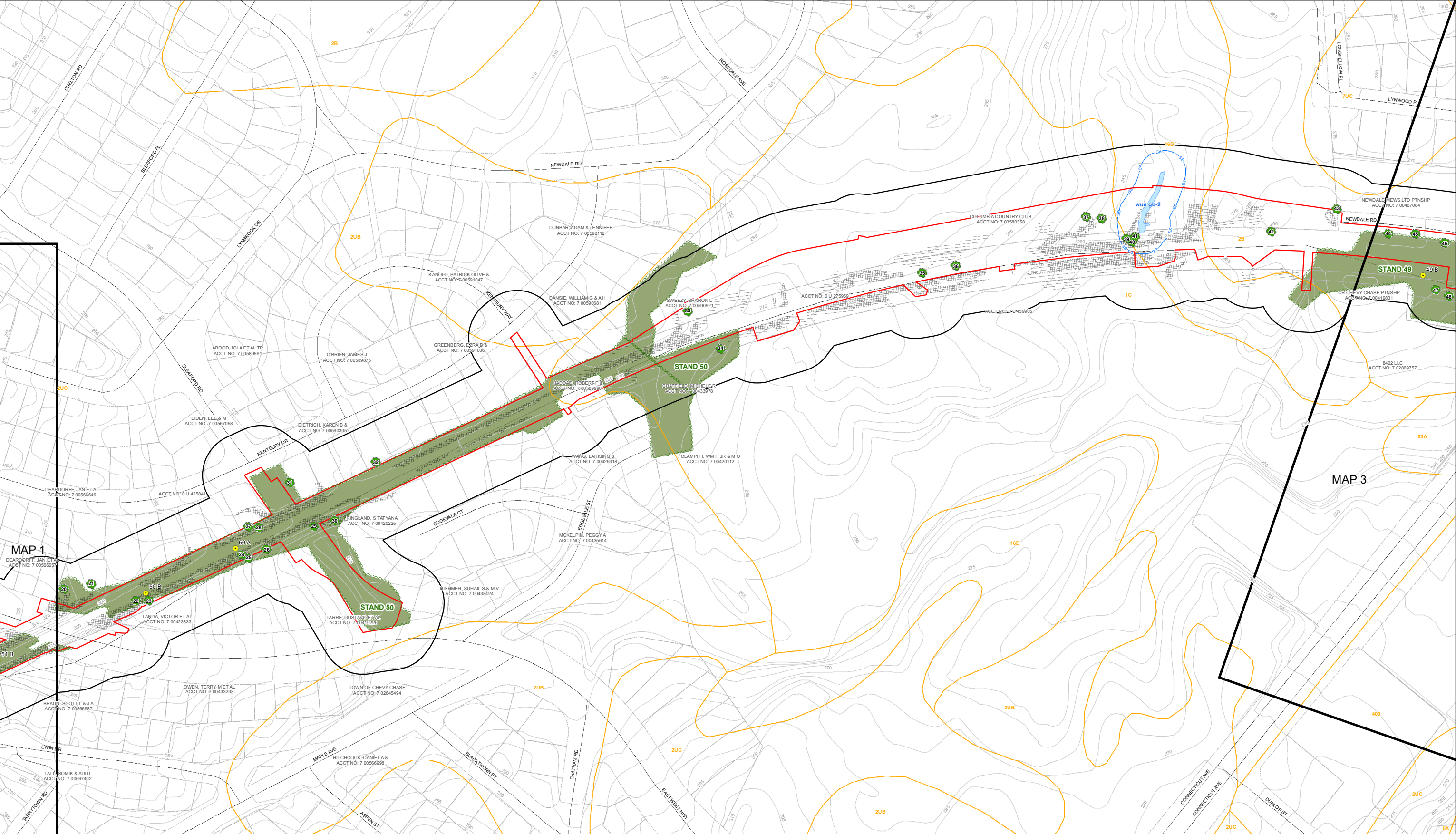
**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 1 of 25





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0 50 100 200 Feet

**LEGEND:**

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FEIS LOD	FOREST STAND	EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
PROPERTY BOUNDARY	SPECIMEN TREE	DELINEATED WETLAND	25% SLOPES
EXISTING CONTOUR	SAMPLE PLOT	25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
		50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

**Purple Line**

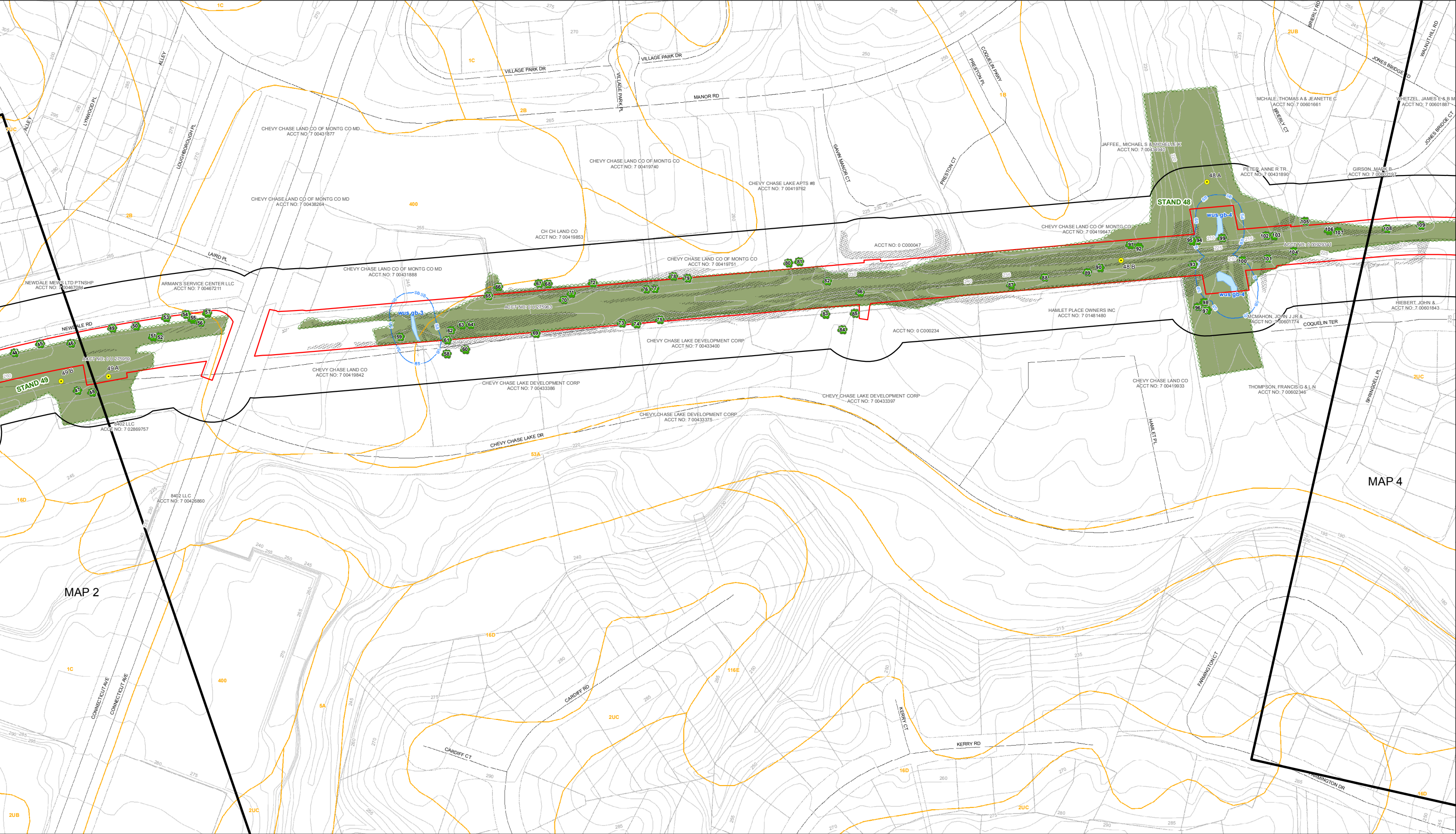
**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 2 of 25



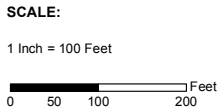


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3/7/2014  
DATE



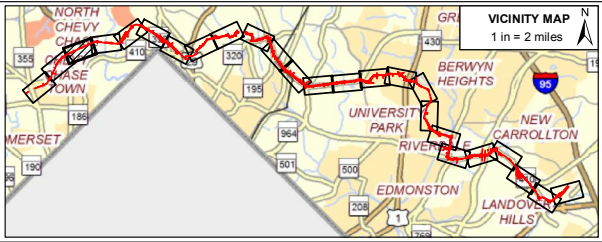
LEGEND:

- FSD STUDY AREA
- FEIS LOD
- PROPERTY BOUNDARY
- EXISTING CONTOUR

- ROADWAY
- FOREST STAND
- SPECIMEN TREE
- SAMPLE PLOT

- INTERMITTENT/PERENNIAL STREAM
- EPHEMERAL CHANNEL
- DELINEATED WETLAND
- 25-FT WETLAND BUFFER
- 50-FT STREAM BUFFER

- OPEN WATER
- 15% SLOPES (ON ERODIBLE SOIL)
- 25% SLOPES
- SOIL TYPE BOUNDARY
- 100-YEAR FLOODPLAIN



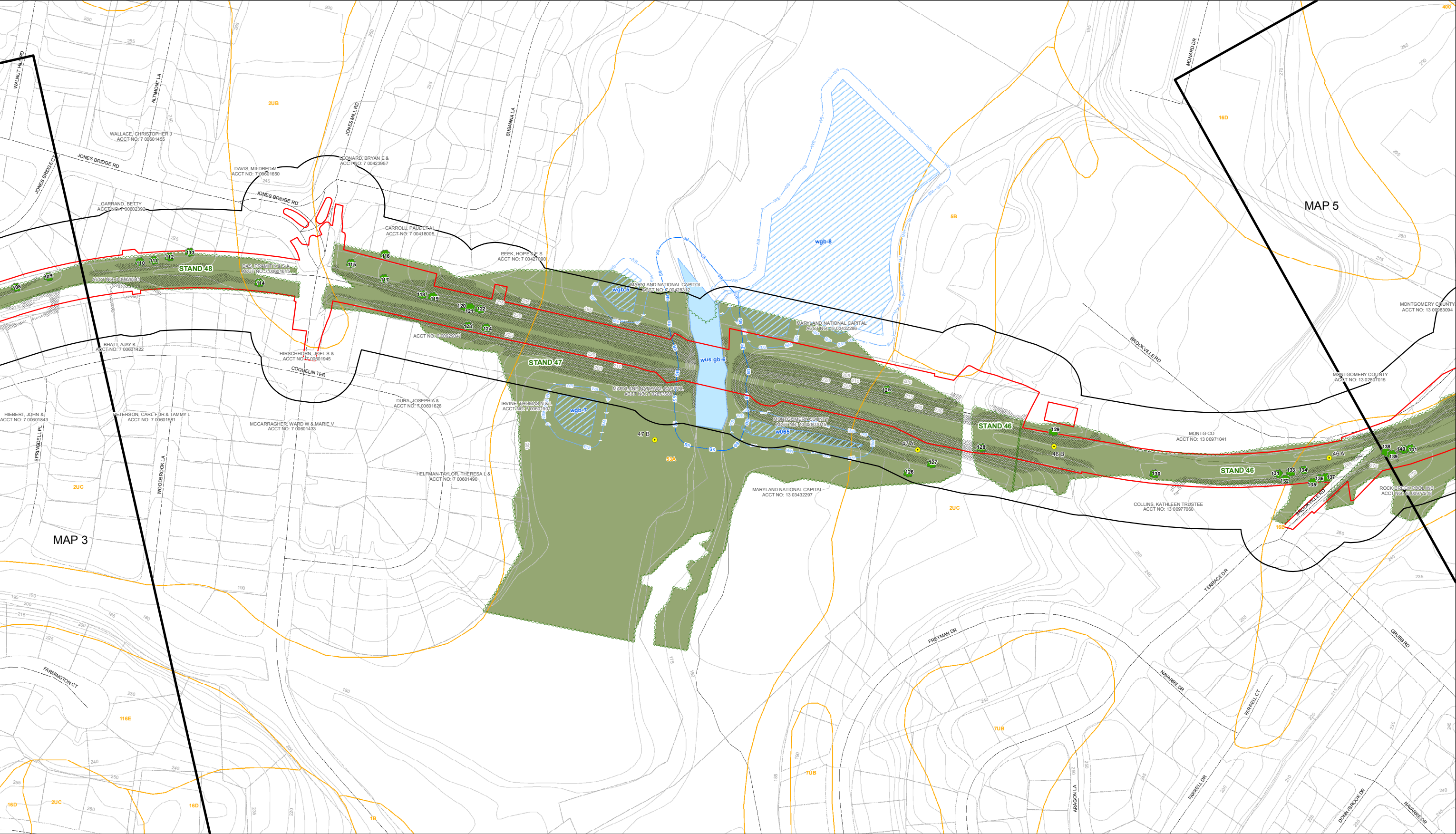
PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 3 of 25





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COASTAL RESOURCES, INC.

3/7/2014  
DATE

SCALE:  
1 Inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	FEIS LOD	PROPERTY BOUNDARY	EXISTING CONTOUR
ROADWAY	FOREST STAND	SPECIMEN TREE	SAMPLE PLOT

INTERMITTENT/PERENNIAL STREAM	OPEN WATER
EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
DELINEATED WETLAND	25% SLOPES
25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

**Purple Line**

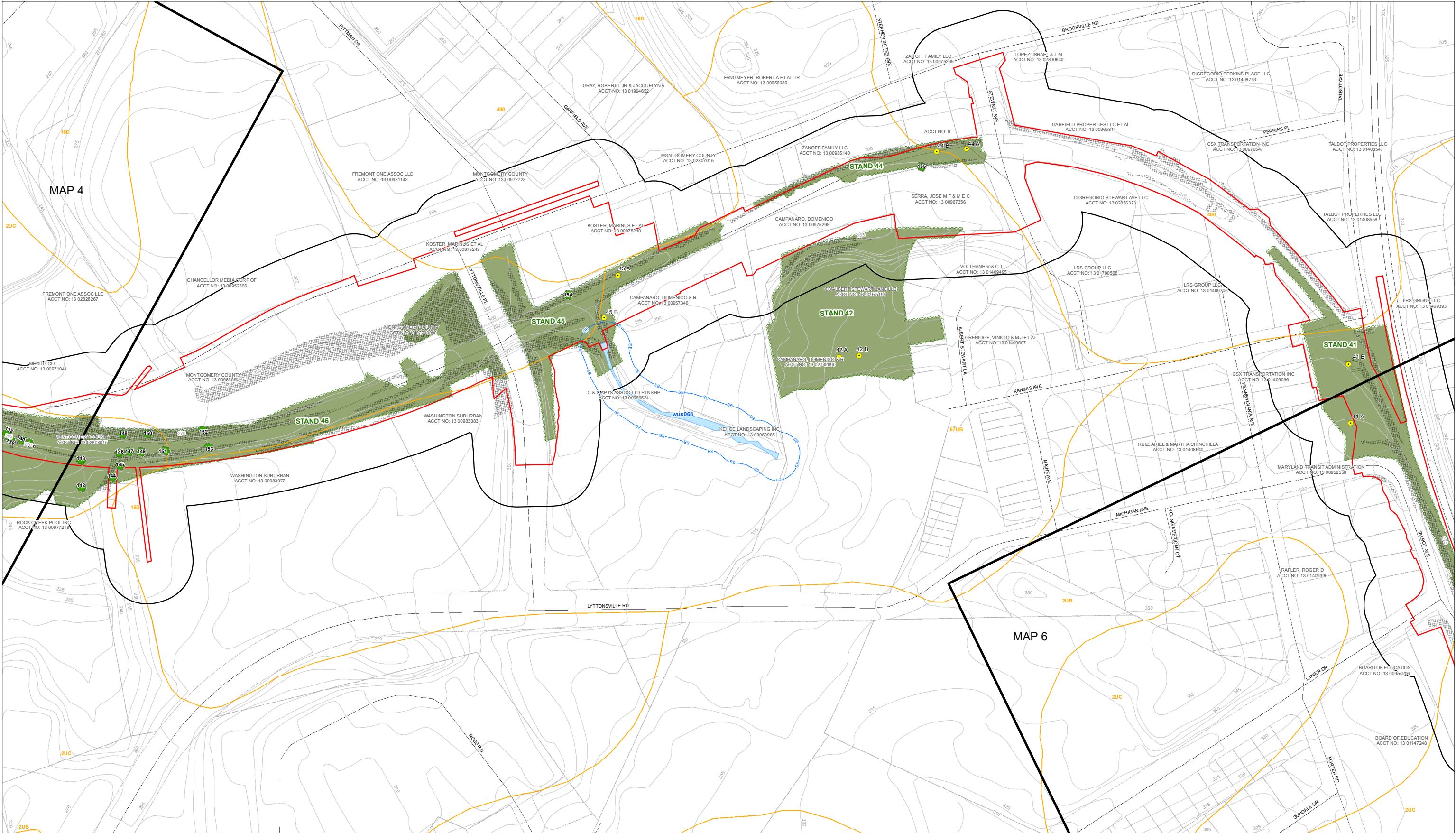
**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 4 of 25





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COASTAL RESOURCES, INC.

3/7/2014

DATE

SCALE:

1 inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	FEIS LOD	PROPERTY BOUNDARY	EXISTING CONTOUR
ROADWAY	FOREST STAND	SPECIMEN TREE	SAMPLE PLOT

INTERMITTENT/PERENNIAL STREAM	OPEN WATER
EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
DELINEATED WETLAND	25% SLOPES
25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

**VICINITY MAP**  
1 in = 2 miles

**Purple Line**

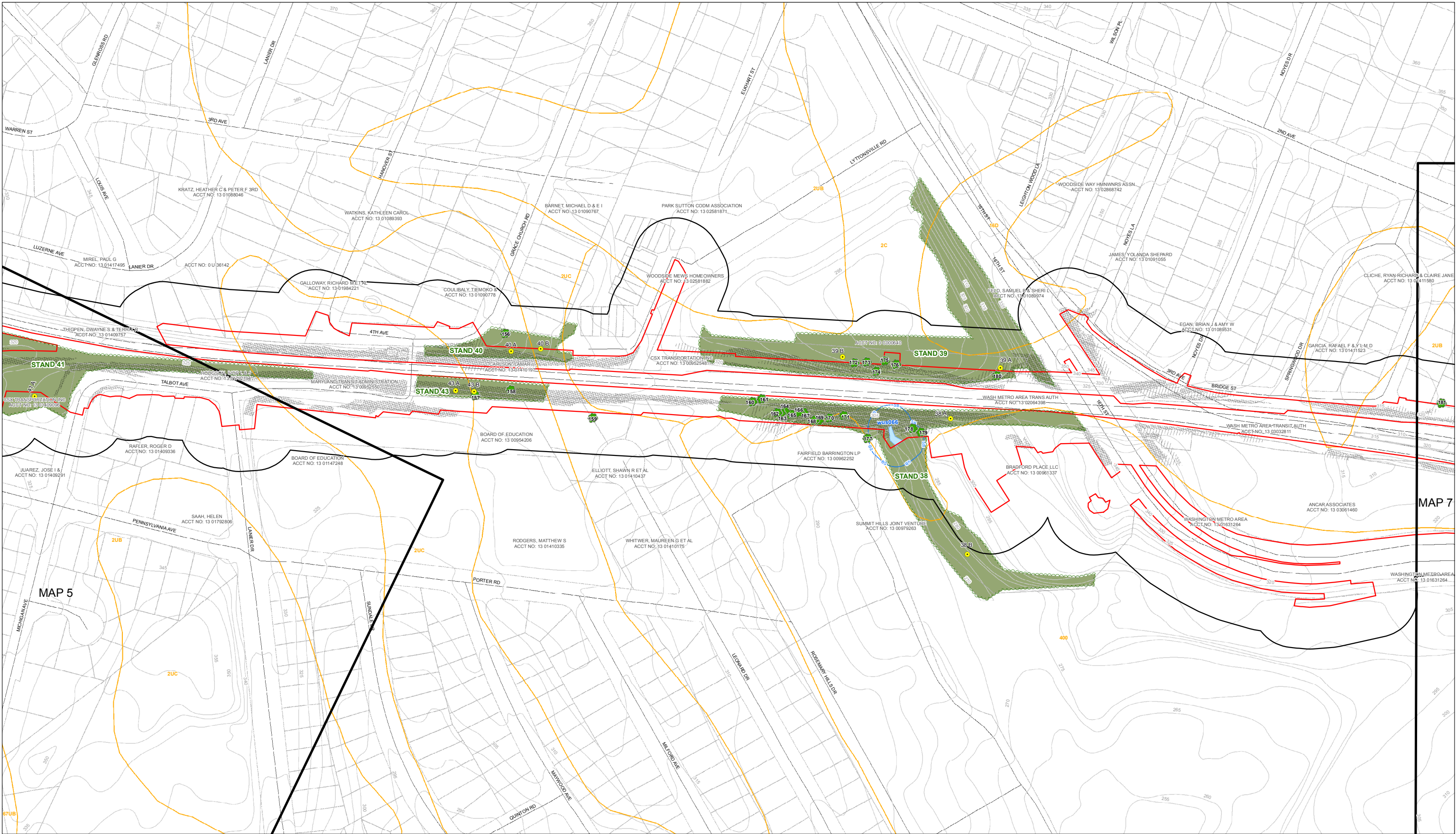
**FOREST STAND DELINEATION ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 5 of 25





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COASTAL RESOURCES, INC.

3/7/2014

DATE

SCALE:

1 inch = 100 Feet

0 50 100 200 Feet

LEGEND:

	FSD STUDY AREA		ROADWAY		FOREST STAND		INTERMITTENT/PERENNIAL STREAM		OPEN WATER
	FEIS LOD		SAMPLE PLOT		DELINEATED WETLAND		25-FT WETLAND BUFFER		15% SLOPES (ON ERODIBLE SOIL)
	PROPERTY BOUNDARY		SOIL TYPE BOUNDARY		50-FT STREAM BUFFER		100-YEAR FLOODPLAIN		25% SLOPES
	EXISTING CONTOUR								

VICINITY MAP  
1 in = 2 miles

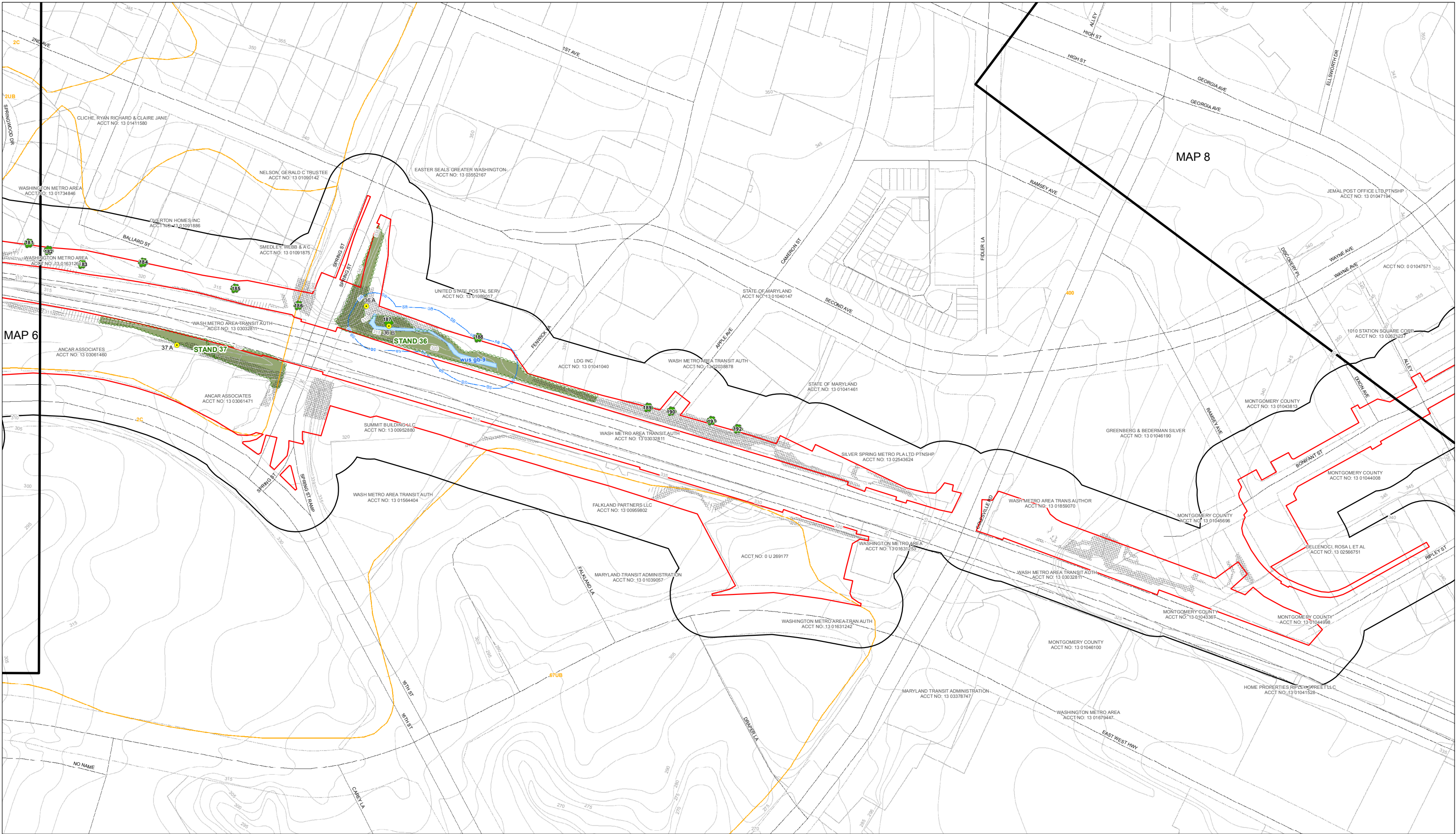
**Purple Line**  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 6 of 25





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3/7/2014

DATE

**SCALE:**

1 inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

	FSD STUDY AREA		ROADWAY		INTERMITTENT/PERENNIAL STREAM		OPEN WATER
	FEIS LOD		FOREST STAND		EPHEMERAL CHANNEL		15% SLOPES (ON ERODIBLE SOIL)
	PROPERTY BOUNDARY		SPECIMEN TREE		DELINEATED WETLAND		25% SLOPES
	EXISTING CONTOUR		SAMPLE PLOT		25-FT WETLAND BUFFER		SOIL TYPE BOUNDARY
					50-FT STREAM BUFFER		100-YEAR FLOODPLAIN

**VICINITY MAP**

1 in = 2 miles

**Purple Line**

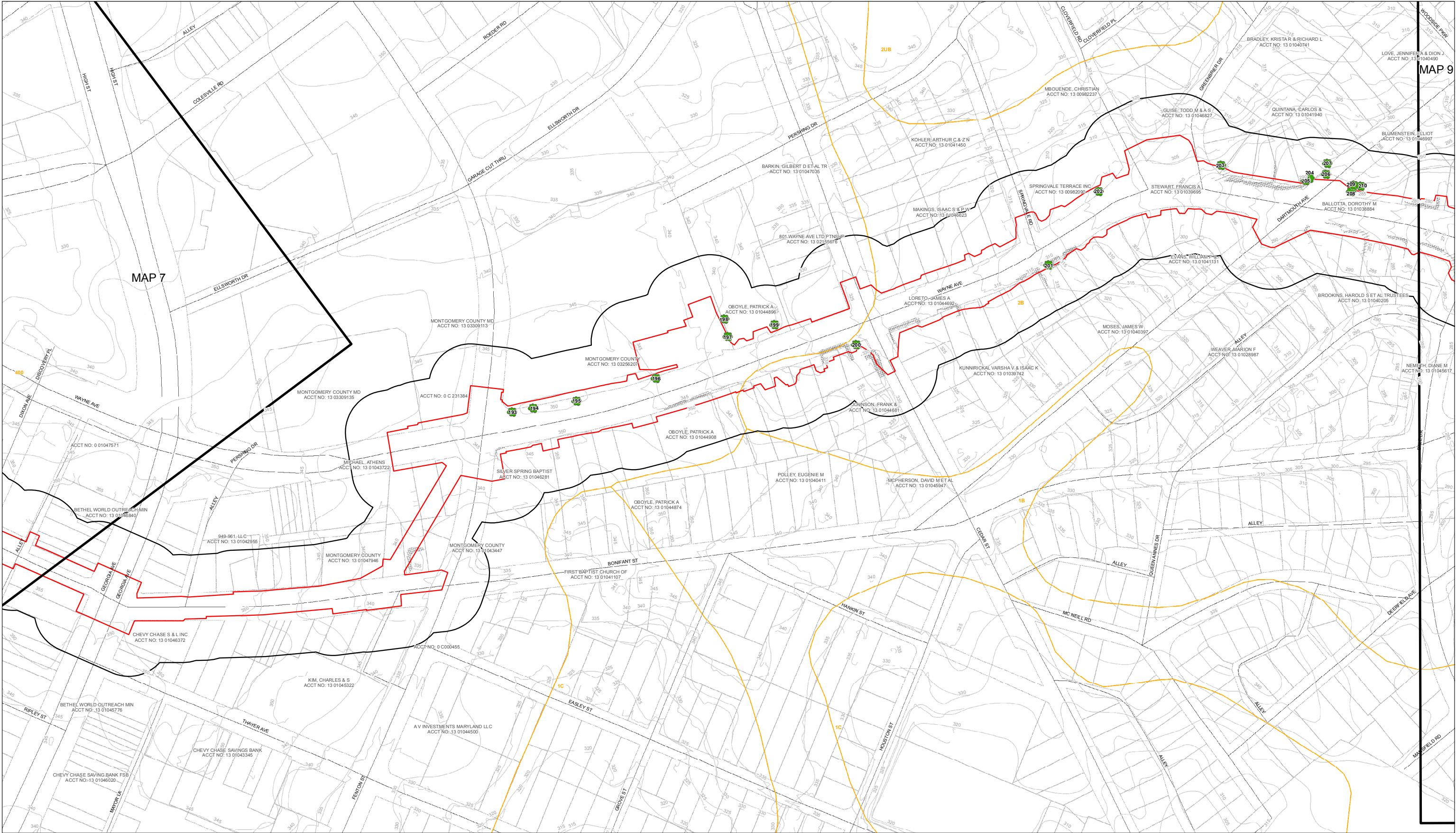
**FOREST STAND DELINEATION ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 7 of 25





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3/7/2014

DATE

**SCALE:**

1 inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

	FSD STUDY AREA		ROADWAY		INTERMITTENT/PERENNIAL STREAM		OPEN WATER
	FEIS LOD		FOREST STAND		EPHEMERAL CHANNEL		15% SLOPES (ON ERODIBLE SOIL)
	PROPERTY BOUNDARY		SPECIMEN TREE		DELINEATED WETLAND		25% SLOPES
	EXISTING CONTOUR		SAMPLE PLOT		25-FT WETLAND BUFFER		SOIL TYPE BOUNDARY
					50-FT STREAM BUFFER		100-YEAR FLOODPLAIN

**Purple Line**

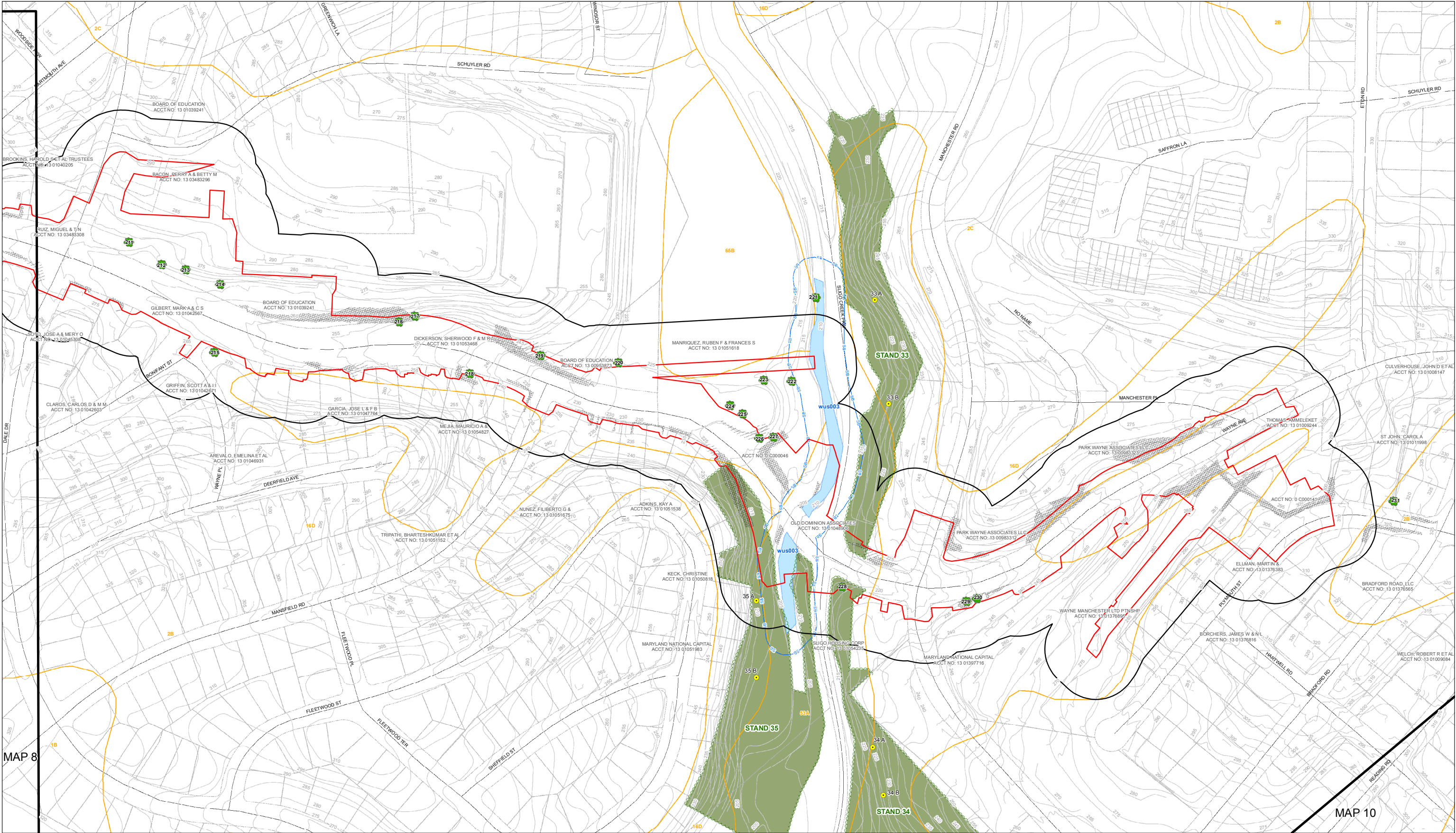
**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 8 of 25





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3/7/2014

DATE

SCALE:

1 inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

	FSD STUDY AREA		ROADWAY		INTERMITTENT/PERENNIAL STREAM		OPEN WATER
	FEIS LOD		FOREST STAND		EPHEMERAL CHANNEL		15% SLOPES (ON ERODIBLE SOIL)
	PROPERTY BOUNDARY		SPECIMEN TREE		DELINEATED WETLAND		25% SLOPES
	EXISTING CONTOUR		SAMPLE PLOT		25-FT WETLAND BUFFER		SOIL TYPE BOUNDARY
					50-FT STREAM BUFFER		100-YEAR FLOODPLAIN

**Purple Line**

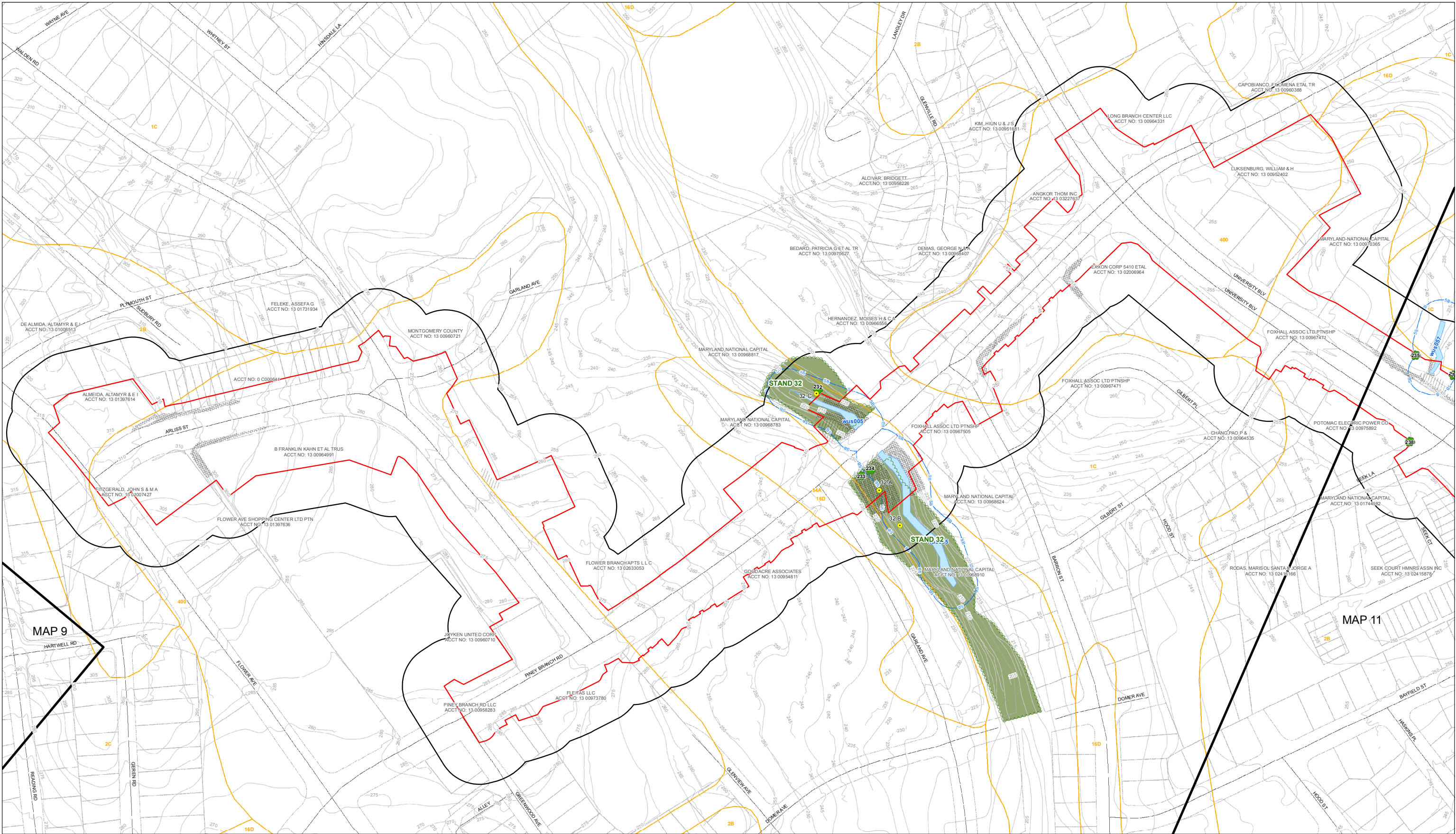
**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 9 of 25





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COASTAL RESOURCES, INC.

3/7/2014

DATE

SCALE:

1 inch = 100 Feet

0 50 100 200 Feet

LEGEND:

	FSD STUDY AREA		ROADWAY		INTERMITTENT/PERENNIAL STREAM		OPEN WATER
	FEIS LOD		FOREST STAND		EPHEMERAL CHANNEL		15% SLOPES (ON ERODIBLE SOIL)
	PROPERTY BOUNDARY		SPECIMEN TREE		DELINEATED WETLAND		25% SLOPES
	EXISTING CONTOUR		SAMPLE PLOT		25-FT WETLAND BUFFER		SOIL TYPE BOUNDARY
					50-FT STREAM BUFFER		100-YEAR FLOODPLAIN

**Purple Line**

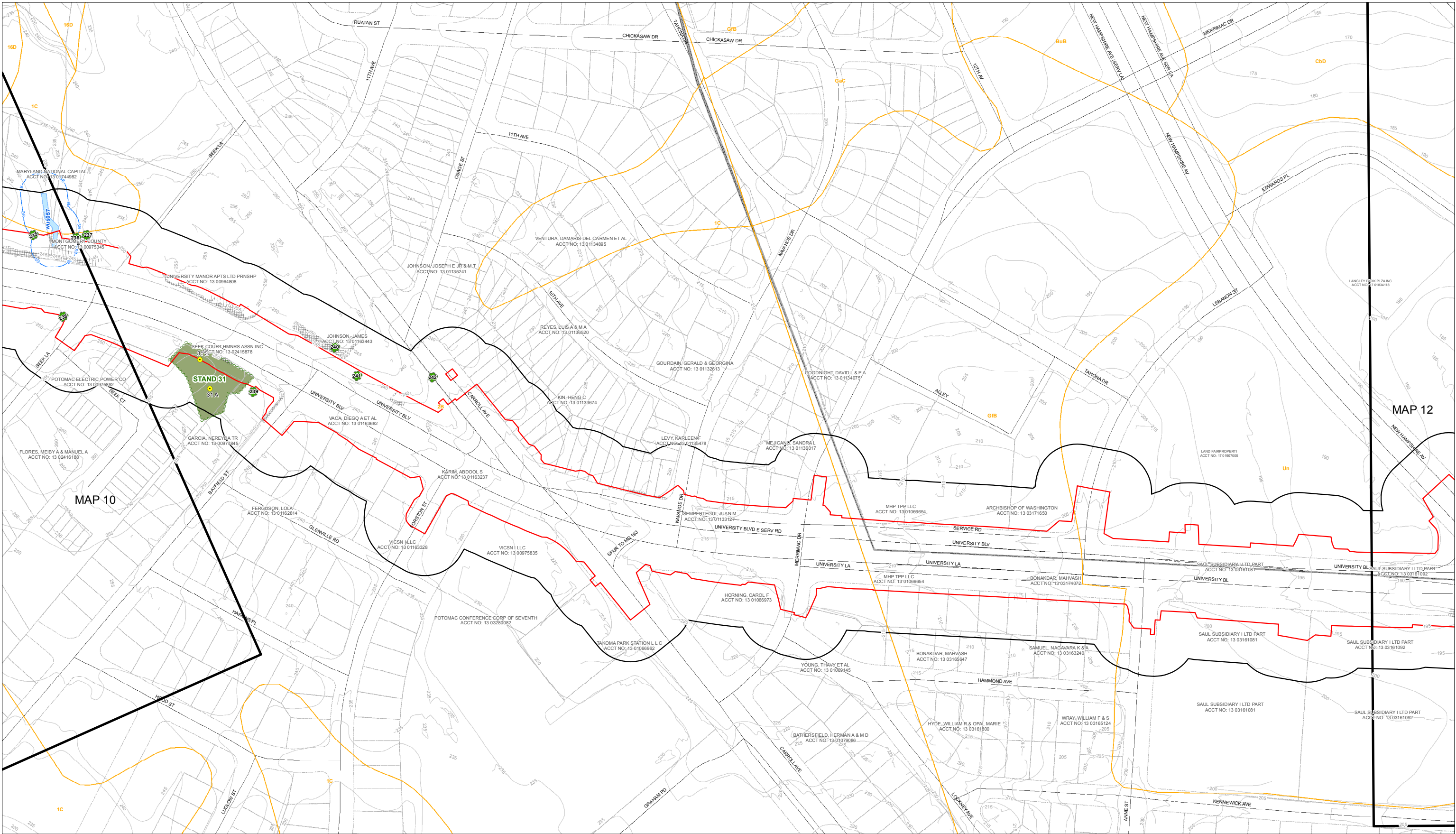
**FOREST STAND DELINEATION ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 10 of 25





MAP 12

MAP 10

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COASTAL RESOURCES, INC.

3/7/2014

DATE

SCALE:

1 inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

	FSD STUDY AREA		ROADWAY		FOREST STAND		SPECIMEN TREE		SAMPLE PLOT
	FEIS LOD		PROPERTY BOUNDARY		EXISTING CONTOUR		INTERMITTENT/PERENNIAL STREAM		EPHEMERAL CHANNEL
	DELINEATED WETLAND		25-FT WETLAND BUFFER		50-FT STREAM BUFFER		OPEN WATER		15% SLOPES (ON ERODIBLE SOIL)
	25% SLOPES		SOIL TYPE BOUNDARY		100-YEAR FLOODPLAIN				

**VICINITY MAP**

1 in = 2 miles

**Purple Line**

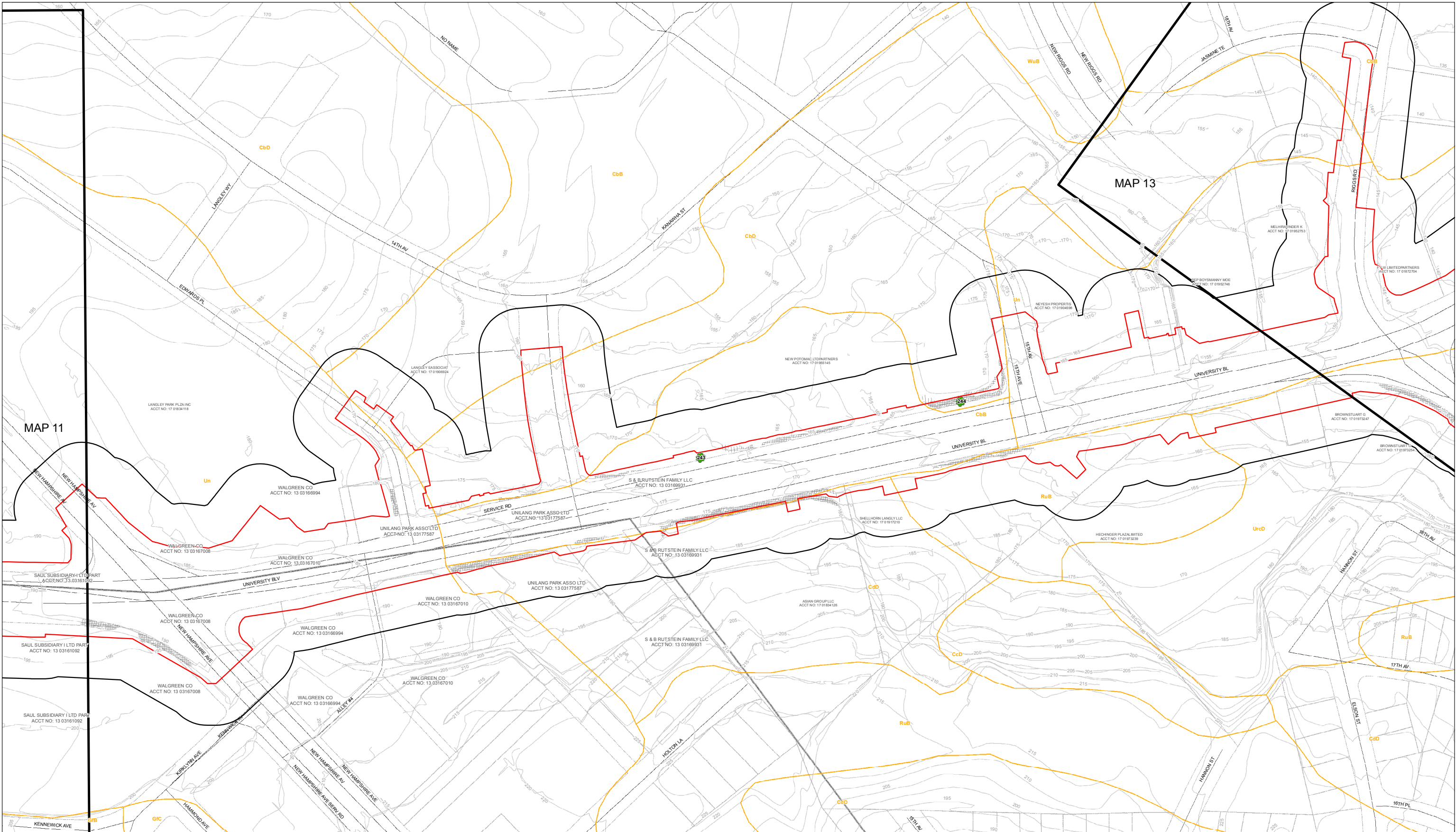
**FOREST STAND DELINEATION ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 11 of 25





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BRIDGETTE GARNER  
COASTAL RESOURCES, INC.

3/7/2014

DATE

SCALE:

1 inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

	FSD STUDY AREA		ROADWAY		INTERMITTENT/PERENNIAL STREAM		OPEN WATER
	FEIS LOD		FOREST STAND		EPHEMERAL CHANNEL		15% SLOPES (ON ERODIBLE SOIL)
	PROPERTY BOUNDARY		SPECIMEN TREE		DELINEATED WETLAND		25% SLOPES
	EXISTING CONTOUR		SAMPLE PLOT		25-FT WETLAND BUFFER		SOIL TYPE BOUNDARY
					50-FT STREAM BUFFER		100-YEAR FLOODPLAIN

**VICINITY MAP**  
1 in = 2 miles

**Purple Line**

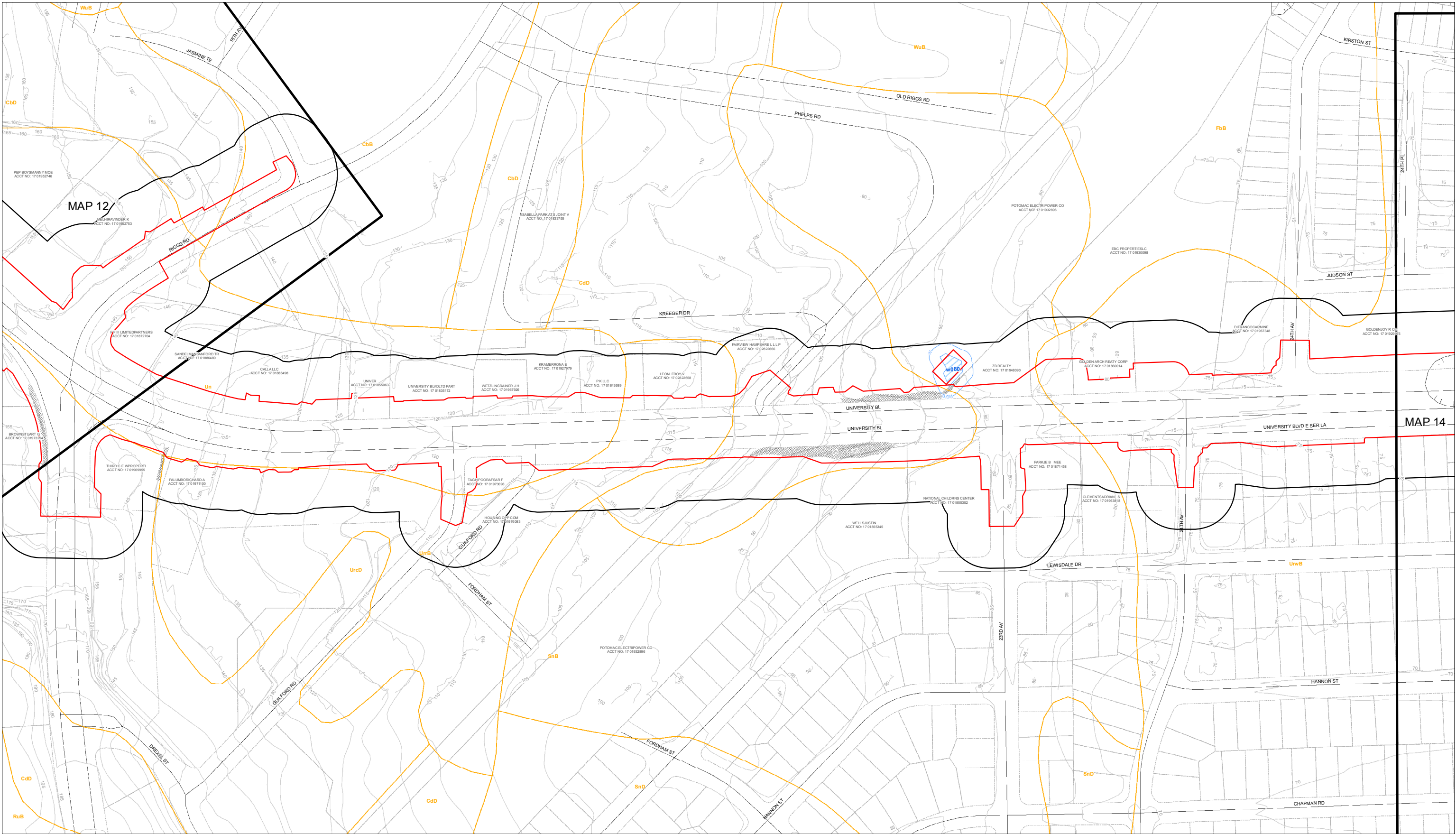
**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 12 of 25





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BRIDGETTE GARNER  
COASTAL RESOURCES, INC.

3/7/2014

DATE

SCALE:

1 inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

	FSD STUDY AREA		ROADWAY		INTERMITTENT/PERENNIAL STREAM		OPEN WATER
	FEIS LOD		FOREST STAND		EPHEMERAL CHANNEL		15% SLOPES (ON ERODIBLE SOIL)
	PROPERTY BOUNDARY		SPECIMEN TREE		DELINEATED WETLAND		25% SLOPES
	EXISTING CONTOUR		SAMPLE PLOT		25-FT WETLAND BUFFER		SOIL TYPE BOUNDARY
					50-FT STREAM BUFFER		100-YEAR FLOODPLAIN

**VICINITY MAP**

1 in = 2 miles

**Purple Line**

COASTAL RESOURCES, INC.

**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

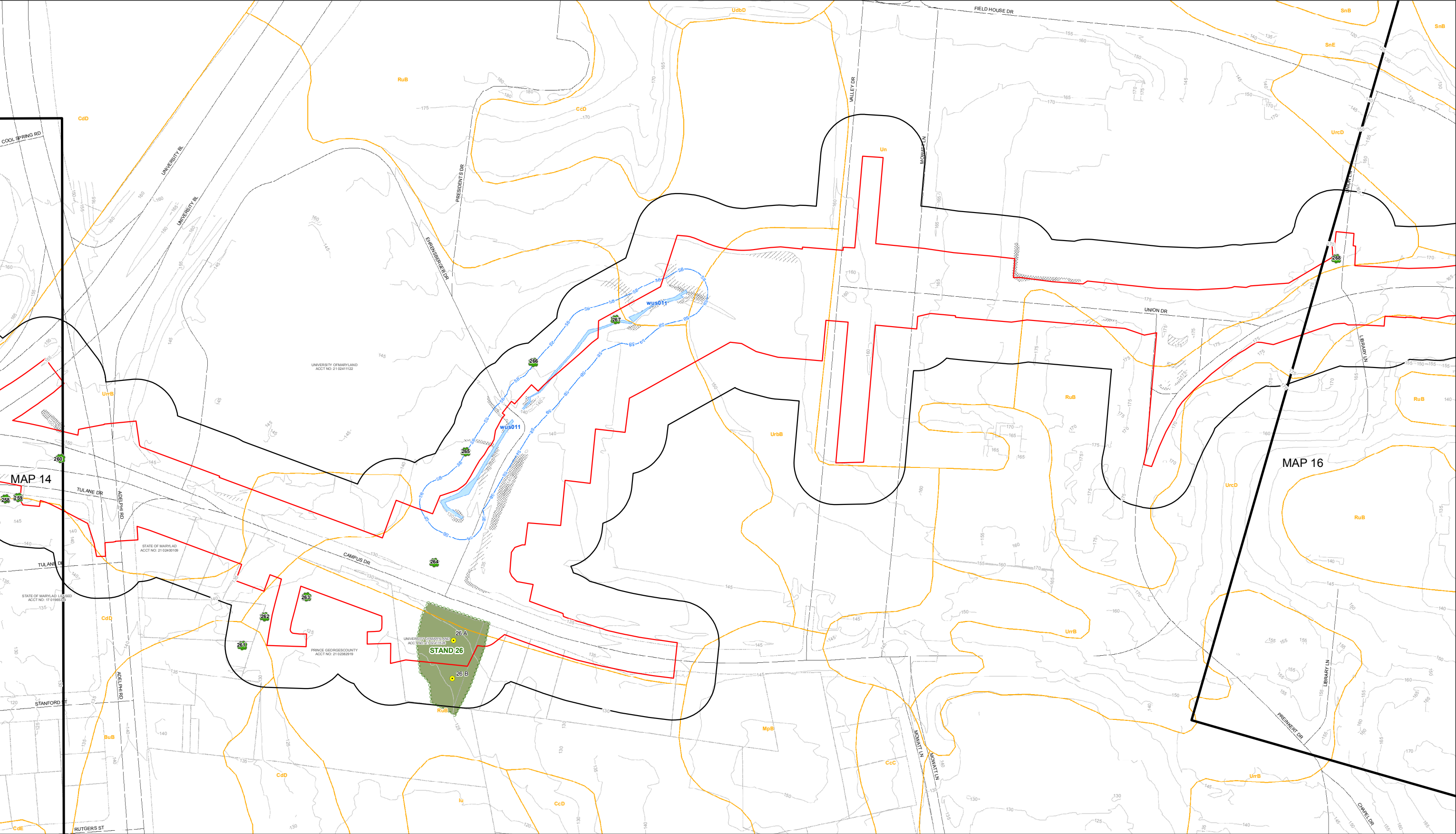
Montgomery and Prince George's Counties, Maryland

March 2014

MAP 13 of 25







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BRIDGETTE GARNER  
COASTAL RESOURCES, INC.

3/7/2014  
DATE

1 Inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	ROADWAY	INTERMITTENT/PERENNIAL STREAM	OPEN WATER
FEIS LOD	FOREST STAND	EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
PROPERTY BOUNDARY	SPECIMEN TREE	DELINEATED WETLAND	25% SLOPES
EXISTING CONTOUR	SAMPLE PLOT	25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
		50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

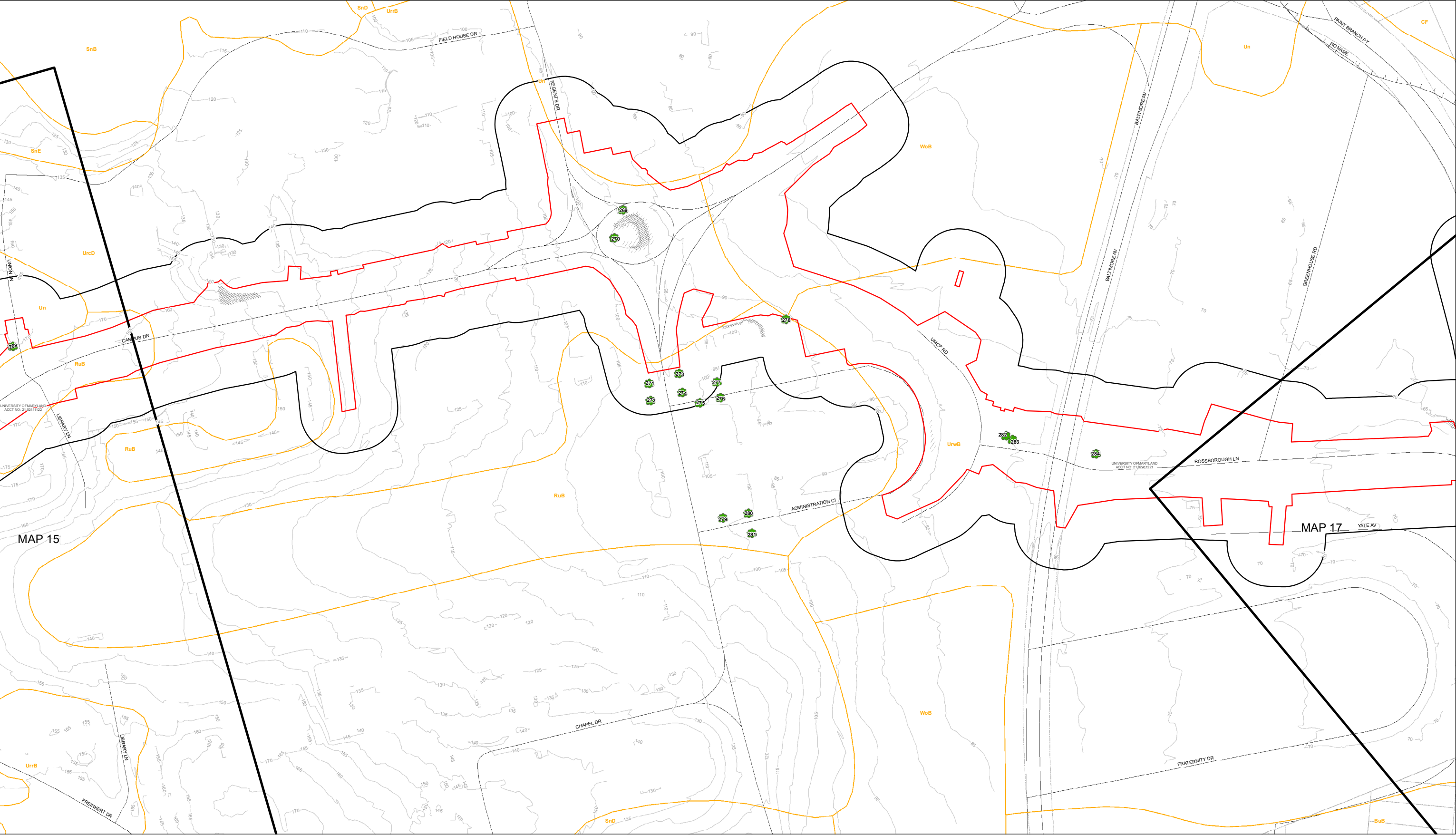
**Purple Line**

**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 15 of 25



THIS PLAN WAS PREPARED BY:  
BRIDGETTE GARNER  
COASTAL RESOURCES, INC.  
MARYLAND DEPARTMENT OF NATURAL RESOURCES  
QUALIFIED PROFESSIONAL (2009)

*Bridgette Garner*

BRIDGETTE GARNER  
COASTAL RESOURCES, INC.

3/7/2014  
DATE

SCALE:  
1 Inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	ROADWAY	INTERMITTENT/PERENNIAL STREAM	OPEN WATER
FEIS LOD	FOREST STAND	EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
PROPERTY BOUNDARY	SPECIMEN TREE	DELINEATED WETLAND	25% SLOPES
EXISTING CONTOUR	SAMPLE PLOT	25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
		50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

VICINITY MAP  
1 in = 2 miles

**Purple Line**

COASTAL RESOURCES, INC.

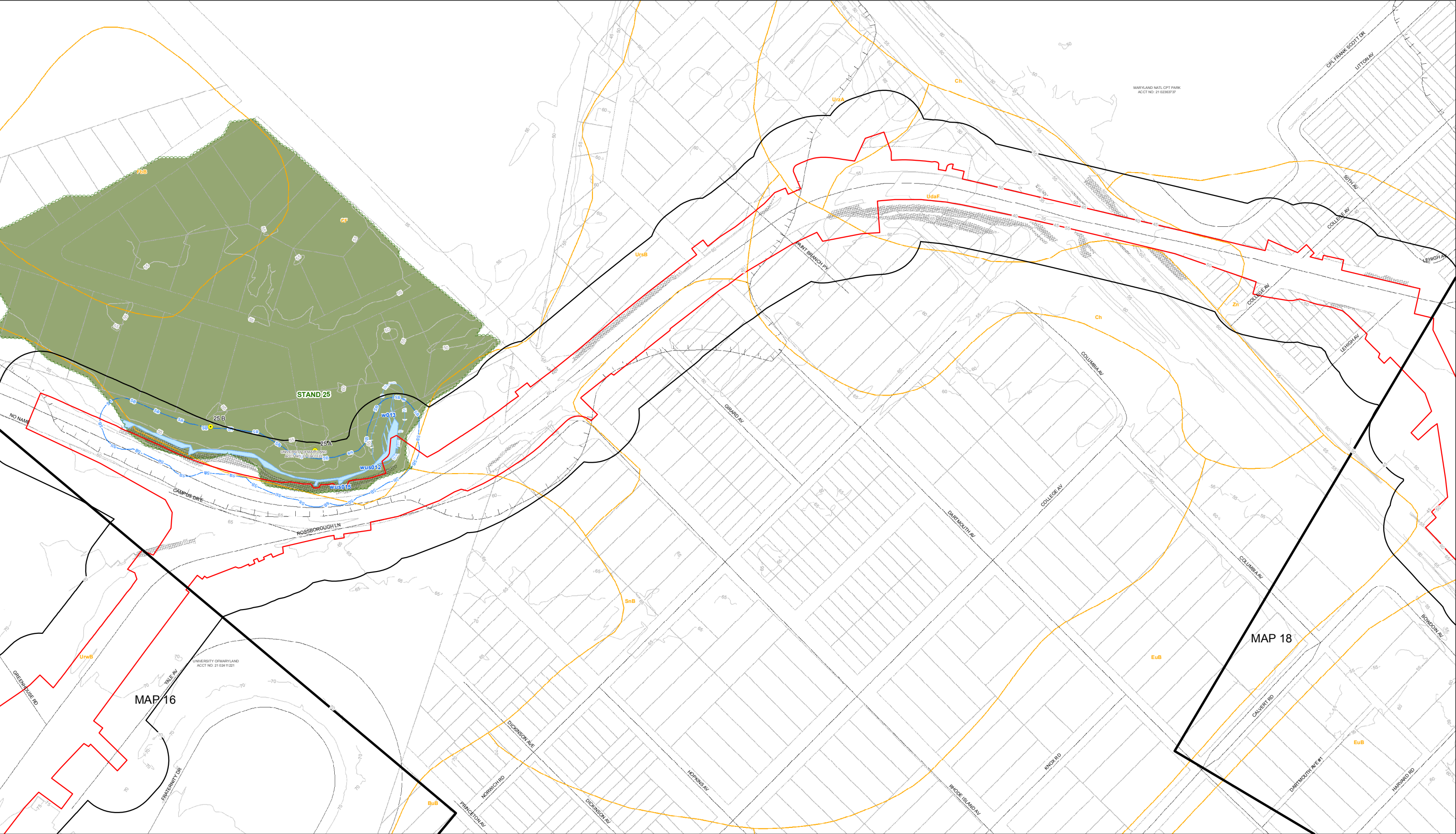
**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 16 of 25





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3/7/2014  
DATE

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0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	ROADWAY	INTERMITTENT/PERENNIAL STREAM	OPEN WATER
FEIS LOD	FOREST STAND	EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
PROPERTY BOUNDARY	SPECIMEN TREE	DELINEATED WETLAND	25% SLOPES
EXISTING CONTOUR	SAMPLE PLOT	25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
		50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

**Purple Line**

**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 17 of 25









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3/7/2014  
DATE

SCALE:  
1 Inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	ROADWAY	INTERMITTENT/PERENNIAL STREAM	OPEN WATER
FEIS LOD	FOREST STAND	EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
PROPERTY BOUNDARY	SPECIMEN TREE	DELINEATED WETLAND	25% SLOPES
EXISTING CONTOUR	SAMPLE PLOT	25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
		50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

**Purple Line**

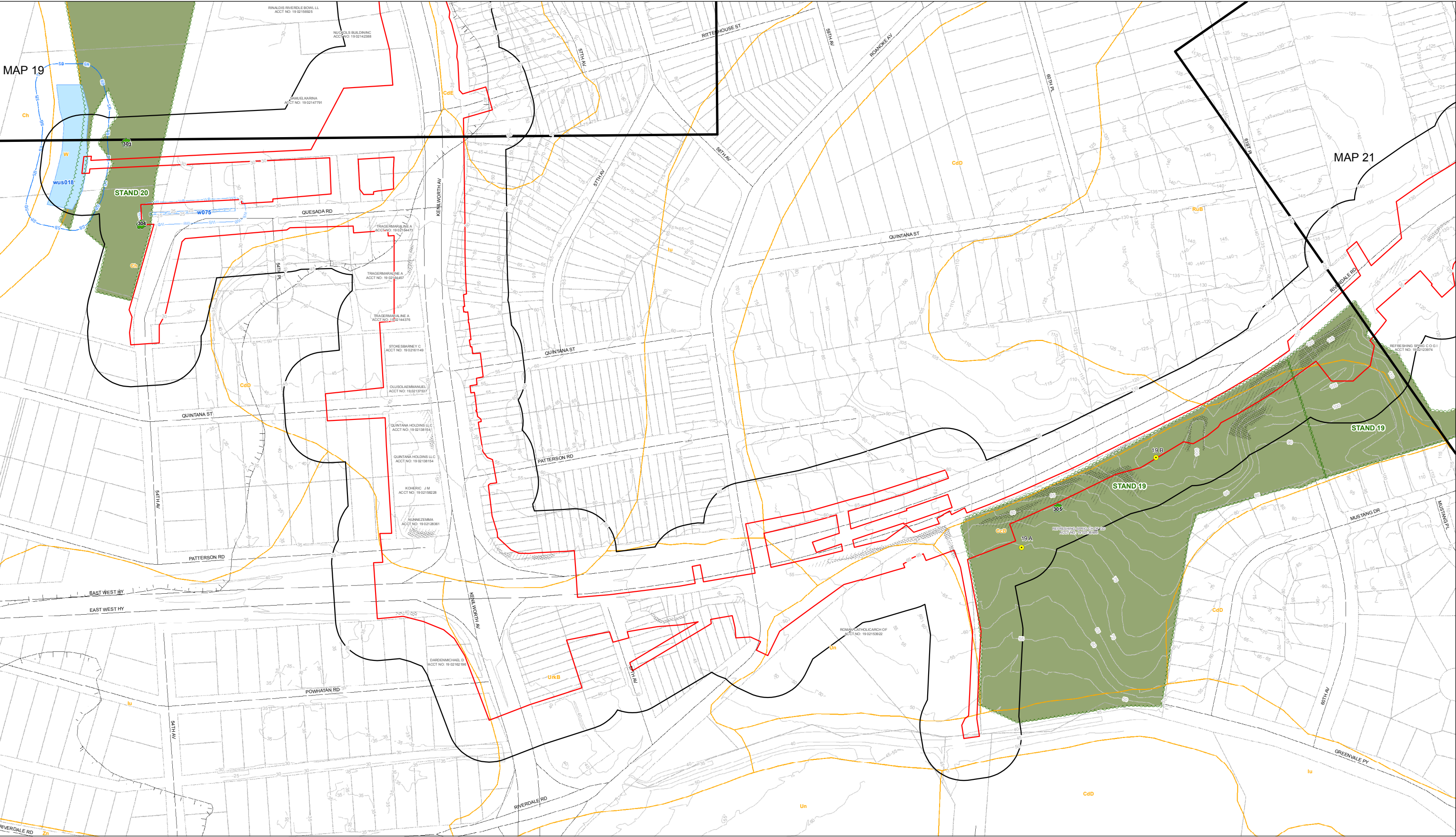
**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 19 of 25





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BRIDGETTE GARNER  
COASTAL RESOURCES, INC.

3/7/2014  
DATE

1 Inch = 100 Feet  
SCALE:

0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	FEIS LOD	PROPERTY BOUNDARY	EXISTING CONTOUR
ROADWAY	FOREST STAND	SPECIMEN TREE	SAMPLE PLOT

INTERMITTENT/PERENNIAL STREAM	OPEN WATER
EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
DELINEATED WETLAND	25% SLOPES
25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

**Purple Line**

**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

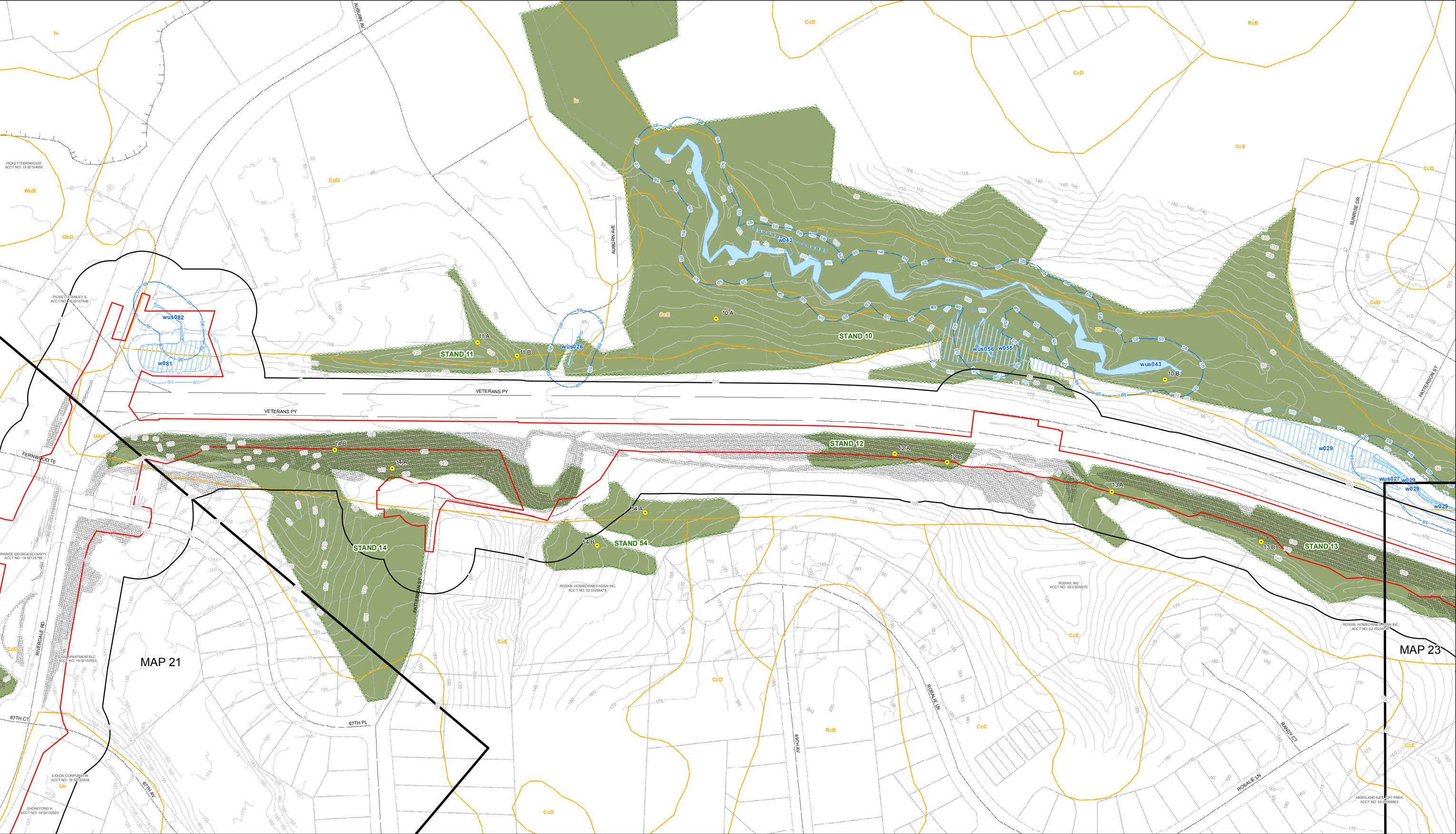
March 2014

MAP 20 of 25









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MARYLAND DEPARTMENT OF NATURAL RESOURCES  
QUALIFIED PROFESSIONAL (2009)

*Bridgette Garner*

BRIDGETTE GARNER  
COASTAL RESOURCES, INC.

3/7/2014  
DATE

1 Inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	FEIS LOD	PROPERTY BOUNDARY	EXISTING CONTOUR
ROADWAY	FOREST STAND	SPECIMEN TREE	SAMPLE PLOT

INTERMITTENT/PERENNIAL STREAM	OPEN WATER
EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
DELINEATED WETLAND	25% SLOPES
25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

**Purple Line**

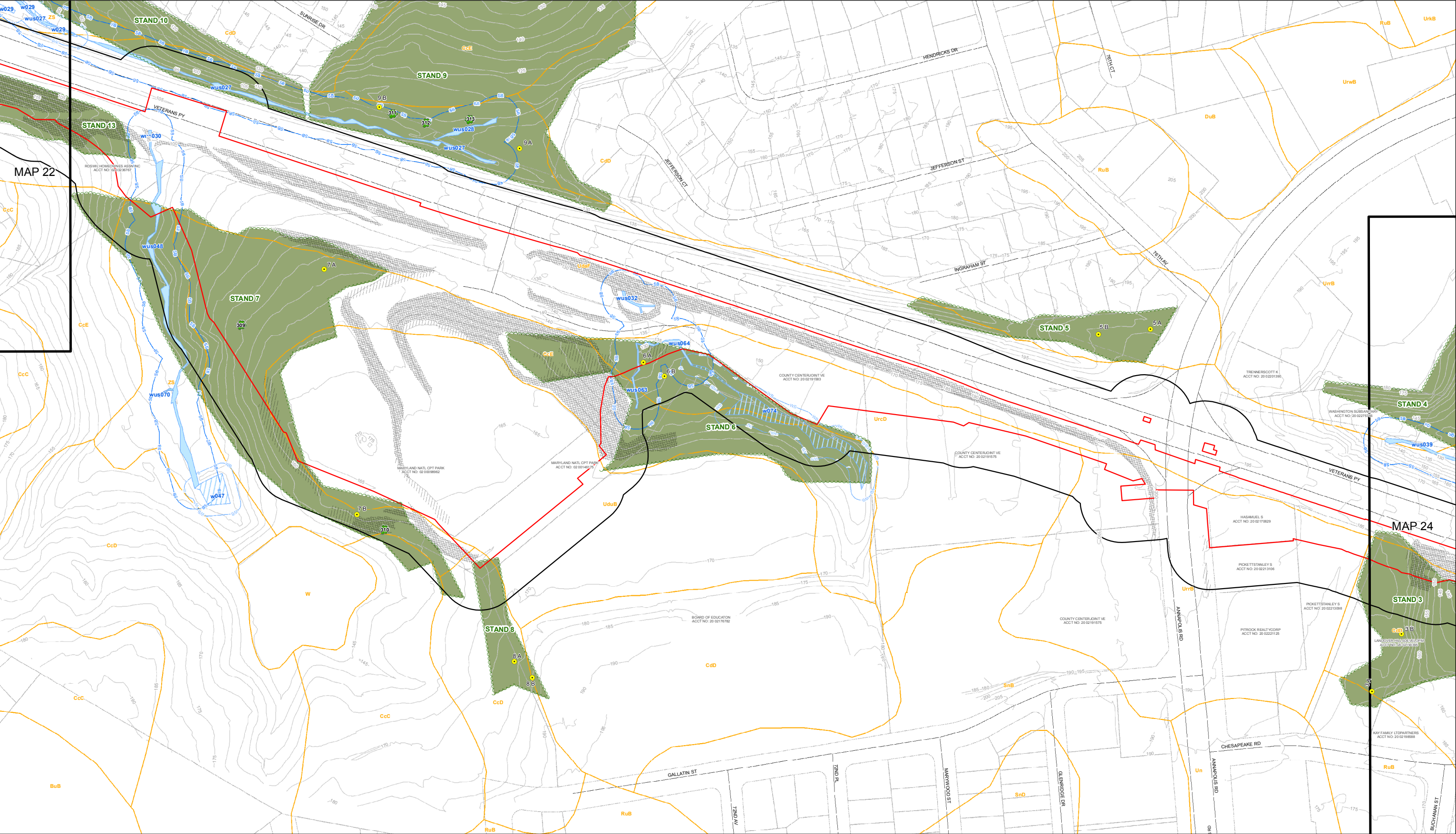
**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 22 of 25





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MARYLAND DEPARTMENT OF NATURAL RESOURCES  
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COASTAL RESOURCES, INC.

3/7/2014  
DATE

1 Inch = 100 Feet

0 50 100 200 Feet

**LEGEND:**

FSD STUDY AREA	ROADWAY	INTERMITTENT/PERENNIAL STREAM	OPEN WATER
FEIS LOD	FOREST STAND	EPHEMERAL CHANNEL	15% SLOPES (ON ERODIBLE SOIL)
PROPERTY BOUNDARY	SPECIMEN TREE	DELINEATED WETLAND	25% SLOPES
EXISTING CONTOUR	SAMPLE PLOT	25-FT WETLAND BUFFER	SOIL TYPE BOUNDARY
		50-FT STREAM BUFFER	100-YEAR FLOODPLAIN

**VICINITY MAP**  
1 in = 2 miles

**Purple Line**

**PURPLE LINE  
FOREST STAND DELINEATION  
ENVIRONMENTAL FEATURES MAP**

Montgomery and Prince George's Counties, Maryland

March 2014

MAP 23 of 25









SOILS IN THE STUDY AREA					
MAP SYMBOL	MAP UNIT NAME	% HYDRIC	K-VALUE	PRIME OR UNIQUE FARMLAND	Restrictions and Limitations
1B	Gaia silt loam, 3-8% slopes	5	0.24-0.37	YES	Somewhat limited due to frost action
1C	Gaia silt loam, 8-15% slopes	5	0.24-0.37	NO	Somewhat limited due to frost action and slope
2B	Glenelg silt loam, 3-8% slopes	5	0.32-0.49	YES	Somewhat limited due to frost action
2C	Glenelg silt loam, 8-15% slopes	5	0.32-0.49	NO	Somewhat limited due to frost action and slope
2UB	Glenelg-Urban land complex, 0-8% slopes	5	0.32-0.49	NO	Somewhat limited due to frost action
2UC	Glenelg-Urban land complex, 8-15% slopes	5	0.32-0.49	NO	Somewhat limited due to frost action and slope
5B	Glenville silt loam, 3-8% slopes	5	0.24-0.32	NO	Very limited due to wetness and frost action
7UC	Gaia-Urban land complex, 8-15% slopes	5	0.24-0.37	NO	Somewhat limited due to frost action and slope
16D	Brinklow-Blocktown channely silt loam, 15-25% slopes	5	0.10-0.24	NO	Very limited due to slope, depth to bedrock, and frost action
53A	Codorus silt loam, 0-3% slopes, occasionally flooded	10	0.24-0.49	NO	Very limited due to flooding and frost action
54A	Hatboro silt loam, 0-3% slopes, frequently flooded	100	0.20-0.49	NO	Very limited due to flooding, wetness, and frost action
65B	Wheaton silt loam, 0-8% slopes	0	0.37-0.49	NO	Somewhat limited due to frost action
67UB	Urban land-Wheaton complex, 0-8% slopes	5	0.37-0.49	NO	Somewhat limited due to frost action
400	Urban land	N/A	N/A	N/A	N/A
AuB	Aquaso-Urban land complex, 0-5% slopes	0	0.20-0.37	NO	Very limited due to frost action, low strength, depth to thick cemented pan, and depth to saturated zone
BuB	Beltsville-Urban land complex, 0-5% slopes	5	0.20-0.37	NO	Somewhat limited due to depth to thick cemented pan, frost action, and depth to saturated zone
CbB	Chillum-Urban land complex, 0-5% slopes	0	0.20-0.37	NO	Somewhat limited due to low strength and frost action
CbD	Chillum-Urban land complex, 5-15% slopes	0	0.20-0.37	NO	Somewhat limited due to low strength and frost action
CcC	Christiana-Downer complex, 5-10% slopes	5	0.43-0.49	NO	Somewhat limited due to slope, frost action, low strength, and depth to saturated zone
CcD	Christiana-Downer complex, 10-15% slopes	5	0.43-0.49	NO	Somewhat limited due to slope, frost action, low strength, and depth to saturated zone
CdC	Christiana-Downer-Urban land complex, 5-15% slopes	0	0.43-0.49	NO	Somewhat limited due to slope, frost action, low strength, and depth to saturated zone
CdD	Christiana-Downer-Urban land complex, 15-25% slopes	5	0.43-0.49	NO	Somewhat limited due to slope, frost action, low strength, and depth to saturated zone
CF	Codorus and Hatboro soils, frequently flooded	40	0.37	NO	Very limited due to flooding, frost action, and depth to saturated zone
Ch	Codorus-Hatboro-Urban land complex, frequently flooded	30	0.37	NO	Very limited due to flooding, frost action, and depth to saturated zone
EsA	Elisiboro sandy loam, 0-2% slopes	0	0.17-0.28	NO	Somewhat limited due to frost action and flooding
EsB	Elisiboro sandy loam, 2-5% slopes	0	0.17-0.28	NO	Somewhat limited due to frost action and flooding
EuB	Elisiboro-Urban land complex, 0-5% slopes	0	0.17-0.28	NO	Somewhat limited due to frost action and flooding
FbB	Fallsington-Urban land complex, 0-5% slopes	55	0.10-0.24	NO	Very limited due to ponding, depth to saturated zone, and frost action
GbD	Galestown-Urban land complex, 5-15% slopes	0	0.10	NO	Somewhat limited due to slope
GfB	Glenelg-Wheaton-Urban land complex, 0-8% slopes	0	0.32-0.49	YES	Somewhat limited due to low strength and frost action
Iu	Issue-Urban land complex, occasionally flooded	10	0.37	NO	Very limited due to flooding, depth to saturation zone, and frost action
lupB	Matapeake silt loam, 2-5% slopes	0	0.20-0.37	YES	Very limited due to frost action
RuB	Russett-Christiana-Urban land complex, 0-5% slopes	0	0.15-0.37	NO	Somewhat limited due to frost action, low strength, and depth to saturation zone
SnB	Sassafras-Urban land complex, 0-5% slopes	0	0.17-0.32	NO	Somewhat limited due to frost action
UdaF	Udorthents, highway, 0-65% slopes	N/A	N/A	N/A	N/A
UdB0	Udorthents, loamy, 5-15% slopes	0	0.37	NO	Somewhat limited due to frost action and slope
UduB	Udorthents-Urban land complex, 0-5% slopes	0	0.32	NO	Somewhat limited due to frost action
Un	Urban land	N/A	N/A	N/A	N/A
UrbB	Urban land-Beltsville complex, 0-5% slopes	0	0.15-0.49	NO	Somewhat limited due to a thick cemented pan, frost action, and depth to saturated zone
UrcD	Urban land-Christiana-Downer complex, 5-15% slopes	0	0.32-0.55	NO	Somewhat limited due to frost action, low strength, slope, and depth to saturation zone
UreB	Urban land-Elisiboro complex, 0-5% slopes	0	0.17-0.28	NO	Somewhat limited due to frost action and flooding
UrkB	Urban land-Issue Complex, 0-5% slopes	0	0.37	NO	Very limited due to flooding, depth to saturation zone, and frost action
UrrB	Urban land-Russett-Christiana complex, 0-5% slopes	0	0.15-0.37	NO	Somewhat limited due to frost action, low strength, and depth to saturation zone
UrsB	Urban land-Sassafras complex, 0-5% slopes	0	0.15-0.37	NO	Somewhat limited due to frost action
UrwB	Urban land-Woodstown complex, 0-5% slopes	0	0.10-0.37	NO	Somewhat limited due to shrink-swell, frost action, and depth to saturated zone
UrZA	Urban land-Zekiah complex, 0-2% slopes, frequently flooded	0	0.24-0.49	NO	Very limited due to ponding, depth to saturated zone, frost action, and flooding
W	Water	N/A	N/A	N/A	N/A
WoB	Woodstown sandy loam, 2-5% slopes	5	0.10-0.37	YES	Somewhat limited due to shrink-swell, frost action, and depth to saturated zone
WuB	Woodstown-Urban land complex, 0-5% slopes	5	0.10-0.37	YES	Somewhat limited due to shrink-swell, frost action, and depth to saturated zone
Zn	Zekiah-Urban land complex, frequently flooded	55	0.24-0.49	NO	Very limited due to ponding, depth to saturated zone, frost action, and flooding
ZS	Zekiah and Issue soils, frequently flooded	60	0.24-0.49	NO	Very limited due to ponding, depth to saturated zone, frost action, and flooding

FOREST STANDS WITHIN THE STUDY AREA				
Stand	Size (Acres) Within Project Area		Retention Priority	
	100' Buffer	LOD		
1	1.18	0.30	3	
2	1.64	0.29	1	due to specimen trees, steep slopes, wetlands, and waterways
3	1.17	0.24	1	due to steep slopes
4	0.05	0.00	3	
5	0.00	0.00	N/A	located outside of study area
6	1.55	1.40	1	due to steep slopes
7	2.71	5.19	1	due to specimen trees, steep slopes, and waterways
8	0.15	0.02	3	
9	0.00	0.00	N/A	located outside of study area
10	0.54	0.00	1	due to the presence of wetlands and waterways
11	0.00	0.00	N/A	located outside of study area
12	0.17	0.39	1	due to steep slopes
13	1.09	1.63	1	due to steep slopes
14	1.82	1.07	1	due to steep slopes and wetlands
15	0.55	0.34	1	due to steep slopes
16	1.64	0.05	3	
17	0.77	0.00	1	due to steep slopes
18	0.37	0.00	1	due to specimen trees and steep slopes
19	3.46	1.69	1	due to specimen trees and steep slopes
20	2.05	0.68	1	due to the presence of specimen trees, steep slopes, and streams
21	0.12	0.10	1	due to steep slopes and waterways
22	2.14	0.84	1	due to wetlands and waterways
23	0.44	0.10	3	
24	2.95	2.07	1	due to specimen trees, steep slopes, and waterways
25	1.89	0.22	1	due to steep slopes, wetlands, and waterways
26	0.26	0.43	3	
27	1.15	0.71	1	due to the presence of specimen trees, steep slopes, wetlands, and waterways
28	1.79	0.68	1	due to the presence of steep slopes, waterway, and wetlands
29	0.94	0.39	1	due to specimen trees, steep slopes, and waterways
30	0.56	0.99	1	due to steep slopes and waterways
31	0.28	0.12	1	due to steep slopes
32	0.73	0.45	1	due to specimen trees, steep slopes, and waterways
33	0.38	0.04	1	due to steep slopes
34	0.15	0.04	1	due to specimen trees
35	0.69	0.26	1	due to steep slopes and waterways
36	0.02	0.67	1	due to specimen trees, steep slopes, and waterways
37	0.02	0.30	1	due to steep slopes
38	0.41	0.92	1	due to specimen trees and steep slopes
39	1.22	0.54	1	due to specimen trees and steep slopes
40	0.17	0.21	1	due to specimen trees and steep slopes
41	0.34	1.46	1	due to steep slopes
42	0.73	0.08	1	due to steep slopes
43	0.00	0.30	1	due to specimen trees and steep slopes
44	0.08	0.40	1	due to specimen trees and steep slopes
45	0.17	1.40	1	due to the presence of specimen trees, steep slopes, and stream
46	1.27	4.81	1	due to specimen trees and steep slopes
47	4.59	4.03	1	due to specimen trees and steep slopes, wetlands, and waterways
48	1.40	6.14	1	due to specimen trees and steep slopes, and waterways
49	0.90	0.93	1	due to specimen trees
50	1.43	2.82	1	due to specimen trees and steep slopes
51	0.90	0.86	1	due to specimen trees, steep slopes, and waterways
52	0.50	0.13	1	due to wetlands and waterways
53	0.78	0.06	1	due to waterways
54	0.30	0.00	3	
55	0.98	0.28	1	due to specimen trees, wetlands, and waterways.
56	0.69	0.55	3	
Total	52	48		

SPECIMEN TREES											
Tree ID	Common Name	Scientific Name	DBH (inches)	Condition	Map No.	Tree ID	Common Name	Scientific Name	DBH (inches)	Condition	Map No.
1	red maple	Acer rubrum	37.0	Poor	1	211	tulip poplar	Liriodendron tulipifera	30.0	Good	3
2	red maple	Acer rubrum	47.0	Fair	1	212	pin oak	Quercus palustris	33.1	Good	9
3	slippery elm	Ulmus rubra	50.0	Good	1	213	red maple	Acer rubrum	30.2	Good	9
4	black walnut	Juglans nigra	31.7	Good	1	214	tulip poplar	Liriodendron tulipifera	36.5	Good	9
5	black walnut	Juglans nigra	30.5	Good	1	215	silver maple	Acer saccharinum	41.0	Good	9
6	tulip poplar	Liriodendron tulipifera	40.0	Fair	1	216	pin oak	Quercus palustris	41.7	Good	9
7	black walnut	Juglans nigra	34.0	Good	1	217	tulip poplar	Liriodendron tulipifera	40.0	Good	9
8	tulip poplar	Liriodendron tulipifera	40.0	Fair	1	218	silver maple	Acer saccharinum	35.5	Fair	9
9	tulip poplar	Liriodendron tulipifera	32.0	Good	1	219	pin oak	Quercus palustris	35.7	Good	9
10	tulip poplar	Liriodendron tulipifera	37.2	Good	1	220	willow oak	Quercus phellos	38.6	Good	9
11	tulip poplar	Liriodendron tulipifera	35.0	Good	1	221	silver maple	Acer saccharinum	32.0	Fair	9
12	tulip poplar	Liriodendron tulipifera	45.0	Good	1	222	southern red oak	Quercus falcata	45.0	Good	9
13	tulip poplar	Liriodendron tulipifera	37.1	Good	1	223	shingle oak	Quercus imbricaria	32.0	Good	9
14	tulip poplar	Liriodendron tulipifera	33.6	Good	1	224	tulip poplar	Liriodendron tulipifera	41.2	Good	9
15	tulip poplar	Liriodendron tulipifera	38.9	Fair	1	225	river birch	Betula nigra	32.7	Fair	9
16	pin oak	Quercus palustris	34.4	Good	1	226	tulip poplar	Liriodendron tulipifera	34.8	Good	9
17	tulip poplar	Liriodendron tulipifera	35.0	Good	1	227	tulip poplar	Liriodendron tulipifera	37.6	Good	9
18	tulip poplar	Liriodendron tulipifera	31.0	Good	1	228	tulip poplar	Liriodendron tulipifera	33.9	Good	9
19	red maple	Acer rubrum	35.0	Good	1	229	pin oak	Quercus palustris	39.6	Good	9
20	eastern cottonwood	Populus deltoides	41.0	Fair	2	230	pin oak	Quercus palustris	30.0	Good	9
21	red maple	Acer rubrum	36.1	Fair	2	231	pin oak	Quercus palustris	37.5	Good	9
22	American sycamore	Platanus occidentalis	38.6	Good	2	232	tulip poplar	Liriodendron tulipifera	40.0	Good	10
23	willow oak	Quercus phellos	34.0	Good	2	233	tulip poplar	Liriodendron tulipifera	33.8	Fair	10
24	tulip poplar	Liriodendron tulipifera	38.2	Good	2	234	tulip poplar	Liriodendron tulipifera	32.8	Fair	10
25	tulip poplar	Liriodendron tulipifera	33.3	Fair	2	235	tulip poplar	Liriodendron tulipifera	34.0	Good	10 & 11
26	tulip poplar	Liriodendron tulipifera	36.7	Fair	2	236	black cherry	Prunus serotina	45.1	Fair	11
27	tulip poplar	Liriodendron tulipifera	45.7	Good	2	237	honeylocust	Gleditsia triacanthos	33.0/33.0	Poor	11
28	tulip poplar	Liriodendron tulipifera	42.7	Good	2	238	white oak	Quercus alba	33.5	Good	10 & 11
29	tulip poplar	Liriodendron tulipifera	32.8	Good	2	239	white oak	Quercus alba	32.0	Fair	11
30	tulip poplar	Liriodendron tulipifera	40.8	Good	2	240	pin oak	Quercus palustris	35.3	Good	11
31	American sycamore	Platanus occidentalis	38.7	Good	2	241	pin oak	Quercus palustris	30.7	Poor	11
32	black oak	Quercus velutina	36.0	Good	2	242	oak sp.	Quercus sp.	31.2	Good	11
33	willow oak	Quercus phellos	30.0	Good	2	243	pin oak	Quercus palustris	30.0	Fair	12
34	tulip poplar	Liriodendron tulipifera	35.0	Good	2	244	pin oak	Quercus palustris	35.0	Fair	12
35	white pine	Pinus strobus	30.0	Good	2	245	northern red oak	Quercus rubra	35.1	Good	14
36	tulip poplar	Liriodendron tulipifera	30.0	Good	2	246	green ash	Fraxinus pennsylvanica	34.7	Good	14
37	tulip poplar	Liriodendron tulipifera	30.0	Good	2	247	tulip poplar	Liriodendron tulipifera	37.3	Good	14
38	tulip poplar	Liriodendron tulipifera	32.0	Good	2	248	American sycamore	Platanus occidentalis	34.8	Fair	14
39	tulip poplar	Liriodendron tulipifera	38.0	Good	2	249	American sycamore	Platanus occidentalis	32.5	Fair	14
40	tulip poplar	Liriodendron tulipifera	38.0	Good	2	250	red maple	Acer rubrum	31.9	Poor	14
41	tulip poplar	Liriodendron tulipifera	44.5	Good	2	251	American sycamore	Platanus occidentalis	36.6	Fair	14
42	American sycamore	Platanus occidentalis	46.7	Good	2	252	willow oak	Quercus phellos	33.8	Fair	14
43	American sycamore	Platanus occidentalis	46.0	Poor	2	253	willow oak	Quercus phellos	33.5	Fair	14
44	silver maple	Acer saccharinum	41.7	Fair	2 & 3	254	willow oak	Quercus phellos	32.4	Good	14
45	silver maple	Acer saccharinum	38.2	Fair	2 & 3	255	pin oak	Quercus palustris	37.8	Good	14
46	silver maple	Acer saccharinum	49.5	Fair	2 & 3	256	pin oak	Quercus palustris	39.6	Good	14
47	eastern cottonwood	Populus deltoides	43.5	Good	2 & 3	257	pin oak	Quercus palustris	36.6	Good	14
48	eastern cottonwood	Populus deltoides	43.4	Fair	2 & 3	258	pin oak	Quercus palustris	33.5	Fair	14 & 15
49	silver maple	Acer saccharinum	59.6	Fair	3	259	pin oak	Quercus palustris	31.7	Good	14 & 15
50	silver maple	Acer saccharinum	41.6	Fair	3	260	pin oak	Quercus palustris	39.1	Fair	14 & 15
51	black locust	Robinia pseudoacacia	36.1	Fair	3	261	willow oak	Quercus phellos	32.0	Good	15
52	black locust	Robinia pseudoacacia	34.7	Poor	3	262	willow oak	Quercus phellos	31.0	Fair	15
53	black maple	Acer saccharinum	43.7	Fair	3	263	northern catalpa	Catalpa speciosa	53.5	Good	15
54	silver maple	Acer saccharinum	41.3	Poor	3	264	bald cypress	Taxodium mucronatum	34.6	Good	15
55	silver maple	Acer saccharinum	35.5	Fair	3	265	pin oak	Quercus palustris	32.5	Good	15
56	black locust	Robinia pseudoacacia	34.7	Poor	3	266	sweetgum	Liquidambar styraciflua	31.9	Good	15
57	willow poplar	Salix nigra	44.3	Poor	3	267	willow oak	Quercus phellos	30.0	Fair	15
58	silver maple	Acer saccharinum	38.4	Good	3	268	sawtooth oak	Quercus acutissima	33.2	Good	15 & 16
59	American sycamore	Platanus occidentalis	38.8	Good	3	269	willow oak	Quercus phellos	37.2	Good	16
60	silver maple	Acer saccharinum	42.0	Fair	3	270	willow oak	Quercus phellos	33.3	Good	16
61	silver maple	Acer saccharinum	35.5	Poor	3	271	willow oak	Quercus phellos	41.5	Good	16
62	pin poplar	Liriodendron tulipifera	40.0	Good	3	272	willow oak	Quercus phellos	39.0	Good	16
63	black walnut	Juglans nigra	33.9	Good	3	273	willow oak	Quercus phellos	39.0	Good	16
64	black locust	Robinia pseudoacacia	33.7	Fair	3	274	willow oak	Quercus phellos	31.4	Good	16
65	American sycamore	Platanus occidentalis	34.5	Good	3	275	willow oak	Quercus phellos	47.4	Good	16
66	American sycamore	Platanus occidentalis	36.0	Fair	3	276	willow oak	Quercus phellos	38.1	Good	16
67	northern catalpa	Catalpa bignonioides	49.3	Poor	3	277	willow oak	Quercus phellos	38.0	Good	16
68	American sycamore	Platanus occidentalis	36.7	Good	3	278	honey locust	Gleditsia triacanthos	30.4	Fair	16
69	silver maple	Acer saccharinum	31.5	Fair	3	279	willow oak	Quercus phellos	39.3	Good	16
70	black locust	Robinia pseudoacacia	32.0	Fair	3	280	willow oak	Quercus phellos	37.0	Good	16
71	pin poplar	Liriodendron tulipifera	40.0	Good	3	281	willow oak	Quercus phellos	31.9	Good	16
72	eastern cottonwood	Populus deltoides	32.1	Fair	3	282	pin oak	Quercus palustris	32.8	Good	16
73	silver maple	Acer saccharinum	35.0	Fair	3	283	pin oak	Quercus palustris	44.7	Good	16
74	silver maple	Acer saccharinum	43.5	Fair	3	284	willow oak	Quercus phellos	33.3	Good	16
75	silver maple	Acer saccharinum	50.0	Good	3	285	white oak	Quercus alba	36.4	Good	18
76	eastern cottonwood	Populus deltoides	40.2	Fair	3	286	loblolly pine	Pinus taeda	18.8	Fair	18
77	eastern cottonwood	Populus deltoides	31.0	Fair	3	287	white oak	Quercus alba	32.7	Fair	18
78	tulip poplar	Liriodendron tulipifera	35.9	Good	3	288	white oak	Quercus alba	32.8	Fair	18
79	silver maple	Acer saccharinum	43.0	Good	3	289	white oak	Quercus alba	34.0	Fair	18
80	silver maple	Acer saccharinum	47.4	Fair	3	290	white oak	Quercus alba	31.0	Good	18
81	silver maple	Acer saccharinum	48.2	Fair	3	291	white oak	Quercus alba	33.9	Good	18
82	eastern cottonwood	Populus deltoides	34.1	Fair	3	292	southern red oak	Quercus falcata	30.0	Fair	18
83	silver maple	Acer saccharinum	37.5	Fair	3	293	tulip poplar	Liriodendron tulipifera	36.4	Fair	19
84	black walnut	Juglans nigra	41.5	Good	3	294	red maple	Acer rubrum	31.0	Poor	19
85	eastern cottonwood	Populus deltoides	35.3/38.7	Fair	3	295	red maple	Acer rubrum	35.4	Fair	19
86	tulip poplar	Liriodendron tulipifera	33.8	Good	3	296	tulip poplar	Liriodendron tulipifera	43.4	Fair	19
87	tulip poplar	Liriodendron tulipifera	30.1	Good	3	297	tulip poplar	Liriodendron tulipifera	42.4	Poor	19
88	tulip poplar	Liriodendron tulipifera	34.2	Good	3	298	tulip poplar	Liriodendron tulipifera	34.4	Good	19
89	tulip poplar	Liriodendron tulipifera	31.3	Good	3	299	tulip poplar	Liriodendron tulipifera	38.4	Good	19
90	tulip poplar	Liriodendron tulipifera	32.8	Good	3	300	willow oak	Quercus phellos	43.0	Good	19
91	tulip poplar	Liriodendron tulipifera	30.7	Good	3	301	sweetgum	Liquidambar styraciflua	32.0	Fair	19
92	tulip poplar	Liriodendron tulipifera	40.0	Good	3	302	eastern cottonwood	Populus deltoides	36.1	Fair	19
93	tulip poplar	Liriodendron tulipifera	34.5	Good	3	303	willow oak	Quercus phellos	31.0	Good	20
94	tulip poplar	Liriodendron tulipifera	31.6	Good	3	304	hairy wood	Myrica aspleniifolia	27.5	Good	20
95	tulip poplar	Liriodendron tulipifera	40.2/40.1	Good	3	305	northern red oak	Quercus rubra	31.5	Fair	20
96	tulip poplar	Liriodendron tulipifera	32.5	Good	3	306	willow oak	Quercus phellos	48.0	Fair	21
97	tulip poplar	Liriodendron tulipifera	34.4	Good	3	307	white oak	Quercus alba	44.8	Good	21
98	tulip poplar	Liriodendron tulipifera	38.2	Good	3	308	pin oak	Quercus palustris	47.7	Good	21
99	tulip poplar	Liriodendron tulipifera	35.1	Good	3	309	chestnut oak	Quercus prinus	40.0	Good	21
100	tulip poplar	Liriodendron tulipifera	35.2	Good	3	310	willow oak	Quercus phellos	43.4	Good	23
101	tulip poplar	Liriodendron tulipifera	33.4	Fair	3	311	tulip poplar	Liriodendron tulipifera	31.5	Good	23
102	tulip poplar	Liriodendron tulipifera	31.8	Good	3	312	tulip poplar	Liriodendron tulipifera	32.0	Good	23
103	pin poplar	Liriodendron tulipifera	31.7	Good	3	313	tulip poplar	Liriodendron tulipifera	31.0	Good	23
104	tulip poplar	Liriodendron tulipifera	37.9	Good	3	314	white oak	Quercus alba	38.0	Good	24
105	tulip poplar	Liriodendron tulipifera	46.3	Good	3	315	northern red oak	Quercus rubra	47.5	Good	24

## **Appendix B**

***[insert Figure 3.2-8]***





Exterior Purple Line LRV Rendering (based on Houston LRV design)



Interior Rendering 1



Interior Rendering 2



Interior Rendering 3



Interior Rendering 4



Interior Rendering 5



Interior Rendering 6

General Characteristics of The Proposed LRV

- Modern spacious design
- 80% low floor
- Service-proven design
- Bi-directional operability
- 80 seats (including 40 flip-downs)
- Open floor design in low floor area
- 1500 V supply to reduce system energy consumption
- Modular and easier to maintain

Figure 3.2-8. Light Rail Vehicle Renderings



**SECTION 2 to EXHIBIT 2**

**ATCs**

<b>No.</b>	<b>Proposal Location</b>	<b>Description</b>
2	Incorporated into Design	Spray-applied waterproofing membrane (Plymouth Tunnel)
4	Incorporated into Design	Reconfigure Annapolis Rd./Glenridge Station from side platform to center platform station
5	Incorporated into Design	Reconfigure Beacon Heights Station from side platform to center platform
17	Incorporated into Design	Bethesda South Station Entrance Reconfiguration
18	Incorporated into Design	Bethesda Station ventilation optimization
20	Incorporated into Design	New Carrollton Station reconfiguration
21	Incorporated into Design	Baltimore-Washington Parkway Bridge
24	Incorporated into Design	Bethesda Station platform reconfiguration
27	Incorporated into Design	Permanent retaining walls with timber lagging

**SECTION 3 to EXHIBIT 2**  
**TOTAL TRIP RUN TIME PROPOSAL FORM**

*[attach Proposal Form AA]*



## **FORM AA**

### **TOTAL TRIP RUN TIME PROPOSAL FORM**

Instructions: Proposer shall calculate and commit to Total Trip Run Time and its components by service periods (time of day) and by seasonal trimesters as specified in Part 3, Section 3.15 of the Technical Provisions. A summary of the Total Trip Run Time shall be presented by the Proposer in Table AA-1 through Table AA-4. Total Trip Run Time shall be calculated for both the eastbound and westbound direction in accordance with the following formula:

$$\mathbf{T_{tot} = Tvops + Td + Ttb + Tother + Tsc}$$

Where:

- Ttot means the Total Trip Run Time.
- Tvops means the Run Time that Concessionaire commits will be generated from vehicle performance and operating performance in accordance with the Contract Documents as measured in accordance with Part 3, Section 3.15 of the Technical Provisions.
- Td means the Run Time that Concessionaire commits will be generated from Dwell Times in accordance with Part 3, Section 3.15 of the Technical Provisions.
- Ttb means the Run Time that Concessionaire commits will be generated from the turn back of the Train at an ending Terminal Station in accordance with Part 3, Section 3.15 of the Technical Provisions.
- Tother means the Run Time that Concessionaire commits will be generated in accordance with Part 3, Section 3.15 of the Technical Provisions.
- Tsc means the Run Time calculated in accordance with Part 3, Section 3.15 of the Technical Provisions and as shown in Table AA-5 for Proposal purposes.

**Table AA-1. Total Trip Run Time Commitment Summary – Eastbound Weekday**

<b>Winter Weekday</b> (in minutes to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.4	6.3	6.0	4.4	11.4	72.5
AM Peak	44.4	6.3	6.0	7.4	12.4	76.6
Midday	44.4	6.3	6.0	4.8	16.2	77.7
PM Peak	44.4	6.3	6.0	4.8	16.2	77.7
Evening	44.4	6.3	6.0	3.5	16.2	76.4
Late	44.4	6.3	6.0	2.3	15.2	74.3
<b>Summer Weekday</b> (in minutes to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.4	6.3	6.0	5.6	9.4	71.8
AM Peak	44.4	6.3	6.0	6.2	10.4	73.3
Midday	44.4	6.3	6.0	3.3	14.2	74.3
PM Peak	44.4	6.3	6.0	3.3	14.2	74.3
Evening	44.4	6.3	6.0	2.7	14.2	73.6
Late	44.4	6.3	6.0	3.4	13.2	73.3
<b>Autumn Weekday</b> (in minute to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.4	6.3	6.0	5.1	10.4	72.3
AM Peak	44.4	6.3	6.0	7.7	11.4	75.9
Midday	44.4	6.3	6.0	6.0	15.2	77.9
PM Peak	44.4	6.3	6.0	4.8	15.2	76.7
Evening	44.4	6.3	6.0	2.3	15.2	74.2
Late	44.4	6.3	6.0	2.0	14.2	72.9

**Table AA-2. Total Trip Run Time Commitment Summary – Westbound Weekday**

<b>Winter Weekday</b> (in minutes to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.6	6.3	6.0	4.3	13.5	74.7
AM Peak	44.6	6.3	6.0	7.5	14.5	78.9
Midday	44.6	6.3	6.0	7.9	14.5	79.3
PM Peak	44.6	6.3	6.0	9.0	13.4	79.3
Evening	44.6	6.3	6.0	7.6	13.4	77.9
Late	44.6	6.3	6.0	6.5	12.4	75.8
<b>Summer Weekday</b> (in minutes to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.6	6.3	6.0	5.6	11.5	74.0
AM Peak	44.6	6.3	6.0	6.2	12.5	75.5
Midday	44.6	6.3	6.0	6.4	12.5	75.8
PM Peak	44.6	6.3	6.0	7.5	11.4	75.8
Evening	44.6	6.3	6.0	6.9	11.4	75.1
Late	44.6	6.3	6.0	7.6	10.4	74.8
<b>Autumn Weekday</b> (in minute to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.6	6.3	6.0	5.1	12.5	74.5
AM Peak	44.6	6.3	6.0	7.8	13.5	78.2
Midday	44.6	6.3	6.0	9.2	13.5	79.5
PM Peak	44.6	6.3	6.0	9.1	12.4	78.3
Evening	44.6	6.3	6.0	6.4	12.4	75.7
Late	44.6	6.3	6.0	6.1	11.4	74.4

**Table AA-3. Total Trip Run Time Commitment Summary – Eastbound Weekend**

<b>Winter Weekend</b> (in minutes to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.4	6.3	6.0	2.0	15.2	73.9
Midday	44.4	6.3	6.0	2.0	16.2	75.0
Afternoon	44.4	6.3	6.0	2.0	16.2	75.0
Late	44.4	6.3	6.0	3.0	15.2	75.0
<b>Summer Weekend</b> (in minutes to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.4	6.3	6.0	1.7	13.2	71.6
Midday	44.4	6.3	6.0	3.7	14.2	74.7
Afternoon	44.4	6.3	6.0	3.7	14.2	74.7
Late	44.4	6.3	6.0	3.5	13.2	73.4
<b>Autumn Weekend</b> (in minute to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.4	6.3	6.0	1.8	14.2	72.8
Midday	44.4	6.3	6.0	2.8	15.2	74.8
Afternoon	44.4	6.3	6.0	2.8	15.2	74.8
Late	44.4	6.3	6.0	2.3	14.2	73.2

**Table AA-4. Total Trip Run Time Commitment Summary – Westbound Weekend**

<b>Winter Weekend</b> (in minutes to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.6	6.3	6.0	5.7	13.5	76.1
Midday	44.6	6.3	6.0	3.7	14.5	75.1
Afternoon	44.6	6.3	6.0	3.7	14.5	75.1
Late	44.6	6.3	6.0	4.7	13.5	75.1
<b>Summer Weekend</b> (in minutes to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.6	6.3	6.0	5.4	11.5	73.8
Midday	44.6	6.3	6.0	5.4	12.5	74.8
Afternoon	44.6	6.3	6.0	5.4	12.5	74.8
Late	44.6	6.3	6.0	5.1	11.5	73.5
<b>Autumn Weekend</b> (in minute to one decimal point)						
<b>Period</b>	<b>Tvops</b>	<b>Td</b>	<b>Ttb</b>	<b>Tother</b>	<b>Tsc</b>	<b>Total Trip Run Time</b>
Early	44.6	6.3	6.0	5.6	12.5	75.0
Midday	44.6	6.3	6.0	4.5	13.5	74.9
Afternoon	44.6	6.3	6.0	4.5	13.5	74.9
Late	44.6	6.3	6.0	4.0	12.5	73.3

**Table AA-5: Tsc Run Times**

WEEKDAYS – EASTBOUND (in minutes)			
	Winter	Summer	Autumn
Period	Tsc	Tsc	Tsc
Early	11.4	9.4	10.4
AM Peak	12.4	10.4	11.4
Midday	16.2	14.2	15.2
PM Peak	16.2	14.2	15.2
Evening	16.2	14.2	15.2
Late	15.2	13.2	14.2
WEEKDAYS – WESTBOUND (in minutes)			
	Winter	Summer	Autumn
Period	Tsc	Tsc	Tsc
Early	13.5	11.5	12.5
AM Peak	14.5	12.5	13.5
Midday	14.5	12.5	13.5
PM Peak	13.4	11.4	12.4
Evening	13.4	11.4	12.4
Late	12.4	10.4	11.4
WEEKENDS – EASTBOUND (in minutes)			
	Winter	Summer	Autumn
Period	Tsc	Tsc	Tsc
Early	15.2	13.2	14.2
Midday	16.2	14.2	15.2

Afternoon	16.2	14.2	15.2
Late	15.2	13.2	14.2
WEEKENDS – WESTBOUND (in minutes)			
	Winter	Summer	Autumn
Period	Tsc	Tsc	Tsc
Early	13.5	11.5	12.5
Midday	14.5	12.5	13.5
Afternoon	14.5	12.5	13.5
Late	13.5	11.5	12.5

## **SECTION 4 to EXHIBIT 2**

### **SILVER SPRING TRANSIT CENTER PROVISIONS**

Concessionaire shall design and construct (to include all applicable civil, geotechnical, structure, mechanical, electrical and systems engineering-related Work), and thereafter operate and maintain, the Purple Line Silver Spring Transit Center Station on the north side of the existing Silver Spring Transit Center (SSTC), including the alternative pedestrian path from the existing SSTC green roof to the WMATA mezzanine connector, generally consistent with the conceptual drawings attached as Annex A to this Exhibit 2, Section 4. The proposed elevator and stairway at the WMATA mezzanine connector shall be deferred; provided, however, that the design and construction shall be such that these elements can be constructed at a later date without the need to take the Purple Line System's SSTC Station out of service during normal revenue service hours.

The Purple Line System's SSTC Station shall be designed and constructed so that there is no structural impact to the existing SSTC structure. The SSTC aerial structure over both WMATA and CSXT facilities shall be designed to replace the straddle bent with a new eccentric pier in accordance with the alignment drawing "1042mTW2205\_Alignment Shift Opt 2.dgn" provided by, or on behalf of, Concessionaire and incorporated by reference.

Concessionaire shall also design and construct a new traffic signal with traffic signal controller equipment with TSPP functionality at the intersection of Ramsey Avenue and Bonifant Street. The new signal shall be designed to provide Peak Period transit signal preemption signal sequencing as the initial configuration. The traffic signal owner shall be Montgomery County, and the signal shall be designed to interconnect with the Montgomery County Traffic Management Center.

Except as expressly modified by this Exhibit 2, Section 4, all other requirements pertaining to this portion of the Work under the Technical Provisions apply.

Owner acknowledges that if additional ROW is required to complete the Silver Spring ATC Work, then the Parties will proceed under Section 7.5.1.4 of the Agreement.

Concessionaire shall make best efforts to incorporate the bioretention facility (shown on PLTP Drawing RD-117, submitted on November 17, 2015) or the functional replacement within the real property rights acquired, as modified in this Exhibit 2, Section 4.

If, despite Concessionaire's exercise of best efforts, the capital cost for providing a functional replacement or meeting MDE mitigation requirements increases over the capital cost of the bioretention facility previously shown on PLTP Drawing RD-117 as a result of the revisions to real property rights acquisition under this Exhibit 2, Section 4 (regarding elimination of the 1110 Bonifant Rd. property), then Owner shall be



responsible for the capital cost increase or for acquisition of real property rights for such functional replacement.

## **Annex A**

*[insert conceptual drawings]*

***PLTP Drawing SSTC-STA1 – Overall Station Site Plan***

***PLTP Drawing SSTC-STA2 – Station Cross Section***

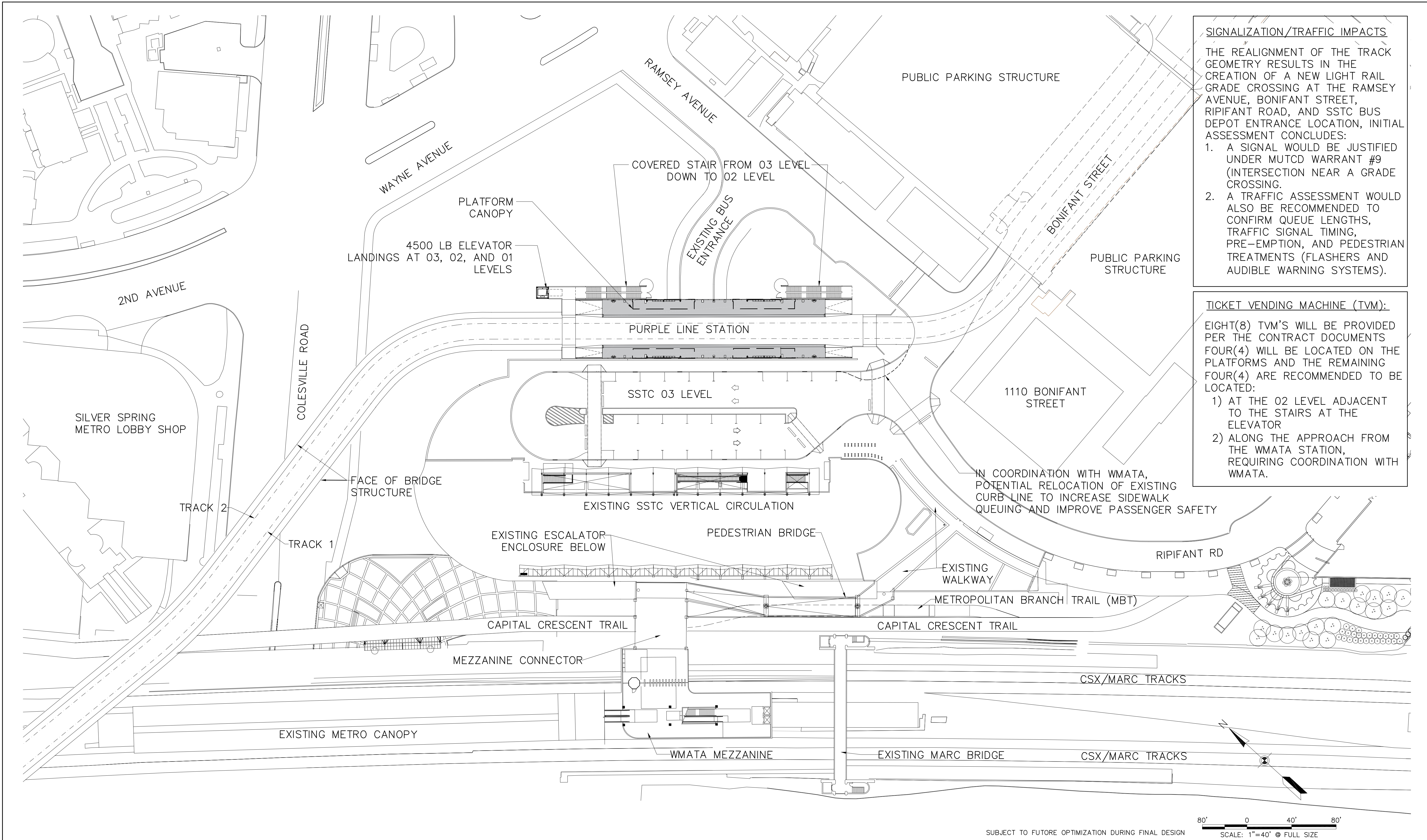
***PLTP Drawing SSTC-TA1 – Plan and Profile***

***PLTP Drawing SSTC-TA2 – Plan and Profile***

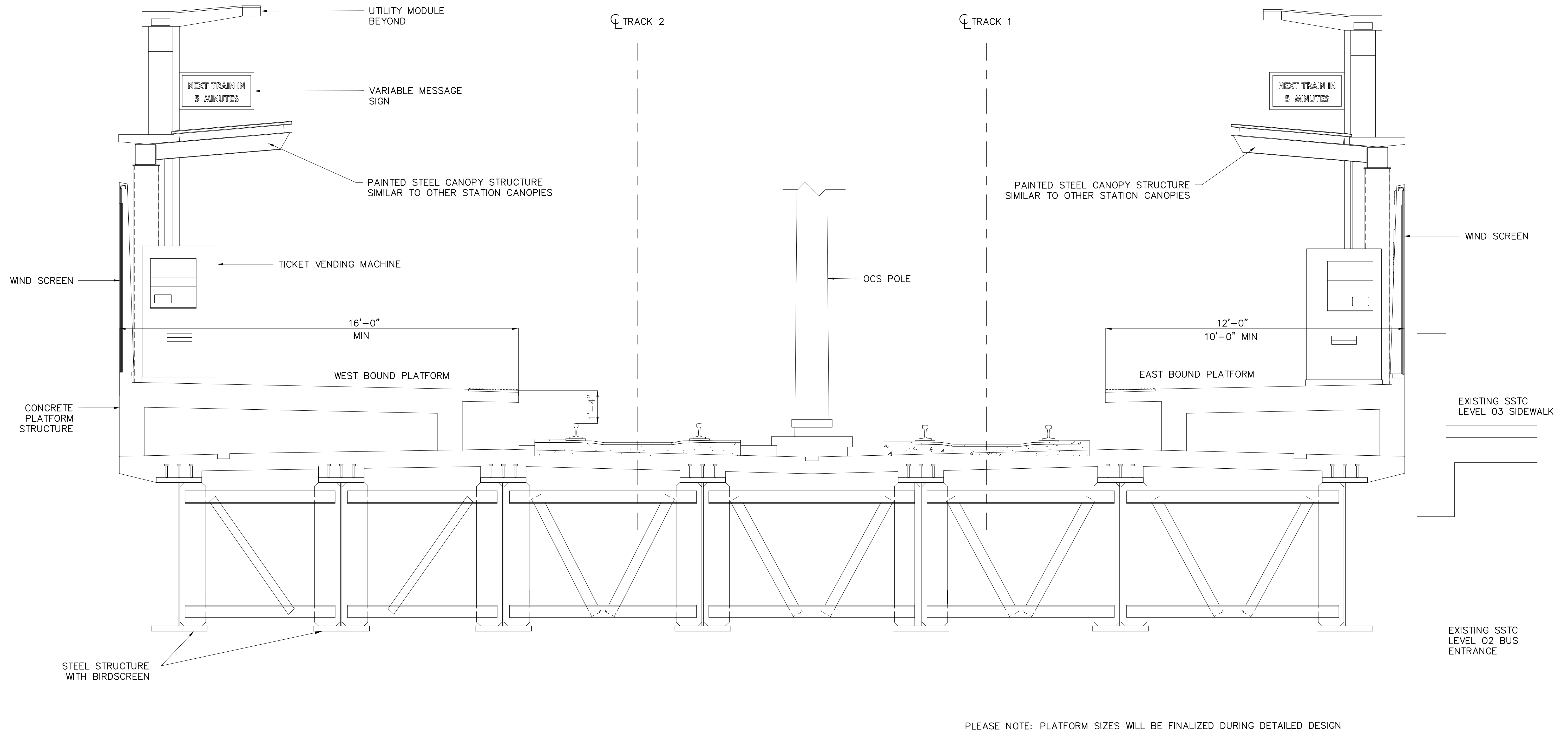
***PLTP Drawing SSTC-TP – Typical Section***

***PLTP Drawing SSTC-OCS – OCS Profile***

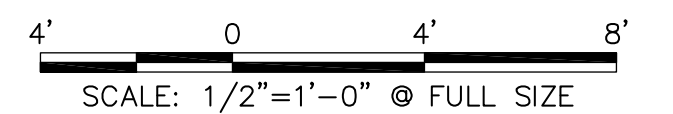
***PLTP Drawing SSTC-RW – ROW Requirements***







SUBJECT TO FUTURE OPTIMIZATION DURING FINAL DESIGN



MARYLAND TRANSIT ADMINISTRATION



Maryland Department of Transportation



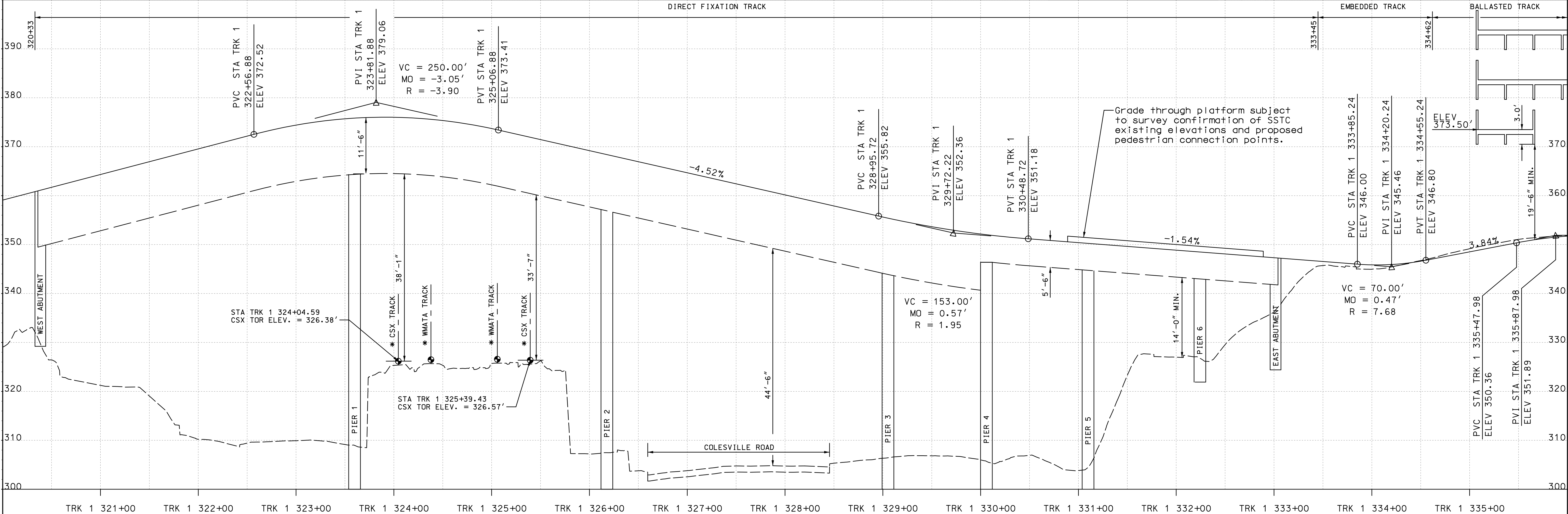
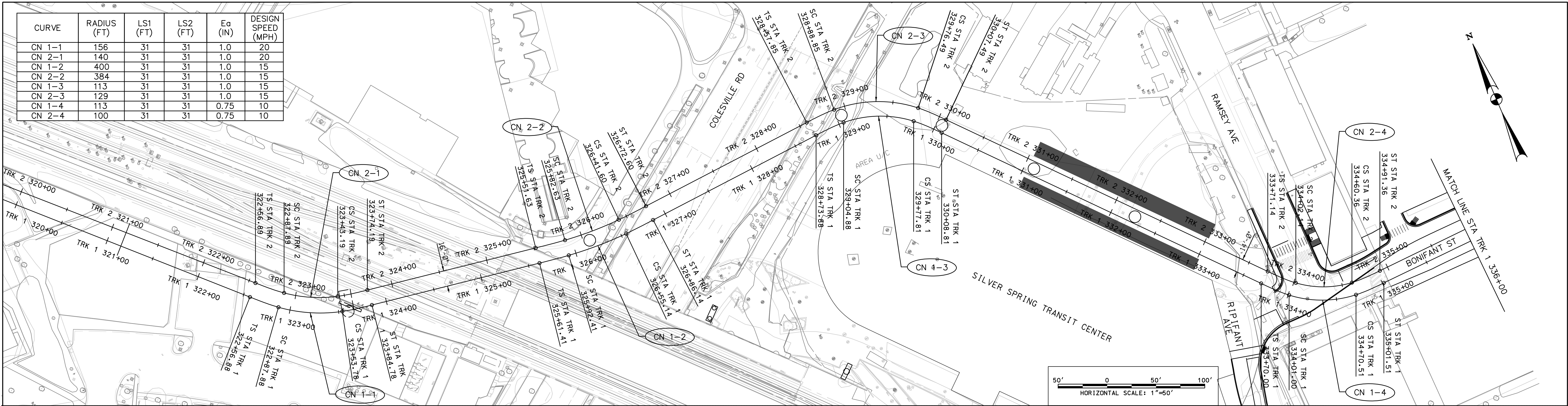
ANNEX A EXHIBITS  
SSTC OPTIMIZED ALIGNMENT

STATION CROSS SECTION

DRAWING NO.  
SSTC-STA2



CURVE	RADIUS (FT)	LS1 (FT)	LS2 (FT)	Ea (IN)	DESIGN SPEED (MPH)
CN 1-1	156	31	31	1.0	20
CN 2-1	140	31	31	1.0	20
CN 1-2	400	31	31	1.0	15
CN 2-2	384	31	31	1.0	15
CN 1-3	113	31	31	1.0	15
CN 2-3	129	31	31	1.0	15
CN 1-4	113	31	31	0.75	10
CN 2-4	100	31	31	0.75	10



PRELIMINARY - SUBJECT TO FURTHER OPTIMIZATION DURING FINAL DESIGN

10' 0 10' 20'

VERTICAL SCALE: 1"=10'

MARYLAND TRANSIT ADMINISTRATION

MTA Maryland

Maryland Department of Transportation

PURPLE LINE

TRANSIT PARTNERS

ANNEX A EXHIBITS

SSTC OPTIMIZED ALIGNMENT

PLAN AND PROFILE

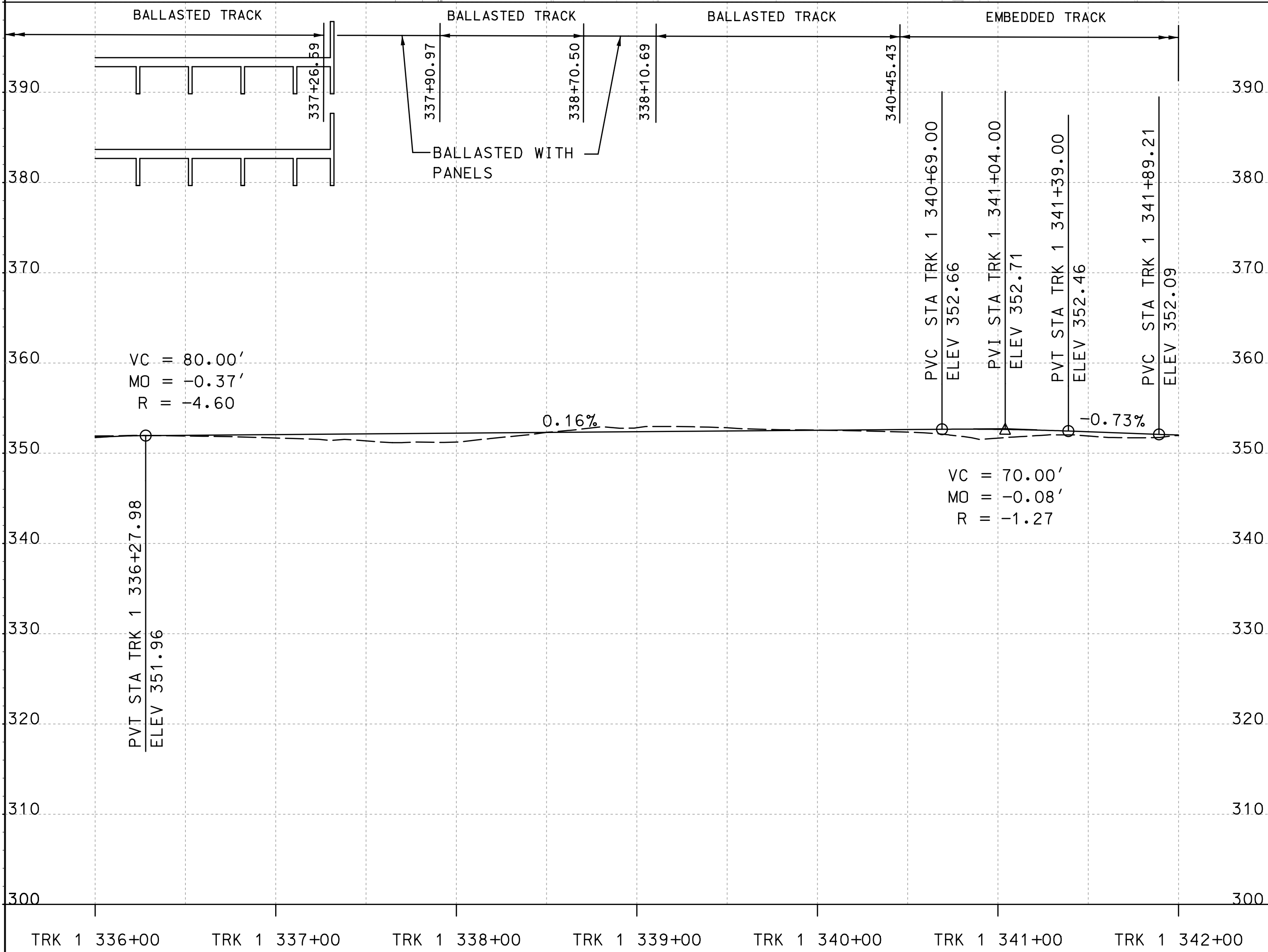
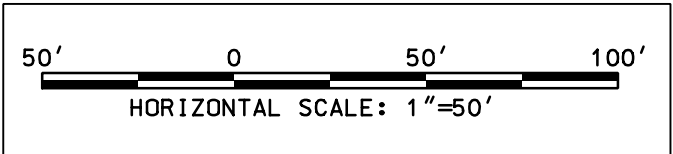
DRAWING NO.

SSTC-TA1

\$FILEL\$  
\$DATE\$



CURVE	RADIUS (FT)	LS1 (FT)	LS2 (FT)	Ea (IN)	DESIGN SPEED (MPH)
CN 1-5	8500	N/A	N/A	1.0	10
CN 2-5	6512	N/A	N/A	1.0	10
CN 1-6	1500	N/A	N/A	1.0	10
CN 2-6	1500	N/A	N/A	1.0	10



PRELIMINARY - SUBJECT TO FURTHER OPTIMIZATION DURING FINAL DESIGN

MARYLAND TRANSIT ADMINISTRATION

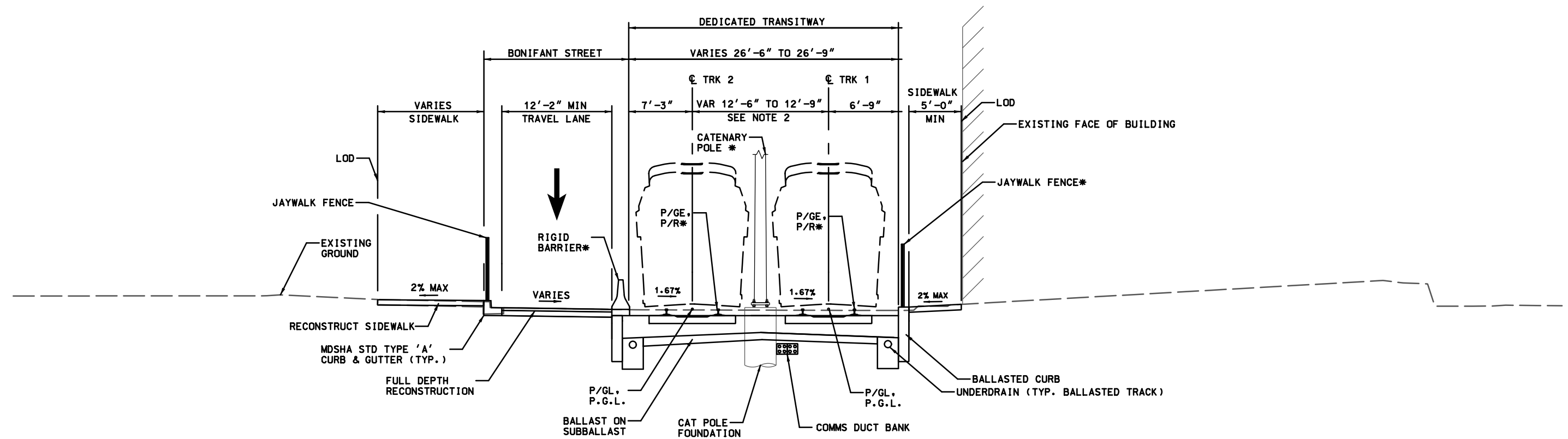


ANNEX A EXHIBITS  
SSTC OPTIMIZED ALIGNMENT

PLAN AND PROFILE

DRAWING NO.  
SSTC-TA2

\$FILEL\$  
\$DATE\$



# BONIFANT STREET – BALLASTED TRACK

STA 334+20 TO STA 340+45

- \* NOTES: 1. CURBS ARE REMOVED AT CROSS STREETS  
 2. TRACK CENTERS VARY BETWEEN 12'-9" AND 12'-6" FROM STA TRK 1 340+50.12 TO STA TRK 1 341+04.88  
 3. THE PROFILE GRADE ELEVATION (P/GE) AND THE POINT OF ROTATION (P/R) SHALL BE APPLIED TO THE TOP OF LOW RAIL  
 4. LOW CLEARANCE UNDER THE BONIFANT GARAGE WILL REQUIRE UNDERBRIDGE STYLE ATTACHMENTS DIRECTLY TO THE UNDERSIDE OF THE GARAGE DECK OR BEAMS.  
 5. RIGID BARRIER BETWEEN 334+60 TO 337+00. BALLASTED CURB BETWEEN 337+00 TO 341+00.  
 6. JAYWALK FENCE BETWEEN 334+60 TO 338+00 LT/RT.

LEGEND					
P/GL	—	PROFILE GRADE LINE	STA	—	STATION
P.G.L.	—	PROFILE GRADE LINE	N.T.S.	—	NOT TO SCALE
P/GE	—	PROFILE GRADE ELEVATION	TYP	—	TYPICAL
P/R	—	POINT OF ROTATION	COMMS	—	COMMUNICATIONS
DF	—	DIRECT FIXATION	TRK	—	TRACK
WBR	—	WESTBOUND ROADWAY	MDSA	—	MARYLAND STATE HIGHWAY ASSOCIATION
EBR	—	EASTBOUND ROADWAY	CCT	—	CAPITAL CRESCENT TRAIL
NBR	—	NORTHBOUND ROADWAY	LRT	—	LIGHT RAIL TRACK
SBR	—	SOUTHBOUND ROADWAY			
MCDOT	—	MONTGOMERY COUNTY DEPARTMENT OF TRANSPORTATION			

PRELIMINARY – SUBJECT TO FURTHER OPTIMIZATION DURING FINAL DESIGN

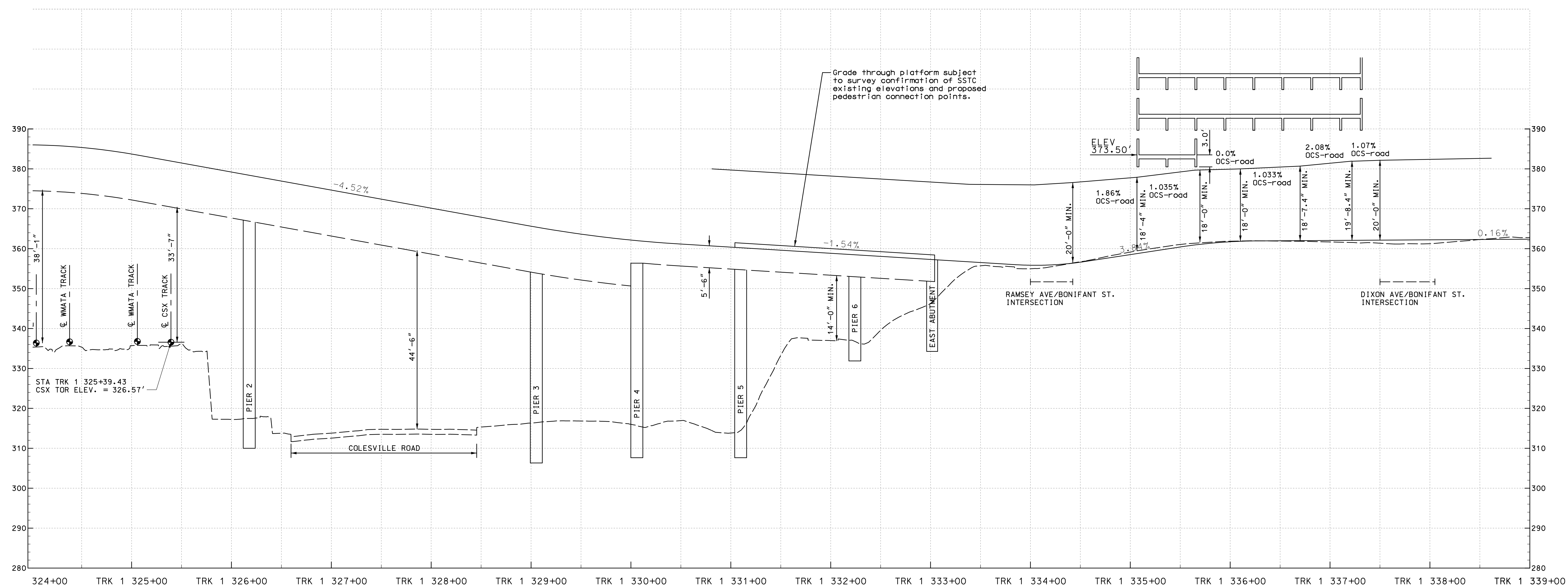
N.T.S



ANNEX A EXHIBITS  
SSTC OPTIMIZED ALIGNMENT

DRAWING NO.  
SSTC-TP

**TYPICAL SECTION**



LINE	SURFACE	OFFSET
---	West Existing	0.0000
Scaled 4.0000 Times Ver.		
Scaled 1.0000 Times Hor.		

- NOTES:
1. LOW PROFILE OCS (APPROX. STA. 333+00 TO 339+30)
  2. LOW CLEARANCE UNDER THE BONIFANT GARAGE WILL REQUIRE UNDERBRIDGE STYLE ATTACHMENTS DIRECTLY TO THE UNDERSIDE OF THE GARAGE DECK OR BEAMS
  3. OCS CLEARANCE LESS THAN 20' BETWEEN APPROX STA. 334+40 AND STA. 337+50, WITH MINIMUM CLEARANCE OF 18.0' AT APPROX STA 335+65

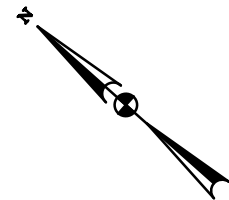


PRELIMINARY - SUBJECT TO FURTHER OPTIMIZATION DURING FINAL DESIGN

<div>MARYLAND TRANSIT ADMINISTRATION</div> <div></div>	<div>PURPLE LINE</div> <div>TRANSIT PARTNERS</div>	ANNEX A EXHIBITS SSTC OPTIMIZED ALIGNMENT	DRAWING NO. SSTC-OCS
		OCS PROFILE	

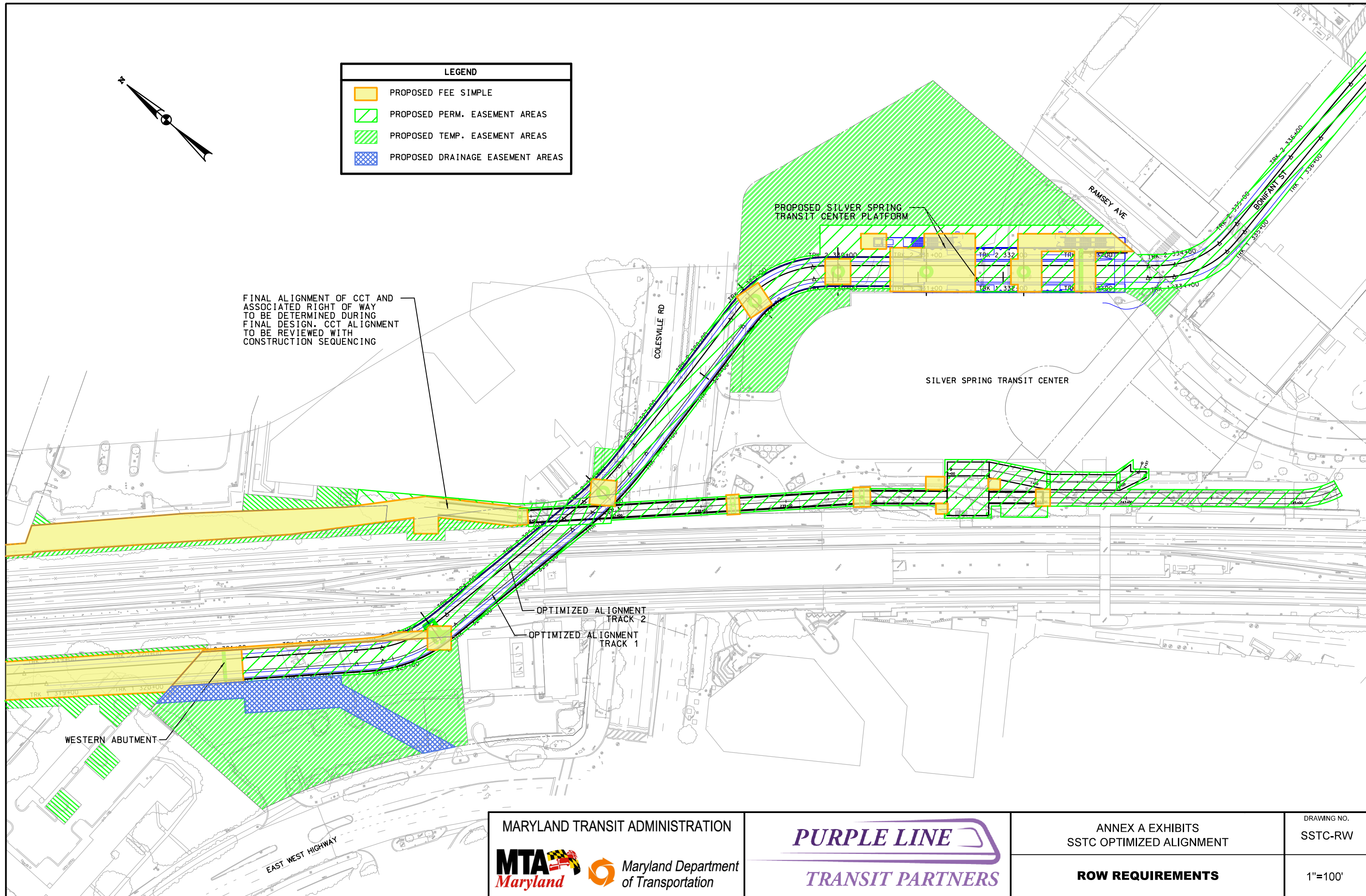
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tfrsdeg, februar 23, 2016 AT 01:20





LEGEND	
	PROPOSED FEE SIMPLE
	PROPOSED PERM. EASEMENT AREAS
	PROPOSED TEMP. EASEMENT AREAS
	PROPOSED DRAINAGE EASEMENT AREAS

FINAL ALIGNMENT OF CCT AND ASSOCIATED RIGHT OF WAY TO BE DETERMINED DURING FINAL DESIGN. CCT ALIGNMENT TO BE REVIEWED WITH CONSTRUCTION SEQUENCING



MARYLAND TRANSIT ADMINISTRATION

 Maryland Department of Transportation

  
TRANSIT PARTNERS

ANNEX A EXHIBITS SSTC OPTIMIZED ALIGNMENT
<b>ROW REQUIREMENTS</b>

DRAWING NO. SSTC-RW
1"=100'

c:\pw\_work\kdm01\img\sls\shelton\dms090303\SSTC Optimization ROW ExhibitV2.dgn  
Thursday, February 25, 2016 AT 06:55 AM

## **SECTION 5 to EXHIBIT 2**

### **BACKFILL PROVISIONS**

Select backfill material may be used for MSE walls whose “Anticipated Owner” is identified as MTA in Exhibit 3.11 in Book 2, Part 2B, Section 3 of the Technical Provisions (the “Backfill Uses”).

Select backfill material shall meet the requirements set forth below (collectively, the “Backfill Requirements”):

Select backfill material used in the structure volume shall be reasonably free from organic material, shale or other poor durability particles and otherwise deleterious materials. The backfill shall conform to the following grading as determined by AASHTO T-27:

<b>Sieve Size</b>	<b>Percent Passing</b>
4”	100
No. 40	0 - 60
No. 200	0 - 15

The Plasticity Index (P.I.) of the backfill material as determined by AASHTO T-90 shall not exceed 6.

Backfill material shall exhibit an angle of internal friction of not less than 34 degrees, as determined by the standard Direct Shear Test, AASHTO T236, on the portion finer than the #10 sieve, using a sample of the material compacted to 95 percent of AASHTO T99, Methods C or D, with oversized correction as outlined in Note 7 to AASHTO T99, at optimum moisture content. No testing is required for material where 80 percent of sizes are greater than 3/4 inch.

Backfill material shall have a magnesium sulfate soundness loss of less than 30 percent after four cycles.

Additionally, the backfill material shall conform to the following electrochemical requirements:

- For metallic soil reinforcements:

<b>AASHTO Requirements</b>	<b>Test Methods</b>
a) pH range between 5.0 and 10.0	T 289
b) Resistivity greater than 3,000 ohm-cm	T 288
c) Chlorides less than 100 ppm	T 291
d) Sulfates less than 200 ppm	T 290
e) Organic Content less than 1%	T 267

If resistivity is greater or equal to 5000 ohm-cm, the chlorides and sulfates requirements may be waived.

- For geosynthetic soil reinforcements:

Polyolefin Polymer (Polypropylene and High Density Polyethylene):

**AASHTO Requirement**

**Test Methods**

a) pH range between 3.0 and 11.0

T 289

Concessionaire shall perform analysis tests for each source of material and shall perform such additional tests to assure conformance whenever the character of the select backfill material changes. All tests shall be performed by laboratories that are AASHTO Materials Reference Laboratory (AMRL) accredited.

## **SECTION 6 to EXHIBIT 2**

### **LANDFILL PROVISIONS**

1. The Gude Drive Landfill in Rockville, Maryland (Montgomery County) is located at 600 E. Gude Drive. The following constitute the “Gude Drive Requirements”:

- Soils and construction/demolition debris delivered may not begin until July 1, 2017.
- Material will be stockpiled on-site at the Gude Drive Landfill; provided, however, that Montgomery County, by or through the Gude Drive Landfill, reserves the right to limit stockpiling of no more than 60,000 cubic yards at any one time from Concessionaire.
- Concessionaire shall demonstrate that soil material is clean and suitable for landfill cover material.

The Concessionaire shall be required to periodically provide an operator and equipment to stockpile the materials on site.<sup>2</sup> The Brown Station Road Landfill in Upper Marlboro, Maryland (Prince George’s County) is located at 3500 Brown Station Road. The following constitute collectively the “Brown Station Road Requirements”:

- Deliveries must be complete prior to the closing of the Brown Station Road Landfill, anticipated as of the Effective Date to be by June, 2019.
- Concessionaire may only deliver material generated within Prince George’s County to the Brown Station Road Landfill.
- Concessionaire shall cause all material to be Maryland Department of the Environment (MDE) pre-approved by a third party independent testing laboratory for toxicity characteristic leaching procedure (TCLP) test and a full run of Resource Conservation and Recovery Act (RCRA) metals:

All samples are analyzed for:

- Full Toxicity Characteristic Leaching Procedure (TCLP) including volatiles, Semi-Volatiles, Pesticides, Herbicides, and Metals by the United States (U.S.) EPA Methods 1311, 8260, 8270, 8141, 6010B, 7471;
- Polychlorinated Biphenyls (PCBs) by U.S. EPA Method 8082;
- Total Petroleum Hydrocarbons (TPH) (GRO/DRO);
- VOCs by U.S. EPA Method 8260;
- SVOCs by U.S. EPA Method 8270;
- Pesticides by U.S. EPA Method 8081;
- Herbicides by U.S. EPA Method 8151;

- Total Metals (Al, Sb, As, Ba, Be, Cd, Cr, Cr3, Cr6, Cu, Fe, Pb, Mn, Hg, Ni, Se, Ag, Tl, Sn, V, Zn);
- Cyanide
- Chain of Custody procedures, sample preparation procedures, and analysis/reporting shall be as outlined by a Maryland Department of the Environment State Certified Water Quality Laboratory. A minimum of 1 sample per borrow source and 1 sample per 10,000 CY delivered. Additional samples may be required by Prince George's County based on source location, non-homogeneous fill, and at Prince George's County's discretion
- Concessionaire shall cause all soil materials also to be gradation and moisture content tested as part of such approval. Required testing frequency is one series of tests for each type of material per grading site. No testing of hot mix asphalt, recycled concrete, etc. is required.
- Concessionaire shall afford Prince George's County officials or representatives access for periodic visual inspection of soil material at Concessionaire's worksites in Prince George's County.
- Construction and demolition debris, hazmat, vegetation, rebar or metals and high moisture content materials are prohibited at the landfill, except as may be accepted by Brown Station Road Landfill.
- On average, it is expected that the landfill can accommodate between 30 – 50 truckloads of clean soil per day. Concessionaire shall coordinate directly with Prince George's County on the number of loads on any particular day as well as the stockpiling of material for future use by Prince George's County. Material is to be stockpiled in piles of similar material.
- Concessionaire shall be required to periodically provide an operator and equipment to deposit the materials in an area adjacent to the landfill.
- Concessionaire shall deposit materials at the landfill during its normal operating hours. Trucks shall be brought onto the site via a separate gate and are not required to be weighed.
- Haul route is as follows: from I-95/ I-495, take Exit 13 and proceed on Richie/Marlboro Road East toward Upper Marlboro, MD; turn right at Brown Street and then again left on Brown Station Road and proceed to the Brown Station Road Landfill.

## **SECTION 7 to EXHIBIT 2**

### **TPSS LOCATION PROVISIONS**

In connection with Concessionaire's 1,500V solution, notwithstanding Exhibit 9, the "ROW Availability Date" with respect to the following parcels is as indicated below. The plats for properties with asterisks (\*) will be revised consistent with the ROW drawings appended as Annex A to this Exhibit 2, Section 7, which when completed and agreed by the Parties shall be incorporated into Book 4 without any further action of the Parties.

Owner shall be responsible for the capital cost increase above \$285,000 or be entitled to receive a credit for any capital cost savings below \$285,000 for the actual construction cost of an underground detention vault shown on PLTP Drawing RD-116, submitted on November 17, 2015, if such underground detention vault is relocated due to changes in property acquisitions shown in this Exhibit 2, Section 7. The Parties shall account for any such additional cost or credit through a Modification Request prepared by Concessionaire under Article 14 of the Agreement.

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date; Other Disposition	Other Notes	Ref. ROW Drawing†
1	01391	59204	Connecticut Avenue	deleted	Elimination of TPSS 2 (8402 LLC)	RW-06
3	01486 01476 02320	59218*	1411 East West Highway, 8401 Colesville Road, and Washington Metropolitan Area Transit Authority	Permanent aerial easement - [REDACTED] 1411 East West Highway - [REDACTED] 8401 Colesville Road - [REDACTED]	Permanent aerial easement over WMATA on the south side of the alignment to accommodate the overhead guide way structure as shown on PLTP Drawing No. SSTC-RW entitled "ANNEX A EXHIBITS SSTC OPTIMIZED ALIGNMENT ROW REQUIREMENTS", undated.	RW-19
3	01472	n/a	Washington Metropolitan Area Transit Authority	[REDACTED]	Fee Simple acquisition associated with the SSTC ATC as shown on PLTP Drawing No. SSTC-RW entitled "ANNEX A EXHIBITS SSTC OPTIMIZED ALIGNMENT ROW REQUIREMENTS", undated.	n/a

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date; Other Disposition	Other Notes	Ref. ROW Drawing†
3	01477	59220	1110 Bonifant Street	██████	Owner no longer acquiring due to Silver Spring ATC Work (Bonifant Building LLC)	RW-20
5	01711	59241*	1401 University Blvd E	██████	Elimination of TPSS 9 (La Union Center LLC)	RW-41
5	01754	59246* 59247*	2520 University Blvd E	██████	Elimination of TPSS 10 (Adelphi Center LLC)	RW-45
6	01802	59313	3841 Campus Drive University of Maryland	██████	Availability of Building 212 on Rossborough Lane (University of Maryland)	RW-57
8	01943	59326*	6410 Kenilworth Avenue	██████	Elimination of TPSS 14. Fee simple acquisition revised to a temporary construction easement (Atlantic Korean-American Presbytery...)	RW-67, RW-68
9	02000	59346* 59347*	7520 Annapolis Road	██████	Elimination of TPSS Q17 (County Center Joint Venture)	RW-86

† ROW drawings not attached to this Exhibit 2, Section 7, may be found in Book 4.

## **Annex A**

*[insert RW drawings]*

*Right of Way Plan, RW-19, Sheet 097 of 425, Rev 1, dated 2/25/16*

*Right of Way Plan, RW-41, Sheet 119 of 425, Redlines shown on previous Rev. 2 plan*

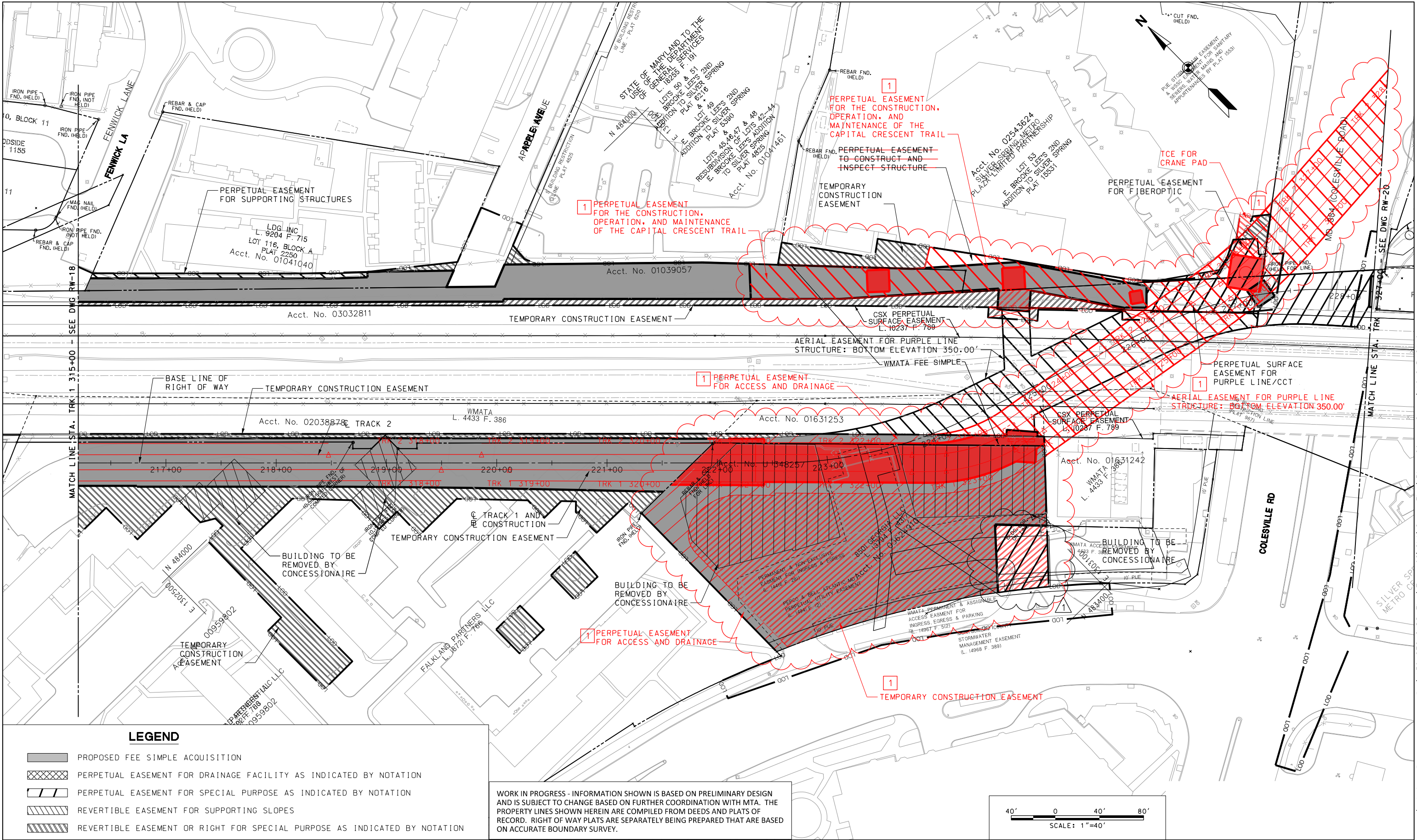
*Right of Way Plan, RW-45, Sheet 123 of 425, Redlines shown on previous Rev. 2 plan*

*Right of Way Plan, RW-67, Sheet 145 of 425, Redlines shown on previous Rev. 1 plan*

*Right of Way Plan, RW-68, Sheet 146 of 425, Redlines shown on previous Rev. 1 plan*

*Right of Way Plan, RW-86, Sheet 164 of 425, Redlines shown on previous Rev. 5 plan*





LEGEND

- PROPOSED FEE SIMPLE ACQUISITION
- PERPETUAL EASEMENT FOR DRAINAGE FACILITY AS INDICATED BY NOTATION
- PERPETUAL EASEMENT FOR SPECIAL PURPOSE AS INDICATED BY NOTATION
- REVERTIBLE EASEMENT FOR SUPPORTING SLOPES
- REVERTIBLE EASEMENT OR RIGHT FOR SPECIAL PURPOSE AS INDICATED BY NOTATION

WORK IN PROGRESS - INFORMATION SHOWN IS BASED ON PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE BASED ON FURTHER COORDINATION WITH MTA. THE PROPERTY LINES SHOWN HEREIN ARE COMPILED FROM DEEDS AND PLATS OF RECORD. RIGHT OF WAY PLATS ARE SEPARATELY BEING PREPARED THAT ARE BASED ON ACCURATE BOUNDARY SURVEY.



PROFESSIONAL CERTIFICATION  
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland  
License No.      Expiration Date

NO.	DESCRIPTION	BY	DATE
1	REVISIONS TO THE METRO PLAZA	DTB	2/25/16
2	PERPETUEL EASEMENT AT ENTRANCE	DTB	9/26/14

CONTRACT DRAWINGS PURPLE LINE LIGHT RAIL	CONTRACT NO. T-1042-0240
RIGHT OF WAY PLAN STA TRK 1 315+00 TO STA TRK 1 327+00 DATE: JUNE 2014	DRAWING NO. RW-19
SCALE: AS SHOWN	SHEET NO. 097 OF 425

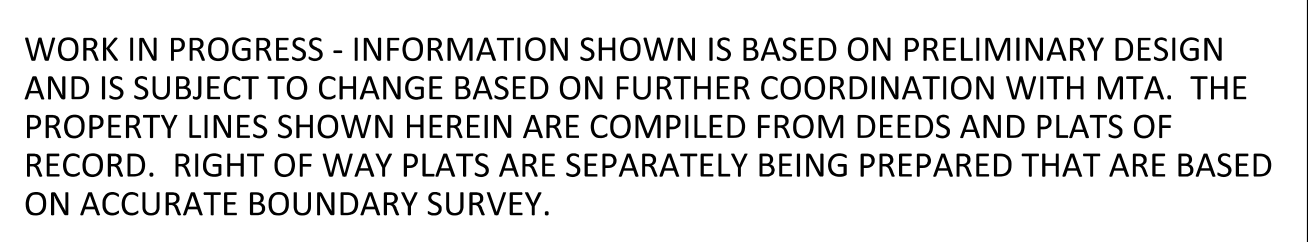






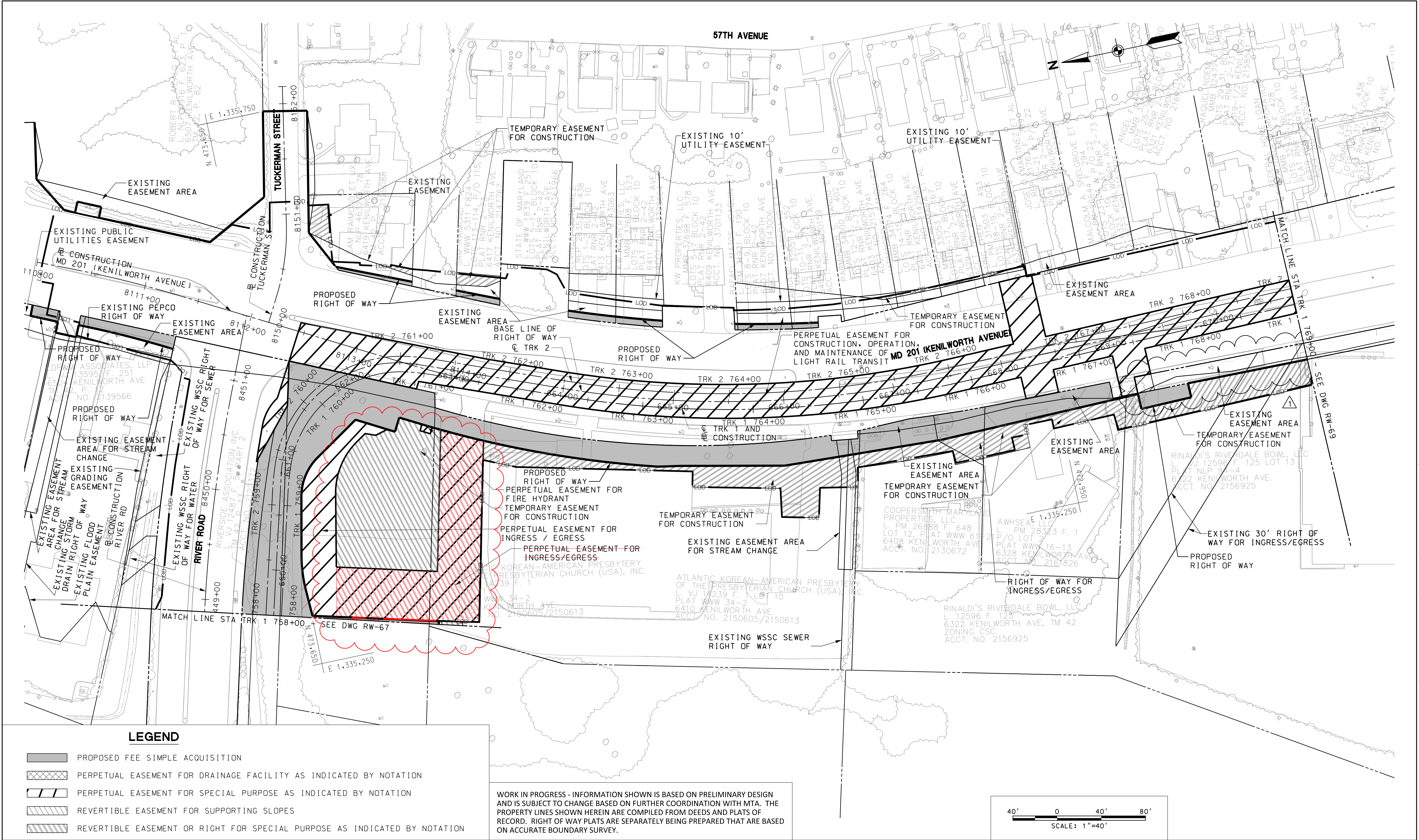






pw:\00 - Current Projects\1042 - Purple Line Light Rail\130 GEC CADD Files\Zone 08\Civil\STV Sheet Files\1042pRW8105.dgn  
12/2016











**EXHIBIT 3**

**INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES, CONTRACTING OFFICER**

Owner Representatives:

- William A. Parks

Contracting Officer (Owner):

- Robert Schleigh

Concessionaire Representative:

- Herb Morgan

**EXHIBIT 4**  
**PRICING EXHIBITS**

- Exhibit 4A: D&C Pricing Information
- Exhibit 4B: Unit Prices for Hazardous Materials Work
- Exhibit 4C: Reserved
- Exhibit 4D: Payment Mechanism
  - Appendix A: Monthly Availability Payment and Monthly Availability Payment Inputs
  - Appendix B: Deduction Factors
  - Appendix C: Noncompliance Points
  - Appendix D: Monthly Operations Performance Factor
  - Appendix E: Energy Painshare / Gainshare



**EXHIBIT 4A**

**D&C PRICING INFORMATION**

**Part A: Summary Information**

A.	Hazardous Materials Remediation Allowance	\$70,000.00
B.	Art in Transit Allowance	\$6,070,000.00
C.	Fare System Allowance	\$15,000,000.00
D.	Total Value of D&C Design Services	\$103,045,092.62
E.	Total Value of D&C Construction Services	\$1,647,784,519.02
F.	Total Value of Demolition Pricing	\$595,000.00
G.	Total Value of D&C Construction Work (sum of items E and F)	\$1,648,379,519.02
H.	Number of LRVs in initial order	25
I.	Individual LRV price	\$8,254,047.13
J.	Total price for initial LRV order	\$206,351,178.36
K.	LRV Supply Milestone amounts	see table in Part B
L.	Cap on payments	see table in Part C
M.	Revenue Service Availability Payment	\$100,000,000.00
N.	Final Completion Payment	\$30,000,000.00
O.	Excess Liability Allowance	\$1,500,000.00

### Part B: Milestone Amounts—Initial Fleet

Payments equal to 85% of the milestone amounts stated below will be made upon completion of each LRV Supply Milestone, in accordance with Article 13 of the Agreement, subject to the annual cap on payments in Part C of this Exhibit 4A.

The LRV Supply Milestones are not listed in the order that might occur chronologically.

LRV Supply Milestone	Unit <sup>14</sup>	Amount	Total
Mobilization; LRV management plan, QA assurance program	Lump sum	\$6,190,535.51	\$6,190,535.51
Review and Comment of the detailed engineering and production schedules, and Preliminary Design with arrangement drawings	Lump Sum	\$10,317,558.92	\$10,317,558.92
Review and Comment on Final Design Submittals	Lump Sum	\$10,317,558.92	\$10,317,558.92
Prototype factory test	Lump sum	\$10,317,558.92	\$10,317,558.92
Begin assembly of each LRV (except prototype and the O&M Spare LRV)	Per LRV	\$2,063,511.78	\$51,587,794.50
Prototype field test	Lump sum	\$10,317,558.92	\$10,317,558.92
Complete assembly and factory test of each LRV (except prototype and the O&M Spare LRV)	Per LRV	\$2,641,295.08	\$66,032,377.00
Provision of manuals, training and test equipment	Lump sum	\$10,317,558.92	\$10,317,558.92
Successful completion of performance verification testing of each LRV, pursuant to Section 1.4 of Part 2C of the Technical Provisions (including prototype but excluding the O&M Spare LRV)	Per LRV	\$1,238,107.07	\$30,952,676.75
TOTAL LRV ORDER PRICE			\$206,351,178.36

<sup>14</sup> "Per LRV" milestones will be paid as each individual LRV attains the stated milestone, in the amount of the "Total" for the milestone divided by the applicable quantity of LRVs.

**Part C: D&C Payment Cap**

Year	Amount	Cumulative Cap
Fiscal Year 2016	\$190,000,000	\$190,000,000
Fiscal Year 2017	\$220,000,000	\$410,000,000
Fiscal Year 2018	\$220,000,000	\$630,000,000
Fiscal Year 2019	\$180,000,000	\$810,000,000
Fiscal Year 2020	\$50,000,000	\$860,000,000

### Part D: Milestone Amounts—LRV Option Order

Upon exercise of an LRV Option, the schedule below will be completed and attached to the Change Order evidencing the LRV order.

The LRV Option Milestones are not listed in the order that might occur chronologically.

Number of LRVs in order: \_\_\_\_\_

Escalation factor: \_\_\_\_\_

LRV Option Milestone	Unit <sup>15</sup>	Base Option Amount (per LRV)	With Escalation (per LRV)	Total (entire order)
Mobilization	Lump sum	\$_____	\$_____	\$_____ (3% of LRV Option order price)
Review and acceptance of the detailed engineering and production schedules	Lump sum	\$_____	\$_____	\$_____ (4% of LRV Option order price)
Review and comment on the preliminary design and arrangement drawings	Lump sum	\$_____	\$_____	\$_____ (3% of LRV Option order price)
Review and comment on the final design	Lump sum	\$_____	\$_____	\$_____ (5% of LRV Option order price)
Receipt at manufacturing facility of carshell	Per LRV	\$_____	\$_____	\$_____ (20% of LRV Option order price)
Receipt of assembled and tested trucks for each LRV	Per LRV	\$_____	\$_____	\$_____ (15% of LRV Option order price)
Start assembly of each LRV	Per LRV	\$_____	\$_____	\$_____ (10% of LRV Option order price)

<sup>15</sup> "Per LRV" milestones will be paid as each individual LRV attains the stated milestone, in the amount of the "Total" for the milestone divided by the applicable quantity of LRVs.

LRV Option Milestone	Unit <sup>15</sup>	Base Option Amount (per LRV)	With Escalation (per LRV)	Total (entire order)
Complete assembly and factory test for each production unit	Per LRV	\$ _____	\$ _____	\$ _____ (30% of LRV Option order price)
Successful completion of performance verification testing of each LRV, pursuant to Part 2C of the Technical Provisions (except prototype)	Per LRV	\$ _____	\$ _____	\$ _____ (10% of LRV Option order price)
TOTAL			\$ _____	\$ _____

**EXHIBIT 4B**

**UNIT PRICES FOR HAZARDOUS MATERIALS WORK**

**HAZARDOUS MATERIAL  
REMEDiation PRICING SHEET**

**Table 1: Hazardous Material  
Remediation Allowance Unit  
Prices**

Activity Code, Category and Activity	Unit of Measure	Unit Price <sup>[1]</sup>	Estimated Quantity	\$Amount <sup>[2]</sup>
01 - Excavation and Off-Site Remediation of Hydrocarbon Contaminated Soil	cubic feet (CF)		24,975	
02a – Removal and Off-Site Remediation of Contaminated Groundwater	1,000 gallons		15,500	
02b – Removal and On-Site Remediation of Contaminated Groundwater	1,000 gallons		4,550	
TOTAL HAZARDOUS MATERIAL REMEDIATION ALLOWANCE AMOUNT <sup>[3]</sup>				

**Table 2: Hazardous Material  
Remediation Demolition Unit  
Prices**

Activity Code, Category and Activity	Unit of Measure	Unit Price <sup>[1]</sup>	Estimated Quantity	\$Amount <sup>[2]</sup>
03 - Removal and Off-Site Remediation of Asbestos Containing Material	CF		2,227	
04 - Removal and Off-Site Remediation of Lead-Based Paint	square feet		55,673	
05 – Excavation and Off-Site Remediation of PCB-Containing Material	CF		2,997	

06 - Excavation and Off-Site Remediation of Radioactive Material	CF		999	
07a – Removal and Off-Site Remediation of Utility Pipe-Derived Asbestos Containing Material	linear feet of 8" pipe		1,250	
07b – Removal and Off-Site Remediation of Utility Pipe-Derived Asbestos Containing Material	Linear feet of 2' x 3' pipe		1,500	
08 – Removal and Off-Site Remediation of Utility Derived Lead-Containing Material	Linear Feet		200	
<b>TOTAL HAZARDOUS MATERIAL REMEDICATION DEMOLITION AMOUNT<sup>[4]</sup></b>				

[1] Enter unit price for each category and activity.

[2] Enter total of quantity multiplied by unit price.

[3] Enter total of "\$Amount" column. *[Note: This amount will be inserted into Exhibit 4A, Part A, line a, entitled "Hazardous Materials Remediation Allowance.]"*

[4] Enter total of "\$Amount" column. *[Note: This amount will be inserted into the blank in Section 15.3.3.1(a) of the P3 Agreement.]*

## Description and Scope of Hazardous Material Remediation Line Items

### 01 – Excavation and Off-Site Remediation of Hydrocarbon Contaminated Soil

This line item addresses the materials resulting from Purple Line construction activities where hydrocarbon contamination is encountered. Soils shall be handled in accordance with the Maryland Department of Environment (MDE) "Cleanup Standards for Soil and Groundwater, Interim Final Guidance, Update No. 2.1, June 2008" or any subsequently issued guidance or regulation that replaces or supplements the Interim Final Guidance.

The quantity to be measured for excavation and off-site remediation shall be based on the actual number of cubic feet of contaminated material in-place prior to excavation and calculated to the nearest cubic foot. Determination of the volume of contaminated material excavated shall be based on cross-sectional volume determination reflecting the differential between the original elevations of the top of contaminated material and the final elevations after removal of the contaminated material. Payment for 75% of the completed quantity will be made upon the Concessionaire's written concurrence with the Contractor's certification (as applicable) that the contaminated materials have been removed and the work was completed in accordance with COMAR and applicable provisions of the Agreement. Request for payment shall also include the cross-sectional survey results and calculated volume determination. Payment for the remainder of completed work shall be made after receipt by the Owner of a certified statement from the disposal facility, signed by an official thereof, that the contaminated materials have been accepted and disposed of in accordance with all applicable Laws.

02 (a & b) – Removal and Excavation and Off-Site/On-Site Remediation of Hydrocarbon Contaminated Groundwater

This line item addresses the groundwater resulting from Purple Line construction activities where hydrocarbon contamination is encountered. Soils shall be handled in accordance with the Maryland Department of Environment (MDE) "Cleanup Standards for Soil and Groundwater, Interim Final Guidance, Update No. 2.1, June 2008" or any subsequently issued guidance or regulation that replaces or supplements the Interim Final Guidance.

The quantity to be measured shall be per 1,000 gallons and shall be based on the actual number of gallons as measured by flow meter, bill of lading or disposal ticket. Payment for 75% of the completed quantity will be made upon the Concessionaire's written concurrence with the Contractor's certification (as applicable) that the contaminated materials have been removed and the work was completed in accordance with MDE and applicable provisions of the Agreement. Request for payment shall also include confirming documentation for the number of gallons removed and remediated. Payment for the remainder of completed work shall be made after receipt by the Owner of a certified statement from the disposal facility, signed by an official thereof, that the contaminated materials have been accepted and disposed of in accordance with all applicable Laws.

03 – Removal and Off-Site Remediation of Asbestos Containing Material (ACM)

This line item addresses the ACM waste resulting from demolition of any structures required for Purple Line construction. ACM waste that results from removal of friable asbestos prior to demolition (in accordance with COMAR 26.11.21.07) shall be handled and disposed of in accordance with COMAR 26.11.21.08. All asbestos waste must be deposited in 6-mil plastic bags and large structural members must be wrapped in 6-mil plastic with duct tape. Bagged and wrapped asbestos materials shall be labeled in accordance with 29 CFR Part 1910 or 40 CFR Part 61 (labeling should include abatement contractor's license number and the date the materials were sealed). Asbestos waste shall be removed from the Site not more than 24 hours after non-NESHAP projects and not more than 7 days after NEHSAP-source projects. Waste shall be disposed of at a licensed disposal facility. Within 10 days, the Maryland Licensed Abatement Contractor who performed the work shall provide to the Maryland Department of the Environment receipt(s) of proper disposal.



The quantity to be measured shall be the cubic foot in-place prior to removal and calculated to the nearest cubic foot. Payment for 75% of the completed quantity will be made upon the Concessionaire's written concurrence with the Contractor's certification (as applicable) as to the following: the building, structure and/or utility is visually free of asbestos; that materials have been removed and the work was completed in accordance with COMAR and applicable provisions of the Agreement; that the final clearance air monitoring results meet acceptable levels; and, that the building, structure and/or utility are certified by the asbestos contractor to be available for normal demolition. Payment for the remainder of completed work shall be made after receipt by the Owner of a certified statement from the disposal facility, signed by an official thereof, that the materials have been accepted and disposed of in accordance with all applicable Laws.

#### 04 – Removal and Off-Site Remediation of Lead Based Paint

This line item addresses the Lead Based Paint waste resulting from demolition of any structures required for Purple Line construction. Lead waste shall be handled and disposed of in accordance with COMAR 26.02.07.08. All lead waste shall be deposited in 6-mil plastic bags or double plastic bags at least 4-mils thick. Lead waste shall be removed from the Site no later than 48 hours after completing the cleanup. Waste shall be disposed of in a manner to prevent lead from becoming airborne. Within 24 hours of completion of the cleanup, the applicable Contractor shall notify MDE to schedule an inspection in accordance with COMAR 26.02.07.12B.

The quantity to be measured shall be square feet in-place prior to removal and measured to the nearest square foot. Payment for 75% of the completed quantity will be made upon the Concessionaire's written concurrence with the Contractor's certification (as applicable) that the materials have been removed and the work was completed in accordance with COMAR and applicable provisions of the Agreement. Request for payment shall also include the measurement results and calculated totals. Payment for the remainder of completed work shall be made after receipt by the Owner of a certified statement from the disposal facility, signed by an official thereof, that the materials have been accepted and disposed of in accordance with all applicable Laws.

#### 05 – Excavation and Off-Site Remediation of Polychlorinated Biphenyl (PCB)-Containing Material

This line item addresses PCB-Containing material waste resulting from demolition of any structures required for Purple Line construction. PCB material is considered a Maryland Toxic materials with levels between 50-500 ppm according to COMAR 26.13.02.19H. Contaminated soils and other solids with PCB concentrations of less than 50 ppm are not considered a hazardous waste in accordance with COMAR 26.13.02.04-1. PCB containing material shall be disposed of in accordance with Federal Regulations 40 CFR Part 761 Subpart D and Maryland COMAR 26.15.02 Disposal of Controlled Hazardous Substances.

The quantity to be measured for excavation and off-site remediation shall be based on the actual number of cubic feet of contaminated material in-place prior to excavation and calculated to the nearest cubic foot. Determination of the volume of contaminated material excavated shall be based on cross-sectional volume determination reflecting the differential between the original elevations of the top of contaminated material and the final elevations after removal of the contaminated material. Payment for 75% of the completed quantity will be made upon the Concessionaire's written concurrence with the Contractor's certification (as applicable) that the contaminated materials have been removed and the work was completed in accordance with COMAR and applicable provisions of the Agreement. Request for payment shall also include the cross-sectional survey results and calculated volume determination. Payment for the remainder of completed work shall be made after receipt by the Owner of a certified statement from the disposal facility, signed by an official thereof, that the contaminated materials have been accepted and disposed of in accordance with all applicable Laws.

#### 06 – Excavation and Off-Site Remediation of Radioactive Material

This line item addresses radioactive waste resulting from demolition of any structures required for Purple Line construction that is considered "radioactive hazardous substance (RHS)" under COMAR 26.16.02.02. Radioactive waste shall be handled and disposed of in accordance with COMAR 26.15.02.04.

The quantity to be measured for excavation and off-site remediation shall be based on the actual number of cubic feet of contaminated material in-place prior to excavation and calculated to the nearest cubic foot. Determination of the volume of contaminated material excavated shall be based on cross-sectional volume determination reflecting the differential between the original elevations of the top of contaminated material and the final elevations after removal of the contaminated material. Payment for 75% of the completed quantity will be made upon the Concessionaire's written concurrence with the Contractor's certification (as applicable) that the contaminated materials have been removed and the work was completed in accordance with COMAR and applicable provisions of the Agreement. Request for payment shall also include the cross-sectional survey results and calculated volume determination. Payment for the remainder of completed work shall be made upon receipt by the Owner of a certified statement from the disposal facility, signed by an official thereof, that the contaminated materials have been accepted and disposed of in accordance with all applicable Laws.

#### 07 (a & b) – Removal and Off-Site Remediation of Utility Pipe-Derived Asbestos Containing Material (ACM)

This line item addresses the ACM waste resulting from demolition, removal, or disruption of subsurface utility pipes required for Purple Line construction. ACM waste that results from removal or generation of friable asbestos (in accordance with COMAR 26.11.21.07) shall be handled and disposed of in accordance with COMAR 26.11.21.08. All asbestos waste must be deposited in 6-mil plastic bags and large structural members must be wrapped in 6-mil plastic with duct tape. Bagged and wrapped asbestos materials shall be labeled in accordance with 29CFR Part 1910 or 61 (labeling should include abatement contractor's license number and the date the materials were sealed). Asbestos waste shall be removed from the site not more than 24 hours after non-NESHAP projects and not more than 7 days after NEHSAP-source projects. Waste shall be disposed of at a licensed disposal facility. Within 10 days, the Maryland Licensed Abatement Contractor who performed the work shall provide to the Maryland Department of the Environment receipt(s) of proper disposal.

The quantity to be measured for removal and off-site remediation of utility pipe-derived asbestos shall be based on the actual number of linear feet of eight (8") inch diameter pipe and two (2') foot x three (3') foot pipe. Payment for 75% of the completed quantity will be made upon the Concessionaire's written concurrence with the Contractor's certification (as applicable) that the contaminated materials have been removed and the work was completed in accordance with COMAR and applicable provisions of the Agreement. Payment for the remainder of completed work shall be made after receipt by the Owner of a certified statement from the disposal facility, signed by an official thereof, that the contaminated materials have been accepted and disposed of in accordance with all applicable Laws.

#### 08 – Removal and Off-Site Remediation of Utility Derived Lead-Containing Material

This line item addresses the lead-containing material resulting from demolition, removal, or disruption of subsurface utility infrastructure required for Purple Line construction. Lead waste shall be handled and disposed of in accordance with COMAR 26.02.07.08. All lead waste shall be deposited in 6-mil plastic bags or double plastic bags at least 4-mils thick. Lead waste shall be removed from the site no later than 48 hours after completing the cleanup. Waste shall be disposed of in a manner to prevent lead from becoming airborne. Within 24 hours of completion of the cleanup, the applicable Contractor shall notify MDE to schedule an inspection in accordance with COMAR 26.02.07.12B.

The quantity to be measured for removal and off-site remediation of utility derived lead containing material shall be based on the actual number of linear feet of lead shielded conductor. Payment for 75% of the completed quantity will be made upon the Concessionaire's written concurrence with the Contractor's certification (as applicable) that the contaminated materials have been removed and the work was completed in accordance with COMAR and applicable provisions of the Agreement. Payment for the remainder of completed work shall be made after receipt by the Owner of a certified statement from the disposal facility, signed by an official thereof, that the contaminated materials have been accepted and disposed of in accordance with all applicable Laws.

#### Items Included in Unit Prices

The unit prices for the items specified will be full compensation for all removal, containment systems, permits, licenses and license fees, insurances, health and safety training, working drawings, daily quality control and disposal records, professional engineer's services, industrial hygienist services, air monitoring, site investigation, sampling, testing and analysis, submitting substantiating test information to verify the presence of contamination, revisions and resubmissions that may be required during the execution of the work, providing safe access for inspections, hand wash station/clean up area, warning signage, air monitoring, floodlighting, test plates, drums, collection and storage at the temporary storage site, stockpiling, containment devices and labels, hauling and disposal at an approved industrial waste site or hazardous waste site, removing and replacing planking, removal of debris, and all material, labor, equipment (including test equipment), tools, and incidentals necessary to complete the work.

**EXHIBIT 4C**

**RESERVED**

**EXHIBIT 4D**

**PAYMENT MECHANISM**

**Part A: Definitions**

**Section 1. Definitions**

Capitalized terms used but not defined in this Exhibit 4D shall have the meanings specified in Exhibit 1 to the Agreement.

## Part B: Calculation of Availability Payments

### Section 1. Monthly Availability Payment

- 1.1 The Monthly Availability Payment shall be payable in arrears for the prior Contract Month. The Monthly Availability Payment shall be calculated in accordance with the following formula:

$$MAP_n = MAPG_n + (MAPO_n \times ESCO_n) + (MAPM_n \times ESCM_n) + (I \times ESCG_n) + LCP_n - \Sigma D + PSGS + QVA$$

Where:

$MAP_n$	means the Monthly Availability Payment for the relevant Contract Month calculated in accordance with the above formula.
$MAPG_n$	means the general portion of the Monthly Availability Payment for the relevant Contract Month, as set out in Section 2 of <u>Appendix A</u> to this <u>Exhibit 4D</u> .
$MAPO_n$	means the operational portion of the Monthly Availability Payment as set out in the column headed “ $MAPO_n$ ” in Section 1 of <u>Appendix A</u> to this <u>Exhibit 4D</u> for the relevant Contract Month and Service Level.
$ESCO_n$	means the Operations Escalation Factor applicable to the relevant Contract Year.
$MAPM_n$	means the maintenance portion of the Monthly Availability Payment as set out in the column headed “ $MAPM_n$ ” in Section 1 of <u>Appendix A</u> to this <u>Exhibit 4D</u> for the relevant Contract Month and Service Level.
$ESCM_n$	means the Maintenance Escalation Factor applicable to the relevant Contract Year
$I$	means the Insurance Payment for the relevant Contract Month.
$ESCG_n$	means the General Escalation Factor applicable to the relevant Contract Year
$LCP_n$	means the Lifecycle Payment for the relevant Contract Month, as set out in <u>Section 3.1</u> of this <u>Part B</u> , as such amount may be adjusted under the terms of the Agreement.
$\Sigma D$	means the sum of all Deductions for the relevant Contract Month for Noncompliance Events, calculated in accordance with the provisions set out in <u>Part C</u> of this <u>Exhibit 4D</u> .
$PSGS$	means any addition/ or deduction arising pursuant to the terms of Appendix E (Electricity Painshare/Gainshare) of this <u>Exhibit 4D</u> .
$QVA$	means the Quarterly Volume Adjustment in the months where it is applicable

- 1.2 In the first and last Contract Month, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month from and including the Revenue Service Availability Date (for the first month) and up to and including the last day of the Term (for the last month). The Parties acknowledge that, as of the Effective Date, Concessionaire assumed achievement of RSA on March 11, 2022, a 21 day Contract



Month 1; based on the foregoing, the pro rata adjustment shall be made, in each case, relative to the original number of assumed days in the first and last Contract Months.

- 1.3 Once during each 3-Contract Month period, the Monthly Availability Payment shall be adjusted, if applicable, for any Operating Volume Adjustment and/or Maintenance Volume Adjustment in accordance with Sections 2.3 - 2.5 of this Part B.
- 1.4 If the calculation prescribed by Section 1.1 of this Part B yields an amount for a Contract Month which is a negative number, then the Monthly Availability Payment for the relevant Contract Month shall be deemed to be zero, provided that:
  - (a) to the extent any Quarterly Volume Adjustment payable to Owner cannot be recovered in that Contract Month, it shall be carried forward to any subsequent Contract Month(s) until the entire amount has been recovered by Owner; and
  - (b) Deductions may not be applied against any Quarterly Volume Adjustment payable to Concessionaire as part of the Monthly Availability Payment.
- 1.5 The Insurance Payment as set out in Section 5 of Appendix A to this Exhibit 4D will be escalated by  $ESCG_n$  and paid monthly, and such amount may be adjusted monthly, or for the applicable time period, under Sections 11.1.2.2(d), 11.1.2.12 and 11.1.8 of the Agreement.

## **Section 2. Quarterly Volume Adjustment**

### **2.1 Purpose**

- (a) A Quarterly Volume Adjustment comprised of Quarterly Operating Volume Adjustment and a Quarterly Maintenance Volume Adjustment shall be determined and applied to the Availability Payment otherwise payable under this Agreement to account for variations in Total Scheduled Operating Hours ("TSOH") and Total Scheduled LRV Miles ("TSVM") relative to Total Baseline Operating Hours ("TBOH") and Total Baseline LRV Miles ("TBVM") respectively in each 3-Contract Month period in accordance with Sections 2.2 - 2.5 of this Part B. The Quarterly Volume Adjustment will only reflect changes in the amount of service requested by Owner. Total Scheduled Operating Hours and Total Scheduled LRV Miles include Special Event Service and Minor Service Changes.
- (b) Major Service Changes will not be directed through a Quarterly Volume Adjustment under this section.

### **2.2 Total Baseline Operating Hours and Total Baseline LRV Miles**

- (a) In its Operating Plans, Concessionaire has defined and committed to both Total Baseline Operating Hours and Total Baseline LRV Miles for each Service Level for the purpose of calculating any Quarterly Volume Adjustments in accordance with Section 2.3 of this Part B.
- (b) Concessionaire's Total Baseline Operating Hours and Total Baseline LRV Miles for each Service Level are as provided in Table 1: Summary of Service Levels.

**Table 1: Summary of Service Levels**

Calendar Month	Service Level 1		Service Level 2		Service Level 3	
	TBOH	TBVM	TBOH	TBVM	TBOH	TBVM
<b>Jan</b>	9,129.00	112,409.00	9,843.00	121,233.00	10,557.00	130,058.00
<b>Feb</b>	8,250.00	101,573.00	8,897.00	109,557.00	9,543.00	117,541.00
<b>Mar</b>	9,131.00	112,442.00	9,845.00	121,266.00	10,559.00	130,090.00
<b>Apr</b>	8,993.00	110,349.00	9,741.00	119,594.00	10,489.00	128,839.00
<b>May</b>	8,954.00	112,416.00	9,639.00	121,240.00	10,324.00	130,064.00
<b>June</b>	8,560.00	109,369.00	9,219.00	118,193.00	9,878.00	127,016.00
<b>July</b>	8,869.00	113,289.00	9,559.00	122,533.00	10,250.00	131,776.00
<b>Aug</b>	8,793.00	112,393.00	9,452.00	121,216.00	10,111.00	130,040.00
<b>Sept</b>	8,851.00	109,418.00	9,564.00	118,242.00	10,278.00	127,067.00
<b>Oct</b>	9,173.00	113,340.00	9,921.00	122,585.00	10,669.00	131,830.00
<b>Nov</b>	8,576.00	106,656.00	9,188.00	114,220.00	9,800.00	121,784.00
<b>Dec</b>	9,201.00	113,340.00	9,948.00	122,585.00	10,696.00	131,830.00
<b>Total</b>	106,480.00	1,326,994.00	114,816.00	1,432,464.00	123,154.00	1,537,935.00

- (c) For each 3-Contract Month period, the Total Scheduled Operating Hours and Total Scheduled LRV Miles for the months in that period (adjusted for partial months) shall be compared to Total Baseline Operating Hours and Total Baseline LRV Miles respectively and:
- (i) If Special Event Service Support Staff have been requested by the Owner in the previous 3-Contract Month period then the Quarterly Operating Volume Adjustment will be calculated, and the Special Event Support Service Staff adjustments will be included;
  - (ii) If the Total Scheduled Operating Hours are greater than 100.1% and less than 105% or less than 99.9% and greater than 95% of the Total Baseline Operating Hours during the 3-Contract Month period, then Concessionaire shall calculate the Quarterly Operating Volume Adjustment.
  - (iii) If the Total Scheduled LRV Miles are greater than 100.1% and less than 105% or less than 99.9% and greater than 95% of the Total Baseline LRV

Miles during the 3-Contract Month period, then Concessionaire shall calculate the Quarterly Maintenance Volume Adjustment.

- (iv) An equitable adjustment to the Availability Payments shall be made by Change Order upon demand of either Party if during this 3-Contract Month period (A) the Total Scheduled Operating Hours are greater than 105% or less than 95% of the Total Baseline Operating Hours and/or (B) the Total Scheduled LRV Miles are greater than 105% or less than 95% of the Total Baseline LRV Miles. The equitable adjustment shall be based on any net increase or decrease in costs, established in accordance with Exhibit 13A, due solely to the variation in Total Scheduled Operating Hours and/or Total Scheduled LRV Miles above 105% or below 95% of the applicable baseline.
- (v) For the purposes of this sub-paragraph (c), where the 3-Contract Month period includes February 29, the Total Baseline Operating Hours and the Total Baseline LRV Miles for the period shall be increased by one day's worth of the relevant values otherwise applicable for the month of February in that period. In other words, unless February is a partial month, the total value for February will be divided by 29 and the resulting daily value will be added to the total value that would otherwise apply.

## 2.3 Calculation of Quarterly Volume Adjustment

- (a) The Quarterly Volume Adjustment shall be calculated by adding the Quarterly Operating Volume Adjustment to the Quarterly Maintenance Volume Adjustment:

$$QVA_g = QOVA_g + QMVA_g$$

where:

$QVA_g$  means Quarterly Volume Adjustment for the relevant 3-Contract Month period.

$QOVA_g$  means the Quarterly Operating Volume Adjustment for the relevant 3-Contract Month period.

$QMVA_g$  means the Quarterly Maintenance Volume Adjustment for the relevant 3-Contract Month period.

- (b) The Quarterly Operating Volume Adjustment shall be calculated based on the inputs from Section 2.2(c)(i) and Section 2.2(c)(ii) of this Part B for the relevant Contract Year and Service Level then in effect, as follows:

$$QOVA_g = (TSOH_g - TBOH_i) * VOLO * ESVO_y + (SESS * SESH_y * ESVO_y)$$

where:

$TSOH_g$  means the Total Scheduled Operating Hours during the relevant 3-Contract Month period.

TBOH <sub>i</sub>	means the Total Baseline Operating Hours for the Service Level in effect during the relevant 3-Contract Month period.
VOLO	means the Operating Volume Adjustment unit price per operating hour for the Service Level in effect during the relevant 3-Contract Month period as provided in Section 3 of <u>Appendix A</u> to this <u>Exhibit 4D</u> .
ESVO <sub>y</sub>	means the VOLO Escalation Factor applicable to the relevant Contract Year.
SESS <sub>y</sub>	means the cost per hour of Special Event Service Support Staff, as provided in Section 3 of <u>Appendix A</u> to this <u>Exhibit 4D</u>
SESH <sub>i</sub>	means the total 3-Contract Month period Special Event Service Support Staff hours

- (c) The Quarterly Maintenance Volume Adjustment shall be calculated based on the inputs from Section 2.2(c)(iii) of this Part B for the relevant 3-Contract Month period and Service Level then in effect, as follows:

$$QMVA_g = (TSVM_g - TBVM_i) * VOLM * ESVM_y$$

where:

TSVM <sub>g</sub>	means the Total Scheduled LRV Miles during the relevant 3-Contract Month period.
TBVM <sub>i</sub>	means the Total Baseline LRV Miles for the Service Level in effect during the relevant 3-Contract Month period.
VOLM	means the Maintenance Volume Adjustment unit price per LRV mile in effect during the relevant 3-Contract Month period as provided in Section 3 of <u>Appendix A</u> to this <u>Exhibit 4D</u> .
ESVM <sub>y</sub>	means the VOLM Escalation Factor applicable to the relevant Contract Year.

## 2.4 Application of Quarterly Volume Adjustment to Monthly Availability Payments

Where a Quarterly Operating Volume Adjustment and/or Quarterly Maintenance Volume Adjustment is established in accordance with Sections 2.2 and 2.3 of this Part B, the relevant net adjustments shall be given effect by way of an increase or decrease to the next Monthly Availability Payment(s) to occur after the net adjustments have been agreed or determined until the adjustment has been fully recovered. In the event that a relevant adjustment arises with respect to the final 3-Contract Month period, the adjustment shall be made to the final Monthly Availability Payment.

## 2.5 Procedure for Finalizing Quarterly Volume Adjustment

- (a) Concessionaire shall calculate the Quarterly Volume Adjustment, if any, with respect to each 3-Contract Month period during the Term.
- (b) Concessionaire will be required to prepare and maintain a Monthly Volume Adjustment Report that sets out the Total Scheduled Operating Hours and Total Scheduled LRV Miles for the relevant Contract Month and cumulative 3-Contract Month period compared against the Total Baseline Operating Hours and Total Baseline LRV Miles for the Service Level in effect.
- (c) Concessionaire shall provide Owner with a draft Quarterly Volume Adjustment Report within 10 days following the end of each 3-Contract Month period, which report shall include copies of all working papers to fully support the calculation of the Quarterly Volume Adjustment for the relevant period.
- (d) As soon as practicable and in any event within 30 days following the end of each 3-Contract Month period (or on such other date as may be agreed upon between Owner and Concessionaire), Concessionaire and Owner shall convene a Quarterly Volume Adjustment Review Meeting. At the Quarterly Volume Adjustment Review Meeting, Concessionaire shall present the draft Quarterly Volume Adjustment Report to Owner, and Owner and Concessionaire shall discuss the Quarterly Volume Adjustment, if any, for the preceding 3-Contract Month period.
- (e) Owner shall promptly notify Concessionaire of the details of any disagreement of all or any aspect of the draft Quarterly Volume Adjustment Report.
- (f) Within 30 days following each Quarterly Volume Adjustment Review Meeting, or within such period as may be otherwise agreed between Owner and Concessionaire, acting reasonably:
  - (i) Owner shall confirm its acceptance of all or any aspect of the Quarterly Volume Adjustment Report; and
  - (ii) The Parties shall seek to reach agreement as to any Quarterly Volume Adjustment.

## Section 3. Calculation of Monthly Lifecycle Payment

3.1 The Monthly Lifecycle Payment will be calculated as follows:

$$LCP_n = (NVLCP_n * ESCLN_n) + (TVLCP_n * ESCLV_n) + SLP_n$$

Where:

**$LCP_n$**  means the Lifecycle Payment for Contract Month  $n$ , where  $n$  is the number of complete months which have elapsed since the Revenue Service Availability Date.

**$ESCLN_n$**  means the Non-LRV Lifecycle Escalation Factor applicable to the relevant Contract Year.

<b><math>NVLC P_n</math></b>	means the Non-LRV Lifecycle Payment for Contract Month $n$ , where $n$ is the number of complete months which have elapsed since the Revenue Service Availability Date.
<b><math>ESCL V_n</math></b>	means the LRV Lifecycle Escalation Factor applicable to the relevant Contract Year
<b><math>SLP_n</math></b>	means the Special Lifecycle Payment for Contract Month $n$ , where $n$ is the number of complete months which have elapsed since the Revenue Service Availability Date, as set forth in Part G, Section 1.1

3.2 The monthly Total LRV Lifecycle Payment will be calculated as follows:

$$TVLCP_n = ILLP_n + ALLP_n$$

where:

$ILLP_n$  means the **Initial LRV Lifecycle Payment** which is calculated on the following basis:

For the first Contract Month, the Initial LRV Lifecycle Payment will be the amount in the first row of Appendix A Table 4.2 Column C.

For the second Contract Month and each subsequent Contract Month, the Initial LRV Lifecycle Payment will be the scheduled payment in Appendix A Table 4.2 Column C for that Contract Month unless the next paragraph applies.

If the Actual Cumulative Initial Fleet LRV Miles for the Contract Month is greater than the Scheduled Cumulative Initial Fleet LRV Miles in Appendix A Table 4.2 Column B for the following month ( $n+1$ ) then the Concessionaire also has the right to receive the Initial LRV Lifecycle Payment for the following month. For each subsequent month, when the Actual Cumulative Initial Fleet LRV Miles exceed the Scheduled Cumulative Initial Fleet LRV Miles in Appendix A Table 4.2 Column B the Concessionaire will receive the Initial LRV Lifecycle Payment for the following month.

In no case will the sum of all Initial LRV Lifecycle Payments, prior to escalation, be greater than the maximum amount listed in Column D of Appendix A, Table 4.2.

$ALLP_n$  means the **Additional LRV Lifecycle Payment** for Option LRVs, calculated on the following basis:

1. Reserved.
2. Starting in the first Contract Month after the delivery of all the LRVs required for an LRV Option under Section 12.1 of the Agreement, the Additional LRV Lifecycle Payment will be the scheduled payment in Appendix A Table 4.3 in the first "In Service Month" row of Column C multiplied by the number of Option LRVs.

3. If the Owner exercises an additional LRV Option, then a new payment will be calculated and added on the same basis as the first option. For each subsequent Contract Month, the Additional LRV Lifecycle Payment will be the scheduled payment in Appendix A Table 4.3 in the applicable "In Service Month" row of Column C multiplied by the number of Option LRVs delivered, unless the next paragraph applies.

4. If the average Actual Cumulative Additional LRV Miles per Option LRV for the Contract Month is greater than the Scheduled Cumulative Additional LRV Miles per LRV in Appendix A Table 4.3 Column B for the following month (n+1) then the Concessionaire also has the right to receive the Additional LRV Lifecycle Payment per LRV multiplied by the number of Option LRVs for the next "In Service Month" row of Column C. For each subsequent month, when the average Actual Cumulative Additional LRV Miles per Option LRV exceed the Scheduled Cumulative Additional LRV Miles per LRV in Appendix A Table 4.3 Column B the Concessionaire will receive the Additional LRV Lifecycle Payment per LRV for the next "In Service Month" row of Column C multiplied by the number of Option LRVs.

In no case will the sum of all Additional LRV Lifecycle Payments, prior to escalation, be greater than the maximum amount listed in Column D of Appendix A Table 4.3 multiplied by the number of Option LRVs.

3.3 Where Owner has directed a reduction in the Service Level and the number of LRVs available for service, excluding Option LRVs required under Section 12.1.2(b) or 12.1.2(c) of the Agreement, would be greater than the number of LRVs required to deliver the reduced Service Level as specified in Appendix A, Table 4.4, Owner shall confirm in writing, no later than three months prior to the new Service Level coming into effect:

- (a) that all of the excess LRVs may be utilized in service by Concessionaire to deliver the new Service Level, in which case the existing calculation of TVLCP, from Section 3.2 of this Part B, shall apply; or
- (b) that the Service Level is moving from Service Level 3 to Service Level 2, and the number of LRVs that need to be removed is the difference between BSLV for Service Level 3 and BSLV for Service Level 2 in Appendix A, Table 4.4, in which case, the portion of ALLP related to those LRVs will no longer apply; or
- (c) that the Service Level is moving from Service Level 2 to Service Level 1 and the number of LRVs that need to be removed is the difference between BSLV for Service Level 2 and BSLV for Service Level 1 in Appendix A, Table 4.4, in which case, the portion of ALLP related to those LRVs will no longer apply; or
- (d) that some other number of LRVs may be utilized by Concessionaire to deliver the new Service Level, in which case the calculation of TVLCP will be agreed to by a Change Order.

Where Owner notifies Concessionaire under sub-paragraph (a) or (d) above with respect to the LRV(s), Concessionaire may request in writing (no later than one month prior to



the Service Level coming into effect) that it does not wish to utilize such LRV(s) and Owner shall proceed in accordance with sub-paragraph (b) or (c) above.

If in any of the above cases some or all of the excess LRVs are removed from service, the Owner shall either:

- (i) arrange for the relevant LRVs to be removed from the Site; or
- (ii) reimburse Concessionaire for the reasonable and proper costs incurred by Concessionaire to store and maintain the LRVs on the Site.

Where sub-paragraph (b) or (c) applies, Concessionaire may submit and the Owner will also consider fixed costs associated with LRV Renewal Work in accordance with Section 14.2 of the Agreement.

- 3.4 The removal and replacement and/or re-employment of any LRV will require Owner approval as specified in Part 3, Section 3.6 of the Technical Provisions.

#### Section 4. Escalation Factor

- 4.1 The Escalation Factor for each of the components of the Monthly Availability Payment will be calculated in accordance with the following formula.

$$ESC_n = W_{EI1} \left( \frac{EI1_n}{EI1_0} \right) + W_{EI2} \left( \frac{EI2_n}{EI2_0} \right) + W_{EI3} \left( \frac{EI3_n}{EI3_0} \right) + W_{EI5} \left( \frac{EI5_n}{EI5_0} \right)$$

where:

$ESC_n$  means the Maintenance Escalation Factor ( $ESCM_n$ ), Operations Escalation Factor ( $ESCO_n$ ), LRV Lifecycle Escalation Factor ( $ESCLV_n$ ), Non-LRV Lifecycle Escalation Factor ( $ESCLN_n$ ), VOLO Escalation Factor ( $ESVOn$ ), VOLM Escalation Factor ( $ESVM_n$ ), General Escalation Factor ( $ESCG_n$ ) applicable to the relevant Contract Year  $n$ , as shown in the table below, and applying the relevant factors for  $W_{EI1}$ ,  $W_{EI2}$ ,  $W_{EI3}$  and  $W_{EI5}$ .

$ESC_n$		$W_{EI1}$	$W_{EI2}$	$W_{EI3}$	$W_{EI5}$
$ESCM_n$	Maintenance Escalation Factor	0.00%	15.00%	20.00%	65.00%
$ESCO_n$	Operations Escalation Factor	0.00%	35.00%	0.00%	65.00%
$ESCLV_n$	LRV Lifecycle Escalation Factor	5.00%	15.00%	20.00%	60.00%
$ESCLN_n$	Non-LRV Lifecycle Escalation	5.00%	15.00%	20.00%	60.00%

	Factor				
ESVO <sub>n</sub>	VOLO Escalation Factor	0.00%	35.00%	0.00%	65.00%
ESVM <sub>n</sub>	VOLM Escalation Factor	0.00%	15.00%	25.00%	60.00%
ESCG <sub>n</sub>	General Escalation Factor	100.00%	0.00%	0.00%	0.00%

EI1<sub>n</sub> means the value of Escalation Index 1 on the first day of the relevant contract year “n” calculated as an average from the previous 12 months of index values, to be determined by reference to the most recently available data published by the Bureau of Labor Statistics for the relevant index.

EI2<sub>n</sub> means the value of Escalation Index 2 on the first day of the relevant contract year “n” calculated as an average from the previous 12 months of index values, to be determined by reference to the most recently available data published by the Bureau of Labor Statistics for the relevant index.

EI3<sub>n</sub> means the value of Escalation Index 3 on the first day of the relevant contract year “n” calculated as an average from the previous 12 months of index values, to be determined by reference to the most recently available data published by the Bureau of Labor Statistics for the relevant index.

EI5<sub>n</sub> means the value of Escalation Index 5 on the first day of the relevant contract year “n” calculated as an average from the previous 12 months of index values, to be determined by reference to the most recently available data published by the Bureau of Labor Statistics for the relevant index

EI1<sub>0</sub> means the value of Escalation Index 1 on the Proposal Date calculated as the average from the previous 12 months of index values, to be determined by reference to the most recent available data published by the Bureau of Labor Statistics for the relevant index at the Proposal Date.

EI2<sub>0</sub> means the value of Escalation Index 2 on the Proposal Date calculated as the average from the previous 12 months of index values, to be determined by reference to the most recent available data published by the Bureau of Labor Statistics for the relevant index at the Proposal Date.

EI3<sub>0</sub> means the value of Escalation Index 3 on the Proposal Date calculated as the average from the previous 12 months of index values, to be

determined by reference to the most recent available data published by the Bureau of Labor Statistics for the relevant index at the Proposal Date.

El5<sub>0</sub> means the value of Escalation Index 5 on the Proposal Date calculated as an average from the previous 12 months of index values, to be determined by reference to the most recently available data published by the Bureau of Labor Statistics for the relevant index at the Proposal Date.

- 4.2 If any of the published indices outlined in Section 4.1 of this Part B is changed so the base year of the index is changed, then the index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. If any of the published indices outlined in said Section 4.1 are discontinued and a replacement methodology is not otherwise defined in the Agreement, the Parties shall seek to agree an alternative index which as closely replicates the discontinued index as is possible and in the event of a failure to agree on a replacement index, the matter may be referred to the financial DRB to determine the closest index, and in each case a Change Order shall be deemed to have been issued in respect of any material difference between the previous index and the newly agreed or determined index.
- 4.3 For the purposes of the Agreement, any escalation that has not been specifically allocated a factor will be calculated using the General Escalation Factor (ESCG<sub>0</sub>) for the relevant Contract Year.
- 4.4 The escalation indices identified in this Section shall be used solely for the purposes of calculating the Escalation Factors that are applied to the Availability Payment components identified in Section 4.1 of this Part B. The escalation indices shall not determine the actual compensation paid to any employees working on the Project, nor shall they serve as a cap on actual compensation payments.

## **Section 5. Changes in the Service Level and Partial Years**

- 5.1 If Owner elects to move to another Service Level with a Major Service Change during a Contract Year, in accordance with Section 8.2 of the Agreement, the relevant MAPO<sub>n</sub> and MAPM<sub>n</sub> will change accordingly, based on Appendix A to this Exhibit 4D.
- 5.2 For partial months that occur due to the Revenue Service Availability Date, a change in the Service Level or the effective date of the termination of the Agreement, a pro rata adjustment to the Monthly Availability Payment shall be made.
- 5.3 For greater clarity with respect to the Volume Adjustment, if Owner elects to move to another Service Level during a Contract Year, in accordance with Section 8.2 of the Agreement, then
  - (a) The next Quarterly Operating Volume Adjustment will be calculated on the preceding 3-Contract Month period based on the Service Level in effect during each Contract Month.
  - (b) The next Quarterly Maintenance Volume Adjustment will be calculated on the preceding 3-Contract Month period based on the Service Level in effect during each Contract Month.

## Part C: Deductions from Monthly Availability Payments

### Section 1. Entitlement to Make Deductions

- 1.1 Upon occurrence of any Noncompliance Event, Owner shall be entitled to make a Deduction from the relevant Monthly Availability Payment with respect to that Noncompliance Event in accordance with this Part C.
- 1.2 The maximum aggregate of all Deductions that Owner can make from a Monthly Availability Payment with respect to any Contract Month shall be the Unadjusted Monthly Availability Payment relating to that Contract Month.

The Unadjusted Monthly Availability Payment is the sum of MAPG, MAPO and MAPM for such Contract Month, and escalated as outlined in Section 1.1 of Part B of Exhibit 4D.

- 1.3 Deductions with respect to the relevant Contract Month  $n$  shall be calculated in accordance with the following formula:

$$\sum D = OAD_n + (ESCO_n \times \sum ANED_n)$$

where:

- $\sum D$  means the sum of all Deductions for the relevant Contract Month in relation to each Noncompliance Event calculated in accordance with the provisions set out in Section 4 and Section 5 of this Part C.
- $OAD_n$  means the Operations Availability Deduction with respect to the relevant Contract Month  $n$ .
- $ANED_n$  means the Deductions for Activity Noncompliance Events for the relevant Contract Month  $n$ .

### Section 2. Classification of Deductions

- 2.1 Subject to Section 2.2 of this Part C, the classification of an event as a potential Operations Availability Noncompliance Event, Activity Noncompliance Event or other form of Noncompliance Event shall be made at the time at which the occurrence of the Event is recorded in the electronic database by Concessionaire or is otherwise reported or recorded under Section 16.2 of the Agreement. An event which is incorrectly classified may be re-classified with the approval of Owner's Authorized Representative and Concessionaire's Authorized Representative, acting reasonably, in which case the applicable Performance Monitoring Report, Daily Report and electronic database will be revised accordingly.
- 2.2 An Operations Availability Noncompliance Event is not required to be reported to Owner's Authorized Representative. Operations Availability Noncompliance Events will be determined through the Daily Report process and summarized for Payment Mechanism calculation purposes in the Performance Monitoring Report.

### Section 3. Start-Up Performance

- 3.1 During the first, second and third Contract Months of the O&M Period, the amount of any Operations Availability Deductions and Deductions with respect to Activity Noncompliance Events occurring in the provision of any O&M Work shall be doubled (increased by 100%).
- 3.2 For the avoidance of doubt, there shall be no relief from Noncompliance Points relating to Activity Noncompliance Events or Operations Availability Noncompliance Events during this 3-Contract Month period, although Concessionaire may be entitled to relief during this 3-Contract Month period as provided in Section 15.5 of the Agreement.

### Section 4. Amount of Deductions for Availability Deductions

- 4.1 Availability Deductions with respect to the relevant Contract Month  $n$  shall be calculated in accordance with the following formula:

$$OAD_n = OADF_n \times (MAPG_n + (MAPO_n \times ESCO_n) + (MAPM_n \times ESCM_n))$$

Where:

$OAD_n$  means the Operations Availability Deduction with respect to the relevant Contract Month  $n$ .

$OADF_n$  means the Operations Availability Deduction Factor calculated in Section 1.1 of Appendix B to this Exhibit 4D.

- 4.2 If the Operations Availability Deduction is greater than the Unadjusted Monthly Availability Payment relating to that Contract Month, the maximum amount of Deductions which can be made relating to Operations Availability Noncompliance Events in that Contract Month shall be the Unadjusted Monthly Availability Payment relating to the Contract Month.

### Section 5. Amount of Deductions for Activity Noncompliance Events

- 5.1 The amount of the Deduction with respect to an Activity Noncompliance Event shall be calculated based on Section 1 of Appendix C to this Exhibit 4D.
- 5.2 Activity Noncompliance Events will be assessed in accordance with Part 3, Section 2.1 of the Technical Provisions. The Activity Noncompliance Occurrence Table summarizes Activity Noncompliance Occurrences. Notwithstanding the summary included in the Activity Noncompliance Occurrence Table, additional detail describing each potential Activity Noncompliance Occurrence and corresponding Noncompliance Events is provided within the text of Part 3 of the Technical Provisions.
- 5.3 Following the occurrence of an Activity Noncompliance Occurrence, Concessionaire shall be allowed a Response Time and a Rectification Time in accordance with Part 3, Section 2.1 of the Technical Provisions and Section 16.2.3 of the Agreement. If, before the expiration of the Response Time or Rectification Time (as applicable), the Concessionaire demonstrates, to the reasonable satisfaction of Owner's Authorized

Representative, that it has responded or rectified the Activity Noncompliance Occurrence (as applicable), no Noncompliance Points will be applied and no Deduction will be made with respect to the Activity Noncompliance Occurrence.

- 5.4 If the Activity Noncompliance Occurrence is not rectified by the end of the Rectification Time, Concessionaire shall be allowed an additional rectification time in the duration of the Application (Maximum Exposure) Time in accordance with Part 3, Section 2.1 of the Technical Provisions and Section 16.2.3.4 of the Agreement. If, before the expiration of the Application (Maximum Exposure) Time, Concessionaire demonstrates, to the reasonable satisfaction of Owner's Authorized Representative, that it has rectified the Activity Noncompliance Occurrence, no further Deduction shall be made with respect to the Activity Noncompliance Occurrence. Otherwise, a Deduction shall apply in the appropriate amount (as described in Section 5.1 of this Part C) and a further Application (Maximum Exposure) Time as specified in the Activity Noncompliance Occurrence Table shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Concessionaire shall demonstrate, to the reasonable satisfaction of Owner's Authorized Representative, that it has rectified the Activity Noncompliance Occurrence.
- 5.5 The provisions of Section 5.4 of this Part C shall not apply to Activity Noncompliance Occurrences where, if the response or rectification is not carried out within the Response Time, Rectification Time or Application (Maximum Exposure) Time, as applicable, Owner's Authorized Representative notifies Concessionaire Representative that Owner no longer requires Concessionaire to address such Activity Noncompliance Occurrence.

#### **Section 6. Deduction for Daily Operational Performance Factor**

- 6.1 The following Deduction, escalated annually at ESCG, shall also apply with respect to operational performance except in cases where (a) the Total Operations Availability Deduction for the Contract Month exceeds the sum of all the daily operational Deductions for that Contract Month or (b) the event giving rise to the Deduction is a Planned Service Interruption:

Event	Daily Operational Deduction
On any single day during a Contract Month, the Daily Operational Performance Factor for that day is less than 80%.	\$25,000

## **Part D: Review and Amendment of Payment Mechanism**

### **Section 1. Amendment of Activity Noncompliance Occurrence Table**

- 1.1 The Activity Noncompliance Occurrence Table contains a representational, but not exhaustive, list of Activity Noncompliance Occurrences during the O&M Period possible under the Contract Documents. Subject to Sections 1.2 and 1.3 of this Part D, Owner may add, adjust or remove an entry to or from the Activity Noncompliance Occurrence Table including establishing the category applicable to such Activity Noncompliance Occurrence in the Activity Noncompliance Occurrence Table or setting a reasonable “Response Time”, “Rectification Time” or “Application (Maximum Exposure) Time” (or, if reasonable, no “Response Time”, “Rectification Time” or “Application (Maximum Exposure) Time”).
- 1.2 Owner’s right to revise the Activity Noncompliance Occurrence Table:
- (a) shall be limited to inclusion of existing contractual obligations in the list of Activity Noncompliance Occurrences for which Noncompliance Points may be assessed.
  - (b) includes the right to add such obligations to the Activity Noncompliance Occurrence Table and to include or revise designations under each table heading (e.g., Noncompliance Type, Category and Time), as Owner deems appropriate;
  - (c) does not include the right to expand Concessionaire’s existing contractual obligations under the Contract Documents;
  - (d) may not increase the maximum aggregate Noncompliance Points assessable under the original Agreement. For example, Owner could add up to five additional Major Service Events, each associated with a Noncompliance Point amount of 120. In such event Owner would either remove contractual obligations from the Activity Noncompliance Occurrence Table or change the designations under the table headings in order to comply with the zero growth limit; and
  - (e) may not result in an increase in the amount of the dollar Deductions allocated to any Activity Noncompliance Event.
- 1.3 No more often than every three years during the Term, starting on the third anniversary of the Revenue Service Availability Date, Owner may provide notice to Concessionaire regarding proposed revisions to the Activity Noncompliance Occurrence Table, subject to the limitations in Section 1.2(c) of this Part D. Concessionaire shall have 15 days after receipt of the proposed revisions to the Activity Noncompliance Occurrence Table to deliver comments to Owner. After considering Concessionaire’s Comments, Owner will provide Concessionaire with the revised Activity Noncompliance Occurrence Table. Changes included in the any revised Activity Noncompliance Occurrence Table will be applied prospectively, starting three days after delivery to Concessionaire of the revised table or such later date stated in the notice delivering any revised table.



## **Section 2. Review of Payment Mechanism**

- 2.1 Without limiting Owner's rights under Sections 1.1 through 1.3 of this Part D, the overall functioning of the Payment Mechanism will be jointly reviewed by Owner and Concessionaire at any time if requested by either Party, up to a maximum of one review per Contract Year. In any event, a review shall be carried out at least once in every five Contract Years.
- 2.2 Owner and Concessionaire shall act reasonably and diligently in carrying out the reviews.
- 2.3 For the avoidance of doubt, the Parties intend that any changes made as a result of such a review shall not alter the overall risk profile of the Project, the delivery of the O&M Work or the likely magnitude of Activity Noncompliance Occurrences and Noncompliance Events. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Modification Request submitted by Concessionaire which will be processed under Article 14 of the Agreement.
- 2.4 Owner and Concessionaire may, with respect to each matter under review:
- (a) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or
  - (b) agree adjustments to the relevant matter to take effect in the Contract Year immediately following the review.
- 2.5 Any agreed adjustment pursuant to a review shall be effective from the commencement of a mutually agreed date between Owner and Concessionaire. Failure to reach agreement on a commencement date will result in the agreed adjustment coming into effect in the Contract Year immediately following the relevant review carried out in accordance with Section 2.1 of this Part D.

## **Part E: Noncompliance Points**

### **Section 1. Noncompliance Points**

- 1.1 Noncompliance Points shall be allocated for Noncompliance Events which occur during the O&M Period, unless such Noncompliance Points are cancelled pursuant to any other provision of the Agreement.
- 1.2 The number of Noncompliance Points for Operations Availability Noncompliance Events and Activity Noncompliance Events pursuant to this Exhibit 4D shall be allocated on the following basis:
  - (a) Noncompliance Points with respect to Operations Availability Noncompliance Events shall be allocated for each Contract Month based on the relevant Operations Availability Deduction Factor calculated for that Contract Month, in accordance with Section 2 of Appendix C to this Exhibit 4D;
  - (b) Noncompliance Points with respect to Activity Noncompliance Events shall be allocated with respect to each Activity Noncompliance Event, in accordance with Section 1 of Appendix C to this Exhibit 4D; and
  - (c) Noncompliance Points with respect to a failure by Concessionaire to keep record of or report to Owner an Activity Noncompliance Occurrence or Noncompliance Event as and when required under Section 16.2.1.1 or 16.2.1.2 of the Agreement shall be allocated in accordance with Section 16.3.3 of the Agreement.

## Part F: Monitoring and Reporting

### Section 1. Sources of Information

The table below sets out the sources of the factual information regarding the performance of the O&M Work for the relevant Contract Month for the purposes of calculating the relevant Monthly Availability Payment, the Deductions assessed and the number of Noncompliance Points allocated.

Item	Source
MOPF	Performance Monitoring Report for Contract Month <i>n</i>
Activity Noncompliance Occurrences and Noncompliance Events	Performance Monitoring Report for Contract Month <i>n</i>

### Section 2. Noncompliance Event Relating to Monitoring or Reporting

- 2.1 If the Performance Monitoring Report for any Contract Month is erroneous or omits required information, the Party that first becomes aware of the problem shall promptly notify the other about it. The Parties shall then meet and confer with the goal of reaching agreement on appropriate revisions to the Performance Monitoring Report. If the Parties are unable to reach agreement within 10 days after the delivery of said notification then the matter will be considered a dispute subject to resolution in accordance with the Agreement. Notwithstanding the foregoing, matters involving fraudulent action or inaction, deliberate misrepresentation or gross misconduct or incompetence by a Concessionaire-Related Party, will not be subject to dispute resolution.
- 2.2 If Concessionaire fails to monitor or accurately report any Operations Availability Noncompliance Event or Activity Noncompliance Occurrence then, without prejudice to the Deduction to be made with respect to the relevant Operations Availability Noncompliance Event or Activity Noncompliance Occurrence, the Noncompliance regarding monitoring or reporting shall be deemed to be a new Medium Service Activity Noncompliance Event. In such event, Concessionaire shall be allocated Noncompliance Points and associated Deductions for each such occurrence. If the situation involves fraudulent action or inaction, deliberate misrepresentation or gross misconduct or incompetence by a Concessionaire-Related Party, then a Major Service Activity Noncompliance Event shall be deemed to have occurred and Noncompliance Points and associated Deductions shall be assessed on that basis.
- 2.3 If any inspection or investigation by Owner of records made available pursuant to the Agreement reveals any further matters of the type referred to in Sections 2.1 and 2.2 of this Part F, those matters shall be dealt with in accordance with said Sections 2.1 and 2.2, as appropriate, and Owner shall, in addition, be entitled to make Deductions in the manner prescribed in Part C of this Exhibit 4D by treating the failure to properly monitor

compliance as a Medium Service Activity Noncompliance Occurrence. Any such Deductions shall be made from the Monthly Availability Payment for the Contract Month in which the relevant matters were revealed by Owner investigations or may be carried forward and deducted from Monthly Availability Payments due with respect to subsequent Contract Months.

- 2.4 The provisions of this Part F shall not prejudice any other rights of Owner under the Contract Documents.

## Part G: Special Lifecycle Payment

### Section 1. Special Lifecycle Payment

1.1 The Special Lifecycle Payments are set out in the table below:

Contract Month	Special Lifecycle Payment
1	-
2	-
3	-
4	-
5	-
6	-
7	-
8	-
9	-
10	-
11	3,437,871.13
12	-
13	-
14	-
15	-
16	-
17	3,437,871.13
18	-
19	-
20	-
21	-
22	-
23	3,437,871.13
24	-
25	-
26	-
27	-
28	-
29	3,437,871.13
30	-
31	-
32	-
33	-
34	-
35	3,437,871.13
36	-
37	-
38	-
39	-
40	-
41	3,437,871.13

Contract Month	Special Lifecycle Payment
42	-
43	-
44	-
45	-
46	-
47	3,437,871.13
48	-
49	-
50	-
51	-
52	-
53	3,437,871.13
54	-
55	-
56	-
57	-
58	-
59	-
60	-
61	-
62	-
63	-
64	-
65	-
66	-
67	-
68	-
69	-
70	-
71	-
72	-

## APPENDIX A: MONTHLY AVAILABILITY PAYMENT AND MONTHLY AVAILABILITY PAYMENT INPUTS

### Section 1. MAPO<sub>n</sub> and MAPM<sub>n</sub> for Service Levels 1 to 3

The following inputs (provided in Base Date prices) shall be applied to determine MAPO<sub>n</sub> and MAPM<sub>n</sub> for calculation of the Monthly Availability Payment for each Contract Month during which the relevant Service Level is in effect:

Calendar Month <sub>m</sub>	Service Level 1		Service Level 2		Service Level 3	
	MAPO <sub>n</sub>	MAPM <sub>n</sub>	MAPO <sub>n</sub>	MAPM <sub>n</sub>	MAPO <sub>n</sub>	MAPM <sub>n</sub>
Jan	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
Feb	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
Mar	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
Apr	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
May	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
June	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
July	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
Aug	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
Sept	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
Oct	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
Nov	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16
Dec	1,286,275.33	1,410,592.57	1,329,935.56	1,449,154.07	1,379,180.41	1,489,474.16

### Section 2. Monthly Availability Payment General

The MAPG will follow the table below:

Contract Month	MAPG
1	4,290,960.54
2	4,318,159.44
3	4,596,311.91
4	4,318,159.44
5	4,318,159.44
6	5,562,804.10
7	5,562,804.10
8	5,519,263.20
9	5,519,263.20
10	5,519,263.20
11	5,519,822.82
12	5,502,823.11
13	9,857,805.40
14	5,504,753.39
15	5,789,859.67
16	6,584,629.24
17	12,019,676.53
18	6,996,459.24



<b>Contract Month</b>	<b>MAPG</b>
19	11,339,287.67
20	6,996,459.24
21	6,996,459.24
22	8,076,335.10
23	6,997,035.65
24	6,940,296.05
25	12,182,226.42
26	6,942,288.99
27	7,234,522.93
28	8,022,164.85
29	6,942,288.99
30	6,981,069.57
31	12,186,883.92
32	6,981,069.57
33	6,981,069.57
34	8,060,945.43
35	6,981,663.27
36	6,938,443.87
37	12,169,638.39
38	6,940,501.48
39	7,240,041.26
40	8,020,377.33
41	6,940,501.48
42	6,867,314.68
43	12,070,459.53
44	6,867,314.68
45	6,867,314.68
46	7,947,190.53
47	6,867,926.18
48	6,927,362.03
49	12,088,616.82
50	6,929,486.37
51	7,236,514.64
52	8,009,362.22
53	6,929,486.37
54	6,854,728.34
55	12,049,603.39
56	6,854,728.34
57	6,854,728.34
58	7,934,604.19
59	6,855,358.19
60	6,827,717.21
61	10,868,039.78
62	6,780,449.14
63	7,095,153.12
64	6,780,449.14
65	6,780,449.14
66	6,834,246.10

<b>Contract Month</b>	<b>MAPG</b>
67	10,887,662.74
68	6,834,246.10
69	6,834,246.10
70	6,834,246.10
71	6,834,743.43
72	6,811,985.17
73	10,898,779.12
74	6,813,009.09
75	7,135,580.67
76	6,813,009.09
77	6,813,009.09
78	6,844,281.31
79	10,916,364.56
80	6,844,281.31
81	6,844,281.31
82	6,844,281.31
83	6,844,793.56
84	6,916,679.11
85	11,008,631.74
86	6,917,741.44
87	7,248,377.31
88	6,917,741.44
89	6,917,741.44
90	6,857,158.31
91	10,991,280.44
92	6,857,158.31
93	6,857,158.31
94	6,857,158.31
95	6,857,685.93
96	6,824,475.02
97	6,825,577.10
98	6,825,577.10
99	7,164,478.87
100	6,825,577.10
101	6,825,577.10
102	6,767,039.26
103	6,767,039.26
104	6,767,039.26
105	6,767,039.26
106	6,767,039.26
107	6,767,582.71
108	6,733,264.01
109	6,734,407.23
110	6,734,407.23
111	7,081,781.54
112	6,734,407.23
113	6,734,407.23
114	6,784,415.45

<b>Contract Month</b>	<b>MAPG</b>
115	6,784,415.45
116	6,784,415.45
117	6,784,415.45
118	6,784,415.45
119	6,784,975.20
120	6,736,892.06
121	6,738,077.85
122	6,738,077.85
123	7,094,136.52
124	6,738,077.85
125	6,738,077.85
126	6,786,303.48
127	6,786,303.48
128	6,786,303.48
129	6,786,303.48
130	6,786,303.48
131	6,786,880.02
132	6,749,282.16
133	6,750,512.01
134	6,750,512.01
135	7,115,472.15
136	6,750,512.01
137	6,750,512.01
138	6,689,614.34
139	6,689,614.34
140	6,689,614.34
141	6,689,614.34
142	6,689,614.34
143	6,690,208.17
144	6,651,390.48
145	6,652,665.92
146	6,652,665.92
147	7,026,750.06
148	6,652,665.92
149	6,652,665.92
150	6,695,172.86
151	6,695,172.86
152	6,695,172.86
153	6,695,172.86
154	6,695,172.86
155	6,695,784.51
156	6,655,210.65
157	6,656,533.27
158	6,656,533.27
159	7,039,969.51
160	6,656,533.27
161	6,656,533.27
162	6,702,372.20

<b>Contract Month</b>	<b>MAPG</b>
163	6,702,372.20
164	6,702,372.20
165	6,702,372.20
166	6,702,372.20
167	6,703,002.21
168	6,650,666.57
169	6,652,038.00
170	6,652,038.00
171	7,045,060.15
172	6,652,038.00
173	6,652,038.00
174	6,402,642.16
175	6,402,642.16
176	6,402,642.16
177	6,402,642.16
178	6,402,642.16
179	6,403,291.06
180	6,413,231.81
181	6,414,653.75
182	6,414,653.75
183	6,817,501.46
184	6,414,653.75
185	6,414,653.75
186	6,404,622.94
187	6,404,622.94
188	6,404,622.94
189	6,404,622.94
190	6,404,622.94
191	6,405,291.31
192	6,414,913.25
193	6,416,387.45
194	6,416,387.45
195	6,829,306.34
196	6,416,387.45
197	6,416,387.45
198	6,779,857.66
199	6,779,857.66
200	6,779,857.66
201	6,779,857.66
202	6,779,857.66
203	6,780,546.09
204	6,730,298.56
205	6,731,826.83
206	6,731,826.83
207	7,155,068.70
208	6,731,826.83
209	6,731,826.83
210	6,669,875.42

<b>Contract Month</b>	<b>MAPG</b>
211	6,669,875.42
212	6,669,875.42
213	6,669,875.42
214	6,669,875.42
215	6,670,584.50
216	6,612,211.93
217	6,613,796.13
218	6,613,796.13
219	7,047,619.05
220	6,613,796.13
221	6,613,796.13
222	6,551,387.43
223	6,551,387.43
224	6,551,387.43
225	6,551,387.43
226	6,551,387.43
227	6,552,117.77
228	6,500,824.09
229	6,502,466.15
230	6,502,466.15
231	6,947,134.64
232	6,502,466.15
233	6,502,466.15
234	6,437,048.38
235	6,437,048.38
236	6,437,048.38
237	6,437,048.38
238	6,437,048.38
239	6,437,800.64
240	6,399,931.95
241	6,401,633.87
242	6,401,633.87
243	6,857,419.08
244	6,401,633.87
245	6,401,633.87
246	6,396,349.31
247	6,396,349.31
248	6,396,349.31
249	6,396,349.31
250	6,396,349.31
251	6,397,124.14
252	6,401,954.77
253	6,403,718.61
254	6,403,718.61
255	6,870,898.44
256	6,403,718.61
257	6,403,718.61
258	6,401,658.26

<b>Contract Month</b>	<b>MAPG</b>
259	6,401,658.26
260	6,401,658.26
261	6,401,658.26
262	6,401,658.26
263	6,402,456.33
264	6,402,586.54
265	6,404,414.43
266	6,404,414.43
267	6,883,273.76
268	6,404,414.43
269	6,404,414.43
270	6,401,712.40
271	6,401,712.40
272	6,401,712.40
273	6,401,712.40
274	6,401,712.40
275	6,402,534.41
276	6,406,905.95
277	6,408,800.08
278	6,408,800.08
279	6,899,630.89
280	6,408,800.08
281	6,408,800.08
282	6,404,230.58
283	6,404,230.58
284	6,404,230.58
285	6,404,230.58
286	6,404,230.58
287	6,405,077.25
288	6,409,631.12
289	6,411,593.77
290	6,411,593.77
291	6,914,695.35
292	6,411,593.77
293	6,411,593.77
294	6,407,529.64
295	6,407,529.64
296	6,407,529.64
297	6,407,529.64
298	6,407,529.64
299	6,408,401.71
300	6,411,996.72
301	6,414,030.24
302	6,414,030.24
303	6,929,709.36
304	6,414,030.24
305	6,414,030.24
306	6,412,663.20

<b>Contract Month</b>	<b>MAPG</b>
307	6,412,663.20
308	6,412,663.20
309	6,412,663.20
310	6,412,663.20
311	6,413,561.43
312	6,412,884.35
313	6,414,991.16
314	6,414,991.16
315	6,943,562.27
316	6,414,991.16
317	6,414,991.16
318	6,414,921.65
319	6,414,921.65
320	6,414,921.65
321	6,414,921.65
322	6,414,921.65
323	6,415,846.83
324	6,416,207.32
325	6,418,389.94
326	6,418,389.94
327	6,960,175.32
328	6,418,389.94
329	6,418,389.94
330	6,417,719.68
331	6,417,719.68
332	6,417,719.68
333	6,417,719.68
334	6,417,719.68
335	6,418,672.62
336	6,419,907.12
337	6,422,168.12
338	6,422,168.12
339	6,977,498.14
340	6,422,168.12
341	6,422,168.12
342	2,394,513.75
343	2,394,513.75
344	2,394,585.84
345	2,394,585.84
346	2,394,585.84
347	2,395,567.37
348	1,593,682.65
349	1,596,024.72
350	1,596,024.72
351	1,596,024.72
352	1,596,024.72
353	1,596,024.72
354	1,596,024.72



Contract Month	MAPG
355	1,596,024.72
356	1,596,024.72
357	1,596,024.72
358	1,596,024.72
359	1,597,035.69
360	1,597,035.69
361 <sup>1</sup>	1,301,186.22

<sup>1</sup> Contract Month 361 may be used if Contract Month 1 is a partial calendar month

### Section 3. Volume Adjustment

The Operating Volume Adjustment and the Maintenance Volume Adjustment in Base Date prices will follow the table below and be calculated based on inputs in the Pricing Sheets.

	For All Service Levels
VOLO	\$75
VOLM	\$1
SESS	\$110

### Section 4. Monthly Lifecycle Payment

4.1 The Non-LRV Lifecycle Payments are set out in the table below:

Contract Month	Non-LRV Lifecycle
1	-
2	-
3	-
4	-
5	-
6	-
7	-
8	-
9	-
10	-
11	-
12	-
13	-
14	-
15	-
16	-
17	-
18	-
19	-

Contract Month	Non-LRV Lifecycle
20	-
21	-
22	-
23	-
24	-
25	-
26	-
27	-
28	-
29	-
30	-
31	-
32	-
33	-
34	-
35	-
36	-
37	-
38	-
39	-
40	-
41	-
42	-
43	-
44	-
45	-
46	-
47	-
48	-
49	172,301.00
50	172,301.00
51	172,301.00
52	172,301.00
53	172,301.00
54	172,301.00
55	-
56	-
57	-
58	-
59	-
60	-
61	-
62	-
63	-
64	-
65	-
66	-
67	-

Contract Month	Non-LRV Lifecycle
68	-
69	-
70	-
71	-
72	-
73	-
74	-
75	-
76	-
77	-
78	-
79	9,605.00
80	9,605.00
81	9,605.00
82	9,605.00
83	9,605.00
84	9,605.00
85	9,605.00
86	9,605.00
87	9,605.00
88	9,605.00
89	9,605.00
90	9,605.00
91	-
92	-
93	-
94	-
95	-
96	-
97	1,006,630.00
98	1,006,630.00
99	1,006,630.00
100	1,006,630.00
101	1,006,630.00
102	1,006,630.00
103	-
104	-
105	-
106	-
107	-
108	-
109	888,827.00
110	888,827.00
111	888,827.00
112	888,827.00
113	888,827.00
114	888,827.00
115	-

Contract Month	Non-LRV Lifecycle
116	-
117	-
118	-
119	-
120	-
121	474,310.00
122	474,310.00
123	474,310.00
124	474,310.00
125	474,310.00
126	474,310.00
127	44,518.00
128	44,518.00
129	44,518.00
130	44,518.00
131	44,518.00
132	44,518.00
133	1,088,703.00
134	1,088,703.00
135	1,088,703.00
136	1,088,703.00
137	1,088,703.00
138	1,088,703.00
139	-
140	-
141	-
142	-
143	-
144	-
145	363,525.00
146	363,525.00
147	363,525.00
148	363,525.00
149	363,525.00
150	363,525.00
151	-
152	-
153	-
154	-
155	-
156	-
157	-
158	-
159	-
160	-
161	-
162	-
163	-

<b>Contract Month</b>	<b>Non-LRV Lifecycle</b>
164	-
165	-
166	-
167	-
168	-
169	690,100.00
170	23,956.00
171	23,956.00
172	23,956.00
173	23,956.00
174	23,956.00
175	162,409.69
176	162,409.69
177	162,409.69
178	162,409.69
179	162,409.69
180	162,409.69
181	298,050.26
182	298,050.26
183	298,050.26
184	298,050.26
185	298,050.26
186	298,050.26
187	324,554.76
188	324,554.76
189	324,554.76
190	324,554.76
191	324,554.76
192	324,554.76
193	1,277,875.21
194	1,277,875.21
195	1,277,875.21
196	1,277,875.21
197	1,277,875.21
198	1,277,875.21
199	332,858.37
200	332,858.37
201	332,858.37
202	332,858.37
203	332,858.37
204	332,858.37
205	1,504,902.36
206	1,504,902.36
207	1,504,902.36
208	1,504,902.36
209	1,504,902.36
210	1,504,902.36
211	422,191.54

<b>Contract Month</b>	<b>Non-LRV Lifecycle</b>
212	422,191.54
213	422,191.54
214	422,191.54
215	422,191.54
216	422,191.54
217	1,361,595.64
218	1,361,595.64
219	1,361,595.64
220	1,361,595.64
221	1,361,595.64
222	1,361,595.64
223	393,576.42
224	393,576.42
225	393,576.42
226	393,576.42
227	393,576.42
228	393,576.42
229	1,327,184.70
230	1,327,184.70
231	1,327,184.70
232	1,327,184.70
233	1,327,184.70
234	1,327,184.70
235	335,304.34
236	335,304.34
237	335,304.34
238	335,304.34
239	335,304.34
240	335,304.34
241	350,480.86
242	350,480.86
243	350,480.86
244	350,480.86
245	350,480.86
246	350,480.86
247	-
248	-
249	-
250	-
251	-
252	-
253	503,537.44
254	503,537.44
255	503,537.44
256	503,537.44
257	503,537.44
258	503,537.44
259	-

Contract Month	Non-LRV Lifecycle
260	-
261	-
262	-
263	-
264	-
265	259,129.04
266	259,129.04
267	259,129.04
268	259,129.04
269	259,129.04
270	259,129.04
271	54,123.23
272	54,123.23
273	54,123.23
274	54,123.23
275	54,123.23
276	54,123.23
277	839,179.12
278	839,179.12
279	839,179.12
280	839,179.12
281	839,179.12
282	839,179.12
283	151,939.80
284	151,939.80
285	151,939.80
286	151,939.80
287	151,939.80
288	151,939.80
289	902,946.33
290	902,946.33
291	902,946.33
292	902,946.33
293	902,946.33
294	902,946.33
295	-
296	-
297	-
298	-
299	-
300	-
301	864,871.37
302	864,871.37
303	864,871.37
304	864,871.37
305	864,871.37
306	864,871.37
307	-

Contract Month	Non-LRV Lifecycle
308	-
309	-
310	-
311	-
312	-
313	1,006,630.37
314	1,006,630.37
315	1,006,630.37
316	1,006,630.37
317	1,006,630.37
318	1,006,630.37
319	-
320	-
321	-
322	-
323	-
324	-
325	814,488.53
326	148,344.53
327	148,344.53
328	148,344.53
329	148,344.53
330	148,344.53
331	-
332	-
333	-
334	-
335	-
336	-
337	-
338	-
339	-
340	-
341	-
342	-
343	-
344	-
345	-
346	-
347	-
348	-
349	23,956.00
350	23,956.00
351	23,956.00
352	23,956.00
353	23,956.00
354	23,956.00
355	-



<b>Contract Month</b>	<b>Non-LRV Lifecycle</b>
356	-
357	-
358	-
359	-
360	-
361 <sup>1</sup>	-

<sup>1</sup> Contract Month 361 may be used if Contract Month 1 is a partial calendar month

4.2 The Initial LRV Lifecycle Payments are set out in the table below:

<b>Contract Month</b>	<b>(A) Total Baseline LRV Miles for Service Level 1</b>	<b>(B) Scheduled Cumulative Initial Fleet LRV Miles</b>	<b>(C) Initial LRV Lifecycle Payment</b>	<b>(D) Initial LRV Lifecycle Payment (Cumulative)</b>
1	74,498.71	74,498.71	-	-
2	115,473.00	189,971.71	-	-
3	115,473.00	305,444.71	-	-
4	115,473.00	420,917.71	-	-
5	115,473.00	536,390.71	-	-
6	115,473.00	651,863.71	-	-
7	115,473.00	767,336.71	-	-
8	115,473.00	882,809.71	-	-
9	115,473.00	998,282.71	-	-
10	115,473.00	1,113,755.71	-	-
11	115,473.00	1,229,228.71	-	-
12	115,473.00	1,344,701.71	-	-
13	115,473.00	1,460,174.71	-	-
14	115,473.00	1,575,647.71	-	-
15	115,473.00	1,691,120.71	-	-
16	115,473.00	1,806,593.71	-	-
17	115,473.00	1,922,066.71	-	-
18	115,473.00	2,037,539.71	-	-
19	115,473.00	2,153,012.71	-	-
20	115,473.00	2,268,485.71	-	-
21	115,473.00	2,383,958.71	-	-
22	115,473.00	2,499,431.71	-	-
23	115,473.00	2,614,904.71	-	-
24	115,473.00	2,730,377.71	-	-
25	115,473.00	2,845,850.71	-	-
26	115,473.00	2,961,323.71	-	-
27	115,473.00	3,076,796.71	-	-
28	115,473.00	3,192,269.71	-	-
29	115,473.00	3,307,742.71	-	-
30	115,473.00	3,423,215.71	-	-
31	115,473.00	3,538,688.71	-	-
32	115,473.00	3,654,161.71	-	-
33	115,473.00	3,769,634.71	-	-
34	115,473.00	3,885,107.71	-	-

<b>Contract Month</b>	<b>(A) Total Baseline LRV Miles for Service Level 1</b>	<b>(B) Scheduled Cumulative Initial Fleet LRV Miles</b>	<b>(C) Initial LRV Lifecycle Payment</b>	<b>(D) Initial LRV Lifecycle Payment (Cumulative)</b>
35	115,473.00	4,000,580.71	-	-
36	115,473.00	4,116,053.71	-	-
37	115,473.00	4,231,526.71	-	-
38	115,473.00	4,346,999.71	-	-
39	115,473.00	4,462,472.71	-	-
40	115,473.00	4,577,945.71	-	-
41	115,473.00	4,693,418.71	-	-
42	115,473.00	4,808,891.71	-	-
43	115,473.00	4,924,364.71	-	-
44	115,473.00	5,039,837.71	-	-
45	115,473.00	5,155,310.71	-	-
46	115,473.00	5,270,783.71	-	-
47	115,473.00	5,386,256.71	-	-
48	115,473.00	5,501,729.71	-	-
49	115,473.00	5,617,202.71	-	-
50	115,473.00	5,732,675.71	-	-
51	115,473.00	5,848,148.71	-	-
52	115,473.00	5,963,621.71	-	-
53	115,473.00	6,079,094.71	-	-
54	115,473.00	6,194,567.71	-	-
55	115,473.00	6,310,040.71	-	-
56	115,473.00	6,425,513.71	-	-
57	115,473.00	6,540,986.71	-	-
58	115,473.00	6,656,459.71	-	-
59	115,473.00	6,771,932.71	-	-
60	115,473.00	6,887,405.71	-	-
61	115,473.00	7,002,878.71	-	-
62	115,473.00	7,118,351.71	-	-
63	115,473.00	7,233,824.71	-	-
64	115,473.00	7,349,297.71	-	-
65	115,473.00	7,464,770.71	-	-
66	115,473.00	7,580,243.71	-	-
67	115,473.00	7,695,716.71	-	-
68	115,473.00	7,811,189.71	-	-
69	115,473.00	7,926,662.71	-	-
70	115,473.00	8,042,135.71	101,896.00	101,896.00
71	115,473.00	8,157,608.71	101,896.00	203,792.00
72	115,473.00	8,273,081.71	101,896.00	305,688.00
73	115,473.00	8,388,554.71	101,896.00	407,584.00
74	115,473.00	8,504,027.71	101,896.00	509,480.00
75	115,473.00	8,619,500.71	101,896.00	611,376.00
76	115,473.00	8,734,973.71	101,896.00	713,272.00
77	115,473.00	8,850,446.71	101,896.00	815,168.00
78	115,473.00	8,965,919.71	101,896.00	917,064.00
79	115,473.00	9,081,392.71	101,896.00	1,018,960.00
80	115,473.00	9,196,865.71	101,896.00	1,120,856.00
81	115,473.00	9,312,338.71	101,896.00	1,222,752.00

<b>Contract Month</b>	<b>(A) Total Baseline LRV Miles for Service Level 1</b>	<b>(B) Scheduled Cumulative Initial Fleet LRV Miles</b>	<b>(C) Initial LRV Lifecycle Payment</b>	<b>(D) Initial LRV Lifecycle Payment (Cumulative)</b>
82	115,473.00	9,427,811.71	237,757.00	1,460,509.00
83	115,473.00	9,543,284.71	237,757.00	1,698,266.00
84	115,473.00	9,658,757.71	237,757.00	1,936,023.00
85	115,473.00	9,774,230.71	237,757.00	2,173,780.00
86	115,473.00	9,889,703.71	237,757.00	2,411,537.00
87	115,473.00	10,005,176.71	237,757.00	2,649,294.00
88	115,473.00	10,120,649.71	237,757.00	2,887,051.00
89	115,473.00	10,236,122.71	237,757.00	3,124,808.00
90	115,473.00	10,351,595.71	237,757.00	3,362,565.00
91	115,473.00	10,467,068.71	237,757.00	3,600,322.00
92	115,473.00	10,582,541.71	237,757.00	3,838,079.00
93	115,473.00	10,698,014.71	237,757.00	4,075,836.00
94	115,473.00	10,813,487.71	101,896.00	4,177,732.00
95	115,473.00	10,928,960.71	101,896.00	4,279,628.00
96	115,473.00	11,044,433.71	101,896.00	4,381,524.00
97	115,473.00	11,159,906.71	101,896.00	4,483,420.00
98	115,473.00	11,275,379.71	101,896.00	4,585,316.00
99	115,473.00	11,390,852.71	101,896.00	4,687,212.00
100	115,473.00	11,506,325.71	101,896.00	4,789,108.00
101	115,473.00	11,621,798.71	101,896.00	4,891,004.00
102	115,473.00	11,737,271.71	101,896.00	4,992,900.00
103	115,473.00	11,852,744.71	101,896.00	5,094,796.00
104	115,473.00	11,968,217.71	101,896.00	5,196,692.00
105	115,473.00	12,083,690.71	101,896.00	5,298,588.00
106	115,473.00	12,199,163.71	-	5,298,588.00
107	115,473.00	12,314,636.71	-	5,298,588.00
108	115,473.00	12,430,109.71	-	5,298,588.00
109	115,473.00	12,545,582.71	-	5,298,588.00
110	115,473.00	12,661,055.71	-	5,298,588.00
111	115,473.00	12,776,528.71	-	5,298,588.00
112	115,473.00	12,892,001.71	-	5,298,588.00
113	115,473.00	13,007,474.71	-	5,298,588.00
114	115,473.00	13,122,947.71	-	5,298,588.00
115	115,473.00	13,238,420.71	-	5,298,588.00
116	115,473.00	13,353,893.71	-	5,298,588.00
117	115,473.00	13,469,366.71	-	5,298,588.00
118	115,473.00	13,584,839.71	-	5,298,588.00
119	115,473.00	13,700,312.71	-	5,298,588.00
120	115,473.00	13,815,785.71	-	5,298,588.00
121	115,473.00	13,931,258.71	-	5,298,588.00
122	115,473.00	14,046,731.71	-	5,298,588.00
123	115,473.00	14,162,204.71	-	5,298,588.00
124	115,473.00	14,277,677.71	-	5,298,588.00
125	115,473.00	14,393,150.71	-	5,298,588.00
126	115,473.00	14,508,623.71	-	5,298,588.00
127	115,473.00	14,624,096.71	-	5,298,588.00
128	115,473.00	14,739,569.71	-	5,298,588.00

<b>Contract Month</b>	<b>(A) Total Baseline LRV Miles for Service Level 1</b>	<b>(B) Scheduled Cumulative Initial Fleet LRV Miles</b>	<b>(C) Initial LRV Lifecycle Payment</b>	<b>(D) Initial LRV Lifecycle Payment (Cumulative)</b>
129	115,473.00	14,855,042.71	-	5,298,588.00
130	115,473.00	14,970,515.71	-	5,298,588.00
131	115,473.00	15,085,988.71	-	5,298,588.00
132	115,473.00	15,201,461.71	-	5,298,588.00
133	115,473.00	15,316,934.71	-	5,298,588.00
134	115,473.00	15,432,407.71	-	5,298,588.00
135	115,473.00	15,547,880.71	-	5,298,588.00
136	115,473.00	15,663,353.71	-	5,298,588.00
137	115,473.00	15,778,826.71	-	5,298,588.00
138	115,473.00	15,894,299.71	-	5,298,588.00
139	115,473.00	16,009,772.71	-	5,298,588.00
140	115,473.00	16,125,245.71	-	5,298,588.00
141	115,473.00	16,240,718.71	-	5,298,588.00
142	115,473.00	16,356,191.71	-	5,298,588.00
143	115,473.00	16,471,664.71	-	5,298,588.00
144	115,473.00	16,587,137.71	-	5,298,588.00
145	115,473.00	16,702,610.71	-	5,298,588.00
146	115,473.00	16,818,083.71	-	5,298,588.00
147	115,473.00	16,933,556.71	-	5,298,588.00
148	115,473.00	17,049,029.71	-	5,298,588.00
149	115,473.00	17,164,502.71	-	5,298,588.00
150	115,473.00	17,279,975.71	-	5,298,588.00
151	115,473.00	17,395,448.71	-	5,298,588.00
152	115,473.00	17,510,921.71	-	5,298,588.00
153	115,473.00	17,626,394.71	-	5,298,588.00
154	115,473.00	17,741,867.71	355,441.34	5,654,029.34
155	115,473.00	17,857,340.71	355,441.34	6,009,470.69
156	115,473.00	17,972,813.71	355,441.34	6,364,912.03
157	115,473.00	18,088,286.71	355,441.34	6,720,353.37
158	115,473.00	18,203,759.71	355,441.34	7,075,794.72
159	115,473.00	18,319,232.71	355,441.34	7,431,236.06
160	115,473.00	18,434,705.71	355,441.34	7,786,677.41
161	115,473.00	18,550,178.71	355,441.34	8,142,118.75
162	115,473.00	18,665,651.71	355,441.34	8,497,560.09
163	115,473.00	18,781,124.71	355,441.34	8,853,001.44
164	115,473.00	18,896,597.71	355,441.34	9,208,442.78
165	115,473.00	19,012,070.71	355,441.34	9,563,884.12
166	115,473.00	19,127,543.71	829,363.14	10,393,247.26
167	115,473.00	19,243,016.71	829,363.14	11,222,610.39
168	115,473.00	19,358,489.71	829,363.14	12,051,973.53
169	115,473.00	19,473,962.71	829,363.14	12,881,336.66
170	115,473.00	19,589,435.71	829,363.14	13,710,699.80
171	115,473.00	19,704,908.71	829,363.14	14,540,062.93
172	115,473.00	19,820,381.71	829,363.14	15,369,426.07
173	115,473.00	19,935,854.71	829,363.14	16,198,789.20
174	115,473.00	20,051,327.71	829,363.14	17,028,152.34
175	115,473.00	20,166,800.71	829,363.14	17,857,515.47

<b>Contract Month</b>	<b>(A) Total Baseline LRV Miles for Service Level 1</b>	<b>(B) Scheduled Cumulative Initial Fleet LRV Miles</b>	<b>(C) Initial LRV Lifecycle Payment</b>	<b>(D) Initial LRV Lifecycle Payment (Cumulative)</b>
176	115,473.00	20,282,273.71	829,363.14	18,686,878.61
177	115,473.00	20,397,746.71	829,363.14	19,516,241.74
178	115,473.00	20,513,219.71	355,441.34	19,871,683.09
179	115,473.00	20,628,692.71	355,441.34	20,227,124.43
180	115,473.00	20,744,165.71	355,441.34	20,582,565.78
181	115,473.00	20,859,638.71	355,441.34	20,938,007.12
182	115,473.00	20,975,111.71	355,441.34	21,293,448.46
183	115,473.00	21,090,584.71	355,441.34	21,648,889.81
184	115,473.00	21,206,057.71	355,441.34	22,004,331.15
185	115,473.00	21,321,530.71	355,441.34	22,359,772.49
186	115,473.00	21,437,003.71	355,441.34	22,715,213.84
187	115,473.00	21,552,476.71	355,441.34	23,070,655.18
188	115,473.00	21,667,949.71	355,441.34	23,426,096.52
189	115,473.00	21,783,422.71	355,441.34	23,781,537.87
190	115,473.00	21,898,895.71	-	23,781,537.87
191	115,473.00	22,014,368.71	-	23,781,537.87
192	115,473.00	22,129,841.71	-	23,781,537.87
193	115,473.00	22,245,314.71	-	23,781,537.87
194	115,473.00	22,360,787.71	-	23,781,537.87
195	115,473.00	22,476,260.71	-	23,781,537.87
196	115,473.00	22,591,733.71	-	23,781,537.87
197	115,473.00	22,707,206.71	-	23,781,537.87
198	115,473.00	22,822,679.71	-	23,781,537.87
199	115,473.00	22,938,152.71	-	23,781,537.87
200	115,473.00	23,053,625.71	-	23,781,537.87
201	115,473.00	23,169,098.71	-	23,781,537.87
202	115,473.00	23,284,571.71	-	23,781,537.87
203	115,473.00	23,400,044.71	-	23,781,537.87
204	115,473.00	23,515,517.71	-	23,781,537.87
205	115,473.00	23,630,990.71	-	23,781,537.87
206	115,473.00	23,746,463.71	-	23,781,537.87
207	115,473.00	23,861,936.71	-	23,781,537.87
208	115,473.00	23,977,409.71	-	23,781,537.87
209	115,473.00	24,092,882.71	-	23,781,537.87
210	115,473.00	24,208,355.71	-	23,781,537.87
211	115,473.00	24,323,828.71	-	23,781,537.87
212	115,473.00	24,439,301.71	-	23,781,537.87
213	115,473.00	24,554,774.71	-	23,781,537.87
214	115,473.00	24,670,247.71	-	23,781,537.87
215	115,473.00	24,785,720.71	-	23,781,537.87
216	115,473.00	24,901,193.71	-	23,781,537.87
217	115,473.00	25,016,666.71	-	23,781,537.87
218	115,473.00	25,132,139.71	-	23,781,537.87
219	115,473.00	25,247,612.71	-	23,781,537.87
220	115,473.00	25,363,085.71	-	23,781,537.87
221	115,473.00	25,478,558.71	-	23,781,537.87
222	115,473.00	25,594,031.71	-	23,781,537.87

<b>Contract Month</b>	<b>(A) Total Baseline LRV Miles for Service Level 1</b>	<b>(B) Scheduled Cumulative Initial Fleet LRV Miles</b>	<b>(C) Initial LRV Lifecycle Payment</b>	<b>(D) Initial LRV Lifecycle Payment (Cumulative)</b>
223	115,473.00	25,709,504.71	-	23,781,537.87
224	115,473.00	25,824,977.71	-	23,781,537.87
225	115,473.00	25,940,450.71	-	23,781,537.87
226	115,473.00	26,055,923.71	-	23,781,537.87
227	115,473.00	26,171,396.71	-	23,781,537.87
228	115,473.00	26,286,869.71	-	23,781,537.87
229	115,473.00	26,402,342.71	-	23,781,537.87
230	115,473.00	26,517,815.71	-	23,781,537.87
231	115,473.00	26,633,288.71	-	23,781,537.87
232	115,473.00	26,748,761.71	-	23,781,537.87
233	115,473.00	26,864,234.71	-	23,781,537.87
234	115,473.00	26,979,707.71	-	23,781,537.87
235	115,473.00	27,095,180.71	-	23,781,537.87
236	115,473.00	27,210,653.71	-	23,781,537.87
237	115,473.00	27,326,126.71	-	23,781,537.87
238	115,473.00	27,441,599.71	101,895.84	23,883,433.71
239	115,473.00	27,557,072.71	101,895.84	23,985,329.54
240	115,473.00	27,672,545.71	101,895.84	24,087,225.38
241	115,473.00	27,788,018.71	101,895.84	24,189,121.22
242	115,473.00	27,903,491.71	101,895.84	24,291,017.06
243	115,473.00	28,018,964.71	101,895.84	24,392,912.90
244	115,473.00	28,134,437.71	101,895.84	24,494,808.73
245	115,473.00	28,249,910.71	101,895.84	24,596,704.57
246	115,473.00	28,365,383.71	101,895.84	24,698,600.41
247	115,473.00	28,480,856.71	101,895.84	24,800,496.25
248	115,473.00	28,596,329.71	101,895.84	24,902,392.09
249	115,473.00	28,711,802.71	101,895.84	25,004,287.93
250	115,473.00	28,827,275.71	237,756.96	25,242,044.88
251	115,473.00	28,942,748.71	237,756.96	25,479,801.84
252	115,473.00	29,058,221.71	237,756.96	25,717,558.79
253	115,473.00	29,173,694.71	237,756.96	25,955,315.75
254	115,473.00	29,289,167.71	237,756.96	26,193,072.70
255	115,473.00	29,404,640.71	237,756.96	26,430,829.66
256	115,473.00	29,520,113.71	237,756.96	26,668,586.61
257	115,473.00	29,635,586.71	237,756.96	26,906,343.57
258	115,473.00	29,751,059.71	237,756.96	27,144,100.52
259	115,473.00	29,866,532.71	237,756.96	27,381,857.48
260	115,473.00	29,982,005.71	237,756.96	27,619,614.44
261	115,473.00	30,097,478.71	237,756.96	27,857,371.39
262	115,473.00	30,212,951.71	101,895.84	27,959,267.23
263	115,473.00	30,328,424.71	101,895.84	28,061,163.07
264	115,473.00	30,443,897.71	101,895.84	28,163,058.91
265	115,473.00	30,559,370.71	101,895.84	28,264,954.74
266	115,473.00	30,674,843.71	101,895.84	28,366,850.58
267	115,473.00	30,790,316.71	101,895.84	28,468,746.42
268	115,473.00	30,905,789.71	101,895.84	28,570,642.26
269	115,473.00	31,021,262.71	101,895.84	28,672,538.10

<b>Contract Month</b>	<b>(A) Total Baseline LRV Miles for Service Level 1</b>	<b>(B) Scheduled Cumulative Initial Fleet LRV Miles</b>	<b>(C) Initial LRV Lifecycle Payment</b>	<b>(D) Initial LRV Lifecycle Payment (Cumulative)</b>
270	115,473.00	31,136,735.71	101,895.84	28,774,433.93
271	115,473.00	31,252,208.71	101,895.84	28,876,329.77
272	115,473.00	31,367,681.71	101,895.84	28,978,225.61
273	115,473.00	31,483,154.71	101,895.84	29,080,121.45
274	115,473.00	31,598,627.71	-	29,080,121.45
275	115,473.00	31,714,100.71	-	29,080,121.45
276	115,473.00	31,829,573.71	-	29,080,121.45
277	115,473.00	31,945,046.71	-	29,080,121.45
278	115,473.00	32,060,519.71	-	29,080,121.45
279	115,473.00	32,175,992.71	-	29,080,121.45
280	115,473.00	32,291,465.71	-	29,080,121.45
281	115,473.00	32,406,938.71	-	29,080,121.45
282	115,473.00	32,522,411.71	-	29,080,121.45
283	115,473.00	32,637,884.71	-	29,080,121.45
284	115,473.00	32,753,357.71	-	29,080,121.45
285	115,473.00	32,868,830.71	-	29,080,121.45
286	115,473.00	32,984,303.71	-	29,080,121.45
287	115,473.00	33,099,776.71	-	29,080,121.45
288	115,473.00	33,215,249.71	-	29,080,121.45
289	115,473.00	33,330,722.71	-	29,080,121.45
290	115,473.00	33,446,195.71	-	29,080,121.45
291	115,473.00	33,561,668.71	-	29,080,121.45
292	115,473.00	33,677,141.71	-	29,080,121.45
293	115,473.00	33,792,614.71	-	29,080,121.45
294	115,473.00	33,908,087.71	-	29,080,121.45
295	115,473.00	34,023,560.71	-	29,080,121.45
296	115,473.00	34,139,033.71	-	29,080,121.45
297	115,473.00	34,254,506.71	-	29,080,121.45
298	115,473.00	34,369,979.71	-	29,080,121.45
299	115,473.00	34,485,452.71	-	29,080,121.45
300	115,473.00	34,600,925.71	-	29,080,121.45
301	115,473.00	34,716,398.71	-	29,080,121.45
302	115,473.00	34,831,871.71	-	29,080,121.45
303	115,473.00	34,947,344.71	-	29,080,121.45
304	115,473.00	35,062,817.71	-	29,080,121.45
305	115,473.00	35,178,290.71	-	29,080,121.45
306	115,473.00	35,293,763.71	-	29,080,121.45
307	115,473.00	35,409,236.71	-	29,080,121.45
308	115,473.00	35,524,709.71	-	29,080,121.45
309	115,473.00	35,640,182.71	-	29,080,121.45
310	115,473.00	35,755,655.71	-	29,080,121.45
311	115,473.00	35,871,128.71	-	29,080,121.45
312	115,473.00	35,986,601.71	-	29,080,121.45
313	115,473.00	36,102,074.71	-	29,080,121.45
314	115,473.00	36,217,547.71	-	29,080,121.45
315	115,473.00	36,333,020.71	-	29,080,121.45
316	115,473.00	36,448,493.71	-	29,080,121.45

<b>Contract Month</b>	<b>(A) Total Baseline LRV Miles for Service Level 1</b>	<b>(B) Scheduled Cumulative Initial Fleet LRV Miles</b>	<b>(C) Initial LRV Lifecycle Payment</b>	<b>(D) Initial LRV Lifecycle Payment (Cumulative)</b>
317	115,473.00	36,563,966.71	-	29,080,121.45
318	115,473.00	36,679,439.71	-	29,080,121.45
319	115,473.00	36,794,912.71	-	29,080,121.45
320	115,473.00	36,910,385.71	-	29,080,121.45
321	115,473.00	37,025,858.71	-	29,080,121.45
322	115,473.00	37,141,331.71	189,364.80	29,269,486.25
323	115,473.00	37,256,804.71	189,364.80	29,458,851.05
324	115,473.00	37,372,277.71	189,364.80	29,648,215.85
325	115,473.00	37,487,750.71	189,364.80	29,837,580.65
326	115,473.00	37,603,223.71	189,364.80	30,026,945.45
327	115,473.00	37,718,696.71	189,364.80	30,216,310.25
328	115,473.00	37,834,169.71	189,364.80	30,405,675.05
329	115,473.00	37,949,642.71	189,364.80	30,595,039.85
330	115,473.00	38,065,115.71	189,364.80	30,784,404.65
331	115,473.00	38,180,588.71	189,364.80	30,973,769.45
332	115,473.00	38,296,061.71	189,364.80	31,163,134.24
333	115,473.00	38,411,534.71	189,364.80	31,352,499.04
334	115,473.00	38,527,007.71	441,851.20	31,794,350.24
335	115,473.00	38,642,480.71	441,851.20	32,236,201.44
336	115,473.00	38,757,953.71	441,851.20	32,678,052.64
337	115,473.00	38,873,426.71	441,851.20	33,119,903.84
338	115,473.00	38,988,899.71	441,851.20	33,561,755.04
339	115,473.00	39,104,372.71	441,851.20	34,003,606.24
340	115,473.00	39,219,845.71	441,851.20	34,445,457.44
341	115,473.00	39,335,318.71	441,851.20	34,887,308.64
342	115,473.00	39,450,791.71	441,851.20	35,329,159.84
343	115,473.00	39,566,264.71	441,851.20	35,771,011.04
344	115,473.00	39,681,737.71	441,851.20	36,212,862.24
345	115,473.00	39,797,210.71	441,851.20	36,654,713.44
346	115,473.00	39,912,683.71	189,364.80	36,844,078.24
347	115,473.00	40,028,156.71	189,364.80	37,033,443.04
348	115,473.00	40,143,629.71	189,364.80	37,222,807.83
349	115,473.00	40,259,102.71	189,364.80	37,412,172.63
350	115,473.00	40,374,575.71	189,364.80	37,601,537.43
351	115,473.00	40,490,048.71	189,364.80	37,790,902.23
352	115,473.00	40,605,521.71	189,364.80	37,980,267.03
353	115,473.00	40,720,994.71	189,364.80	38,169,631.83
354	115,473.00	40,836,467.71	189,364.80	38,358,996.63
355	115,473.00	40,951,940.71	189,364.80	38,548,361.43
356	115,473.00	41,067,413.71	189,364.80	38,737,726.23
357	115,473.00	41,182,886.71	189,364.80	38,927,091.03
358	115,473.00	41,298,359.71	-	38,927,091.03
359	115,473.00	41,413,832.71	-	38,927,091.03
360	115,473.00	41,529,305.71	-	38,927,091.03
361 <sup>[1]</sup>	40,974.00	41,570,279.71	-	38,927,091.03



<sup>1</sup> Contract Month 361 may be used if Contract Month 1 is a partial calendar month

4.3 The additional LRV Lifecycle Payments for each Option LRV are set out in the table below:

In Service Month	(A) Scheduled Additional LRV Miles per Option LRV	(B) Cumulative Additional LRV Miles per Option LRV	(C) Additional LRV Lifecycle Payment per Option LRV	(D) Additional LRV Lifecycle Payment per Option LRV (Cumulative)
1	4,441.00	4,441.00	-	-
2	4,441.00	8,882.00	-	-
3	4,441.00	13,323.00	-	-
4	4,441.00	17,764.00	-	-
5	4,441.00	22,205.00	-	-
6	4,441.00	26,646.00	-	-
7	4,441.00	31,087.00	-	-
8	4,441.00	35,528.00	-	-
9	4,441.00	39,969.00	-	-
10	4,441.00	44,410.00	-	-
11	4,441.00	48,851.00	-	-
12	4,441.00	53,292.00	-	-
13	4,441.00	57,733.00	-	-
14	4,441.00	62,174.00	-	-
15	4,441.00	66,615.00	-	-
16	4,441.00	71,056.00	-	-
17	4,441.00	75,497.00	-	-
18	4,441.00	79,938.00	-	-
19	4,441.00	84,379.00	-	-
20	4,441.00	88,820.00	-	-
21	4,441.00	93,261.00	-	-
22	4,441.00	97,702.00	-	-
23	4,441.00	102,143.00	-	-
24	4,441.00	106,584.00	-	-
25	4,441.00	111,025.00	-	-
26	4,441.00	115,466.00	-	-
27	4,441.00	119,907.00	-	-
28	4,441.00	124,348.00	-	-
29	4,441.00	128,789.00	-	-
30	4,441.00	133,230.00	-	-
31	4,441.00	137,671.00	-	-
32	4,441.00	142,112.00	-	-
33	4,441.00	146,553.00	-	-
34	4,441.00	150,994.00	-	-
35	4,441.00	155,435.00	-	-
36	4,441.00	159,876.00	-	-
37	4,441.00	164,317.00	-	-
38	4,441.00	168,758.00	-	-
39	4,441.00	173,199.00	-	-
40	4,441.00	177,640.00	-	-
41	4,441.00	182,081.00	-	-

In Service Month	(A) Scheduled Additional LRV Miles per Option LRV	(B) Cumulative Additional LRV Miles per Option LRV	(C) Additional LRV Lifecycle Payment per Option LRV	(D) Additional LRV Lifecycle Payment per Option LRV (Cumulative)
42	4,441.00	186,522.00	-	-
43	4,441.00	190,963.00	-	-
44	4,441.00	195,404.00	-	-
45	4,441.00	199,845.00	-	-
46	4,441.00	204,286.00	-	-
47	4,441.00	208,727.00	-	-
48	4,441.00	213,168.00	-	-
49	4,441.00	217,609.00	-	-
50	4,441.00	222,050.00	-	-
51	4,441.00	226,491.00	-	-
52	4,441.00	230,932.00	-	-
53	4,441.00	235,373.00	-	-
54	4,441.00	239,814.00	-	-
55	4,441.00	244,255.00	-	-
56	4,441.00	248,696.00	-	-
57	4,441.00	253,137.00	-	-
58	4,441.00	257,578.00	-	-
59	4,441.00	262,019.00	-	-
60	4,441.00	266,460.00	-	-
61	4,441.00	270,901.00	-	-
62	4,441.00	275,342.00	-	-
63	4,441.00	279,783.00	-	-
64	4,441.00	284,224.00	-	-
65	4,441.00	288,665.00	-	-
66	4,441.00	293,106.00	-	-
67	4,441.00	297,547.00	-	-
68	4,441.00	301,988.00	-	-
69	4,441.00	306,429.00	-	-
70	4,441.00	310,870.00	3,919.00	3,919.00
71	4,441.00	315,311.00	3,919.00	7,838.00
72	4,441.00	319,752.00	3,919.00	11,757.00
73	4,441.00	324,193.00	3,919.00	15,676.00
74	4,441.00	328,634.00	3,919.00	19,595.00
75	4,441.00	333,075.00	3,919.00	23,514.00
76	4,441.00	337,516.00	3,919.00	27,433.00
77	4,441.00	341,957.00	3,919.00	31,352.00
78	4,441.00	346,398.00	3,919.00	35,271.00
79	4,441.00	350,839.00	3,919.00	39,190.00
80	4,441.00	355,280.00	3,919.00	43,109.00
81	4,441.00	359,721.00	3,919.00	47,028.00
82	4,441.00	364,162.00	9,144.00	56,172.00
83	4,441.00	368,603.00	9,144.00	65,316.00
84	4,441.00	373,044.00	9,144.00	74,460.00
85	4,441.00	377,485.00	9,144.00	83,604.00
86	4,441.00	381,926.00	9,144.00	92,748.00
87	4,441.00	386,367.00	9,144.00	101,892.00

In Service Month	(A) Scheduled Additional LRV Miles per Option LRV	(B) Cumulative Additional LRV Miles per Option LRV	(C) Additional LRV Lifecycle Payment per Option LRV	(D) Additional LRV Lifecycle Payment per Option LRV (Cumulative)
88	4,441.00	390,808.00	9,144.00	111,036.00
89	4,441.00	395,249.00	9,144.00	120,180.00
90	4,441.00	399,690.00	9,144.00	129,324.00
91	4,441.00	404,131.00	9,144.00	138,468.00
92	4,441.00	408,572.00	9,144.00	147,612.00
93	4,441.00	413,013.00	9,144.00	156,756.00
94	4,441.00	417,454.00	3,919.00	160,675.00
95	4,441.00	421,895.00	3,919.00	164,594.00
96	4,441.00	426,336.00	3,919.00	168,513.00
97	4,441.00	430,777.00	3,919.00	172,432.00
98	4,441.00	435,218.00	3,919.00	176,351.00
99	4,441.00	439,659.00	3,919.00	180,270.00
100	4,441.00	444,100.00	3,919.00	184,189.00
101	4,441.00	448,541.00	3,919.00	188,108.00
102	4,441.00	452,982.00	3,919.00	192,027.00
103	4,441.00	457,423.00	3,919.00	195,946.00
104	4,441.00	461,864.00	3,919.00	199,865.00
105	4,441.00	466,305.00	3,919.00	203,784.00
106	4,441.00	470,746.00	-	203,784.00
107	4,441.00	475,187.00	-	203,784.00
108	4,441.00	479,628.00	-	203,784.00
109	4,441.00	484,069.00	-	203,784.00
110	4,441.00	488,510.00	-	203,784.00
111	4,441.00	492,951.00	-	203,784.00
112	4,441.00	497,392.00	-	203,784.00
113	4,441.00	501,833.00	-	203,784.00
114	4,441.00	506,274.00	-	203,784.00
115	4,441.00	510,715.00	-	203,784.00
116	4,441.00	515,156.00	-	203,784.00
117	4,441.00	519,597.00	-	203,784.00
118	4,441.00	524,038.00	-	203,784.00
119	4,441.00	528,479.00	-	203,784.00
120	4,441.00	532,920.00	-	203,784.00
121	4,441.00	537,361.00	-	203,784.00
122	4,441.00	541,802.00	-	203,784.00
123	4,441.00	546,243.00	-	203,784.00
124	4,441.00	550,684.00	-	203,784.00
125	4,441.00	555,125.00	-	203,784.00
126	4,441.00	559,566.00	-	203,784.00
127	4,441.00	564,007.00	-	203,784.00
128	4,441.00	568,448.00	-	203,784.00
129	4,441.00	572,889.00	-	203,784.00
130	4,441.00	577,330.00	-	203,784.00
131	4,441.00	581,771.00	-	203,784.00
132	4,441.00	586,212.00	-	203,784.00
133	4,441.00	590,653.00	-	203,784.00

In Service Month	(A) Scheduled Additional LRV Miles per Option LRV	(B) Cumulative Additional LRV Miles per Option LRV	(C) Additional LRV Lifecycle Payment per Option LRV	(D) Additional LRV Lifecycle Payment per Option LRV (Cumulative)
134	4,441.00	595,094.00	-	203,784.00
135	4,441.00	599,535.00	-	203,784.00
136	4,441.00	603,976.00	-	203,784.00
137	4,441.00	608,417.00	-	203,784.00
138	4,441.00	612,858.00	-	203,784.00
139	4,441.00	617,299.00	-	203,784.00
140	4,441.00	621,740.00	-	203,784.00
141	4,441.00	626,181.00	-	203,784.00
142	4,441.00	630,622.00	-	203,784.00
143	4,441.00	635,063.00	-	203,784.00
144	4,441.00	639,504.00	-	203,784.00
145	4,441.00	643,945.00	-	203,784.00
146	4,441.00	648,386.00	-	203,784.00
147	4,441.00	652,827.00	-	203,784.00
148	4,441.00	657,268.00	-	203,784.00
149	4,441.00	661,709.00	-	203,784.00
150	4,441.00	666,150.00	-	203,784.00
151	4,441.00	670,591.00	-	203,784.00
152	4,441.00	675,032.00	-	203,784.00
153	4,441.00	679,473.00	-	203,784.00
154	4,441.00	683,914.00	13,670.82	217,454.82
155	4,441.00	688,355.00	13,670.82	231,125.64
156	4,441.00	692,796.00	13,670.82	244,796.46
157	4,441.00	697,237.00	13,670.82	258,467.28
158	4,441.00	701,678.00	13,670.82	272,138.10
159	4,441.00	706,119.00	13,670.82	285,808.92
160	4,441.00	710,560.00	13,670.82	299,479.74
161	4,441.00	715,001.00	13,670.82	313,150.56
162	4,441.00	719,442.00	13,670.82	326,821.38
163	4,441.00	723,883.00	13,670.82	340,492.20
164	4,441.00	728,324.00	13,670.82	354,163.02
165	4,441.00	732,765.00	13,670.82	367,833.84
166	4,441.00	737,206.00	31,898.58	399,732.43
167	4,441.00	741,647.00	31,898.58	431,631.01
168	4,441.00	746,088.00	31,898.58	463,529.60
169	4,441.00	750,529.00	31,898.58	495,428.18
170	4,441.00	754,970.00	31,898.58	527,326.76
171	4,441.00	759,411.00	31,898.58	559,225.35
172	4,441.00	763,852.00	31,898.58	591,123.93
173	4,441.00	768,293.00	31,898.58	623,022.52
174	4,441.00	772,734.00	31,898.58	654,921.10
175	4,441.00	777,175.00	31,898.58	686,819.68
176	4,441.00	781,616.00	31,898.58	718,718.27
177	4,441.00	786,057.00	31,898.58	750,616.85
178	4,441.00	790,498.00	13,670.82	764,287.67
179	4,441.00	794,939.00	13,670.82	777,958.49

In Service Month	(A) Scheduled Additional LRV Miles per Option LRV	(B) Cumulative Additional LRV Miles per Option LRV	(C) Additional LRV Lifecycle Payment per Option LRV	(D) Additional LRV Lifecycle Payment per Option LRV (Cumulative)
180	4,441.00	799,380.00	13,670.82	791,629.31
181	4,441.00	803,821.00	13,670.82	805,300.13
182	4,441.00	808,262.00	13,670.82	818,970.95
183	4,441.00	812,703.00	13,670.82	832,641.77
184	4,441.00	817,144.00	13,670.82	846,312.59
185	4,441.00	821,585.00	13,670.82	859,983.41
186	4,441.00	826,026.00	13,670.82	873,654.23
187	4,441.00	830,467.00	13,670.82	887,325.05
188	4,441.00	834,908.00	13,670.82	900,995.87
189	4,441.00	839,349.00	13,670.82	914,666.69
190	4,441.00	843,790.00	-	914,666.69
191	4,441.00	848,231.00	-	914,666.69
192	4,441.00	852,672.00	-	914,666.69
193	4,441.00	857,113.00	-	914,666.69
194	4,441.00	861,554.00	-	914,666.69
195	4,441.00	865,995.00	-	914,666.69
196	4,441.00	870,436.00	-	914,666.69
197	4,441.00	874,877.00	-	914,666.69
198	4,441.00	879,318.00	-	914,666.69
199	4,441.00	883,759.00	-	914,666.69
200	4,441.00	888,200.00	-	914,666.69
201	4,441.00	892,641.00	-	914,666.69
202	4,441.00	897,082.00	-	914,666.69
203	4,441.00	901,523.00	-	914,666.69
204	4,441.00	905,964.00	-	914,666.69
205	4,441.00	910,405.00	-	914,666.69
206	4,441.00	914,846.00	-	914,666.69
207	4,441.00	919,287.00	-	914,666.69
208	4,441.00	923,728.00	-	914,666.69
209	4,441.00	928,169.00	-	914,666.69
210	4,441.00	932,610.00	-	914,666.69
211	4,441.00	937,051.00	-	914,666.69
212	4,441.00	941,492.00	-	914,666.69
213	4,441.00	945,933.00	-	914,666.69
214	4,441.00	950,374.00	-	914,666.69
215	4,441.00	954,815.00	-	914,666.69
216	4,441.00	959,256.00	-	914,666.69
217	4,441.00	963,697.00	-	914,666.69
218	4,441.00	968,138.00	-	914,666.69
219	4,441.00	972,579.00	-	914,666.69
220	4,441.00	977,020.00	-	914,666.69
221	4,441.00	981,461.00	-	914,666.69
222	4,441.00	985,902.00	-	914,666.69
223	4,441.00	990,343.00	-	914,666.69
224	4,441.00	994,784.00	-	914,666.69
225	4,441.00	999,225.00	-	914,666.69

In Service Month	(A) Scheduled Additional LRV Miles per Option LRV	(B) Cumulative Additional LRV Miles per Option LRV	(C) Additional LRV Lifecycle Payment per Option LRV	(D) Additional LRV Lifecycle Payment per Option LRV (Cumulative)
226	4,441.00	1,003,666.00	-	914,666.69
227	4,441.00	1,008,107.00	-	914,666.69
228	4,441.00	1,012,548.00	-	914,666.69
229	4,441.00	1,016,989.00	-	914,666.69
230	4,441.00	1,021,430.00	-	914,666.69
231	4,441.00	1,025,871.00	-	914,666.69
232	4,441.00	1,030,312.00	-	914,666.69
233	4,441.00	1,034,753.00	-	914,666.69
234	4,441.00	1,039,194.00	-	914,666.69
235	4,441.00	1,043,635.00	-	914,666.69
236	4,441.00	1,048,076.00	-	914,666.69
237	4,441.00	1,052,517.00	-	914,666.69
238	4,441.00	1,056,958.00	3,919.07	918,585.76
239	4,441.00	1,061,399.00	3,919.07	922,504.83
240	4,441.00	1,065,840.00	3,919.07	926,423.90
241	4,441.00	1,070,281.00	3,919.07	930,342.97
242	4,441.00	1,074,722.00	3,919.07	934,262.04
243	4,441.00	1,079,163.00	3,919.07	938,181.11
244	4,441.00	1,083,604.00	3,919.07	942,100.18
245	4,441.00	1,088,045.00	3,919.07	946,019.25
246	4,441.00	1,092,486.00	3,919.07	949,938.32
247	4,441.00	1,096,927.00	3,919.07	953,857.39
248	4,441.00	1,101,368.00	3,919.07	957,776.46
249	4,441.00	1,105,809.00	3,919.07	961,695.53
250	4,441.00	1,110,250.00	9,144.50	970,840.03
251	4,441.00	1,114,691.00	9,144.50	979,984.53
252	4,441.00	1,119,132.00	9,144.50	989,129.03
253	4,441.00	1,123,573.00	9,144.50	998,273.53
254	4,441.00	1,128,014.00	9,144.50	1,007,418.03
255	4,441.00	1,132,455.00	9,144.50	1,016,562.53
256	4,441.00	1,136,896.00	9,144.50	1,025,707.02
257	4,441.00	1,141,337.00	9,144.50	1,034,851.52
258	4,441.00	1,145,778.00	9,144.50	1,043,996.02
259	4,441.00	1,150,219.00	9,144.50	1,053,140.52
260	4,441.00	1,154,660.00	9,144.50	1,062,285.02
261	4,441.00	1,159,101.00	9,144.50	1,071,429.52
262	4,441.00	1,163,542.00	3,919.07	1,075,348.59
263	4,441.00	1,167,983.00	3,919.07	1,079,267.66
264	4,441.00	1,172,424.00	3,919.07	1,083,186.73
265	4,441.00	1,176,865.00	3,919.07	1,087,105.80
266	4,441.00	1,181,306.00	3,919.07	1,091,024.87
267	4,441.00	1,185,747.00	3,919.07	1,094,943.94
268	4,441.00	1,190,188.00	3,919.07	1,098,863.01
269	4,441.00	1,194,629.00	3,919.07	1,102,782.08
270	4,441.00	1,199,070.00	3,919.07	1,106,701.15
271	4,441.00	1,203,511.00	3,919.07	1,110,620.22

In Service Month	(A) Scheduled Additional LRV Miles per Option LRV	(B) Cumulative Additional LRV Miles per Option LRV	(C) Additional LRV Lifecycle Payment per Option LRV	(D) Additional LRV Lifecycle Payment per Option LRV (Cumulative)
272	4,441.00	1,207,952.00	3,919.07	1,114,539.29
273	4,441.00	1,212,393.00	3,919.07	1,118,458.36
274	4,441.00	1,216,834.00	-	1,118,458.36
275	4,441.00	1,221,275.00	-	1,118,458.36
276	4,441.00	1,225,716.00	-	1,118,458.36
277	4,441.00	1,230,157.00	-	1,118,458.36
278	4,441.00	1,234,598.00	-	1,118,458.36
279	4,441.00	1,239,039.00	-	1,118,458.36
280	4,441.00	1,243,480.00	-	1,118,458.36
281	4,441.00	1,247,921.00	-	1,118,458.36
282	4,441.00	1,252,362.00	-	1,118,458.36
283	4,441.00	1,256,803.00	-	1,118,458.36
284	4,441.00	1,261,244.00	-	1,118,458.36
285	4,441.00	1,265,685.00	-	1,118,458.36
286	4,441.00	1,270,126.00	-	1,118,458.36
287	4,441.00	1,274,567.00	-	1,118,458.36
288	4,441.00	1,279,008.00	-	1,118,458.36
289	4,441.00	1,283,449.00	-	1,118,458.36
290	4,441.00	1,287,890.00	-	1,118,458.36
291	4,441.00	1,292,331.00	-	1,118,458.36
292	4,441.00	1,296,772.00	-	1,118,458.36
293	4,441.00	1,301,213.00	-	1,118,458.36
294	4,441.00	1,305,654.00	-	1,118,458.36
295	4,441.00	1,310,095.00	-	1,118,458.36
296	4,441.00	1,314,536.00	-	1,118,458.36
297	4,441.00	1,318,977.00	-	1,118,458.36
298	4,441.00	1,323,418.00	-	1,118,458.36
299	4,441.00	1,327,859.00	-	1,118,458.36
300	4,441.00	1,332,300.00	-	1,118,458.36
301	4,441.00	1,336,741.00	-	1,118,458.36
302	4,441.00	1,341,182.00	-	1,118,458.36
303	4,441.00	1,345,623.00	-	1,118,458.36
304	4,441.00	1,350,064.00	-	1,118,458.36
305	4,441.00	1,354,505.00	-	1,118,458.36
306	4,441.00	1,358,946.00	-	1,118,458.36
307	4,441.00	1,363,387.00	-	1,118,458.36
308	4,441.00	1,367,828.00	-	1,118,458.36
309	4,441.00	1,372,269.00	-	1,118,458.36
310	4,441.00	1,376,710.00	-	1,118,458.36
311	4,441.00	1,381,151.00	-	1,118,458.36
312	4,441.00	1,385,592.00	-	1,118,458.36
313	4,441.00	1,390,033.00	-	1,118,458.36
314	4,441.00	1,394,474.00	-	1,118,458.36
315	4,441.00	1,398,915.00	-	1,118,458.36
316	4,441.00	1,403,356.00	-	1,118,458.36
317	4,441.00	1,407,797.00	-	1,118,458.36

<b>In Service Month</b>	<b>(A) Scheduled Additional LRV Miles per Option LRV</b>	<b>(B) Cumulative Additional LRV Miles per Option LRV</b>	<b>(C) Additional LRV Lifecycle Payment per Option LRV</b>	<b>(D) Additional LRV Lifecycle Payment per Option LRV (Cumulative)</b>
318	4,441.00	1,412,238.00	-	1,118,458.36
319	4,441.00	1,416,679.00	-	1,118,458.36
320	4,441.00	1,421,120.00	-	1,118,458.36
321	4,441.00	1,425,561.00	-	1,118,458.36
322	4,441.00	1,430,002.00	7,283.26	1,125,741.62
323	4,441.00	1,434,443.00	7,283.26	1,133,024.88
324	4,441.00	1,438,884.00	7,283.26	1,140,308.14
325	4,441.00	1,443,325.00	7,283.26	1,147,591.40
326	4,441.00	1,447,766.00	7,283.26	1,154,874.66
327	4,441.00	1,452,207.00	7,283.26	1,162,157.92
328	4,441.00	1,456,648.00	7,283.26	1,169,441.18
329	4,441.00	1,461,089.00	7,283.26	1,176,724.44
330	4,441.00	1,465,530.00	7,283.26	1,184,007.70
331	4,441.00	1,469,971.00	7,283.26	1,191,290.96
332	4,441.00	1,474,412.00	7,283.26	1,198,574.22
333	4,441.00	1,478,853.00	7,283.26	1,205,857.48
334	4,441.00	1,483,294.00	16,994.28	1,222,851.76
335	4,441.00	1,487,735.00	16,994.28	1,239,846.04
336	4,441.00	1,492,176.00	16,994.28	1,256,840.32
337	4,441.00	1,496,617.00	16,994.28	1,273,834.60
338	4,441.00	1,501,058.00	16,994.28	1,290,828.88
339	4,441.00	1,505,499.00	16,994.28	1,307,823.16
340	4,441.00	1,509,940.00	16,994.28	1,324,817.44
341	4,441.00	1,514,381.00	16,994.28	1,341,811.72
342	4,441.00	1,518,822.00	16,994.28	1,358,806.00
343	4,441.00	1,523,263.00	16,994.28	1,375,800.28
344	4,441.00	1,527,704.00	16,994.28	1,392,794.56
345	4,441.00	1,532,145.00	16,994.28	1,409,788.84
346	4,441.00	1,536,586.00	7,283.26	1,417,072.10
347	4,441.00	1,541,027.00	7,283.26	1,424,355.36
348	4,441.00	1,545,468.00	7,283.26	1,431,638.62
349	4,441.00	1,549,909.00	7,283.26	1,438,921.88
350	4,441.00	1,554,350.00	7,283.26	1,446,205.14
351	4,441.00	1,558,791.00	7,283.26	1,453,488.40
352	4,441.00	1,563,232.00	7,283.26	1,460,771.66
353	4,441.00	1,567,673.00	7,283.26	1,468,054.92
354	4,441.00	1,572,114.00	7,283.26	1,475,338.18
355	4,441.00	1,576,555.00	7,283.26	1,482,621.44
356	4,441.00	1,580,996.00	7,283.26	1,489,904.70
357	4,441.00	1,585,437.00	7,283.26	1,497,187.96
358	4,441.00	1,589,878.00	-	1,497,187.96
359	4,441.00	1,594,319.00	-	1,497,187.96
360	4,441.00	1,598,760.00	-	1,497,187.96



The Additional LRV Lifecycle Payments per LRV in column (C) of Table 4.3 for each Contract Month must be no greater than the Initial LRV Lifecycle Payment from column (C) of Table 4.2 divided by the number of LRVs in the Initial Vehicle Fleet.

- 4.4 The number of LRVs required for each Service Level (“BSLV”), including the initial vehicle fleet for Service Level 1, is set out in the table below:

Service Level	BSLV
1 (inclusive of the O&M Spare LRV)	26
2	31
3	37

## Section 5. Insurance Payment

The Insurance Payment (I) is set out in the table below:

Contract Month	Insurance Payment
1 <sup>1</sup>	435,037.08
2	435,037.08
3	435,037.08
4	435,037.08
5	435,037.08
6	435,037.08
7	435,037.08
8	435,037.08
9	435,037.08
10	435,037.08
11	435,037.08
12	435,037.08
13	435,037.08
14	435,037.08
15	435,037.08
16	435,037.08
17	435,037.08
18	435,037.08
19	435,037.08
20	435,037.08
21	435,037.08
22	435,037.08
23	435,037.08
24	435,037.08
25	435,037.08
26	435,037.08
27	435,037.08
28	435,037.08
29	435,037.08
30	435,037.08
31	435,037.08
32	435,037.08

Contract Month	Insurance Payment
33	435,037.08
34	435,037.08
35	435,037.08
36	435,037.08
37	435,037.08
38	435,037.08
39	435,037.08
40	435,037.08
41	435,037.08
42	435,037.08
43	435,037.08
44	435,037.08
45	435,037.08
46	435,037.08
47	435,037.08
48	435,037.08
49	435,037.08
50	435,037.08
51	435,037.08
52	435,037.08
53	435,037.08
54	435,037.08
55	435,037.08
56	435,037.08
57	435,037.08
58	435,037.08
59	435,037.08
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61	435,037.08
62	435,037.08
63	435,037.08
64	435,037.08
65	435,037.08
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67	435,037.08
68	435,037.08
69	435,037.08
70	435,037.08
71	435,037.08
72	435,037.08
73	435,037.08
74	435,037.08
75	435,037.08
76	435,037.08
77	435,037.08
78	435,037.08
79	435,037.08

Contract Month	Insurance Payment
80	435,037.08
81	435,037.08
82	435,037.08
83	435,037.08
84	435,037.08
85	435,037.08
86	435,037.08
87	435,037.08
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119	435,037.08
120	435,037.08
121	435,037.08
122	435,037.08
123	435,037.08
124	435,037.08
125	435,037.08
126	435,037.08

Contract Month	Insurance Payment
127	435,037.08
128	435,037.08
129	435,037.08
130	435,037.08
131	435,037.08
132	435,037.08
133	435,037.08
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168	435,037.08
169	435,037.08
170	435,037.08
171	435,037.08
172	435,037.08
173	435,037.08

<b>Contract Month</b>	<b>Insurance Payment</b>
174	435,037.08
175	435,037.08
176	435,037.08
177	435,037.08
178	435,037.08
179	435,037.08
180	435,037.08
181	435,037.08
182	435,037.08
183	435,037.08
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213	435,037.08
214	435,037.08
215	435,037.08
216	435,037.08
217	435,037.08
218	435,037.08
219	435,037.08
220	435,037.08

Contract Month	Insurance Payment
221	435,037.08
222	435,037.08
223	435,037.08
224	435,037.08
225	435,037.08
226	435,037.08
227	435,037.08
228	435,037.08
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256	435,037.08
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258	435,037.08
259	435,037.08
260	435,037.08
261	435,037.08
262	435,037.08
263	435,037.08
264	435,037.08
265	435,037.08
266	435,037.08
267	435,037.08

<b>Contract Month</b>	<b>Insurance Payment</b>
268	435,037.08
269	435,037.08
270	435,037.08
271	435,037.08
272	435,037.08
273	435,037.08
274	435,037.08
275	435,037.08
276	435,037.08
277	435,037.08
278	435,037.08
279	435,037.08
280	435,037.08
281	435,037.08
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292	435,037.08
293	435,037.08
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295	435,037.08
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297	435,037.08
298	435,037.08
299	435,037.08
300	435,037.08
301	435,037.08
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303	435,037.08
304	435,037.08
305	435,037.08
306	435,037.08
307	435,037.08
308	435,037.08
309	435,037.08
310	435,037.08
311	435,037.08
312	435,037.08
313	435,037.08
314	435,037.08



Contract Month	Insurance Payment
315	435,037.08
316	435,037.08
317	435,037.08
318	435,037.08
319	435,037.08
320	435,037.08
321	435,037.08
322	435,037.08
323	435,037.08
324	435,037.08
325	435,037.08
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352	435,037.08
353	435,037.08
354	435,037.08
355	435,037.08
356	435,037.08
357	435,037.08
358	435,037.08
359	435,037.08
360	435,037.08
361 <sup>1</sup>	-

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<sup>1</sup> Contract Month 361 may be used if Contract Month 1 is a partial calendar month

## APPENDIX B: DEDUCTION FACTORS

### Section 1. Operational Availability Deduction Factor

1.1 The Operational Availability Deduction Factor ( $OADF_n$ ) shall be calculated as follows:

$MOPF_n^{16}$	$OADF_n$
.960 and above	0.00%
.950	0.50%
.940	1.00%
.930	3.00%
.920	5.00%
.910	7.00%
.900	9.00%
.890	11.50%
.880	14.00%
.870	16.50%
.860	19.00%
.850	22.00%
.840	24.00%
.830	26.00%
.820	28.00%
.810	30.00%
.800	32.00%
.790	34.00%
.780	36.00%
.770	38.00%
.760	40.00%
.750	42.00%
.740	44.00%
.730	46.00%
.720	48.00%

$MOPF_n^{16}$	$OADF_n$
.710	50.00%
.700	52.00%
.690	54.00%
.680	56.00%
.670	58.00%
.660	60.00%
.650	62.00%
.640	64.00%
.630	66.00%
.620	68.00%
.610	70.00%
.600	72.00%
.590	74.00%
.580	76.00%
.570	78.00%
.560	80.00%
.550	82.00%
.540	84.00%
.530	86.00%
.520	88.00%
.510	90.00%
.500	92.00%
.490	94.00%
.480	96.00%
.470	98.00%
.460	99.00%
.450 and below	100.00%

<sup>16</sup> Note: Straight line interpolation shall be used to calculate payments for MOPF results that fall between listed points.

- 1.2 The Monthly Operations Performance Factor (“MOPF”) will be calculated using the formula outlined in Appendix D to this Exhibit 4D.

## **APPENDIX C: NONCOMPLIANCE POINTS**

### **Section 1. Noncompliance Points Applicable to Activity Noncompliance Events**

The following table identifies the maximum number of Noncompliance Points and Deduction to be assessed against Concessionaire upon the occurrence of each Activity Noncompliance Event during the Contract Month.

<b>Category</b>	<b>Noncompliance Points</b>	<b>Financial Deduction</b>	<b>Application</b>
Minor Quality Activity Noncompliance Event	12	\$250	Per Activity Noncompliance Event
Minor Service Activity Noncompliance Event	12	\$500	
Medium Quality Activity Noncompliance Event	24	\$2,500	
Medium Service Activity Noncompliance Event	24	\$5,000	
Major Quality Activity Noncompliance Event	120	\$20,000	
Major Service Activity Noncompliance Event	120	\$40,000	

### **Section 2. Noncompliance Points Applicable to Operations Availability Noncompliance Events**

The following table identifies the number of Noncompliance Points to be assessed against Concessionaire upon the compilation of each occurrence of an Operations Availability Noncompliance Event for a Contract Month relating to the Monthly Factor for that month.

<b>MOF<sub>n</sub></b>	<b>Noncompliance Points</b>	<b>Application</b>
.960 and above	0	Monthly
.950 to .959	120	
.940 to .949	360	
.930 to .939	720	
.910 to .929	1,200	
.860 to .909	2,400	
.800 to .859	3,600	
.799 and below	4,800	

## **APPENDIX D: MONTHLY OPERATIONS PERFORMANCE FACTOR**

1. The Monthly Operations Performance Factor shall be calculated in accordance with the following formula:

$$MOPF_n = 100\% - \left( \frac{\sum OTP}{TRP_n} \right)$$

where:

- $MOPF_n$  means the Monthly Operations Performance Factor for the relevant Contract Month.
- $\sum OTP$  means the sum of all OTP Factors for every Trip scheduled on that month. The OTP Factors for each trip are as provided in Table 1 of this Appendix D (OTP Factors) and the provisions that follow Table 1 in Appendix D.
- $TRP_n$  means the total number of Trips scheduled for the relevant Contract Month.

2. The Daily Operations Performance Factor shall be calculated in accordance with the following formula:

$$DOPF_n = 100\% - \left( \frac{\sum OTP}{TRP_n} \right)$$

where:

- $DOPF_n$  means the Daily Operations Performance Factor for the relevant day of the relevant Contract Month.
- $\sum OTP$  means the sum of all OTP Factors for every Trip scheduled on that day. The OTP Factors for each trip are as provided in Table 1 of this Appendix D (OTP Factors) and the provisions that follow Table 1 in Appendix D.
- $TRP_n$  means the total number of Trips scheduled for the relevant day of the relevant Contract Month.

**Table 1: OTP Factors**

Operations Availability Noncompliance Event	Short Name	OTP Factor ("OTP")
During any period when the Headway is 10 minutes or less, the scheduled Train departs the originating Station or an Intermediate Transfer Station less than the greater of 3 minutes or 0.5 times the Headway after the previous Train, or more than the greater of 9 minutes or 1.5 times the Headway after the previous Train. (For Trains operating during any period when the Headway is ten minutes or less, the maximum 0.8 OTP Factor for being late shall apply per Trip).	Unsequenced Train – Frequent Periods	0.80
During any period when the Headway is more than 10 minutes, the scheduled Train arrives at the Terminal Station more than 5.0 minutes and not more than 7.5 minutes late.	Late Train – Infrequent Periods	0.80
During any period when the Headway is more than 10 minutes, the scheduled Train arrives at the Terminal Station more than 7.5 minutes and not more than 10 minutes late.	Moderately Late Train – Infrequent Periods	1.10
During any period when the Headway is more than 10 minutes, the scheduled Train arrives at the Terminal Station more than 10 minutes late.	Very Late Train – Infrequent Periods	1.30
During any period the Train has one or more LRVs less than scheduled.	Short Train	1.30
During any period when the Headway is more than 10 minutes, the scheduled Train departs the originating Station more than 0 seconds early or an Intermediate Transfer Station more than 30 seconds early.	Early Departure – Infrequent Periods	1.30
During any period the scheduled Train departs its originating Station but does not reach the ending Terminal Station.	Incomplete Trip	2.50
During any period the scheduled Train does not depart from the intended originating Station.	Missed Trip	2.50

3. **Multiple OTP Factors May Apply.** If multiple Operations Availability Noncompliance Events (including Late Trip, Incomplete Trip and Short Train) occur during a Train's scheduled Trip, multiple OTP Factors may be applied. Missed Trips cannot be made up in other Periods.
4. **Maximum OTP Factor per Trip.** The maximum total OTP Factor for any scheduled Train Trip is 2.50.

5. **Missed Trips Calculated per Period.** A Missed Trip OTP Factor will be applied for each Train Trip that does not depart from the Starting Terminal Station during that period. For example, if 50 Train Trips were scheduled to depart from the starting Terminal Station during the AM Peak Period but only 48 Train Trips departed from the starting Terminal Station during the AM Peak Period, 2 Missed Trip OTP Factors would accumulate during that period.
6. **Reduced OTP Factors for Approved Planned Service Interruptions.** During the approved timeframe of a Planned Service Interruption that is requested by the Concessionaire and approved by the Owner, Concessionaire will be entitled to the benefit of certain reduced OTP Factors if the following conditions are met:  
(1) Concessionaire must provide Alternate Train Service or Alternate Bus Service to all Stations, (2) Concessionaire must serve all Stations with Alternate Train Service to the extent possible, including all Stations in the return direction after Trains are returning from the Service Interruption area to the starting Terminal Station, (3) the Alternate Service must be consistent with the approved Operating Plan, the approved Alternate Service Plan, the approved Workblock Request Package, and the requirements of Part 3, Section 3.2 of the Technical Provisions, and (4) the Planned Service Interruption is not during the first, second or third Contract Month of the O&M Period.

During any time period for which conditions (1) through (4) above have been met, (a) the OTP Factor for Incomplete Trips will be reduced to 1.20, (b) the OTP Factor for Missed Trips will be reduced to 2.00 per regularly scheduled Normal Service Train Trip, and (c) the OTP Factor for a "Late Train – Infrequent Period" Trip will be reduced to 0.40. A Train that departs a Terminal Station, turns at the Service Interruption area and returns to the same starting Terminal Station would be counted as one Incomplete Trip.

7. **Reduced OTP Factors for Certain Early/Late Period Planned Missed Trips.** During Contract Years 8 thru 29, the OTP Factor for a limited number of Missed Trips may be reduced further during the approved timeframe of a Planned Service Interruption that is requested by Concessionaire and approved by Owner if certain conditions are met. These conditions include: (1) all conditions of Section 6 of this Appendix D are met, (2) the need for the Planned Service Interruption, including the type and location of the Work, was specifically identified as occurring in the current year in the current annual update of the Maintenance Plan approved by Owner, (3) Alternate Service must be provided during the entire timeframe of the Planned Service Interruption, (4) the Alternate Service must use Trains and Headways may not be greater than 200% of Normal Service Headways, and (5) the Planned Service Interruption occurs during an Early or Late period of the day (as the terms "Early" and "Late" are used in Part 3, Exhibit 3.1 of the Technical Provisions). For up to 40 Missed Trips per year that meet these conditions, the Missed Trip OTP Factor will be 0.2. For up to an additional 40 Missed Trips per year, the Missed Trip Non-Conformance Factor will be 0.4. This Section 7 only applies to Planned Service Interruptions and applies to no more than 80 Missed Trips per year in each of those years.
8. **Reduced OTP Factors for Using Planned Alternate Bus Service One Weekend Per Year.** During Contract Years 8 thru 29, the OTP Factor for a limited number of Incomplete Trips may be reduced further for one weekend per year during the approved timeframe of a Planned Service Interruption that is requested by Concessionaire and approved by Owner if certain conditions are met. These conditions include: (1) all conditions of Section 6 of this Appendix D are met, (2) the need for the Planned Service Interruption, including the type and location of the Work, was specifically identified as



occurring in the current year in the current annual update of the Maintenance Plan approved by Owner, (3) Alternate Service must be provided during the entire timeframe of the Planned Service Interruption, (4) Alternate Bus Service may be used for service on no more than one segment of the system, where a segment represents the Stations between an Intermediate Transfer Station and either the other Intermediate Transfer Station or a Terminal Station; Alternate Bus Service must be provided where Alternate Rail Service is not provided; (5) the Planned Service Interruption must begin no earlier than the start of the Late period on the last non-Holiday weekday of the week and end prior to regular Early period start time of the next non-Holiday weekday; for example, the Planned Service Interruption could start at 21:00 Friday night and must end prior to 05:00 Monday morning if neither Friday nor Monday were a Holiday; in this example, the Planned Service Interruption could start at 21:00 Friday and end by 05:00 Tuesday morning if Monday were a Holiday eligible for a Planned Service Interruption; (6) the reduced OTP Factors in this Section 8 shall be applicable to no more than one weekend Planned Service Interruption per year in years 8 thru 29, provided that Concessionaire may opt not to use the reduced OTP Factors in this Section 8 in a year and carry the weekend forward up to two years; for example, Concessionaire may opt not to use the provisions in this Section 8 in Contract Years 8 and 9 and then apply the provisions of this Section 8 to three weekends in Contract Year 10; and (7) Concessionaire must provide Owner with written notification in advance of the applicable Planned Service Interruption when it chooses to apply the reduced OTP Factors in this Section 8. For the Incomplete Trips that meet these conditions during the Planned Service Interruption, the Incomplete Trip OTP Factor will be 0.2. A Train that departs a Terminal Station, turns at the Service Interruption area where Alternate Bus Service begins and returns to the same starting Terminal Station would be counted as one Incomplete Trip. For Track Renewal Work at the Silver Spring Transit Center which requires a weekend Planned Service Interruption, not to exceed a total of four full weekends between years 8 thru 29, the Incomplete Trip OTP Factor will be 0.0, provided that conditions (1) through (5) of this paragraph are met.

9. **Reduced OTP Factors for Unplanned Alternate Service.** If service is interrupted in both directions due to a reason other than Non-Concessionaire Caused Disruptions and the disruption is expected to last more than 60 minutes, Concessionaire will be entitled to the benefit of certain reduced OTP Factors if the following conditions are met: (1) Concessionaire must provide Alternate Rail Service and/or Alternate Bus Service to all Stations, (2) Concessionaire must serve all Stations with Alternate Rail Service to the extent possible, including all Stations in the return direction after Trains are returning from the Service Interruption area to the starting Terminal Station, and (3) the Alternate Service must be consistent with the approved Operating Plan, the approved Alternate Service Plan, and the requirements of Part 3, Section 3.2 of the Technical Provisions. The OTP Factors will accrue according to the factors in Table 1 until such conditions are met. During the time period where these conditions are met, the OTP Factor for Incomplete Trips will be reduced to 2.00.
10. **Reduced OTP Factor for Short-Turning Trains during a Short Unplanned Disruption.** If service is interrupted in both directions due to a reason other than Non-Concessionaire Caused Disruptions and the disruption lasts less than 60 minutes, Concessionaire will be entitled to the benefit of certain reduced OTP Factors if the following conditions are met: (1) Concessionaire must provide Alternate Rail Service in both directions and on both sides of the Service Interruption area to the maximum extent possible, and (2) the Alternate Service must be consistent with the approved Operating

Plan, the approved Alternate Service Plan, and the requirements of Part 3, Section 3.2 of the Technical Provisions. The OTP Factors will accumulate in Table 1 until such conditions are met. During the time period where the conditions set out in this clause are met, the OTP Factor for Incomplete Trips will be reduced to 2.20.

## **APPENDIX E: ENERGY PAINSHARE / GAINSHARE**

### **Section 1. Formula for the calculation of Energy Painshare/Gainshare**

- 1.1 Owner will retain the risk of changes in electricity prices during the O&M Period in order to mitigate power commodity price risk for the Project.
- 1.2 As provided in Section 8.9 of the Agreement, Owner will contract for supply of power required for Purple Line System operations, including facilities and platforms as well as traction power.
- 1.3 A pain-share / gain-share (PS/GS) approach will be used to promote energy-efficient solutions during the O&M Period.
- 1.4 Attachment 1 of this Appendix E includes Concessionaire's commitments regarding maximum power usage for Service Levels 1 through 3 during each month of the O&M Period, separately identifying annual volume consumption for commitments for two types of electricity: (1) Traction Power and (2) Electricity for Other Uses. The Parties acknowledge that more detailed analysis of consumption for Electricity for Other Uses will be performed during final design. If (1) the final design analysis results are reviewed and validated by Owner and (2) the Concessionaire utilizes good energy efficiency practices recognized in the industry for both design and the execution of O&M Work, then solely for the purposes of the calculations performed in Section 1.7(b) the Concessionaire's actual Electricity for Other Uses consumption will be measured relative to the updated Attachment 1 consumption estimate identified during final design. Under no circumstances shall the final design estimate of consumption for Electricity for Other Uses be less than 4,000,000 or greater than 12,000,000 kWh per year.
- 1.5 During the O&M Period, Concessionaire's actual electricity consumption for each electricity type will be measured relative to Attachment 1 of this Appendix E using the Electrical Power Usage Report except that for the purposes of Section 1.7(a) the Concessionaire's actual Traction Power consumption will be measured relative to a commitment amount of 16,000,000 kWh per year regardless of which Service Level is in effect.
- 1.6 The Concessionaire's actual Traction Power consumption used in Section 1.7(b) will be measured relative to the relevant maximum power usage commitment for Traction Power for the Service Level in effect in each month (adjusted proportionately for fractions of a month and leap year as applicable). Concessionaire's relevant commitment regarding maximum power usage for Traction Power will be adjusted linearly using actual Revenue Vehicle Miles to account for:
  - (a) Owner-directed schedule changes, including Special Events and Minor Service Changes, as outlined in Section 2.3 of Part B of this Exhibit 4D.
  - (b) Non-Concessionaire Caused Disruptions, Force Majeure or Relief Events that stopped, reduced or increased the number of Trips.

1.7 Subject to Sections 1.4 to Section 1.6, based on these adjusted maximum power usage commitments and actual electricity consumption:

- (a) If Concessionaire's actual electricity consumption for any given year is less than the adjusted maximum power usage commitment amount for either Traction Power or Electricity for Other Uses, Concessionaire will be entitled to a bonus payment for energy efficiency for the relevant power usage commitment. For each maximum power usage commitment, the amount of the annual energy bonus payment will be equal to the lesser of (a) Owner's relevant average rate for electricity consumption that year (\$ per kWh) for that power type and (b) 130% of the relevant rate for electricity (\$0.07 per kWh for Traction Power and \$0.14 per kWh for Electricity for Other Uses, each as adjusted per ESCG for the relevant Contract Year), multiplied by 70% of the electricity volume consumption savings. Owner will pay Concessionaire 1/12 of the annual energy bonus payment in each of the 12 months following Owner's receipt of the annual Electrical Power Usage Report.
- (b) The inverse also applies if Concessionaire's actual electricity consumption for any given year is higher than the adjusted maximum power usage commitment amount for either Traction Power or Electricity for Other Uses. In such event, Owner will make an energy efficiency deduction from the Concessionaire's Availability Payments. For each maximum power usage commitment, the amount of the annual energy efficiency deduction will be equal to the lesser of (i) Owner's relevant average rate for electricity consumption (\$ per kWh) for that power type for that year, and (ii) 130% of the relevant rate for electricity (\$0.07 per kWh for Traction Power and \$0.14 per kWh for Electricity for Other Uses, each as adjusted per ESCG for the relevant Contract Year), multiplied by 70% of the additional electricity consumption amount. Owner will subtract 1/12 of the annual energy efficiency deduction from the APs in each of the 12 months following Owner receipt of the annual Electrical Power Usage Report.

# ATTACHMENT 1 TO APPENDIX E

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
Contract Month 1 after RSA	1,529,717.06	1,669,072.30	1,807,570.02	222,163.50	222,274.58	222,385.72
2	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
3	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
4	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
5	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
6	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
7	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
8	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
9	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
10	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
11	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
12	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
13	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
14	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
15	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
16	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
17	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
18	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
19	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
20	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
21	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
22	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
23	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
24	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
25	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
26	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
27	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
28	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
29	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
30	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
31	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
32	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
33	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
34	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
35	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
36	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
37	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
38	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
39	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
40	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
41	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
42	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
43	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
44	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
45	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
46	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
47	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
48	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
49	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
50	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
51	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
52	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
53	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
54	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
55	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
56	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
57	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
58	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
59	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
60	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
61	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
62	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
63	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
64	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
65	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
66	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
67	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
68	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
69	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
70	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
71	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
72	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
73	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
74	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
75	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
76	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
77	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
78	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
79	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
80	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
81	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
82	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
83	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
84	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
85	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
86	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
87	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
88	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
89	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
90	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
91	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
92	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
93	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
94	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
95	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
96	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
97	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
98	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
99	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
100	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
101	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
102	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86



Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
103	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
104	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
105	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
106	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
107	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
108	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
109	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
110	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
111	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
112	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
113	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
114	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
115	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
116	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
117	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
118	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
119	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
120	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
121	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
122	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
123	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
124	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
125	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
126	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
127	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
128	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
129	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
130	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
131	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
132	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
133	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
134	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
135	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
136	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
137	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
138	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
139	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
140	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
141	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
142	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
143	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
144	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
145	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
146	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
147	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
148	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
149	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
150	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
151	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
152	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
153	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
154	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
155	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
156	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
157	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
158	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
159	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
160	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
161	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
162	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
163	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
164	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
165	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
166	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
167	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
168	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
169	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
170	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
171	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
172	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
173	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
174	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
175	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
176	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
177	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
178	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
179	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
180	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
181	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
182	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
183	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
184	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
185	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
186	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
187	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
188	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
189	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
190	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
191	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
192	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
193	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
194	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
195	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
196	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
197	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
198	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
199	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
200	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
201	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
202	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
203	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
204	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
205	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
206	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
207	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
208	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
209	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
210	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
211	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
212	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
213	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
214	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
215	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
216	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
217	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
218	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
219	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
220	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
221	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
222	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
223	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
224	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
225	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
226	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
227	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
228	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
229	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
230	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
231	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
232	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
233	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
234	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
235	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
236	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
237	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
238	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
239	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
240	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
241	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
242	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
243	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
244	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
245	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
246	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
247	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
248	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
249	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
250	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
251	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
252	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
253	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
254	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
255	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
256	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
257	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
258	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
259	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
260	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
261	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
262	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
263	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
264	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
265	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
266	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
267	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
268	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
269	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
270	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
271	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
272	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
273	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
274	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
275	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
276	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
277	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
278	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
279	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
280	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
281	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
282	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
283	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
284	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
285	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
286	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
287	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
288	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
289	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
290	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
291	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
292	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
293	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
294	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
295	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
296	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
297	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
298	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
299	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
300	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
301	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
302	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
303	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
304	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
305	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
306	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
307	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
308	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
309	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
310	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86



Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
311	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
312	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
313	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
314	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
315	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
316	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
317	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
318	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
319	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
320	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
321	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
322	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
323	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
324	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
325	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
326	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
327	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
328	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
329	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
330	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
331	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
332	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
333	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
334	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
335	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
336	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86

Contract Month	Aggregate Energy Target (kWh)					
	Traction Power			Electricity for Other Uses		
	Service Level 1	Service Level 2	Service Level 3	Service Level 1	Service Level 2	Service Level 3
337	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
338	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
339	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
340	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
341	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
342	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
343	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
344	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
345	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
346	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
347	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
348	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
349	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
350	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
351	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
352	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
353	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
354	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
355	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
356	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
357	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
358	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
359	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
360	2,371,061.44	2,587,062.06	2,801,733.53	344,353.42	344,525.60	344,697.86
Contract Month 361	841,344.38	917,989.76	994,163.51	122,190.00	122,251.00	122,312.00

## ATTACHMENT 2 TO APPENDIX E

### Electrical Power Usage Report

#### ELECTRICAL POWER USAGE REPORT

Report Number:
Report Date:
Contract Year:
Explanation of Owner-Directed Schedule Changes, including Special Events and Minor Service Changes:
Explanation of Non-Concessionaire Caused Disruptions, Force Majeure Events, and Relief Events:

Traction Power											
Aggregate Electricity Target (from Electrical Power Usage Proposal Form)			Adjustments to Aggregate Electricity Target			Final Aggregate Electricity Target	Aggregate Actual Electricity Consumption		Painshare Adjustment or Gainshare Adjustment		
Month	Service Level in Effect	Maximum Power Usage Commitment for Service Level in Effect (kWh)	Changes in Service Level Occuring During the Month (kWh)	Owner-Directed Schedule Changes, including Special Events and Minor Service Changes (kWh)	Non-Concessionaire Caused Disruptions, Force Majeure Events, and Relief Events (kWh)	Adjusted Maximum Power Usage Commitment (kWh)	Usage (kWh)	Variance between Actual Consumption and Target (kWh)	Average Cost of Consumption for Contract Year (\$ per kWh)	Adjusted Average Cost of Traction Power Consumption in ITP (\$ per kWh)	Adjustment to Monthly Availability Payments (\$)
1										N/A	N/A
~										N/A	N/A
12										N/A	N/A
Annual Total											

Electricity for Other Uses									
Aggregate Electricity Target (from Electrical Power Usage Proposal Form)		Adjustments to Aggregate Electricity Target		Final Aggregate Electricity Target	Aggregate Actual Electricity Consumption		Painshare Adjustment or Gainshare Adjustment		
Month	Maximum Power Usage Commitment for Service Level in Effect (kWh)	Owner-Directed Schedule Changes, including Special Events and Minor Service Changes (kWh)	Non-Concessionaire Caused Disruptions, Force Majeure Events, and Relief Events (kWh)	Adjusted Maximum Power Usage Commitment (kWh)	Usage (kWh)	Variance between Actual Consumption and Target (kWh)	Average Cost of Consumption for Contract Year (\$ per kWh)	Adjusted Average Cost of Electricity for Other Uses Consumption in ITP (\$ per kWh)	Adjustment to Monthly Availability Payments (\$)
1								N/A	N/A
~								N/A	N/A
12								N/A	N/A
Annual Total									

**EXHIBIT 5**

**FINANCE DOCUMENTS**

**Exhibit 5A: List of Initial Funding Agreements and Initial Security Documents**

**Exhibit 5B: Form of Direct Agreement**

**Exhibit 5C: Form of Financial Close Certificate**

**Exhibit 5D: Form of Owner Bring-Down Certificate**

**Exhibit 5E: Form of Owner Certificate Regarding PABs Official Statement**

**Attachment 1: Identified Portions of the Official Statement**

**Exhibit 5F: Form of Continuing Disclosure Agreement**

**Exhibit 5G: Calculation and Payment of Refinancing Gain**

**Exhibit 5H: Indicative TIFIA Term Sheet**

**Exhibit 5I: Form of Maryland Attorney General Letter**

**EXHIBIT 5A**  
**LIST OF INITIAL FUNDING AGREEMENTS**  
**AND INITIAL SECURITY DOCUMENTS**

**Funding Agreements**

**Security Documents**

## **EXHIBIT 5B**

### **FORM OF DIRECT AGREEMENT**

**THIS DIRECT AGREEMENT** dated as of [ ] (“**Direct Agreement**”), is made by and among the Maryland Transit Administration (“**MTA**”), the Maryland Department of Transportation (“**MDOT**”), each a state agency of the state of Maryland (collectively, the “**Owner**”), Purple Line Transit Partners LLC, a Delaware limited liability company (“**Concessionaire**”), and [ ], as trustee or collateral agent (in such capacity, together with its successors in such capacity, the “**Collateral Agent**”) for the Lenders (as defined in the P3 Agreement).

### **RECITALS**

- A. Owner and Concessionaire have entered into that certain Public-Private Partnership Agreement dated as of [ ] (the “**P3 Agreement**”) for the Purple Line Project (the “**Project**”), which P3 Agreement contemplates Concessionaire obtaining financing or Refinancing for the Project from third parties.
- B. In order to enable Concessionaire to finance certain activities and certain obligations with respect to the Project, the Lenders have agreed to make available debt facilities, on the terms set out in the Funding Agreements and Security Documents, for the purpose of financing the Project, subject to provision of certain assurances from Owner regarding Lender’s and Collateral Agent’s rights in the event of an Event of Default or Concessionaire Default.
- C. Owner and Concessionaire have previously set forth such assurances in the P3 Agreement for the benefit of Lender as an express third-party beneficiary of such assurances.
- D. In reliance on such assurances, and on this Direct Agreement, Lender has agreed to make available such financing or Refinancing facilities for the purpose of financing or Refinancing all or part of the Project.
- E. The execution of this Direct Agreement by Owner in favor of the Collateral Agent is a condition precedent to such financing or Refinancing facilities being made available to Concessionaire by Lender.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual terms and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, each of Owner, Concessionaire and Collateral Agent hereby agree as follows:

#### **1. DEFINITIONS, SECTION REFERENCES AND INTERPRETATION**

**1.1 Definitions.** Capitalized terms used and not otherwise defined and references used but not construed in this Direct Agreement have the respective meanings and constructions assigned to such terms in the P3 Agreement. In addition, the following terms have the

meanings specified below:

**Collateral Agent** has the meaning given to it in the Preamble.

**Concessionaire** has the meaning given to it in the Preamble.

**Concessionaire Project Completion Default** means a Concessionaire Default under Section 17.1.1(d)(i) of the P3 Agreement (missed Long Stop Date).

**Concessionaire Wrongful Transfer Default** means a Concessionaire Default under Section 17.1.1(h) of the P3 Agreement (wrongful assignment or transfer or attempted assignment or transfer of Concessionaire's interest; wrongful Equity Transfer or wrongful Change of Ownership).

**Cure Period** means:

- (a) With respect to a Concessionaire Default set forth in an Owner Notice that is curable by the payment of money to Owner, a period starting on the date of the receipt of such Owner Notice and ending 60 days after the later of (i) Collateral Agent's receipt of such Owner Notice or (ii) expiration of Concessionaire's cure period (if any) under the P3 Agreement;
- (b) With respect to a Concessionaire Default set forth in an Owner Notice, other than an Incurable Concessionaire Default, a Concessionaire Project Completion Default and those under clauses (a) above and (c) below, a period starting on the date of the receipt by Collateral Agent of such Owner Notice and ending 90 days after the later of (i) receipt by Collateral Agent of such Owner Notice or (ii) expiration of Concessionaire's cure period (if any) under the P3 Agreement; and
- (c) With respect to a Concessionaire Default set forth in an Owner Notice, other than an Incurable Concessionaire Default and a Concessionaire Project Completion Default, which Concessionaire Default by its nature is not capable of cure unless and until the Step-in Party, the Collateral Agent or a court receiver has management, custody and control of the Project, a period starting on the date of the receipt by Collateral Agent of such Owner Notice and ending 180 days after the later of (i) receipt by Collateral Agent of such Owner Notice or (ii) expiration of Concessionaire's cure period (if any) under the P3 Agreement; provided, however, that (A) during such cure period the Step-in Party cures all Concessionaire Defaults which may be cured by the payment of money within the Cure Period under clause (a) above, (B) during such cure period the Step-in Party cures all Concessionaire Defaults governed by clause (b) above within the Cure Period available under clause (b) above, and (C) within the later of (1) five days after expiration of Concessionaire's cure period, if any, and (2) 60 days after the Collateral Agent receives such Owner Notice, the Step-in Party initiates and thereafter pursues with good faith, diligence and continuity lawful processes and steps to obtain possession, custody and control of the Project.

Notwithstanding the foregoing, Collateral Agent's and Concessionaire's respective cure periods

shall be deemed to run concurrently, and not serially, for purposes of the condition to Revenue Service Availability under Section 7.10.2.8 of the P3 Agreement.

To the extent that the Collateral Agent is prohibited from curing any Concessionaire Default by any Governmental Entity (with the understanding that a Person appointed by a bankruptcy court as liquidator, assignee, administrator, receiver, custodian, conservator, sequestrator or trustee or otherwise relating to any bankruptcy, insolvency or similar proceeding is not considered a Governmental Entity for purposes of this Direct Agreement), the Cure Periods above shall be extended for the period of such prohibition. In no case, however, shall a Cure Period extend beyond the expiration of the Term.

**Direct Agreement** has the meaning given to it in the Preamble.

**Discharge Date** means the date on which all of the obligations of Concessionaire under all Funding Agreements have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

**Event of Default** means an “Event of Default” (or its equivalent) as defined in any Funding Agreement with a Lender that is entitled to enter into a Direct Agreement and has entered into a Direct Agreement through the Collateral Agent.

**Incurable Concessionaire Default** means a Concessionaire Default under Section 17.1.1(m), 17.1.1(n) or 17.1.1(o) of the P3 Agreement (bankruptcy-type events).

**Lender Notice** has the meaning given to it in Section 5.1.

**Owner** has the meaning given to it in the Preamble.

**Owner Notice** has the meaning given to it in Section 4.1.

**P3 Agreement** has the meaning given to it in the recitals to this Direct Agreement.

**Project** has the meaning given to it in the recitals to this Direct Agreement.

**Revival Date** has the meaning given to it in Section 12.1.

**Revived Rights** has the meaning given to it in Section 12.1.

**Step-in Date** means later of (a) the date of the receipt of the Step-in Notice and (b) if required by Section 7.2, the date of Owner’s approval to the appointment of the Step-in Party, in both cases subject to Owner’s receipt of any payments required under Section 8.3(d).

**Step-in Notice** has the meaning given to it in Section 7.1.

**Step-in Party** has the meaning given to it in Section 7.2.

**Step-in Period** means the period from and including the Step-in Date until the earliest of:

- (a) The Substitution Effective Date;
- (b) The Step-out Date;



- (c) The date of termination of the P3 Agreement by Owner in accordance with the P3 Agreement and this Direct Agreement;
- (d) The date of the expiration or early termination of the Term under the P3 Agreement;
- (e) Expiration of the applicable Cure Period without cure of the Concessionaire Default to which it relates, and
- (f) The date an Incurable Concessionaire Default occurs;

provided, however, that (i) to the extent that the Collateral Agent is prohibited from exercising its step-in rights by any Governmental Entity, the Step-in Periods above shall be extended for the period of such prohibition and (ii) the Step-in Period with respect to any Concessionaire Project Completion Default shall be deemed extended for the period described in Section 6.4 to the extent the Collateral Agent complies with the requirements of such section.

**Step-out Date** means the effective date a Step-in Party designates for ceasing its step-in as set forth in any Step-out Notice served by the Step-in Party pursuant to Section 9.

**Step-out Notice** has the meaning given to it in Section 9.

**Substitute Accession Agreement** means the agreement to be entered into by a Substituted Entity pursuant to Section 11.1.

**Substitution Effective Date** has the meaning given to it in Section 11.1.

**Substitution Notice** has the meaning given to it in Section 10.1.

**1.2 References to P3 Agreement.** All provisions of the P3 Agreement referenced in this Direct Agreement are deemed incorporated in this Direct Agreement by such reference as if fully set forth herein, with such modifications as may be necessary.

### **1.3 Interpretation.**

Unless the context otherwise clearly requires:

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;
- (b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
- (c) The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;
- (d) The word “will” shall be construed to have the same meaning and effect as the word “shall”;
- (e) Any reference herein to any Person, or to any Person in a specified capacity,

shall be construed to include such Person's successors and permitted assigns or such Person's successors in such capacity, as the case may be;

- (f) The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Direct Agreement in its entirety and not to any particular provision hereof;
- (g) All references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to this Direct Agreement, unless otherwise specified herein. Any Schedules to this Direct Agreement are an integral part hereof. The provisions of this Direct Agreement shall prevail over the provisions of any Schedules to the extent of any inconsistency;
- (h) The headings used in this Direct Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Direct Agreement;
- (i) References herein to this Direct Agreement or to any other agreement or document relating to the Project includes a reference to this Direct Agreement, or, as the case may be, such other agreement or document as amended from time to time;
- (j) "Winding-up", "liquidation", "dissolution", "insolvency", "adjustment" or "reorganization" of a Person and references to the "liquidator", "assignee", "administrator", "receiver", "custodian", "conservator" "sequestrator" or "trustee" of a Person shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such Person is incorporated, organized or constituted or any jurisdiction in which such Person or, as the case may be, insolvency representative or officer carries on business including the seeking of winding-up, liquidation, dissolution, reorganization, administration, arrangement, adjustment or relief of debtors; and
- (k) Any definition or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in such agreement, instrument or other document).

## 2. REPRESENTATIONS AND WARRANTIES

### 2.1 Owner represents and warrants to the Collateral Agent that:

- (a) **Organization; Power and Authority.** Owner is an agency of the State of Maryland, and Owner has the power and authority to execute this Direct Agreement and the P3 Agreement, and to perform the provisions hereof and thereof.

- (b) **Authorizations; Enforceability.** This Direct Agreement and the P3 Agreement have each been duly authorized, executed and delivered by Owner, and each constitutes a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (c) **No Default.** As of the date of the execution of this Direct Agreement, there is no Owner Default. Owner is not aware of any Concessionaire Default, and there exists no event or condition of which Owner is aware that would, with the giving of notice or passage of time or both, constitute such a Concessionaire Default or Owner Default.
- (d) **Initial Funding Agreements; Initial Security Documents.** Owner acknowledges and agrees that the documents referred to in Schedule B attached hereto constitute the Initial Funding Agreements and the Initial Security Documents for purposes of the P3 Agreement.
- (e) **No Conflicts.** The execution and delivery by Owner of the P3 Agreement and this Direct Agreement, and the performance by Owner of its obligations under said agreements, will not conflict with any Laws applicable to Owner that are valid and in effect on the date of execution and delivery.
- (f) **No Litigation.** As of the date of the execution of this Direct Agreement, there is no action, suit, proceeding, investigation or litigation pending and served on Owner which challenges Owner's authority to execute, deliver or perform, or the validity or enforceability of, the P3 Agreement and this Direct Agreement. Concessionaire and Collateral Agent acknowledge that an action has been filed in the U.S. District Court in the District of Columbia alleging that a Threatened or Endangered Species exists at, near or on the Project ROW.
- (g) **Compliance with Mandatory Requirements.** The Initial Funding Agreements and Initial Security Documents, listed in Schedule B, each comply with the provisions of Section 4.3 of the P3 Agreement.

**2.2** Concessionaire represents and warrants to Owner and the Collateral Agent that:

- (a) **Organization; Power and Authority.** Concessionaire is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is registered to transact business in the State of Maryland, and has all requisite power and authority to conduct, execute, deliver and perform its obligations under the P3 Agreement and this Direct Agreement.
- (b) **Authorization; No Conflicts.** The execution, delivery and performance by Concessionaire of the P3 Agreement and this Direct Agreement have been duly authorized by all necessary organizational action, and do not and will not (i) require any consent or approval of Concessionaire's board of directors, shareholders, managers, members, as applicable, or any other person or entity

that has not been obtained, (ii) violate any provision of Concessionaire's organizational documents or any Law having applicability to Concessionaire, or (iii) result in a breach of or constitute a default under any agreement to which Concessionaire is a party.

- (c) **Enforceability.** The P3 Agreement and this Direct Agreement have each been duly executed and delivered and constitute the legal, valid and binding obligation of Concessionaire enforceable against Concessionaire in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally.
- (d) **No Default.** As of the date of the execution of this Direct Agreement, there is no Concessionaire Default, Concessionaire is not aware of any Owner Default, and there exists no event or condition of which Concessionaire is aware that would, with the giving of notice or passage of time or both, constitute a Concessionaire Default or an Owner Default.
- (e) **Purpose of Loan.** The purposes of the Project Debt evidenced and secured by the Funding Agreements are exclusively those set forth in Section 4.3.1 of the P3 Agreement.
- (f) **Initial Funding Agreements; Initial Security Documents.** Schedule B lists all the Initial Funding Agreements and all the Initial Security Documents.
- (g) **Compliance with Mandatory Requirements.** The Initial Funding Agreements and Initial Security Documents, listed in Schedule B, comply with the provisions of Section 4.3 of the P3 Agreement.

**2.3** The Collateral Agent represents and warrants to Owner and Concessionaire that:

- (a) **Existence; Authority.** The Collateral Agent is a [ ] duly organized, validly existing and in good standing under the laws of the [State]/[Commonwealth of ], and has all requisite power and authority to conduct, execute, deliver and perform its obligations under this Direct Agreement.
- (b) **Enforceability.** This Direct Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of the Collateral Agent enforceable against the Collateral Agent in accordance with its terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally.
- (c) **Priority.** Collateral Agent, on behalf of each Lender, has (or each such Lender has) entered into a senior or first-tier subordinate Security Document with Concessionaire with respect to each Funding Agreement in favor of each such Lender.

- (d) **Equity Commitments.** Collateral Agent acknowledges and accepts the equity commitments of Concessionaire under Section 4.4.3.1 of the P3 Agreement.
- (e) **Disclaimer.** Collateral Agent acknowledges and agrees to Owner's disclaimers of liability under the following Sections of the P3 Agreement: Sections 4.2.5 and 4.2.7 (regarding Owner liability under Concessionaire's financing plan), Section 7.8.1.4(c) (regarding certain Hazardous Materials claims of third parties), Sections 11.1.2.2 and 11.1.9.4 (regarding certain insurance-related matters), Sections 17.2.4.5 and 17.2.7.2 (relating to Owner remedies and suspension rights), Section 19.2.3.3(a) (regarding Insurance Unavailability) and Section 23.4.8 (regarding liability for disclosures).

### **3. AGREEMENTS AND CONSENT TO SECURITY; NOTICES TO OWNER**

**3.1** Owner acknowledges notice and receipt of the Funding Agreements and Security Documents, listed in Schedule B, and, notwithstanding anything in the P3 Agreement to the contrary but in reliance on Concessionaire's and Collateral Agent's representations and warranties set forth in Sections 2.2 and 2.3, (a) acknowledges that indebtedness under such Funding Agreements, secured by such Security Documents, constitutes Project Debt for purposes of the P3 Agreement and (b) consents to the collateral assignment by Concessionaire to the Collateral Agent of all of Concessionaire's Interests pursuant to the terms and provisions of, the Security Documents, listed in Schedule B.

**3.2** If the Security Documents listed in Schedule B include a pledge of equity interests in Concessionaire held by the Equity Members and notwithstanding anything in the P3 Agreement to the contrary, Owner acknowledges notice and receipt of such Security Documents, and in reliance on Concessionaire's and Collateral Agent's representations and warranties, consents to the granting by each of such Equity Members to the Collateral Agent of a security interest in such equity interests in Concessionaire pursuant to the terms and provisions of such Security Documents.

**3.3** In reliance on Concessionaire's and Collateral Agent's representations and warranties, notwithstanding anything in the P3 Agreement to the contrary, Owner agrees that the grant of the security interest in and first lien over, all of Concessionaire's Interest under the Principal Project Documents to which Concessionaire is a party pursuant to the Initial Security Documents listed in Schedule B and the grant of the security interest by each Equity Member in its equity interests in Concessionaire pursuant to such Security Documents, the execution by Concessionaire, Collateral Agent and Owner of this Direct Agreement does not constitute a Concessionaire Default, Default Termination Event or any other default by Concessionaire of the Contract Documents. Owner further affirms that such grants would not, with the giving of notice or lapse of time or both, constitute a Concessionaire Default, Default Termination Event or any other default by Concessionaire of the Contract Documents, and that such grants do not require the consent of Owner, other than as provided herein. Concessionaire and Collateral Agent agree that the foregoing does not constitute Owner's approval of, or waiver of the right to approve, any transfer to a Substituted Entity.

**3.4** The rights and obligations of the parties to this Direct Agreement in Sections 4 through 16 hereof (pertaining to Collateral Agent cure, step-in and other remedies) shall apply with respect to any underlying Security Document(s) and the related Lender(s) and Funding

Agreement(s) so long as any Project Debt secured by such Security Document(s) remains outstanding.

#### **4. OWNER NOTICE OF TERMINATION AND EXERCISE OF REMEDIES**

**4.1** Owner shall give the Collateral Agent written notice (an “**Owner Notice**”) promptly upon giving Notice to Concessionaire of:

- (a) A Concessionaire Default (other than an Incurable Concessionaire Default);
- (b) Owner’s right to terminate, or Owner’s election to terminate, the P3 Agreement under Sections 17.2.1 and 19.3 of the P3 Agreement;
- (c) Owner’s exercise of any rights under Section 17.2.3 (except Section 17.2.3.4), 17.2.4 or 17.2.7 of the P3 Agreement; or
- (d) Owner’s right to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Concessionaire) under the P3 Agreement.

Notwithstanding clause (a) above, if an Incurable Concessionaire Default occurs, Owner shall provide an Owner Notice advising Collateral Agent of such Incurable Concessionaire Default unless Owner is precluded from providing such notice by court order or an automatic stay in bankruptcy.

**4.2** An Owner Notice shall specify:

- (a) The unperformed obligations of Concessionaire under the P3 Agreement that are the grounds for termination of the P3 Agreement, or for suspension of performance or for exercise of the other rights all as referred to in Sections 17.2.1, 17.2.3 (except Section 17.2.3.4), 17.2.4 and 17.2.7 of the P3 Agreement in detail sufficient to enable the Collateral Agent to assess the scope and amount of any liability of Concessionaire resulting therefrom;
- (b) To the extent known to Owner, all amounts due and payable by Concessionaire to Owner under the P3 Agreement on or before the date of such Owner Notice and which amounts remain unpaid at such date and the basis for Concessionaire’s obligation to pay such amounts;
- (c) The estimated amount of Concessionaire’s payment obligation to Owner that Owner reasonably foresees will arise during the applicable Cure Period, if any; and
- (d) Any other unperformed obligations of Concessionaire of which Owner is aware as of the date of such Owner Notice.

**4.3** Upon the Collateral Agent’s request (made not more frequently than monthly), Owner shall update the statements and information in its Owner Notice.

**4.4** Following receipt of an Owner Notice, the Collateral Agent shall have the rights set forth in Section 6.2 and the right to deliver to Owner a Step-in Notice as provided in Section 7.

**4.5** As long as any Project Debt secured by any Security Document remains outstanding, Owner will promptly provide Collateral Agent with a copy of any other hard copy written notice it gives to Concessionaire relating to any Concessionaire Default.

## **5. LENDER NOTICE; PAYMENTS TO COLLATERAL AGENT**

**5.1** The Collateral Agent shall provide Owner promptly upon providing the same to Concessionaire, with a copy of any hard copy written notice it gives to Concessionaire under any Funding Agreement or Security Document relating to any Event of Default (whether or not an Owner Notice has been served relating to the same event)(each, a “**Lender Notice**”). Notices relating to cure periods under the Funding Agreement or Security Document, anticipated Events of Default, “warning” type notices and similar notifications are considered to be related to an Event of Default.

**5.2** If applicable, the Collateral Agent shall specify in any Lender Notice the circumstances and nature of the Event of Default to which the Lender Notice relates.

**5.3** Owner shall, following receipt of a Lender Notice relating to an Event of Default and until further notification from the Collateral Agent, pay to an account designated by the Collateral Agent in the Lender Notice any payments required to be made by Owner to Concessionaire under the P3 Agreement as of the date of receipt by Owner of such Lender Notice including any Termination Compensation required to be paid to Concessionaire under the P3 Agreement, but subject to all rights, defenses, adjustments, deductions and offsets respecting payment available to Owner under the P3 Agreement. The Collateral Agent shall provide to Owner the following information: (a) the individual responsible for administering the account, including his or her position; (b) the mailing address of such individual; and (c) the telephone number, fax and e-mail address of such individual. The Collateral Agent has a continuing obligation to Owner to ensure that the individual’s information required in the preceding sentence is true and correct and to give subsequent Notice to Owner of any changes thereto.

**5.4** All sums paid as provided in Section 5.3 shall be deemed paid to Concessionaire under the P3 Agreement. Concessionaire and the Collateral Agent agree that any payment made in accordance with Section 5.3 shall constitute a complete discharge of Owner’s relevant payment obligations to Concessionaire. Owner shall have no liability to Concessionaire, any Lender, Collateral Agent or any third party, whatsoever, for any delay in processing any invoice pursuant to Section 5.3. In no event shall any payment be due to the Collateral Agent earlier than it is due under the P3 Agreement.

**5.5** Owner may rely upon any Lender Notice purported to be signed and delivered by or for the Collateral Agent, without Owner obligation or liability to Concessionaire, any Lender, Collateral Agent or any third party to ascertain or investigate its authenticity, truth or accuracy.

**5.6** The Collateral Agent shall promptly provide Notice to Owner of any decision to accelerate amounts outstanding under the Funding Agreements or to exercise any enforcement remedies under the Funding Agreements.

**5.7** The Collateral Agent's or Lender's exercise of any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents shall be subject to compliance with the requirements of Section 4.5 of the P3 Agreement if such exercise of rights would constitute a Refinancing.

## **6. LIMITATIONS ON OWNER REMEDIES DURING CURE PERIOD; CURE PERIOD EXTENSION**

**6.1** Prior to the expiration of any applicable Cure Period and provided Owner has given an Owner Notice relating to a Concessionaire Default if required under this Direct Agreement,

**6.1.1** Owner agrees:

- (a) not to terminate the P3 Agreement under Section 19.3 of the P3 Agreement; and
- (b) not to take or to support any legal action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding-up of Concessionaire or for the composition or readjustment of Concessionaire's debts, or any similar insolvency procedure in relation to Concessionaire, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Concessionaire or for any part of Concessionaire's Interest;

provided that Owner shall not be prevented from:

- (x) taking any such action on a Revival Date with respect to any prior Concessionaire Default, or
- (y) exercising any other rights and remedies available to Owner under the Contract Documents with respect to the subject Concessionaire Default or any other Concessionaire Default.

**6.1.2** This Section 6.1.2 applies if (a) Owner is an additional obligee under a bond for Performance Security, or is a transferee beneficiary under any letter of credit, or is a guaranteed party (or has elected to become a guaranteed party pursuant to Section 11.4.1 of the P3 Agreement), (b) with respect to any such letter of credit, Collateral Agent and Concessionaire have met all conditions to transfer of beneficiary's rights from Concessionaire to the Collateral Agent under Section 11.3.2 of the P3 Agreement, and (c) within 10 days after Owner delivers notice to Concessionaire and the Collateral Agent of Owner's intent to make a claim under such security, letter of credit or guaranty, the Collateral Agent commences the good faith, diligent exercise of its remedies under such security, letter of credit or guaranty. In such event, Owner shall forbear from exercising remedies as additional obligee or transferee beneficiary or guaranteed party, as applicable, against any such bond, letter of credit or guaranty so long as the Collateral Agent continues such good faith, diligent exercise of its remedies, without interruption, until the Concessionaire Default is cured. Except as set forth in the first sentence of Section 6.1.3, if such Concessionaire Default remains uncured at the end of the Cure Period, Owner's obligation to forbear from exercising remedies as additional obligee, transferee beneficiary or guaranteed party, as applicable, shall cease.



6.1.3 The foregoing obligation of Owner to forbear under Section 6.1.2 shall not apply where access to a bond, letter of credit, guaranty or other payment or performance security is to satisfy damages owing to Owner, in which case Owner may make demand, draw, enforce and collect regardless of whether the Concessionaire Default is subsequently cured. The foregoing obligation of Owner to forbear reaches all placed Payment Bond(s), Performance Security (bond(s) and letter(s) of credit) and guarantee(s), if any, so long as Collateral Agent is entitled to pursue and is actively pursuing remedies (for the duration of the Cure Period) under any of the Payment Bond(s), Performance Security or guarantee(s), if any, except that Owner shall not be obligated to forbear from access to satisfy damages owing to Owner.

6.1.4 To the extent Owner has rights to enforce any Design-Build Contract or any O&M Contract, whether as assignee of Concessionaire's rights or otherwise, so long as this Direct Agreement remains in effect, Owner will not exercise remedies against such Contractor if (a) Collateral Agent (or Concessionaire pursuant to direction from Collateral Agent) commences the good faith, diligent exercise of remedies available to Concessionaire under such Contract within 30 days after Owner delivers notice to Concessionaire and the Collateral Agent of default by such Contractor, and (b) continues such good faith, diligent exercise of remedies until the default is cured. At Owner's request from time to time, Concessionaire shall provide to Owner reports on the status of any such default, cure and exercise of remedies.

**6.2 If:**

- (a) Owner exercises any step-in rights under Section 17.2.4 of the P3 Agreement or suspension rights under Section 17.2.7.1 of the P3 Agreement;
- (b) The Collateral Agent delivers a Step-in Notice; and
- (c) There does not exist and does not occur any Incurable Concessionaire Default;

then Owner shall cease exercising its step-in and suspension rights at such time as:

- (x) The Step-in Party obtains possession, custody and control of the Project from Concessionaire;
- (y) The Collateral Agent notifies Owner that the Step-in Party stands ready to immediately commence good faith, diligent curative action; and
- (z) Owner is fully reimbursed for Owner's Recoverable Costs in connection with Owner's performance of any act or Work authorized by Section 17.2.4 of the P3 Agreement.

Even if the foregoing conditions have not been met, Owner will cease the exercise of its step-in or suspension rights under Section 17.2.4 or 17.2.7.1, respectively, of the P3 Agreement upon receipt from Collateral Agent (without Collateral Agent being required to take possession and control of the Project) of a notice, citing this Section 6.2 (that is, not a Step-In Notice), under which Collateral Agent represents that it has cured, or stands ready to commence good faith, diligent curative action, with respect to the Concessionaire Default that gave rise to Owner's original step-in or suspension. Notwithstanding the foregoing, in those circumstances where Owner has assumed possession and control of the Project under the exercise of its step-in

rights under Section 17.2.4 of the P3 Agreement, Collateral Agent must nonetheless deliver a Step-in Notice for Owner to cease its step-in. Nothing in this Section 6.2 shall be construed to transfer care, custody and control of the Project to Owner during any Owner step-in or suspension.

**6.3** During any Cure Period, without giving a Step-in Notice, the Collateral Agent may perform or arrange for the performance of any act, duty, or obligation required of Concessionaire under the P3 Agreement in accordance with the Contract Documents, or may cure any breach by Concessionaire thereunder at any time (whether or not a Default Termination Event has occurred or been declared), which complete, conforming and compliant performance by, or on behalf of, the Collateral Agent shall be accepted by Owner in lieu of performance by Concessionaire and in satisfaction of Concessionaire's obligations under the P3 Agreement. To the extent that any default or Concessionaire Default is cured and/or any payment liabilities or performance obligations of Concessionaire are performed in accordance with the Contract Documents by, or on behalf of, the Collateral Agent during the Cure Period, such action shall discharge the relevant liabilities or obligations of Concessionaire to Owner. The Collateral Agent's right to cure any breach by Concessionaire as provided in this Section 6.3 may be exercised after the expiration of the relevant cure period granted to Concessionaire in Section 17.1.2 of the P3 Agreement; provided, however, that as between Owner and Collateral Agent, Owner shall not prevent, or fail to acknowledge, cure of any Concessionaire Default with complete, conforming and compliant performance by Collateral Agent prior to expiration of Concessionaire's cure period. Any curing of any Default Termination Event by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of Concessionaire under the Contract Documents or any Principal Project Documents, except with respect to the work, services or actions taken or performed by or on behalf of the Collateral Agent (e.g., "step-in" scenarios) and otherwise as set forth in this Direct Agreement.

**6.4** Notwithstanding anything to the contrary in the P3 Agreement or this Direct Agreement, if it becomes apparent that Revenue Service Availability will not be achieved on or before the Long Stop Date (i.e., an anticipated Concessionaire Project Completion Default), Owner shall deliver the Owner Notice to Collateral Agent regarding the anticipated Concessionaire Project Completion Default no later than the Long Stop Date. Upon receipt of such Owner Notice, the Collateral Agent, acting on behalf of the Lenders of Project Debt, shall have an additional six months beyond the Long Stop Date to achieve or cause Concessionaire to achieve Revenue Service Availability, provided Collateral Agent has delivered a Step-In Notice under Section 7.1 of this Direct Agreement on or before the original Long Stop Date. In such event the Long Stop Date shall automatically be extended until six months after the original Long Stop Date, for all purposes under this Direct Agreement and the P3 Agreement.

## **7. STEP-IN NOTICE**

**7.1** Upon the issuance of a Lender Notice or an Owner Notice, the Collateral Agent may give a written notice (a "**Step-in Notice**") under this Section 7 to Owner at any time during the Cure Period in the case of the issuance of an Owner Notice or at any time following the receipt by Owner of a Lender Notice.

**7.2** The Step-In Notice shall nominate a "**Step-in Party**", which may be (a) the Collateral Agent, a Lender or any entity that is wholly owned by a Lender or group of Lenders; or (b) any

Person approved by Owner as a Substituted Entity in accordance with Section 10.

**7.3** Owner may rely upon any Step-in Notice purported to be signed and delivered by or for the Collateral Agent, without Owner obligation or liability to Concessionaire, any Lender, Collateral Agent or any third party to ascertain or investigate its authenticity, truth or accuracy.

## **8. RIGHTS AND OBLIGATIONS ON STEP-IN**

**8.1** Starting on the Step-in Date and during the Step-in Period, the Step-in Party:

- (a) May exercise and enjoy the rights and powers expressed to be assumed by or granted to Concessionaire under the P3 Agreement and this Direct Agreement;
- (b) May exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Party under this Direct Agreement; and
- (c) Shall be liable for the performance of all of Concessionaire's obligations under the P3 Agreement arising on or after the Step-in Date that the Step-in Party seeks to perform.

**8.2** Without prejudice to Section 12 (Revival of Remedies), from and after commencement of any applicable Cure Period and during the applicable Step-in Period, Owner shall:

- (a) Not terminate or give Notice terminating the P3 Agreement under Section 17.2.1 or 19.3 (Termination for Concessionaire Default) of the P3 Agreement unless such Cure Period shall expire without cure of the Concessionaire Default to which it relates or the grounds for termination or giving Notice of termination or otherwise exercising its rights under Section 19.3 of the P3 Agreement in accordance with such section are a subsequent Concessionaire Default, subject to the Cure Period applicable to such subsequent Concessionaire Default;
- (b) Not suspend Owner's performance (including in connection with any liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding-up of Concessionaire or for the composition or readjustment of Concessionaire's debts, or any similar insolvency procedure in relation to Concessionaire, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Concessionaire or for any part of Concessionaire's Interest) under the P3 Agreement, unless (i) such Cure Period expires without cure of the Concessionaire Default to which it relates (ii) suspension of performance is based on failure by the Step-in Party to perform Concessionaire's obligations under the P3 Agreement (other than the Concessionaire Default to which such Cure Period relates), subject to the Cure Period applicable to such failure, or (iii) unless the P3 Agreement has been rejected;
- (c) Not take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding-up of Concessionaire or for the composition or readjustment of Concessionaire's debts, or any similar insolvency procedure in relation to Concessionaire, or for the appointment of a

receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Concessionaire or for any part of Concessionaire's Interest;

- (d) Continue to make payments pursuant to Section 5.3; and
- (e) Endorse or pay over as may be directed by the Collateral Agent any checks received by Owner with respect to, or funds drawn by Owner under, the Performance Security if, in each case, such security is in the form of a surety bond; provided that the Collateral Agent shall reimburse Owner for any Losses incurred by Owner in attempting to cure the Concessionaire Default as and to the extent: (i) Owner is entitled to such reimbursement pursuant to the P3 Agreement; (ii) Owner has promptly notified the Collateral Agent of such Losses at or prior to the time of endorsement; and (iii) the Collateral Agent's obligation to reimburse Owner for such Losses do not exceed the proceeds from any such security.

**8.3** Owner, Collateral Agent and Concessionaire agree that:

- (a) The performance by Owner in favor of either the Step-in Party or Concessionaire shall be a good and effective discharge of Owner's obligations under this Direct Agreement and the P3 Agreement;
- (b) Owner's receipt of complete, conforming and compliant performance in accordance with the Contract Documents from either the Step-in Party or Concessionaire shall be a good and effective discharge of Concessionaire's corresponding obligations under the P3 Agreement;
- (c) The Collateral Agent shall be entitled at any time by Notice to Owner to direct (such direction being binding on the Collateral Agent, Owner and Concessionaire) that, at all times during the Step-in Period, the Step-in Party shall be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with Owner in place of Concessionaire under the P3 Agreement. Owner may conclusively rely on any such decisions, directions, approvals or consents, without any duty whatsoever to ascertain or investigate the validity thereof, and any such decisions, directions, approvals or consents shall be as binding on Concessionaire as if made or given by Concessionaire itself;
- (d) Any amount due from Concessionaire to Owner under the P3 Agreement or this Direct Agreement as of the Step-in Date and notified to such Step-in Party prior to the Step-in Date, including Owner's reasonable costs and expenses incurred in connection with (a) Concessionaire's default and termination, (b) Owner's activities with respect to the Project during any period Owner was in possession, custody and control of the Project, and (c) the approval of the Step-in Party, all as of the effective date of the Step-in Notice and notified to such Step-in Party prior to the Step-in Date, shall be paid to Owner on the Step-in Date, failing which Owner may exercise its rights under the P3 Agreement with respect to the amount so due and unpaid; Owner's receipt of the payment pursuant to this Section 8.3(d) shall be a condition precedent to the Step-in Date; and

- (e) Concessionaire shall not be relieved from any of its obligations under the P3 Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Party exercising the rights provided herein, except to the extent provided in Section 6.3 and Section 9.

## **9. STEP-OUT**

A Step-in Party may, at any time, by giving not less than 30 days' prior written notice ("**Step-out Notice**") to Owner, terminate its obligations to Owner under this Direct Agreement respecting the event giving rise to the Step-in Notice, in which event such Step-in Party shall be released from all obligations under this Direct Agreement respecting the event giving rise to the Step-in Notice, except for any related obligations or liabilities of the Step-in Party arising on or before the effective date of such Step-out Notice and as otherwise set forth in the Step-out Notice. The obligations of Owner to the Step-in Party under this Direct Agreement respecting the event giving rise to the Step-in Notice shall also terminate upon the Step-out Date.

## **10. SUBSTITUTION PROPOSAL BY THE COLLATERAL AGENT**

**10.1** The Collateral Agent may give a notice ("**Substitution Notice**") under this Section 10 in writing to Owner at any time:

- (a) During any Cure Period;
- (b) During any Step-in Period; or
- (c) After delivery of a Lender Notice.

**10.2** In any Substitution Notice, the Collateral Agent shall provide Notice to Owner that it intends to designate a Substituted Entity.

**10.3** The Collateral Agent shall, as soon as practicable thereafter, provide to Owner the information, evidence and supporting documentation regarding the proposed Substituted Entity and any third party entering into a material subcontract with such Substituted Entity for Owner's review and approval, including:

- (a) The name and address of the proposed Substituted Entity and its proposed Key Contractors;
- (b) The names of the proposed Substituted Entity's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;
- (c) The manner in which it is proposed to finance the proposed Substituted Entity in its performance of the balance of the Work and the extent to which such financing is committed;
- (d) Copies of the proposed Substituted Entity's and its proposed Key Contractors' most recent financial statements (and if available the financial statements for the last three financial years) or in the case of a newly-formed special purpose entity

its opening balance sheet;

- (e) A copy of the proposed Substituted Entity's and its proposed Key Contractors' formation documents, and other evidence of each of their organization and authority, including organizational documents, resolutions and incumbency certificates;
- (f) Details of the resources available to the proposed Substituted Entity and its proposed Key Contractors, and the appropriate qualifications, experience and technical competence available to the proposed Substituted Entity and its proposed Key Contractors to enable the proposed Substituted Entity to perform the obligations of Concessionaire under the P3 Agreement;
- (g) The names of the proposed Substituted Entity's and its proposed Key Contractors' directors/managers/members/partners and any key personnel who will assume substantially-similar roles as the Key Personnel and otherwise have responsibility for the day-to-day management of its participation in the Project;
- (h) Disclosure of any actual or potential conflicts of interest of the proposed Substituted Entity and its proposed Key Contractors; and
- (i) All certificates, including certificates regarding debarment or suspension, forms, statements, representations and warranties and opinion(s) of counsel that Owner may reasonably request, signed by the proposed Substituted Entity and, where applicable, proposed Key Contractors, in each case not at Owner's cost or expense.

**10.4** Owner shall not be required to give its approval to the proposed Substituted Entity if:

- (a) There are unremedied Concessionaire Defaults and there is no rectification plan reasonably acceptable to Owner with respect to the Concessionaire Defaults which are capable of being cured by the Substituted Entity; or
- (b) Any proposed security interests to be granted by the proposed Substituted Entity to the Collateral Agent and/or Lender in addition to (or substantially different from) the security interests granted to the Collateral Agent and/or Lender under the Initial Funding Agreements or Initial Security Documents materially and adversely affect the ability of the Substituted Entity to perform Concessionaire's obligations under the Contract Documents or have the effect of increasing any liability of Owner, whether actual or potential (unless a Rescue Refinancing is concurrently proposed, in which case the Project Debt Termination Amount may increase by up to 10%).
- (c) The proposed Substituted Entity is not a Suitable Substitute;
- (d) reserved; or
- (e) Such proposed Substituted Entity's managing member, general partner or the controlling investor of the Substituted Entity is then a Restricted Person.

**10.5** If Owner fails to notify Collateral Agent and/or Lender, as applicable, of Owner's intent to pursue and potentially give its approval within 30 days after the date on which Owner has confirmed it has received the information specified in Section 10.3 with respect to any proposed Substituted Entity, or any extension thereof by mutual agreement of Owner and the Collateral Agent, then the Owner shall be deemed to have disapproved the proposed Substituted Entity. Collateral Agent and Concessionaire acknowledge that, except under Section 10.6, Owner's approval of a proposed Substituted Entity may require compliance with the requirements of Section 10A-202(e) of the State Finance and Procurement Article of the Annotated Code of Maryland, as may be amended from time to time.

**10.6** Notwithstanding the foregoing, any entity that is wholly owned by a Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for Owner approval, upon delivery to Owner of documentation proving that the entity is duly formed, validly existing and wholly owned by such Lender or group of Lenders, including a certificate signed by a duly authorized officer of each such Lender in favor of Owner certifying, representing and warranting such ownership.

**10.7** In addition to the information provided under Section 10.3, and as may be required under said Section 10A-202(e), Owner may request other information on, and evaluate, the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors. Concessionaire, Collateral Agent and any Lender with access to such information shall use commercially reasonable efforts to ensure that Owner receives the requested information promptly. Owner shall consider the information provided under Section 10.3 and this Section 10.7, using the same standards and criteria that Owner is then currently applying in evaluating Persons responding to Owner requests for qualifications for concession or similar agreements for comparable projects and facilities. Alternatively, if there is no current application, then Owner shall apply the same standards and criteria it most recently applied for comparable projects and facilities.

**10.8** Collateral Agent may request approval of more than one Substituted Entity and may request approval at any time or times. Any approval by Owner of a Substituted Entity shall expire one year after the approval is issued, unless Owner approves an extension or unless within such one-year period (or any approved extension thereof) the Substituted Entity has succeeded to Concessionaire's Interest.

**10.9** Owner may revoke an approval if at any time before succeeding to Concessionaire's Interest:

- (a) The Substituted Entity ceases to be in compliance with Owner's rules and regulations regarding organizational conflicts of interest; or
- (b) The Substituted Entity (or any managing member, general partner or controlling investor of the Substituted Entity) becomes a Restricted Person.

**10.10 Receivers**

- (a) The appointment of a receiver at the behest of Concessionaire shall be subject to Owner's prior approval.

- (b) The appointment of a receiver at the behest of any Lender, through the Collateral Agent, shall be subject to the following terms:
  - (i) Owner's prior approval shall not be required for the appointment of the receiver or the selection of the person or entity to serve as receiver;
  - (ii) Whenever any Lender commences any proceeding for the appointment of a receiver, Collateral Agent shall provide Owner not less than five days' prior notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;
  - (iii) Owner may appear in any such proceeding to challenge the selection of the person or entity to serve as receiver; and
  - (iv) Owner may at any time seek an order for replacement of the receiver by a different receiver.
- (c) No receiver appointed at the behest of Concessionaire or any Lender shall have any power or authority to replace any Design-Build Contractor or any O&M Contractor except by reason of default or unless the replacement is a Substituted Entity approved by Owner.

## 11. SUBSTITUTION

**11.1** If Owner approves a Substitution Notice pursuant to Section 10, then the Substituted Entity named therein shall execute a duly completed "**Substitute Accession Agreement**" substantially in the form attached hereto as Schedule A and submit it to Owner (with a copy thereof to the other parties to this Direct Agreement). The assignment set forth in the Substitute Accession Agreement shall become effective on and from the latest of (a) the date on which the Collateral Agent or the Substituted Entity lawfully succeeds to all Concessionaire's Interest through exercise of foreclosure rights and actions on security interests or through transfer from Concessionaire in lieu of foreclosure, (b) the date of Owner's receipt of all payments described in Section 11.4 and (c) the date on which Owner countersigns the Substitute Accession Agreement (the "**Substitution Effective Date**"). Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping the P3 Agreement in effect shall be deemed to have been properly made or taken by the Collateral Agent if a Substituted Entity proposed by the Collateral Agent and approved by Owner makes such payment or takes such action. Owner shall have no obligation to recognize any claim to Concessionaire's Interest by any person or entity that has acquired Concessionaire's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity.

### **11.2** As of the Substitution Effective Date:

- (a) Such Substituted Entity shall become a party to the Contract Documents and this Direct Agreement in place of Concessionaire;
- (b) All of Concessionaire's obligations and liabilities under the Contract Documents and under this Direct Agreement arising from and after the Substitution Effective



Date shall be immediately and automatically transferred to the Substituted Entity, and Concessionaire shall be released from any such obligations and liabilities to Owner arising from and after the Substitution Effective Date subject to the Substituted Entity and Collateral Agent having complied with all of their obligations under this Direct Agreement (it being agreed that the release by the parties of Concessionaire shall not be deemed to preclude subrogation rights or other remedies Collateral Agent/Lender(s) may have against Concessionaire). Notwithstanding the foreclosure or other enforcement of any security interest created or perfected by any Funding Agreement, and notwithstanding occurrence of the Substitution Effective Date, subject to Sections 11.1 and 11.4, Concessionaire shall remain liable to Owner for the payment of all sums owing to Owner under the P3 Agreement and for the performance and observance of all of Concessionaire's covenants and obligations under the P3 Agreement for the period arising prior to the Substitution Effective Date;

- (c) Such Substituted Entity shall exercise and enjoy the rights and perform the obligations of Concessionaire under the Contract Documents and this Direct Agreement, including assuming liability for its acts and omissions under the Contract Documents and this Direct Agreement; and
- (d) Owner shall owe its obligations under the Contract Documents and this Direct Agreement to such Substituted Entity in place of Concessionaire, subject to Owner's right to offset any losses or damages suffered or incurred by Owner as provided under the P3 Agreement, which when such obligations are performed by Owner shall be, and be deemed to be, a release by Concessionaire of its entitlement to such performance.

**11.3** Owner shall use its reasonable efforts to facilitate the transfer to the Substituted Entity of Concessionaire's obligations under the P3 Agreement and this Direct Agreement.

**11.4** The Substituted Entity shall pay to Owner on the Substitution Effective Date any amount due to Owner under the P3 Agreement and this Direct Agreement, including Owner's reasonable costs and expenses incurred in connection with (a) Concessionaire's default and termination, (b) Owner's activities with respect to the Project during any period Owner was in possession, custody and control of the Project, and (c) the approval of the Substituted Entity, all as of the Substitution Effective Date and notified to such Substituted Entity prior to the Substitution Effective Date. Owner's receipt of the payment pursuant to this Section 11.4 shall be a condition precedent to the Substitution Effective Date.

**11.5** Except with respect to Noncompliance Points under Section 11.7, the occurrence of the Substitution Effective Date shall not extinguish prior Concessionaire Defaults that remain uncured, and Owner shall continue to have all rights and remedies available under the P3 Agreement with respect to such Concessionaire Defaults, including any applicable termination rights, consistent with Section 11.2, subject to (a) the limitations on Owner's exercise of such rights and remedies set forth in this Direct Agreement during any applicable Cure Period that continues after the Substitution Effective Date, (b) the limitations on termination due to accumulation of Noncompliance Points prior to the Substitution Effective Date to the extent provided in Section 11.7 and (c) Section 13. Accordingly, following the Substitution Effective Date, subject to clauses (a) and (b) of this Section 11.5, (x) the Substituted Entity shall be

responsible for any prior Concessionaire Defaults that are capable of being cured by the Substituted Entity, and Owner may seek recourse against the Substituted Entity for such defaults, and (y) the Concessionaire shall remain responsible for prior Concessionaire Defaults that are not capable of being cured by the Substituted Entity, and Owner may seek recourse for such defaults against the Concessionaire, and shall not seek recourse against the Substituted Entity. Nothing in this Section 11.5 supersedes Owner's reserved rights with respect to Concessionaire Defaults that are not capable of being cured by the Substituted Entity under this Direct Agreement, the P3 Agreement and otherwise at law with respect to the Concessionaire. For purposes of this Section 11.5, "Concessionaire Defaults that are not capable of being cured by the Substituted Entity" include Incurable Concessionaire Defaults, Concessionaire Wrongful Transfer Defaults and a Concessionaire Project Completion Default.

**11.6** As of the Substitute Effective Date, Owner shall enter into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Concessionaire shall be replaced as a party by the Substituted Entity.

**11.7** On the Substitute Effective Date the number of uncured Noncompliance Points then outstanding shall automatically be reduced by 50%.

**11.8** Non-material breaches and other failures occurring before the date Collateral Agent or its Substituted Entity obtains care, custody and control of the Project shall not be counted in determining existence of any Persistent Concessionaire Default with respect to the Collateral Agent or its Substituted Entity; provided, however that non-material breaches and other failures committed by or through Collateral Agent or its Substituted Entity after having obtained care, custody and control of the Project shall be eligible for Owner's independent determination whether Collateral Agent or its Substituted Entity has committed a Persistent Concessionaire Default. Once all such Noncompliance Events have been cured, Owner will cancel any Noncompliance Points assessed with respect to such Noncompliance Events. The foregoing shall not, however, excuse Collateral Agent or its Substituted Entity from any obligation to cure prior uncured Concessionaire Defaults under the rectification plan described in Section 10.4(a), and except for determination of Persistent Concessionaire Default shall not affect any rights and remedies available to Owner respecting uncured breaches or failures to perform.

## **12. REVIVAL OF REMEDIES; INCURABLE CONCESSIONAIRE DEFAULT**

**12.1** If:

- (a) An Owner Notice has been given;
- (b) The grounds for such Owner Notice are continuing and have not been remedied or waived; and
- (c) Subject to Section 11.5, the Step-in Period ends without cure of the Concessionaire Defaults that were the subject of Owner Notice,

then, from and after the date such Step-in Period expires (the "**Revival Date**"), Owner may:

- (i) Act upon any and all grounds for termination or suspension available to it

under the P3 Agreement with respect to Concessionaire Defaults not remedied or waived, except as provided otherwise in Section 6.4;

- (ii) Pursue any and all claims and exercise any and all remedies against Concessionaire; and
- (iii) Take or support any action of the type referred to in Section 19.7 of the P3 Agreement if and to the extent that it is then entitled to do so under the P3 Agreement (collectively, “**Revived Rights**”).

**12.2** In the event of an Incurable Concessionaire Default, following delivery of an Owner Notice, Owner may terminate the P3 Agreement. Upon the occurrence of an Incurable Concessionaire Default, Owner’s termination rights shall be effective without regard to any limitations set forth in this Direct Agreement, subject to and except to the extent provided otherwise in Section 13.

**12.3** Owner’s Revived Rights pertain only to expiration of the Step-in Period without cure of the Concessionaire Defaults that were the subject of such Owner Notice and do not pertain to permanent substitution by the Substituted Entity. The Revived Rights shall not become effective if cure is effected within the Cure Period.

### **13. NEW AGREEMENTS**

**13.1** The provisions of this Section 13 shall apply only if:

- (a) There occurs an Incurable Concessionaire Default or a Concessionaire Wrongful Transfer Default,
- (b) All of the following occur: (i) there occurs a Concessionaire Default governed by clause (c) of the definition of Cure Period, (ii) the Collateral Agent diligently pursues lawful processes and steps to obtain the appointment of a court receiver for the Project and possession, custody and control of the Project, (iii) despite such efforts the Collateral Agent cannot obtain such possession, custody and control of the Project within the 180-day Cure Period set forth in clause (c) of the definition of Cure Period and (iv) no Step-out Notice has been given; or
- (c) There occurs a termination of the P3 Agreement under Section 9.9.2 or Section 9.15 of the P3 Agreement, provided that (i) neither Collateral Agent nor any Lender participated in, or had knowledge of, the event giving rise to the termination (i.e. Concessionaire’s failure to comply (Section 9.9.2) or improper act (Section 9.15), as applicable), and (ii) Collateral Agent and each Lender certifies in writing to Owner that it did not participate in or have knowledge of such event.

**13.2** If this Section 13 is applicable and either (a) Owner terminates the P3 Agreement or (b) Owner receives notice that the P3 Agreement is otherwise terminated, rejected, invalidated or rendered null and void by order of a bankruptcy court, then (1) Owner will deliver Notice to the Collateral Agent regarding the termination, and (2) the Collateral Agent or other Step-in Party, to the extent then permitted by Law, shall have the option to obtain from Owner

agreements to replace the Contract Documents, and, to the extent necessary, new ancillary agreements (e.g., escrow agreements) (together the “**New Agreements**”) in accordance with this Section 13.

**13.3** In order to exercise such option, the Collateral Agent or other Step-in Party must deliver to Owner, within 90 days after Owner delivers its Notice of termination: (a) a request for New Agreements, (b) a written commitment that the Collateral Agent or other Step-in Party will enter into the New Agreements and pay all the amounts described in Sections 13.5(a) and (c), and (c) originals of such New Agreements, duly executed and acknowledged by the Collateral Agent or other Step-in Party. If such request, commitment and agreements are not delivered within such 90-day period, the option in favor of the Collateral Agent and all other Step-in Parties shall automatically expire. Owner shall have the unconditional right to rely upon any Step-in Notice purported to be signed and delivered by or for the Collateral Agent, without any obligation or liability to ascertain or investigate its authenticity, truth or accuracy.

**13.4** Within 30 days after timely receipt of the conforming Step-in Notice and duly executed New Agreements, Owner will enter into the New Agreements to which Owner is a party with the Collateral Agent or other Step-in Party, subject to any extension of such 30-day period as Owner deems necessary to clear any claims of Concessionaire to continued rights and possession.

**13.5** Upon the execution by all parties and as conditions to the effectiveness of the New Agreements, the Collateral Agent or other Step-in Party shall:

- (a) Pay to Owner:
  - (i) Any and all sums which would, at the time of the execution of the New Agreements, be due under the Contract Documents but for such termination; and
  - (ii) The amount of any Termination Compensation previously paid by Owner under the P3 Agreement, with interest thereon at the Late Payment Rate from the date the Termination Compensation was paid until so reimbursed;
- (b) Otherwise fully remedy any existing Concessionaire Defaults under the Contract Documents (provided, however, that Incurable Concessionaire Defaults, Concessionaire Project Completion Defaults and Concessionaire Wrongful Transfer Defaults need not be remedied and with respect to any Concessionaire Default which cannot be cured until the Collateral Agent or other Step-in Party obtains possession of the Project, it shall have such time, after it obtains such possession, as is necessary with the exercise of good faith, diligence and continuity to cure such Concessionaire Default, in any event not to exceed 120 days after the date it obtains possession of the Project);
- (c) Without duplication of amounts previously paid by Concessionaire, pay to Owner all reasonable costs and expenses, including Owner’s Recoverable Costs, incurred by Owner in connection with (i) such default and termination, (ii) the assertion of rights, interests and defenses in any bankruptcy or related

proceeding, (iii) the recovery of possession of the Project, (iv) all Owner activities during its period of possession of, and respecting, the Project, including permitting, design, acquisition, construction, equipping, maintenance, operation and management activities, minus the amount of Availability Payments, if any, that would have been paid during such period had the P3 Agreement not been terminated and had there been no adjustments to such Availability Payments, provided that the amount included in the calculation under this clause (iv) shall be zero if the costs of the Owner activities are less than the amount to be subtracted, and (v) the preparation, execution, and delivery of such New Agreements. Upon request of the Collateral Agent or other Step-in Party, Owner will provide a written, documented statement of such costs and expenses; and

- (d) Deliver to Owner a new Payment Bond and Performance Security and new letters of credit and guarantees to the extent then required under the P3 Agreement.

**13.6** Upon execution of the New Agreements and payment of all sums due Owner, Owner will assign and deliver to the Collateral Agent or other Step-in Party, without warranty or representation, all the property, contracts, documents and information that Concessionaire may have assigned and delivered to Owner upon termination of the P3 Agreement.

**13.7** The New Agreements shall be effective as of the date of termination of the P3 Agreement and shall run for the remainder of the Term. The New Agreements shall otherwise contain the same covenants, terms and limitations as the Contract Documents and ancillary agreements and documents that were binding on Owner and Concessionaire (except for any requirements which have been fulfilled by Concessionaire before termination and except that Section 4.1 of the P3 Agreement (and any equivalent provisions of the other Contract Documents) shall be revised to be particular to the Collateral Agent or other Step-in Party).

**13.8** If the holders of more than one Security Document make written requests upon Owner for New Agreements in accordance with this Section 13, Owner will award the New Agreements to, as applicable, the holder whose Security Documents have the most senior priority of record. Priority shall be established as follows.

- (a) Owner will submit a written request to the Collateral Agent to designate the Security Documents having the most senior priority of record. Owner shall have the right to conclusively rely on the Collateral Agent's written designation, without duty of further inquiry by Owner and without liability to any Lender; and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.
- (b) If Owner does not receive the Collateral Agent's written designation within 10 days after delivering written request, then Owner may conclusively rely, without further inquiry and without liability to any Lender or Collateral Agent, on the seniority indicated by a then-current title report that Owner obtains from one of the four largest title insurance companies doing business in the State of Maryland (unless otherwise agreed in writing by the most senior holder so indicated); and thereupon the written requests of each holder of any other Security Document shall be deemed to be void.

- (c) If the holders of more than one Security Document share *pari passu* senior lien priority as indicated pursuant to clause (a) or (b) above and make written requests upon Owner for New Agreements in accordance with this Section 13, Owner will award the New Agreement to such holders jointly (unless otherwise agreed in writing by such holders); and thereupon the written requests of each holder of any other Security Documents shall be deemed to be void.

**13.9** If there occurs a termination of the P3 Agreement under Section 9.9.2 or Section 9.15 of the P3 Agreement and either the Collateral Agent or any Lender fails to comply with the conditions in Section 13.1(c), then Collateral Agent shall have no right to an option to obtain New Agreements from Owner.

## **14. OTHER LENDER RIGHTS**

**14.1** In addition to all other rights under this Direct Agreement, Owner acknowledges the Collateral Agent (on behalf of the Lender(s)) has the right to be subrogated to and perform any and all rights of Concessionaire under the P3 Agreement with respect to curing any Concessionaire Default. Owner will permit the Collateral Agent and its Substituted Entity the same access to the Project and Project ROW as is permitted to Concessionaire under the P3 Agreement. Owner consents to Concessionaire constituting and appointing any Collateral Agent as Concessionaire's authorized agent and attorney-in-fact with full power, in Concessionaire's name, place and stead, and as between Owner, Lender, Collateral Agent, at Concessionaire's, Collateral Agent's or Lender's sole cost and expense, to enter upon the Project and Project ROW and to perform all acts required to be performed under the P3 Agreement, and in any Principal Project Document, but only in the event of a Concessionaire Default or an Event of Default. Owner will recognize any such performance by the Collateral Agent as though the same had been done or performed by Concessionaire.

**14.2** The creating or granting of a Security Document in accordance with the P3 Agreement shall not be deemed to constitute an assignment or transfer of the P3 Agreement, Concessionaire's contractual right of entry or Concessionaire's Interest, nor shall any Lender, as such, be deemed to be an assignee or transferee of the P3 Agreement, Concessionaire's contractual right of entry or Concessionaire's Interest so as to require such Lender, as such, to assume the performance of any of the terms, covenants or conditions on the part of Concessionaire to be performed under the Security Document or the P3 Agreement. No Lender, nor any owner of Concessionaire's Interest whose ownership shall have been acquired by, through or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, shall become personally liable under the provisions of this Direct Agreement or the P3 Agreement unless and until the Lender or such owner becomes the owner of Concessionaire's Interest.

**14.3** Upon any permitted collateral assignment of the P3 Agreement, Concessionaire's contractual right of entry and Concessionaire's Interest by a Lender or any owner of Concessionaire's Interest whose ownership shall have been acquired by, through or under any Security Document or whose ownership shall have been derived immediately from any holder thereof, the assignor shall be relieved of any further liability which may accrue under the Security Document or the P3 Agreement from and after the date of such assignment, provided that the assignee is a Substituted Entity and executes and delivers to Owner an instrument of assumption as required under Section 22.5 of the P3 Agreement.

**14.4** A Lender or the Collateral Agent may exercise its rights and remedies under its Security Documents with respect to all, but not less than all, of Concessionaire's Interest.

**14.5** The exercise by a Lender of its rights with respect to Concessionaire's Interest under its Funding Agreements, Security Documents, the Direct Agreement, or applicable law, whether by judicial proceedings or by virtue of any power contained in the Security Documents or Funding Agreements, or by any conveyance from Concessionaire to the Lender instead of foreclosure under the Security Documents, or any subsequent transfer from the Lender to a Substituted Entity, shall not require the consent of Owner or constitute a breach of any provision of or a default under the Contract Documents. The foregoing does not affect the obligation to obtain approval of persons or entities as Substituted Entities under Sections 10 and 11 (and the definition of Substituted Entity).

**14.6** Whenever Owner or Concessionaire obtains knowledge of any condemnation proceedings by a third party (e.g., the federal government or a railroad company with condemnation authority) affecting the Project or Project ROW, it shall promptly give notice thereof to each Lender.

## **15 CONSENTS AND ESTOPPEL CERTIFICATES**

**15.1** Within 15 Business Days after request, through Collateral Agent, of any Lender or proposed Lender entitled to the rights, benefits and protections of this Direct Agreement, Owner, without charge, shall consent to:

- (a) The exercise by any Lender of its rights under and in accordance with this Direct Agreement in the event of a Concessionaire Default; and
- (b) A pledge and hypothecation by Concessionaire of Concessionaire's Interest to any Lender or proposed Lender, which pledge and hypothecation complies with applicable provisions of the P3 Agreement.

**15.2** Within 15 Business Days after request, through Collateral Agent, of any Lender or proposed Lender entitled to the rights, benefits and protections of this Direct Agreement, Owner, without charge, shall certify to its best knowledge by written instrument duly executed and acknowledged, to any Lender or proposed Lender as follows:

- (a) As to whether the P3 Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, attaching a copy thereof to such certificate;
- (b) As to the validity and force and effect of the P3 Agreement, in accordance with its terms;
- (c) As to the existence of any Concessionaire Default;
- (d) As to the existence of events which, by the passage of time or notice or both, would constitute a Concessionaire Default;
- (e) As to the then accumulated amount of Noncompliance Points;

- (f) As to the existence of any claims by Owner regarding the P3 Agreement;
- (g) As to the Effective Date and the commencement and expiration dates of the term of the P3 Agreement;
- (h) As to whether a specified acceptance, approval or consent of Owner called for under the P3 Agreement has been granted;
- (i) Whether the Lender and its Funding Agreements and Security Documents, or the proposed Lender and its proposed Funding Agreements and Security Documents, meet the conditions and limitations in Section 4.3 of the P3 Agreement and Sections 16.3, 16.4, 16.5, 16.6 and 16.7 of this Direct Agreement, and
- (j) As to any other matters of fact within Owner's knowledge about the Contract Documents, Concessionaire, the Project or the Work as may be reasonably requested.

**15.3** Owner will deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within 15 Business Days after receiving its request, provided that the request is delivered to Owner either before the Substituted Entity or proposed Substituted Entity succeeds to Concessionaire's Interest or within 60 days after the Substituted Entity has succeeded to Concessionaire's Interest.

**15.4** Any such certificate may be relied upon by, and only by, the Lender, proposed Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on Owner.

## **16 GENERAL**

**16.1** Neither Lender nor the Collateral Agent shall have any obligation hereunder to extend credit to Owner or any contractor to Owner at any time, for any purpose.

**16.2** For so long as any amount under the Funding Agreements is outstanding and any Security Document is in effect, Owner shall not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation of the P3 Agreement or any interest therein by Concessionaire, other than as specified in the P3 Agreement or this Direct Agreement.

**16.3** No Funding Agreement or Security Document shall affect Owner in the enforcement of its rights and remedies as provided under the P3 Agreement.

**16.4** In the event of an assignment of any Funding Agreement or Security Document, with respect to each, such assignment shall not be binding upon Owner unless and until Owner has received a certified copy of such document, which copy shall, if required to be recorded, bear the date and instrument number or book/liber and page/folio of recordation thereof, and Owner has received notice of the assignee thereof, to which notices under this Direct Agreement may be sent.



**16.5** In the event of any change in the identity of the Collateral Agent, such change shall not be binding upon Owner unless and until Owner has received a notice regarding the change, signed by the replaced and substitute Collateral Agent, and setting forth the address of the substitute Collateral Agent to which notices under this Direct Agreement may be sent.

**16.6** No Lender holding Subordinate Debt or Subordinate Security Documents shall have any rights, benefits or protections under this Direct Agreement.

**16.7** A Lender shall not, by virtue of its Funding Agreement or Security Document, acquire any greater rights to or interests in the Project than Concessionaire has at any applicable time under the P3 Agreement, other than the provisions set forth in this Direct Agreement.

**16.8** Owner acknowledges that each Lender's security interests in the Concessionaire's Interest, and related rights with respect thereto, persist until Owner pays Concessionaire the applicable Termination Compensation under the P3 Agreement, at which time, Collateral Agent shall release, or cause to be released, all security interests in the Concessionaire's Interest.

**16.9** Nothing in this Direct Agreement shall preclude or delay Owner from exercising any remedies other than termination of the P3 Agreement due to Concessionaire Default, including, subject to Owner's express covenants to forbear and as otherwise provided in this Direct Agreement, Owner's rights to cure such Concessionaire Default at Concessionaire's expense.

## **17. TERMINATION**

This Direct Agreement shall remain in effect until the earlier to occur of (a) the Discharge Date; (b) the time at which all of Concessionaire's and Owner's obligations and liabilities have expired or have been satisfied in accordance with the terms of the Contract Documents and this Direct Agreement; and (c) any assignment to a Substituted Entity has occurred under Section 11 and Owner shall have entered into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Concessionaire has been replaced as a party by the Substituted Entity.

## **18. EFFECT OF BREACH**

Without prejudice to any rights a party may otherwise have, a breach of this Direct Agreement shall not of itself give rise to a right to terminate the P3 Agreement.

## **19. NO PARTNERSHIP**

Nothing contained in this Direct Agreement shall be deemed to constitute a partnership between the parties hereto. None of the parties shall hold itself out contrary to the terms of this Section 19.

## **20. REMEDIES CUMULATIVE**

No failure or delay by Owner, Lender or the Collateral Agent (or their designee) in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other

right or power. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by Lender, the Collateral Agent or any designee, transferee or permitted assignee thereof from time to time.

## **21. AMENDMENT AND WAIVER; AMENDMENT OF THE P3 AGREEMENT**

**21.1** This Direct Agreement may be amended only by a written instrument duly executed by or on behalf of the parties.

**21.2** No mutual agreement to cancel or surrender the P3 Agreement shall be effective unless consented to by the Collateral Agent, which consent Concessionaire shall be solely responsible to obtain, or unless the Project Debt Termination Amount is paid in full in connection with such cancellation or surrender. Except as expressly contemplated in the P3 Agreement, while any Security Document is in effect, no agreement between Owner and Concessionaire for the modification or amendment of the P3 Agreement that in any way could reasonably be expected to have a material adverse effect on the rights or interests of the Lender(s) shall be binding on the Lender(s) under such Security Document without Collateral Agent's consent.

## **22. SUCCESSORS AND ASSIGNS**

**22.1** No party to this Direct Agreement may assign or transfer any part of its rights or obligations hereunder without the consent of the other parties, save that (a) the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Funding Agreements, and (b) Owner may assign or transfer its rights and obligations hereunder as provided in Section 22.4 of the P3 Agreement.

**22.2** This Direct Agreement shall be binding upon and inure to the benefit of the parties hereto (and each Lender, through Collateral Agent) and their respective successors and permitted assigns.

**22.3** The provisions of this Direct Agreement that are binding on Owner shall inure only to the benefit of the Lenders (and Collateral Agent) under Section 22.2 and do not, nor shall be deemed to, create any rights in favor of Concessionaire hereunder.

## **23. COUNTERPARTS**

This Direct Agreement may be executed in any number of counterparts, each of which shall be identical and all of which, taken together, shall constitute one and the same instrument, and the parties may execute this Direct Agreement by signing any such counterpart. Transmission by facsimile or e-mail of an executed counterpart of this Direct Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an original of such counterpart.

## **24. SEVERABILITY**

If, at any time, any provision of this Direct Agreement is or becomes illegal, invalid or unenforceable, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision will in any way be affected or impaired. The illegal, invalid or unenforceable provision shall be deemed replaced by such provisions as shall

be legal, valid and enforceable in the relevant jurisdiction.

## 25. NOTICES

**25.1** Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Direct Agreement (each, a “**Notice**”) to a party must be given in writing, delivered by certified mail (with return receipt) or registered mail or by overnight courier. All Notices will be validly given if on a Business Day to each party at the following address:

**To Owner:**

Maryland Transit Administration  
Transit Development & Delivery  
100 S. Charles Street, Tower II, Suite 700  
Baltimore, Maryland 21201  
Attention: Contracting Officer  
Telephone: 443-451-3723  
Facsimile: 410-685-2605  
E-mail: contractingofficer@purplelinemd.com

with copies to:

Maryland Transit Administration  
Office of the Attorney General  
6 St. Paul Street, 12<sup>th</sup> Floor  
Baltimore, Maryland 21202  
Attention: Chief Counsel  
Telephone: 410-767-5833  
Facsimile: 410-333-2584

**To Concessionaire:**

[\_\_\_\_\_]

E-mail: [\_\_\_\_\_]

with copies to:

[\_\_\_\_\_]

E-mail: [\_\_\_\_\_]

**To the Collateral Agent:**

[Collateral Agent's name]  
[Office or department (e.g., Corporate Trust  
Administration)]  
[Street number]  
[City, State, zip code]  
Telephone: [\_\_\_\_\_] ]  
Fax: [\_\_\_\_\_] ]  
E-Mail:[\_\_\_\_\_] ]

**25.2** A Notice shall be deemed to have been given:

- (a) Upon receipt, if delivered in person;
- (b) One Business Day after delivery to the courier properly addressed, if delivered by overnight courier; or
- (c) Four Business Days after deposit with postage prepaid and properly addressed,

if delivered by United States Postal Service certified or registered mail.

**25.3** Each of the parties will provide Notice to each other in writing of any change of address, such Notice to become effective 15 days after dispatch.

## **26. GOVERNING LAW AND JURISDICTION**

**26.1** This Direct Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland applicable to contracts to be performed within such State, except to the extent that United States federal law otherwise applies. Disputes arising from or relating to this Direct Agreement shall be determined by a competent State court in State of Maryland, unless a Maryland court lacks jurisdiction over the action, in which case the matter shall be submitted to the U.S. District Court for the District of Maryland, assuming it has jurisdiction.

**26.2** Each of Concessionaire, Owner and the Collateral Agent irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier, and waives any different statutory requirements for service of process. Nothing in this Direct Agreement will affect the right of any party to serve process in any other manner permitted by law.

**26.3** Each of Owner, Concessionaire and the Collateral Agent hereby (a) certifies that no representative, agent or attorney of any other of the aforementioned parties has represented, expressly or otherwise, that the other party would, in the event of a proceeding, seek to attack the enforceability of the foregoing waiver and (b) acknowledges that it has been induced to sign, and to change its position in reliance upon the benefits of, this Direct Agreement by, among other things, the mutual waivers in this Section 26.

**26.4** Each of Owner, Concessionaire and the Collateral Agent hereby irrevocably and unconditionally waive any and all rights they may have to a trial by jury in any legal action or other proceeding under this Direct Agreement and for any counterclaim in any such action or proceeding. The provisions of this Section 26.4 shall survive the termination or expiration of this Direct Agreement.

## **27. NO PERSONAL LIABILITY OF PUBLIC EMPLOYEES**

In carrying out any of the provisions of this Direct Agreement, or in exercising any right granted to them hereunder or, to the extent provided for herein, under the P3 Agreement, there shall be no liability upon the Secretary, Administrator or other authorized representatives of Owner, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

## **28. CONFLICT WITH THE P3 AGREEMENT**

In the event of any irreconcilable conflict or inconsistency between the provisions of this Direct Agreement and the P3 Agreement, including, without limitation, definitions in Exhibit 1 to the P3 Agreement, the provisions of this Direct Agreement shall control and prevail.

## **29. ENTIRE AGREEMENT**

The parties agree and expressly intend for this Direct Agreement (inclusive of those parts of the P3 Agreement incorporated by reference or use) to constitute a single, non-severable,

integrated agreement whose terms are interdependent and non-divisible. This Direct Agreement (inclusive of those parts of the P3 Agreement incorporated by reference or use) contains the entire understanding of the parties with respect to the subject matter of this Direct Agreement and supersedes all prior agreements, understandings, statements, representations and negotiations, in each case oral or written, between the parties with respect to their subject matter.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Direct Agreement to be duly executed by its duly authorized representative as of the date first written above.

[\_\_\_\_\_] **Collateral Agent**

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

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

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

**PURPLE LINE TRANSIT PARTNERS LLC**

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

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

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

**MARYLAND TRANSIT ADMINISTRATION**

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

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

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

**MARYLAND DEPARTMENT OF TRANSPORTATION**

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

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

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

**Approved as to legal form and sufficiency this**  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
**Asst. Attorney General**

**SCHEDULE A**

**FORM OF SUBSTITUTE ACCESSION AGREEMENT**

[Date]

**To: Maryland Transit Administration, Maryland Department of Transportation**  
**For the attention of: Contracting Officer and Chief Counsel**  
**[Lender and other parties to Funding Agreements to be listed]**  
**[insert address]**  
**For the attention of: [\_\_\_\_\_]**

**From: [Substituted Entity]**

**MARYLAND PURPLE LINE PROJECT**  
**SUBSTITUTE ACCESSION AGREEMENT**

**Ladies and Gentlemen:**

Reference is made to the Public-Private Partnership Agreement, dated as of [\_\_\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Agreement**”) between the Maryland Transit Administration (the “**MTA**”), the Maryland Department of Transportation (“**MDOT**”, and with MTA, the “**Owner**”) and Purple Line Transit Partners LLC (“**Concessionaire**”) and the Direct Agreement, dated as of [\_\_\_\_\_] 20[\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Direct Agreement**”) among Owner, Concessionaire and [\_\_\_\_\_] as Collateral Agent. Terms defined in the Direct Agreement and not otherwise defined herein have the respective meanings set forth in or incorporated into in the Direct Agreement.

1. The undersigned (“we”) hereby confirms that it is a Substituted Entity pursuant to Sections 10 and 11 of the Direct Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Agreement and the Direct Agreement as a Substituted Entity and, accordingly, shall have the rights, powers and obligations of Concessionaire under the Agreement and the Direct Agreement.

3. We hereby assume all duties, obligations and liabilities of Concessionaire under the Contract Documents.

4. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substituted Entity]

5. This Substitute Accession Agreement shall be governed by, and construed in accordance with, the law of the State of Maryland applicable to contract to be performed within such State.

The terms set forth herein are hereby agreed to:

**[Substituted Entity]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted:

**MARYLAND TRANSIT ADMINISTRATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MARYLAND DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to legal form and sufficiency this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
[Asst. ]Attorney General



**SCHEDULE B**

**INITIAL FUNDING AGREEMENTS**

**Funding Agreements**

<b>Document</b>	<b>Party 1</b>	<b>Party(ies) 2</b>

**Security Documents**

<b>Document</b>	<b>Party 1</b>	<b>Party(ies) 2</b>

**EXHIBIT 5C**

**FORM OF FINANCIAL CLOSE CERTIFICATE**

[\_\_\_\_\_]

**[DATE]**

Pursuant to Section 21.4.1 of the Public-Private Partnership Agreement (the “Agreement”), by and among the Maryland Transit Administration (“MTA”), Maryland Department of Transportation (“MDOT”; MTA and MDOT being collectively referred to herein as “Owner”) and Purple Line Transit Partners LLC (“Concessionaire”), Concessionaire hereby represents, certifies and warrants to Owner as at the date of Financial Close (except where a specific date is referred to below, in which case the truth and accuracy of the representation, certification and warranty shall be as at such specific date) as follows:

1. The Financial Model Formulas (a) were prepared by or on behalf of Concessionaire in good faith, (b) are the same financial formulas that Concessionaire utilized and is utilizing in the Financial Model in making disclosures to potential equity investors and Lenders under the Initial Funding Agreements, and (c) as of the effective date of the Initial Funding Agreements are mathematically correct and suitable for making reasonable projections.

2. The Financial Model (a) was prepared by or on behalf of Concessionaire in good faith, (b) was audited and verified by an independent recognized model auditor immediately before the Effective Date of the Agreement and such audit was updated within 48 hours after the Effective Date, (c) fully discloses all cost, revenue and other financial assumptions and projections that Concessionaire has used or is using in making disclosures to equity investors and Lenders under the Initial Funding Agreements and (d) as of the effective date of the Initial Funding Agreements represents the projections that Concessionaire believes in good faith are the most realistic and reasonable for the Project; subject to the understanding that such projections are based upon a number of estimates and assumptions and are subject to significant business, economic and competitive uncertainties and contingencies, and that Concessionaire’s stated belief regarding the projections does not constitute a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

3. Neither Concessionaire nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into agreements such as the Agreement by any federal agency or by any department, agency or political subdivision of the State. For purposes of this Certificate, the term “principal” means an officer, director, owner, partner, Key Personnel, employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Concessionaire.

4. Concessionaire has reviewed all applicable Laws relating to Taxes, and has taken into account all requirements imposed by such Laws in preparing the Financial Model.

5. As of the date of this Certificate, based upon review of information provided by Owner and other investigations undertaken by Concessionaire consistent with Good Industry Practice, Concessionaire has evaluated the constraints affecting equipping and supply of LRVs development, design, construction of the Project, including the Project ROW limits, surface and subsurface conditions discoverable through such investigation, the terms of the Owner-Provided Approvals and requirements of applicable Laws, and Concessionaire has reasonable grounds for believing and does believe that the Project can be developed, designed, constructed and equipped and LRVs can be supplied.

6. Concessionaire, consistent with Good Industry Practice, conducted an investigation of parcels to which it had access and other available information regarding conditions at the construction site before the Setting Date, and as a result of such investigation, Concessionaire is familiar with and accepts the physical requirements of the Work, subject to Concessionaire's rights regarding Relief Events or Force Majeure Events as specified in this Agreement.

7. Concessionaire is a limited liability company duly organized and validly existing under the laws of the State of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver the Initial Funding Agreements and to perform each and all of the obligations of Concessionaire provided for therein. Concessionaire is duly qualified to do business, and is in good standing, in the State.

8. The execution, delivery and performance of the Initial Funding Agreements have been duly authorized by all necessary corporate action of Concessionaire; each person executing the Initial Funding Agreements on behalf of Concessionaire has been duly authorized to execute and deliver each such document on behalf of Concessionaire; and the Initial Funding Agreements have been duly executed and delivered by Concessionaire.

9. Neither the execution and delivery by Concessionaire of the Initial Funding Agreements, nor the consummation of the transactions contemplated thereby, is in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Concessionaire or any agreement, judgment or decree to which Concessionaire is a party or is bound, including the Agreement.

10. The execution and delivery by Concessionaire of the Initial Funding Agreements, and the performance by Concessionaire of its obligations thereunder, will not conflict with any Laws applicable to Concessionaire that are valid and in effect on the date of execution and delivery. Concessionaire is not in breach of any applicable Law that would have a material adverse effect on the Work or the performance of any of its obligations under the Initial Funding Agreements.

11. Each of the Initial Funding Agreements constitutes the legal, valid and binding obligation of Concessionaire, enforceable against Concessionaire and, if applicable, each Equity Member of Concessionaire, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

12. There is no action, suit, proceeding, investigation or litigation pending and served on Concessionaire which challenges Concessionaire's authority to execute, deliver or perform, or the validity or enforceability of, the Initial Funding Agreements, the Contract Documents and the Contracts to which Concessionaire is a party, or which challenges the authority of the Concessionaire representative executing the Initial Funding Agreements, the Contract Documents or such Contracts; and Concessionaire has disclosed to Owner prior to the effective date of the Initial Funding Agreements any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Concessionaire is aware. Concessionaire has no current, pending or outstanding criminal, civil, or enforcement actions initiated by Owner or the State, and Concessionaire agrees that it will immediately notify Owner of any such actions.

13. Between the Effective Date and the effective date of the Initial Funding Agreements, Concessionaire has not obtained knowledge of any additional organizational conflict of interest not disclosed as of the Effective Date of the Agreement, and there have been no organizational changes to Concessionaire or its Contractors identified in the Proposal, which have not been approved in writing by Owner. For this purpose, organizational conflict of interest has the meaning set forth in the Request for Proposals.

14. Neither Concessionaire nor its principal(s) is in arrears in payment of Taxes, permit fees or other statutory, regulatory or judicially required payments to Owner or the State.

15. The individual signing this Certificate, to his or her knowledge after having made reasonable inquiry, and on behalf of Concessionaire, affirms that he/she is the properly authorized representative, agent, member or officer of Concessionaire, that he/she has not directly or indirectly (a) entered into or offered to enter into any combination, collusion or agreement to receive or pay, or (b) received or paid any sum of money or other consideration for the execution of the Agreement other than that which appears upon the face of the Agreement.

Capitalized terms used, but not defined, have the meanings provided in the Agreement.

**IN WITNESS WHEREOF**, the undersigned, the duly elected and qualified [title] of Purple Line Transit Partners LLC, a Delaware limited liability company, has been authorized by all necessary organizational action to make this certification on behalf of Concessionaire (and without personal liability) and further certifies that [he]/[she] has caused this certificate to be executed as of the date first written above.

Signature: \_\_\_\_\_

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

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself/themselves to be the \_\_\_\_\_ of Purple Line Transit Partners LLC, a Delaware limited liability company, and that he/she/they, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability by himself/herself/themselves as \_\_\_\_\_.

In witness whereof I hereunto set my hand and official seal.

(Notary Seal)

\_\_\_\_\_  
Signature of Notary Public  
Notary Public  
Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT 5D**

**FORM OF OWNER BRING-DOWN CERTIFICATE**

[ \_\_\_\_\_ ]/[letterhead of MTA]

[DATE]

Pursuant to Section 4.4.6.7 of the Public-Private Partnership Agreement (the “Agreement”), by and among the Maryland Transit Administration (“MTA”), Maryland Department of Transportation (“MDOT”; MTA and MDOT being collectively referred to herein as “Owner”) and Purple Line Transit Partners LLC (“Concessionaire”), Owner hereby represents, certifies and warrants to Concessionaire as at the date of Financial Close as follows:

1. Owner has full power, right and authority to execute, deliver and perform the Contract Documents *[and {list other documents to which Owner is a party}]* and to perform each and all of the obligations of Owner provided for therein.

2. Each person executing on behalf of Owner the Contract Documents, *[and {list other documents to which Owner is a party}]* has been duly authorized to execute and deliver each such document on behalf of Owner; and the Contract Documents *[and {list other documents to which Owner is a party}]* have been duly executed and delivered by Owner.

3. The Contract Documents *[and {list other documents to which Owner is a party}]* have each been duly authorized by Owner, and each constitutes (or at the time of execution and delivery will constitute) a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms.

4. There is no action, suit, proceeding, investigation or litigation pending and served on Owner which challenges Owner’s authority to execute, deliver and perform, or which challenges the validity or enforceability of, the Contract Documents *[or {list other documents to which Owner is a party}]* or which challenges the authority of Owner officials executing the Contract Documents *[or {list other documents to which Owner is a party}]*; and Owner has disclosed to Concessionaire prior to the effective date of Financial Close any pending action, suit, proceeding, investigation or litigation against Owner (including filed but un-served complaints of which Owner’s senior officials are aware) relating to the Contract Documents *[or such other documents]* or the Project.

5. Neither the execution and delivery by Owner of the Contract Documents *[or {list other documents to which Owner is a party}]*, nor the consummation of the transactions contemplated thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the enabling legislation of Owner or any agreement, judgment or decree to which Owner is a party or is bound.

6. The execution and delivery by Owner of the Contract Documents *[and {list other documents to which Owner is a party}]* does not, and the performance by Owner of its obligations thereunder will not, conflict with any Laws applicable to Owner that are valid and in effect on the date of execution and delivery. Owner is not in breach of any applicable Law that would have a material adverse effect on the performance of any of its obligations under the Contract Documents *[and identify other documents to which Owner is a party]*.

7. No consent of any party and no Governmental Approval is required to be made in connection with Owner's execution and delivery of the Agreement, which has not already been obtained.

Capitalized terms used but not defined herein have the meanings ascribed in the Agreement.

**MARYLAND TRANSIT ADMINISTRATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MARYLAND DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to legal form and sufficiency this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
[Asst. ]Attorney General



**EXHIBIT 5E**

**FORM OF OWNER CERTIFICATE REGARDING PABS OFFICIAL STATEMENT**

The undersigned \_\_\_\_\_ of the State of Maryland, as a duly authorized representative of the Maryland Transit Administration ("MTA") and Maryland Department of Transportation ("MDOT"; MTA and MDOT being collectively referred to herein as "Owner"), does hereby certify as follows:

1. That information contained in the Appendices and under the captions in the Preliminary Official Statement dated [\_\_\_\_\_] (the "Preliminary Official Statement") and the Official Statement dated [\_\_\_\_\_] (the "Official Statement") identified in Attachment 1 (collectively the "Identified Portions") relating to the Maryland Economic Development Corporation Tax-Exempt Private Activity Bonds (Purple Line Project), Series 20xxA and Tax-Exempt Private Activity Bonds (Purple Line Project), Series 20xxB, did not as of the date of the Preliminary Official Statement and the Official Statement and do not as of the date hereof contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

2. To the best of my knowledge, there has been no material adverse change in the financial condition of the State of Maryland (the "State") or Owner from that set forth in the Identified Portions.

3. To the best of my knowledge, no event affecting the State or Owner has occurred since the date of the Official Statement which is necessary to disclose therein in order to make the statements and information contained in the Identified Portions not misleading in any respect.

Dated: \_\_ \_\_\_\_, 201\_\_

**MARYLAND TRANSIT  
ADMINISTRATION**

**MARYLAND DEPARTMENT OF  
TRANSPORTATION**

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

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

Approved as to legal form and sufficiency this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
[Asst. ]Attorney General

**ATTACHMENT 1 TO EXHIBIT 5E**

**IDENTIFIED PORTIONS OF THE OFFICIAL STATEMENT**

1. Information under the following captions:

\_\_\_\_\_.

2. Information included in the following Appendices:

\_\_\_\_\_.

**EXHIBIT 5F**

**FORM OF CONTINUING DISCLOSURE AGREEMENT**

*[to be provided by bond counsel]*

## EXHIBIT 5G

### CALCULATION AND PAYMENT OF REFINANCING GAIN

#### **Section 1      Data and Projections Required for the Calculation of the Refinancing Gain**

1.1      Concessionaire shall notify Owner as soon as practicable of its interest in proceeding with a Refinancing and the proposed schedule for documenting and closing the proposed Refinancing other than an Exempt Refinancing.

1.2      Concessionaire shall provide the following information at least 35 days in advance of the scheduled Refinancing date:

- (a)      The Financial Model with the original projections duly adjusted for any changes in the Project structure (e.g. Owner Changes);
- (b)      Details of the actual timing and amounts of Committed Investment from the Effective Date to the scheduled Refinancing date;
- (c)      Details of the actual timing and amounts of Distributions to Equity Members or any of their Affiliates from the Effective Date to the scheduled Refinancing date;
- (d)      Information on the actual cash flow of Concessionaire from the Effective Date to the scheduled Refinancing date, set out under the same headings as the Financial Model;
- (e)      Term sheet and other relevant information on the terms of the Refinancing;
- (f)      A pre-Refinancing Financial Model, which does not take into account the effects of the Refinancing, as updated by Concessionaire (i) for any changes in the Project and based on the actual performance of the Project to the date of calculation and other macroeconomic assumptions and (ii) with projections for the cash flow of Concessionaire from the estimated Refinancing date to the end of the Term, including projected Distributions ("**Pre-Refinancing Financial Model**");
- (g)      A post-Refinancing Financial Model which fully takes into account the effects of the Refinancing as projected on the basis of the term sheet and new Funding Agreements, as updated by Concessionaire (i) for any changes in the Project and based on the actual performance of the Project to the date of calculation and other macroeconomic assumptions and (ii) with projections for the cash flow of Concessionaire from the scheduled Refinancing date to the end of the Term, including projected Distributions and all costs incurred in connection with the Refinancing ("**Post-Refinancing Financial Model**");
- (h)      A calculation of the Refinancing Gain based on the above and the provisions described below; and

- (i) Information on the assumptions for the projections in the Pre-Refinancing Model and Post-Refinancing Financial Model.

1.3 For the purposes of this Exhibit, “Pre-Refinancing Equity IRR” means the Equity IRR calculated in the Pre-Refinancing Financial Model and “Post-Refinancing Equity IRR” means the Equity IRR calculated in the Post-Refinancing Financial Model.

The Pre-Refinancing Equity IRR and Post-Refinancing Equity IRR shall be calculated for the entire Term taking into account:

- (a) Timing and amounts of the investment by Equity Members;
- (b) Distributions received by Equity Members up to the estimated Refinancing date; and
- (c) Projected Distributions as shown in the Financial Model immediately prior to the Refinancing or immediately after the Refinancing, as applicable.

## **Section 2 Calculation of the Refinancing Gain**

The Refinancing Gain for any Refinancing other than an Exempt Refinancing will be equal to the greater of zero and the difference between A and B where:

A = the Net Present Value of the Distributions to be made from the estimated Refinancing date to the end of the Term as projected in the Post-Refinancing Financial Model, discounted using the Pre-Refinancing Equity IRR; and

B = the Net Present Value of the Distributions to be made from the estimated Refinancing date to the end of the Term as projected in the Pre-Refinancing Financial Model, discounted using the Pre-Refinancing Equity IRR.

For purposes of this Exhibit, “Net Present Value” means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Original Equity IRR.

“Refinancing Gain” excludes gain from the first Refinancing that is anticipated by the Financial Model. However, any gain from the first Refinancing (calculated as provided above) that exceeds the amount of gain for the first Refinancing shown in the Financial Model shall constitute Refinancing Gain.

## **Section 3 Payment of Owner’s Portion of Refinancing Gain**

Owner will receive payment of its portion of the Refinancing Gain as a reduction in the Availability Payments over all or a portion of the Term, subject to the following provisions:

- (a) Owner will not receive its portion of the Refinancing Gain faster than the Equity Members of Concessionaire; and
- (b) If the Refinancing involves raising new debt or otherwise increasing the amount of outstanding Project Debt anticipated in any Fiscal Year of the Financial Model,

Owner may elect to receive its portion as a lump sum payment concurrently with the close of the Refinancing.

#### **Section 4      Final Calculation and Payment**

Concessionaire shall perform a final calculation of the Refinancing Gain and deliver the results to Owner within 15 days after the close of the Refinancing.

## **EXHIBIT 5H**

### **INDICATIVE TIFIA TERM SHEET**

#### **INDICATIVE TERM SHEET FOR TIFIA LOAN AGREEMENT**

The terms set forth herein represent certain common terms for a TIFIA Loan Agreement that must be accepted by the Borrower in order to proceed to execution of a TIFIA Loan Agreement on an expedited basis after final approval of the Borrower's application for TIFIA credit assistance. The terms in this document are indicative only, based on the requirements in the Transportation Infrastructure Finance and Innovation Act of 1998 ("**TIFIA**"), 23 U.S.C. § 601 *et seq.*, as supplemented and amended from time to time (the "**Act**") and standard TIFIA practices, and are subject to modification as indicated below. TIFIA credit assistance is contingent on the credit evaluation of the selected Borrower's financial plan and the execution of a loan agreement (the "**TIFIA Loan Agreement**") with the selected Borrower on terms and conditions acceptable to the United States Department of Transportation (the "**Department**").

This preliminary TIFIA Loan Term Sheet represents an indicative statement of the Department's general intent only and does not purport to be and does not constitute a binding agreement of the Department. The Department will not have any legal obligation under this preliminary TIFIA Loan Term Sheet. Any legal obligation of the Department shall only arise if a subsequent TIFIA Loan Agreement (including all other documents required by the Department to govern, evidence and secure the TIFIA Loan) is agreed to, executed and delivered by the Department and the Borrower. It is expressly understood and agreed that as an accommodation to the Maryland Department of Transportation ("**MDOT**") and the Maryland Transit Administration ("**MTA**") (collectively "**Owner**"), in connection with its competitive proposal process to select a concessionaire for the Project that would become the Borrower under the TIFIA Loan, the Department is making this preliminary TIFIA Loan Term Sheet available prior to the Owner's selection of such Borrower and such Borrower's presentation of a senior loan financing structure to the Department and prior to the Department's completion of its legal and business due diligence and underwriting with respect to, among other items, the selected Borrower and the senior obligation financing structure. As such, the terms and conditions reflected herein remain subject to change by the Department in its sole discretion. The reliance by any party on the terms of this preliminary TIFIA Loan Term Sheet shall be at the sole risk of such party, without any liability to the Department.

#### **UNITED STATES DEPARTMENT OF TRANSPORTATION**

*Preliminary TIFIA Loan Term Sheet of Indicative Terms for financing of the Purple Line P3 Project  
(TIFIA Application for Credit Assistance No. \_\_\_\_\_)*

Capitalized terms used in this Term Sheet and not otherwise defined shall have the respective meanings ascribed thereto in the list of defined terms which is attached hereto as Attachment I.

**TIFIA LENDER**

United States Department of Transportation, acting by and through the Federal Highway Administrator, and its successors and assigns (the “TIFIA Lender”).

**PROJECT**

The Project is a proposed 16.2 mile light rail transit line that extends from Bethesda in Montgomery County to New Carrollton in Prince George’s County. Connecting major activity centers of this corridor located inside the heavily congested Capital Beltway. It will provide direct connections to four branches of the Washington Metropolitan Area Transit Authority (“WMATA”) Metrorail system (both branches of the Red Line at Bethesda and Silver Spring, the Green Line at College Park, and the Orange Line at New Carrollton), as well as all three Maryland Area Regional Commuter (“MARC”) commuter rail lines (linking Washington, Baltimore, and Fredrick, MD) and Amtrak’s Northeast Corridor.

**BORROWER**

A special purpose entity (acceptable to TIFIA Lender) to be formed by the successful proposer selected for the Project by the Owner.

**EQUITY SPONSORS**

[●] and [●] (collectively, the “Equity Sponsors” and each, an “Equity Sponsor”) shall make equity contributions in the Borrower in the amounts of \$[●] and \$[●] respectively under an equity contribution agreement (the “Equity Contribution Agreement”), in form and substance acceptable to the TIFIA Lender, to be executed on or prior to the effective date of the TIFIA Loan Agreement (the “Effective Date”).

**MAXIMUM PRINCIPAL AMOUNT  
OF THE TIFIA LOAN**

The TIFIA Loan may be made in two tranches, a short-term secured loan (the “TIFIA Tranche A Loan”) repaid from the Revenue Service Availability Payment and a long-term secured loan (the “TIFIA Tranche B Loan”) repaid from the Availability Payment.

The loan made pursuant to the TIFIA Loan Agreement (the “TIFIA Loan”) shall be in an amount not to exceed \$[830 million], comprising the principal amount of the TIFIA Tranche A Loan of not to exceed [\$68 million] plus the principal amount of the TIFIA Tranche B Loan of not to exceed [\$762 million], excluding any interest that is capitalized in accordance with the terms thereof; provided that the maximum original principal amount of the TIFIA Loan shall not exceed 33 percent of reasonably anticipated Eligible Project Costs, as defined in the Act, as of the Effective Date; provided further that in no event shall the sum of the maximum original principal amount of the TIFIA Loan and all other Federal Funds received for the project exceed 80% of Eligible Project Costs. Any interest that is capitalized and added to the TIFIA Loan balance will be in



addition to the original principal amount and not subject to foregoing limitations.

[MDOT/MTA NTD: The Borrower may assume that the total amount of Federal Funds received for the project is \$[937 million].]

[NTD: The Borrower may elect to implement the TIFIA Tranche A Loan, the TIFIA Tranche B Loan or both, and may prescribe, in its discretion, the allocation of the \$[830 million] principal amount of the TIFIA Loan among the TIFIA Tranche A Loan and the TIFIA Tranche B Loan. Each bidder must specify such allocation in its Proposal. The total amount of the TIFIA Loan may not exceed the maximum original principal amount indicated in the proviso of the second paragraph of this section.]

#### TERM

(A) The final maturity of the TIFIA Tranche A Loan shall be the earlier of;

(i) [30 days] after the Revenue Service Availability Date; and

(ii) [ ,] [1 year and 30 days] after the Revenue Service Availability Deadline]

(B) The final maturity of the TIFIA Tranche B Loan shall be [ ,] [12 months prior to the end of the Term, as defined in the Public Private Partnership Agreement.].

#### CREDIT RATINGS

Both the Senior Obligations and the TIFIA Loan must be publically rated by at least two nationally recognized rating agencies; the Senior Obligations and the TIFIA Loan must receive an investment grade rating from at least two nationally recognized rating agencies. Public ratings on the TIFIA Loan and the Senior Obligations must be provided annually until the maturity of the related debt instrument from at least one Nationally Recognized Rating Agency.

#### TIFIA INTEREST RATE

The TIFIA Loan shall bear interest at a fixed rate (the “TIFIA Interest Rate”) calculated by adding one basis point (.01%) to the rate of securities of a similar maturity as published on the execution date of the TIFIA Loan Agreement in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities, currently located on the internet at <https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm>.

Interest shall be computed on the outstanding TIFIA Loan balance (which shall include any past due interest and any capitalized interest) on the basis of a 365-day or 366-day year, as

appropriate, for the actual number of days elapsed and will be compounded semi-annually.

#### DEFAULT RATE

If the Borrower fails to pay when due interest on or principal of the TIFIA Loan, the Borrower shall pay interest on such overdue amount from its due date to the date of actual payment at an interest rate of 200 basis points (2.00%) above the TIFIA Interest Rate (the “Default Rate”). Upon the occurrence of a Development Default or upon the abandonment of the Project, the interest rate on the entire outstanding balance of the TIFIA Loan, including past due payments and capitalized interest, shall be the Default Rate and shall continue to bear interest at the Default Rate until such Development Default is cured.

#### ELIGIBLE PROJECT COSTS

Eligible Project Costs shall be those costs defined in the Act as eligible for Federal participation, including Project expenditures incurred by MDOT/MTA beginning [three years] preceding the letter of interest date of [July 26, 2013] and including costs incurred by MDOT/MTA through completion of the Project capital expenditures. The Borrower may assume that [●] of costs incurred by MDOT/MTA may be considered Eligible Project Costs for purposes of sizing the maximum TIFIA Loan amount. Costs eligible for Federal participation associated with the Project (including the improvement projects listed below) shall be considered Eligible Project Costs to the extent they meet the requirements set forth in the immediately following paragraph. The improvement projects referred to in the immediately preceding sentence (each as defined in the Public-Private Partnership Agreement) are the following: (i) Purple Line Mezzanine Connection with South End of Metrorail Red Line Silver Spring Station Platform; (ii) Reconstruction of the College Park Metro Kiss-n-Ride and Bus Loop; (iii) Capital Crescent Trail; (iv) Montgomery County Green Trail; and (v) University of Maryland Bicycle Path.

Notwithstanding the foregoing, all Eligible Project Costs shall be verified by the TIFIA Lender and approved by FTA and must be consistent with all applicable laws, including U.S.C. Title 23 for highways and Chapter 53 of Title 49 for public transportation and for third-party contracts, 48 C.F.R. Part 31.105 relating to construction and architect-engineer contracts and the cost principles in 48 C.F.R. Part 31.2.

#### PROJECT REVENUES

“Project Revenues” shall include:

- (i) All amounts received by the Borrower under the Public-Private Partnership Agreement and any other contracts (including contracts of insurance);
- (ii) All investment income; and

(iii) Other revenues of the Borrower.

SECURITY AND PRIORITY

The TIFIA Loan shall be secured by a security interest in Project Revenues and liens and security interests in other project assets, provided that the TIFIA Loan will not be secured by funds credited to any Senior Debt Service Reserve Account [NTD: To the extent account is funded with bond proceeds]. The TIFIA Loan may be subordinated to Senior Debt Service in the application of the cash flow waterfall (but will be deemed to be and will automatically be on parity in all respects with the Senior Loans upon a Bankruptcy Related Event).

An illustrative flow of funds applicable prior to a Bankruptcy Related Event is shown below:

1. Operations and Maintenance Expenses;
2. Required Capital Expenditures (other than Renewal Expenditures);
3. Fees, costs and expenses due under Senior Loan Agreement and TIFIA Loan Agreement;
4. Interest portion of Senior Debt Service and related Hedging Obligations;
5. Principal portion of Senior Debt Service and Permitted Hedging Termination Obligations;
6. Deposits to the Senior Debt Service Reserve Account if any, and repayment of obligations to any provider of a liquidity facility held in lieu of any Senior Debt Service Reserve Account;
7. Interest portion of TIFIA Debt Service;
8. Principal portion of TIFIA Debt Service;
9. Deposits to TIFIA Debt Service Reserve Account, if any, and repayment of obligations to any provider of a liquidity facility held for the benefit of any the TIFIA Debt Service Reserve Account;
10. Deposits to the Rehabilitation Reserve Account, if any;
11. Mandatory prepayments of the TIFIA Loan, if any;
12. Deposits to a hedging reserve account, if any;
13. Discretionary Capital Expenditures;

14. Voluntary prepayments of the TIFIA Loan, the Senior Loans and the related Hedging Termination Obligations;
15. Deposits to the Distribution Lock-Up Account if the Restricted Payment Conditions have not been met;
16. Management and other fees payable to affiliates under non-arm's length arrangements; and
17. Deposits to the Distribution Account.

Any reserve balances except for those held in the TIFIA Debt Service Reserve Account may be utilized for any purpose which has priority over the funding of such reserve in the project flow of funds.

The TIFIA Loan Agreement will include requirements for any hedging contracts entered into in connection with Senior Obligations.

#### BANKRUPTCY RELATED EVENT

Bankruptcy Related Event means, with respect to any entity, (i) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (A) liquidation, reorganization or other relief in respect of the such entity or any of its debts, or of a substantial part of the assets thereof, under any Insolvency law, or (B) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such entity or for a substantial part of the assets thereof, and, in any case referred to in the foregoing subclauses (A) and (B), such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or (ii) such entity shall (A) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (B) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (C) solely with respect to the Borrower, fail to make two or more consecutive payments of TIFIA Debt Service, (D) make a general assignment for the benefit of creditors, (E) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (i) of this definition, (F) commence a voluntary proceeding under any Insolvency law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency law, (G) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (A) through (F), inclusive, of this clause (ii), or (H) take any action for the purpose of effecting any of the foregoing; or (iii) solely with

respect to the Borrower, (A) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the collateral (other than the equity interests) may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the liens thereon securing the Senior Obligations, or (B) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the collateral (other than the equity interests) shall be transferred pursuant to a sale or disposition of such collateral in lieu of foreclosure; or (iv) solely with respect to the Borrower, (A) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the equity interests may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the liens thereon securing the Senior Obligations, or (B) the Collateral Agent shall commence a process pursuant to which all or a substantial part of the equity interests shall be transferred pursuant to a sale or disposition of such collateral in lieu of foreclosure or (v) solely with respect to the Borrower, the Collateral Agent shall transfer, pursuant to directions issued by the agent for the Senior Lenders, funds or deposit in any of the Project Accounts upon the occurrence and during the continuation of an Event of Default under the Senior Loan Agreement or related documents for application to the prepayment or repayment of any principal amount of the Secured Obligations pursuant to the Collateral Agency Agreement or otherwise other than in accordance with the provisions of the Collateral Agency Agreement.

## REQUIRED RESERVE FUNDS

The TIFIA Lender will require a debt service reserve account which shall be funded (or an Acceptable Letter of Credit issued and delivered) and maintained solely for the benefit of the TIFIA Tranche B Loan in an amount at least equal to the next 6 months of debt service on the TIFIA Tranche B Loan. Such debt service reserve account or Acceptable Letter of Credit shall be funded or posted on or prior to the Substantial Completion Date and may not be funded with tax exempt bond or TIFIA Loan proceeds.

A Rehabilitation Reserve Account will be required (or an Acceptable Letter of Credit issued and delivered).

The Borrower will be required to make deposits, which shall be determined on a case-by-case basis, to such reserve accounts in accordance with the flow of funds.

[NTD: This Term Sheet assumes that all material risk with respect to the O&M Work, including the risk of increases in Operations and Maintenance Expenses and the costs of the Renewal Work, will be passed through to the O&M contractor pursuant to the O&M contract and will be supported by performance security acceptable to the TIFIA Lender. If the preferred bidder's contractual structure deviates from such

assumptions, the TIFIA Lender may require an O&M Reserve Account and/or a Major Maintenance Reserve Account. The TIFIA Lender may also require other reserves and liquidity support depending on the specific requirements of the Project.]

#### SUBSTANTIAL COMPLETION DATE

The Substantial Completion Date for the Project is the date the opening of each and every public transportation element of the Project to public transportation as defined in 49 U.S.C. 5302(a)(10).

[NTD: In the documentation this will be tied to Revenue Service Availability Date.]

#### INDEPENDENT ENGINEER

An Independent Engineer (“IE”) shall be retained by the Borrower during the construction period and shall advise the TIFIA Lender with regard to construction related matters. An IE will be retained during the operating period and shall advise, inter alia, on the adequacy of the Lifecycle Deficit Amount.

Provisions related to the replacement of the IE will be included in the TIFIA Loan Agreement. The Borrower shall pay for all costs and expenses in connection with the services performed by the IE. The IE required under the TIFIA Loan Agreement may be the same entity as the IE or Technical Advisor engaged by the Senior Lenders.

#### OTHER LENDERS’ ADVISORS

An Independent Insurance Advisor (“IA”) shall be retained by the Borrower to review and provide recommendations on the insurance program as of the Effective Date.

An Independent Model Auditor shall be retained to review the Closing Base Case Model.

[NTD: TIFIA Lender shall consider using the same advisors as Senior Lenders.]

#### TIFIA DEBT SERVICE PROFILE

Repayment of the Tranche A Loan shall be made in full on or before the Tranche A Final Maturity Date from the Revenue Service Availability Payment and, as applicable, equity contributions.

The TIFIA Tranche B Loan will be level debt service, or sculpted debt service with an average life the same or less than level debt service, starting no later than 6 months after the earlier of (i) Revenue Service Availability Deadline and (ii) Revenue Service Availability Date, and fully amortized one year prior to the end of the Concession Period. Interest and principal to be paid semi-annually.

The Final Completion Payment shall be applied by the Borrower solely to (i) the repayment of TIFIA Debt Service or Senior Debt

Service or (ii) the payment of Project Costs under the Design-Build Contract.

## CONDITIONS PRECEDENT

The TIFIA Loan Agreement shall contain Conditions Precedent typical for a transaction of this nature. The TIFIA Loan Agreement shall not become effective, nor shall the TIFIA Lender have any obligation to make disbursements of TIFIA Loan proceeds to the Borrower, until such Conditions Precedent, are satisfied, in form and substance satisfactory to the TIFIA Lender. Conditions Precedent for the initial disbursement shall address, inter alia, the following issues:

1. Execution and delivery of finance and security documents, including pledge agreements and New Starts Grant Agreement;
2. Certification by the Borrower and the Owner that the TIFIA Loan Agreement and each other Funding Agreement to which the TIFIA Lender is a party contains all of the mandatory terms and conditions required to be included in such document pursuant to Section 4.3 of the Public-Private Partnership Agreement;
3. Evidence of funding commitments and equity contributions;
4. Legal opinion of Borrower's counsel;
5. Delivery of copies of Senior Loan Documents

[NTD: It is expected that the scheduled maturity date for the short term Senior Loan will be at the latest possible date for payment of the Revenue Service Availability Payment];

6. Delivery of non-debarment certificate;
7. Evidence and satisfaction of 23 U.S.C. §§ 134 & 135 requirements;
8. Evidence of required ratings;
9. Delivery of [Advisor Reports, including Independent Engineer, Independent Insurance Advisor and Independent Model Auditor];
10. Delivery of Borrower's authorized representative certificate;
11. Demonstration of sufficiency of funds in Base Case Projections;
12. Delivery of copies of executed Material Project Documents;

13. Written confirmation of all required permits and approvals for the then current stage of the Project;
14. Delivery of UCC financing statements to the Collateral Agent;
15. Completed arrangements to pay TIFIA lenders for its fees and expenses;
16. Evidence of compliance with NEPA;
17. Delivery by the TIFIA Lender of the TIFIA Lender's authorized representative certificate;
18. Submission of schedule and evidence of prior incurred Eligible Project Costs;
19. Delivery of draw schedule and funding sources for project elements;
20. Delivery of other related documents as required by the TIFIA Lender;
21. Evidence of DUNS number, central contractor registration and federal tax identification number;
22. Delivery of certified Base Case Financial Model, satisfactory to the TIFIA Lender, showing
  - a. Min DSCR [1.25]x
  - b. Min PLCR [1.30]x

[NTD: Levels to be set after review of the preferred bidder's information package and ensuring that the Base Case provides sufficient buffer for downside scenarios. The levels should be in line with those required by the rating agencies to achieve an investment grade rating];
23. Delivery of the initial financial plan reflecting no amortization of Senior Obligations (except for short term Senior Loan, repaid from Revenue Service Availability Date Payments in full) until all currently accruing TIFIA interest is being paid;
24. Evidence of payment and performance security required under project documents; and
25. Delivery of insurance policies and certificates.

Conditions Precedent for each disbursement (including the initial disbursement) shall address, inter alia, the following issues:



1. Funding of required portion of equity commitment or the provision of an Acceptable Letter of Credit if equity contribution is deferred;
2. Delivery of new agreements, permits and information;
3. No event of default;
4. Confirmation of representations and warranties;
5. No Material Adverse Effect, [or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since date the Borrower submitted the Application to the TIFIA Lender];
6. Total federal assistance does not exceed 80% of Eligible Project Costs;
7. Borrower certification (and confirmed by the IE) that the Project will achieve the Substantial Completion by the [Long Stop Date]; and
8. Borrower certification (and confirmed by the IE) that the remaining Project Costs to reach Substantial Completion do not exceed the funding actually available to the Borrower, including committed and undrawn funding available under the debt facilities and the equity commitments (including any contingent equity commitments) and the Progress Payments projected in the most recent updated version of the Base Case Financial Model remaining to be paid by the Owner under the Public-Private Partnership Agreement.

#### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The TIFIA Loan Agreement shall contain Representations and Warranties from the Borrower typical for a transaction of this nature. Such Representations and Warranties shall address, inter alia, the Representations and Warranties matters listed below. The Representations and Warranties shall be made as of the date of execution of the TIFIA Loan Agreement and, in most cases, as of each date on which any disbursement of the TIFIA Loan is made.

1. Organization, valid existence and good standing;
2. Authorization of signatory;
3. Corporate authorization; enforceability;
4. No conflicts; compliance with laws;

5. Required consents; authorizations and permits;
6. No litigation;
7. Valid and perfected liens;
8. No suspension or debarment;
9. Accuracy of representations and warranties;
10. NEPA requirements;
11. State and metropolitan transportation improvement plans;
12. Credit ratings;
13. No default under the TIFIA Loan Agreement or the other related documents;
14. Effectiveness of and no defaults under Material Project Contracts;
15. Accuracy of information furnished;
16. Equity interests;
17. Compliance with applicable laws; OFAC regulations;
18. Environmental matters;
19. Sufficiency of rights and utilities; sufficiency of funds
20. Insurance;
21. Title to personal property; absence of liens
22. Intellectual property rights;
23. Financial statements;
24. Taxes; ERISA;
25. Transactions with affiliates; and
26. Total federal assistance does not exceed 80% of Eligible Project Costs.

**RESTRICTED PAYMENT TESTS  
(I.E. PAYMENTS TO EQUITY  
FROM SURPLUS FUNDS)**

There shall be no distribution of any kind of surplus funds to the Borrower, any Equity Sponsor, or to any of their respective

affiliates unless and until all of the following conditions, inter alia, have been met:

1. the Debt Service Payment Commencement Date has occurred;
2. the Total Debt Service Coverage Ratio is equal to at least [1.20x] for each Calculation Date during the preceding 12 months and is projected to be at least [1.20x] for each Calculation Date during the next 24 months;
3. the Project Life Coverage Ratio is greater than [1.20x] as of the relevant Calculation Date;
4. there is no Event of Default, or event which with the giving of notice or passage of time would constitute an Event of Default, has occurred and is continuing, under the TIFIA Loan Agreement or Senior Loan Documents;
5. no payment default under the TIFIA Loan or the Senior Obligations has occurred and is continuing and the Borrower has made all TIFIA Debt Service payments during the 12-month period ending on the distribution date;
6. all reserves are funded to their required levels;
7. the Borrower would not be insolvent after the distribution; and
8. solely with respect to any Restricted Payment (or portion thereof) to be made from monies on deposit in the Distribution Lock-up Account, the Restricted Payment Conditions were satisfied in full on the most recent Calculation Date prior thereto.

Amounts then available under any liquidity support arrangements shall not be taken into account for the purpose of meeting the Debt Service Coverage requirements.

Funds trapped in the Distribution Lock-up Account for more than 30 months will be applied to prepay TIFIA Loan in inverse order of maturity.

## PROJECT EQUITY

The Equity Sponsors that are funding equity commitments shall provide binding commitments in respect of their contributions prior to or on the Effective Date.

A standby letter of credit or equivalent support acceptable to the TIFIA Lender and issued by a Qualified Issuer shall be required for equity contributions to be made subsequent to the Effective Date. If at any time an issuer of an equity letter of credit ceases

to be a Qualified Issuer, the Borrower shall cause such equity letter of credit to be replaced by a new equity letter of credit issued by a Qualified Issuer within ten (10) Business Days of the date on which the current issuer ceased to be a Qualified Issuer, which replacement equity letter of credit shall be on substantially the same terms and conditions as the equity letter of credit being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender.

The sum of equity contributions to the Borrower and the equity commitment at the Effective Date shall be sufficient to cover (i) the total amount of equity required to be contributed to the Borrower on or prior to the Revenue Service Availability Payment Date as described in the immediately following paragraph and (ii) the shortfall, if any, projected in the Base Case Financial Model, between the Revenue Service Availability Payment and the aggregate principal amount of the TIFIA Tranche A Loan and any other short term debt, together with all interest, fees and other amounts due in respect thereof and any payments due under Qualified Hedges in respect of such other short term debt. The stated amount of any equity letter of credit would need to be equal to the equity commitment.

On the Revenue Service Availability Payment Date, (i) the aggregate principal amount of the TIFIA Tranche A Loan and any other short term debt shall have been repaid in full, together with all interest, fees and other amounts due in respect thereof and any payments due under Qualified Hedges in respect of such other short term debt, and (ii) the Equity Sponsors shall make equity contributions in an amount equal to the amount sufficient to ensure a maximum Debt (as defined below) to equity ratio of [90:10].

For purposes of clause (ii) of the immediately preceding paragraph, "Debt" shall be equal to the sum of (a) the aggregate principal amount of the TIFIA Tranche B Loan, and accrued interest thereon, as of the Revenue Service Availability Payment Date, (b) the amount of any additional disbursements of the TIFIA Tranche B Loan projected in the most recent updated Base Case Financial Model to be made on or prior to the first anniversary of the Substantial Completion Date, (c) the aggregate principal amount of the Senior Obligations, and accrued interest thereon, as of the Revenue Service Availability Payment Date and (d) the amount of any additional disbursements of the Senior Obligations projected in the most recent updated Base Case Financial Model to be made following the Revenue Service Availability Payment Date.

## NET CASH FLOW

"Net Cash Flow" for any period, shall mean an amount equal to Project Revenues received during such period (excluding Progress Payments, the Revenue Service Availability Payment,

the Final Completion Payment, Termination Compensation, and other extraordinary non-recurring items) minus the sum of (i) the Operations and Maintenance Expenses, (ii) major maintenance costs or Capital Expenditures (to the extent not funded from amounts deposited in the Rehabilitation Reserve Account), (iii) deposits to the Rehabilitation Reserve Account during such period.

[NTD: To be further developed]

## OPERATION'S OVERSIGHT

If the Borrower:

- (i) fails for two consecutive Calculation Dates to maintain a minimum Total Debt Service Coverage Ratio of [1.10]x;
- (ii) is projected to have a Total Debt Service Coverage Ratio of less than [1.10]x in any Calculation Period for the remaining term of the TIFIA Loan; or
- (iii) the Borrower receives a total of (i) [•] Noncompliance Points in the course of three consecutive months, (ii) [•] Noncompliance Points in the course of six consecutive months; or (iii) [•] Noncompliance Points in the course of twelve consecutive months.

[NTD: To be further developed after review of the final Public-Private Partnership Agreement and consultation with the Independent Engineer]

then Borrower shall, (a) upon the request of the TIFIA Lender, engage a consultant to review and analyze the operations of the Project and to recommend actions regarding changing the methods of operations or other actions to increase the Net Cash Flow so as to satisfy the Total Debt Service Coverage Ratio or to reduce the number of Non-Compliance Points and (b) either implement the consultant's recommendations or undertake an alternative plan that the consultant agrees is likely to generate equivalent or greater Net Cash Flow than the consultant's recommended actions.

Notwithstanding the foregoing, the TIFIA Lender expressly agrees that the Borrower shall not be obligated to undertake any action to increase the Net Cash Flow, whether or not such action is within the Borrower's control, if such action may result in (i) non-compliance by the Borrower with any applicable law, regulation or governmental approval, or (ii) a breach by the Borrower of any obligation in the Public-Private Partnership Agreement.

## PREPAYMENT

The Borrower may prepay the TIFIA Loans in whole or in part (and, if in part, the principal installments and amounts thereof to

be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in the principal amounts of [\$1,000,000] or any integral multiple thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender such principal amount of the TIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment.

Accelerated prepayment from revenues subject to extended lock-up, Public-Private Partnership Agreement termination compensation, and specified liquidated damages and loss proceeds specified shall be required. In any case where termination compensation under the Public-Private Partnership Agreement is in an amount less than 100% of the Borrower's aggregate outstanding indebtedness, the termination compensation shall be allocated between the Senior Obligations and the TIFIA Loan pro rata based on the outstanding principal of such respective indebtedness.

#### ADDITIONAL SENIOR DEBT

Additional indebtedness on parity with the Initial Senior Obligations ("Additional Senior Obligations") may be incurred, subject to the conditions described below, provided (i) no event of default under the Senior Loan Agreement or the TIFIA Loan Agreement has occurred and is continuing, (ii) the incurrence of such debt shall not result in a downgrade of credit ratings for the Senior Obligations and the TIFIA Loan, respectively, from the lower of the rating on such rating on such indebtedness at Effective Date and its then current rating, and (iii) each lender of such obligations becomes party to the Intercreditor Agreement:

1. The proceeds thereof may be used to complete the construction of the Project, so long as the Borrower certifies to the Senior Lender and the TIFIA Lender, and the Independent Engineer confirms, that the additional investment is necessary and that the proceeds, together with other funds available to complete the Project, are expected to be sufficient to complete the construction of the Project; provided that the aggregate amount of Additional Senior Obligations incurred pursuant to this paragraph (a) may not, without the prior written consent of the TIFIA Lender, exceed [\$●] million] [five percent (5%) of the maximum principal amount of the Initial Senior Obligations];
2. The proceeds thereof may be used to refurbish, upgrade, modify, expand or add to the Project, provided the Borrower certifies to the TIFIA Lender, and the Independent Engineer confirms, that (i) there will be no fundamental change in the use of the Project; (ii) the proceeds of such Additional Senior Obligations, together with other funds available, shall be sufficient for the proposed purpose; (iii) the additional investment is not expected to have a Material Adverse

Effect, and (iv) the Total Debt Service Coverage Ratio, after giving effect to the Additional Senior Obligation, is forecast to be not less than those in the Base Case Financial Model in each calculation period, based on an updated version of the Base Case Financial Model; or

3. The proceeds thereof may be used to refinance the Senior Obligations so long as (i) the net proceeds (after deducting any deposits required to satisfy the TIFIA Debt Service Reserve Required Balance and costs of issuance not to exceed 2% of the principal amount of such Additional Senior Obligations) do not exceed the principal amount outstanding and being refinanced of the Senior Loan, and (ii) Senior Debt Service, after the incurrence of such Additional Senior Obligations, in each year for the remaining term of the TIFIA Loan is less than Senior Debt Service forecast for each year in the Base Case Financial Model as of the Effective Date.

#### MANDATORY TERMS UNDER PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

The TIFIA Loan Agreement and each other Funding Agreement to which the TIFIA Lender is a party will contain all of the mandatory terms and conditions required to be included in such document pursuant to Section 4.3 of the Public-Private Partnership Agreement.

#### PERMITTED INVESTMENTS

Amounts on deposit in any Project Account during the period on or before one year after the Substantial Completion Date and amounts on deposit in the Debt Service Reserve Account and other reserves shall be held uninvested or invested in Permitted Investments.

“Permitted Investments” are as follows and remain in effect for so long as the TIFIA Loan remains outstanding:

1. Obligations of the United States, its agencies and instrumentalities;
2. Certificates of deposit where the certificates are collaterally secured by securities of the type described in item 1 of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by an agency of the Government;
3. Repurchase agreements when collateralized by securities of the type described in item (1) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so

collateralized, including interest;

4. Investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated, at the time such agreement or contract is entered into, in one of the two highest rating categories for comparable types of obligations by any nationally recognized rating agency; and
5. Money market funds that invest solely in obligations of the United States, its agencies and instrumentalities, having a rating from a nationally recognized rating agency, at least equivalent to the rating of the United States Government;

provided, that with respect to any Permitted Investments maintained in any reserve accounts, such Permitted Investments shall mature on a date no later than the earlier of (i) one year from the date of the creation thereof and (ii) the date the funds subject to the investment are required to be applied pursuant to the Financing Documents.

## HEDGING

To protect against fluctuations in interest rates, the Borrower shall make arrangements for a Qualified Hedge or Qualified Hedges to be in place and maintained with respect to the Senior Obligations during any period in which the Senior Obligations bear interest at a variable interest rate. Such hedging arrangements must be in full force and effect at financial close and have an aggregate stated notional amount of not less than 98% and not more than 102% of the aggregate principal amount of the variable interest rate Senior Obligations incurred at financial close and projected to be outstanding during the term of the Qualified Hedges and have a stated maturity or termination date not earlier than the final maturity date of the variable interest rate Senior Obligations.

Each Qualified Hedge shall provide for a fixed interest rate or interest rate cap resulting in fixed payment amounts payable by the Borrower which fixed or cap rate, when (in the case of bank loans) taken together with the Bank Lending Margin and any premium or margin payable on such Qualified Hedge, shall be a rate which is less than or equal to the Loan Underwriting Rate. The "Bank Lending Margin" means: (i) in respect of the Initial Senior Loan Agreement, the "Applicable Margin" as defined in the Initial Senior Loan Agreement and (ii) in respect of any Additional Senior Obligations, a comparable interest rate margin payable on such Additional Senior Obligations. The "Loan



Underwriting Rate” means: means [\_\_\_\_] percent ([\_\_\_\_]%) per annum.<sup>a</sup>

TIFIA consent shall be required for the process for selecting a subsequent Qualified Hedge and a third party fair price certificate shall be required. Further, as described below, TIFIA may consider a hedging reserve fund or a hedging acquisition fund in lieu of or in addition to a subsequent Qualified Hedge.

Acceptable hedges are:

1. floating to fixed interest rate swaps at or below the Loan Underwriting Rate; and
2. interest rate caps at or below the Loan Underwriting Rate.

Acceptable hedges may include “rolling hedges” with a stated termination date of at least one year. A hedging reserve fund acceptable to the TIFIA Lender will be required for the replacement of any hedge whose maturity is less than that of the Senior Obligations being hedged.

Approval of any alternative to a fully hedged strategy or waiver of any hedging requirement is at the sole option and discretion of the TIFIA Lender.

If at any time a Hedging Bank no longer satisfies the requirements for a Qualified Hedge Provider, the Borrower shall cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider within ten (10) Business Days of the date on which such Hedging Bank failed to qualify as a Qualified Hedge Provider, whether by means of a transfer of the disqualified Hedging Bank’s Hedging Agreement to a Qualified Hedge Provider or by means of a termination of such disqualified Hedging Bank’s Hedging Agreement and replacement thereof by a Hedging Agreement with a Qualified Hedge Provider on terms and conditions that satisfy the requirements of the TIFIA Loan Agreement.

The replacement requirement described in the immediately preceding paragraph shall not apply if, (a) at the time of entry into the applicable Qualified Hedge, the Borrower enters into a Credit Support Annex with the applicable Qualified Hedge Provider in form and substance satisfactory to the TIFIA Lender and (b) at the time the Hedging Bank no longer satisfies the

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<sup>a</sup> To be calculated in respect of the period from the Effective Date through the Final Maturity Date based on the sum of (i) the long-term fixed swap rate (which will reflect any premium or margin payable thereon) on the Qualified Hedge(s) entered into on or prior to the Effective Date and (ii) the Bank Lending Margin.

requirements of a Qualified Hedge Provider, such Credit Support Annex is in full force and effect and such Hedging Bank is not in breach or default thereunder.

## TIFIA DISBURSEMENTS

Disbursements shall be made no more frequently than monthly to the Borrower to reimburse or pay for Eligible Project Costs incurred in connection with the Project pursuant to requisition procedures set forth in the TIFIA Loan Agreement and subject to the Borrower's compliance with disbursement conditions. All disbursement requests must be received by the TIFIA Lender on or before the first business day of a calendar month in order to obtain a disbursement by the fifteenth day of such calendar month or if such day is not a Business Day, the next succeeding Business Day. [Note disbursements can be on the 1<sup>st</sup> or the 15<sup>th</sup> of the month].

The Borrower shall provide an annual, cumulative schedule of projected disbursements prior to the Effective Date, such schedule to be included in the TIFIA Loan Agreement. The Borrower may modify such schedule upon written notice to the TIFIA Lender.

Monthly disbursements shall be on a pro rata basis with disbursements of the proceeds of the Senior Obligations, unless otherwise agreed to by the TIFIA Lender and Borrower. No disbursements shall be made more than one year after the Substantial Completion Date.

[NTD: TIFIA is prepared to discuss non rata disbursements. For example, in the event PABs are used, the TIFIA Lender would be prepared to fund after bond proceeds have been used. However, in no event will the TIFIA Lender make any disbursement (as a "true up" or otherwise) upon the occurrence and during the continuance of an Event of Default.]

## EVENTS OF DEFAULT AND REMEDIES

include,

Events of Default under the TIFIA Loan Agreement shall but not be limited to, the following:

1. The Borrower shall fail to pay any principal amount of, or interest on, the TIFIA Loan when and as the payment thereof shall be required under the TIFIA Loan Agreement or the Note.
2. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) is false or misleading in any material respect when made.

3. The Borrower fails to observe or perform any covenant, agreement or obligation of the Borrower under the TIFIA Loan Document (other than a Payment Default or Development Default), and such failure shall not be cured within thirty (30) days after receipt by the Borrower from the TIFIA Lender of written notice thereof; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (3) if and so long as within such thirty (30) day period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured provided such failure is cured within one hundred eighty (180) days of the first occurrence of such failure.
4. The occurrence of a Development Default.
5. Any acceleration shall occur of the maturity of the Senior Obligations or of any other indebtedness of the Borrower in an aggregate principal amount equal to or greater than [\$1,000,000] that is senior to, or in parity with, the TIFIA Loan in right of payment or in right of security (“Other Material Indebtedness”), or any such Senior Obligations or Other Material Indebtedness shall not be paid in full upon the final maturity thereof.
6. The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Material Project Documents or any Material Project Documents shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such default or to obtain an effective written waiver thereof, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this clause if, in the case of any termination of a Material Project Documents (other than the Public-Private Partnership Agreement), the Borrower replaces such Material Project Documents (other than the Public-Private Partnership Agreement) with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness and experience as the counterparty being replaced (or otherwise reasonably acceptable to the TIFIA Lender), and (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (2) on substantially the same terms and conditions as the Material Project Documents being

replaced (or otherwise reasonably acceptable to the TIFIA Lender), and (3) effective as of the date of termination of the Material Project Documents being replaced;

7. A Bankruptcy Related Event occurs with respect to the Borrower, any Equity Sponsor prior to the time such Equity Sponsor's equity contributions is made in full, or any Material Project Party (subject, in the case of a Material Project Party, other than the Owner, to cure by replacement of the affected Material Project Contract (other than the Public-Private Partnership Agreement) with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness and experience as the counterparty being replaced (or otherwise reasonably acceptable to the TIFIA Lender), and (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (2) on substantially the same terms and conditions as the Material Project Documents being replaced (or otherwise reasonably acceptable to the TIFIA Lender), and (3) effective as of the date of termination of the Material Project Documents being replaced);
8. The Borrower shall abandon the Project
9. The construction or operation of the Project shall cease for a continuous period of not less than one hundred eighty (180) (other than for force majeure events covered by insurance or relief events covered under the Public-Private Partnership Agreement).
10. A judgment in excess of [\$1 million] and not otherwise covered by insurance is rendered against the Borrower and remains undischarged for 30 days.
11. A Change of Control shall have occurred other than as approved by the TIFIA Lender.
12. Borrower fails to maintain its existence as a [●].
13. Any equity contribution shall fail to be made at the time and in the amount required under the Equity Contribution Agreement, unless such failure is cured by a draw on the equity letter of credit securing such equity contribution.
14. The Public-Private Partnership Agreement shall expire or be terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall cease to be in full force and effect; or the real property lease for the Project, if any, shall expire or be

terminated (whether by reason of a default thereunder or by mutual agreement of the parties thereto or otherwise), or for any reason shall cease to be in full force and effect.

15. The Borrower receives a total of (i) [•] Noncompliance Points in the course of three consecutive months, (ii) [•] Noncompliance Points in the course of six consecutive months; or [•] Noncompliance Points in the course of twelve consecutive months.

[NTD: To be further developed after review of the Public Private Partnership Agreement and consultation with the Independent Engineer]

Upon the occurrence of an Event of Default under the TIFIA Loan Agreement, the TIFIA Lender may take any one or more of the following actions, at its sole option and discretion:

1. For a Development Default, (i) immediately cease making disbursements; (ii) pursue such other remedies as provided in the TIFIA Loan Agreement; and (iii) require repayment of any unexpended TIFIA Loan proceeds previously disbursed to the Borrower.
2. For failure to make an equity contribution, direct the Collateral Agent to draw on any letter of credit or other credit support securing such obligation.
3. For a Bankruptcy Related Event, (i) immediately cease making disbursements; and (ii) declare all amounts due under the TIFIA Loan Agreement, the Note and other TIFIA loan documents immediately due and payable.
4. (i) Institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid under the TIFIA Loan Agreement, the Note or the other TIFIA Loan documents, (ii) prosecute any judgment or final decree against the Borrower, (iii) exercise all the rights and remedies of a secured creditor under the UCC, and (iv) take whatever action by law or in equity as may appear necessary or desirable to collect the amounts payable by the Borrower, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower, including termination of the TIFIA Loan Agreement.
5. Suspend or debar the Borrower or any of its principals from further participation in any Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

No action pursuant to an Event of Default shall relieve the Borrower from its obligations pursuant to the TIFIA Loan Agreement, all of which shall survive any such action.

#### ANNUAL RATING

The Borrower shall, commencing on [●], no later than the last business day of June of each year over the term of the TIFIA Loan, provide the TIFIA Lender with one public credit rating on the Senior Obligations and the TIFIA Loan from a Nationally Recognized Rating Agency.

#### INDEMNIFICATION

The Borrower shall indemnify and hold the TIFIA Lender harmless from and against any and all claims arising in connection with (i) the execution and delivery of the TIFIA Loan Agreement and related documents, (ii) the TIFIA Loan or the use of any proceeds thereof, or (iii) the violation by any Borrower Indemnity Party of any law or regulation relating to the environment, the release or threatened release of hazardous materials or health and safety matters, except to the extent directly arising from the TIFIA Lender's gross negligence or willful misconduct.

#### ASSIGNABILITY AND SALE

The TIFIA Lender in its sole discretion may grant the Borrower the right to sell or assign its rights in and to the Project, the Public-Private Partnership Agreement and any subsequent lease of the Project as well as its rights and obligations under this Term Sheet and the TIFIA Loan Agreement, upon terms and conditions which are acceptable to the TIFIA Lender in its sole discretion and subject to such additional terms and conditions as the TIFIA Lender may require.

#### SALE OF TIFIA LOAN

After the Substantial Completion Date, the TIFIA Lender may sell the TIFIA Loan or any portion thereof to another entity or offer the TIFIA Loan into the capital markets. In making such sale or offering of the TIFIA Loan the TIFIA Lender shall not change the original terms and conditions of the TIFIA Loan or the Intercreditor Agreement without the prior written consent of the Borrower. The TIFIA Lender shall provide at least sixty (60) days' notice to the Borrower of any intention to sell or offer the TIFIA Loan. The TIFIA Lender and the Borrower agree that for so long as any Senior Loan remains outstanding, the provisions in the TIFIA Loan Agreement which provide that the TIFIA Loan will be deemed to be and will automatically be on parity with the Senior Loans upon a Bankruptcy Related Event shall be of no force or effect following the sale of the TIFIA Loan to any third party other than for a sale made to a U.S. Federal government agency or instrumentality, in which event, the U.S. Federal Government shall have the same benefits with respect to a Bankruptcy Related Event as the TIFIA Lender.

#### ACCOUNTING AND INFORMATION AND REPORTING

OBLIGATIONS  
following

The TIFIA Loan Agreement shall include, inter alia, the monitoring and reporting requirements:

1. Annual independently audited financial statements;
2. Quarterly unaudited financial statements;
3. Monthly construction progress and budget reports and/or Independent Engineer's construction reports;
4. Quarterly financial reports during operations;
5. TIFIA's right to monitor;
6. TIFIA's rights to examine books;
7. TIFIA's right to conduct independent financial audits;
8. Certificates of completion and substantial completion reports;
9. Required permits;
10. Borrower's annual certified financial plans during construction (initially due within 60 days after the Effective Date), including:
  - a. Cost and budget information including any deviations;
  - b. Scheduling and milestone information including any deviations;
  - c. Current estimates of sources and uses of funds for the Project;
  - d. Updated financial model and cash flow projections including Senior Debt Service Coverage and Total Debt Service Coverage projections through Final Maturity;
  - e. Changes in disbursement schedule;
  - f. Cost containment measures and risk mitigation strategies;
  - g. Notification of change orders in excess of [●] and satisfaction of criteria for such change orders;
  - h. Written narrative report describing progress since initial financial plan and most recent financial plan and supporting information;

11. Borrower's annual certified financial plans following Substantial Completion, including:
  - a. Detailed cash flow projections and narrative identifying changes and any potential shortfalls;
  - b. Detailed reports of revenues received, amounts deposited into each project account, and account balances;
  - c. Updated financial model (including basis for any assumption changes) and schedule of actual and projected revenues, expenses and Debt Service Coverage Ratios for Senior Obligations and TIFIA Loan;
  - d. Written narrative report describing variances since initial financial plan and most recent financial plan and supporting information;
12. Copies of material contracts entered into;
13. Notification of material insurance claims;
14. Notification of any default or event that could be expected to result in a Material Adverse Effect;
15. Annual ratings of Senior Obligations and TIFIA Loan;
16. Notification of Change of Control;
17. If applicable, traffic and operating reports on a quarterly basis; and
18. Updated financial models and financial statements on dates as required by the TIFIA Lender.

The TIFIA Lender shall also be provided with such information as is: (1) required, from time to time, to be provided by the Borrower to the Senior Lenders pursuant to the Senior Loan Agreement; (2) provided by the Borrower to any nationally recognized rating agencies providing credit ratings for the Project and/ or its debt; or (3) received by the Borrower from any nationally recognized rating agencies providing credit ratings for the Project and/ or its debt.

#### DOLLARS

All references to dollar amounts in this Term Sheet are references to United States dollars.

#### FEES AND EXPENSES

The Borrower shall be responsible for paying to the TIFIA Lender the following fees and expenses:



1. Commencing in Federal Fiscal Year (FFY) 2015 and continuing thereafter each year throughout the term of the TIFIA Loan Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the 15<sup>th</sup> of November. The TIFIA Lender shall establish the amount of this annual fee, and the Servicer shall notify the Borrower of the amount, at least 30 days before payment is due.

In establishing the amount of the fee, the TIFIA Lender will adjust the previous year's base amount utilizing the CPI. For the FFY 2015 calculation, the TIFIA Lender will use the FFY 2014 base amount of \$12,483, which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

The Borrower shall cooperate and respond to any reasonable request of the TIFIA Lender or its designated loan servicer (the "Servicer") for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

2. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time to time on and after the date hereof for any and all fees, costs, charges and expenses actually incurred by it (including the reasonable fees, costs and expenses of counsel and other advisors) in connection with the negotiation, preparation, execution, delivery and performance of the TIFIA Loan Agreement and the other related documents and the transactions hereby and thereby contemplated, including without limitation, reasonable attorney's, engineer's, and planning fees and professional costs, including all such fees, costs and expenses actually incurred as a result of or in connection with: (i) the enforcement of or attempt to enforce any provision of the TIFIA Loan Agreement or any of the other related documents; (ii) any amendment or requested amendment of, or waiver or consent or requested waiver or consent under or with respect to, the TIFIA Loan Agreement or any of the other related documents, or advice in connection with the

administration of the TIFIA Loan Agreement or any of the other related documents or the rights of the TIFIA Lender thereunder; and (iii) any work-out, restructuring or similar arrangement of the obligations of the Borrower under the TIFIA Loan Agreement or the other related documents during the pendency of one or more Events of Default.

3. The obligations of the Borrower under the TIFIA Loan Agreement shall survive the payment or prepayment in full or transfer of the Note, the enforcement of any provision of the TIFIA Loan Agreement or the other related documents, any amendments, waivers or consents, any Event of Default, and any workout, restructuring or similar arrangement.

## **ATTACHMENT I - DEFINITIONS**

**Acceptable Credit Rating** – with respect to any entity, the rating of such entity’s unsecured, senior long-term indebtedness (or, if such entity has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such entity executes, delivers or issues an equity letter of credit or Qualified Hedge, ‘A+’, ‘A1’ or the equivalent rating from any nationally recognized rating agency, and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from any nationally recognized rating agency.

**Base Case Financial Model** – the financial model delivered on the Effective Date and prepared by the Borrower forecasting the revenues and expenditures of the Project for time periods through the final maturity of the TIFIA Loan and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender.

**Borrower Indemnity Party** -- (a) each Borrower Related Party, (b) the Design Build Contractor, (c) any Person for whom the Borrower may be legally or contractually responsible and (d) the employees, agents, officers, directors, shareholders, members, representatives, consultants, successors and assigns of any of the foregoing.

**Calculation Date** – each [●] and [●] occurring after the Effective Date.

**Calculation Period** – the 6-month period ending on a Calculation Date.

**Capital Expenditures** – expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto that have a useful life of more than one year which are capitalized in accordance with GAAP.

**Change of Control** – any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of any Borrower Related Party or a significant aspect of its business; provided, however, that the following shall not constitute a Change of Control:

(a) a change in possession of the power to direct or control the management of a Borrower Related Party or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(b) a change in possession of the power to Control the management of a Borrower Related Party or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of such Borrower Related Party, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency;

(c) an upstream reorganization or transfer of direct or indirect interests in a Borrower Related Party so long as there occurs no change in the entity with ultimate power to Control or cause the Control of the management of such person;

(d) the exercise of preferred or minority equity holder veto or voting rights (whether provided by applicable law or by a Borrower Related Party's Organizational Documents) over major business decisions of such Borrower Related Party; or

(e) transfers of direct or indirect ownership interests in a Borrower Related Party between or among Persons that are under common Control.

**Collateral Agency Agreement** – Collateral Agency and Account Agreement by and among the TIFIA Lender, the Borrower, the agent for the Senior Lenders and the Collateral Agent, dated as of [●].

**Collateral Agent** – the agent on behalf of TIFIA Lenders and the Senior Lenders under the Collateral Agency Agreement and the other security agreements.

**CPI** – the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, [●] as the base period.

**Debt Service Payment Commencement Date** – [ ] [date set to be no later than 6 months after the Revenue Service Availability Deadline].

**Development Default** – (i) the Borrower fails to diligently prosecute the work related to the Project; or (ii) the Borrower fails to achieve Substantial Completion in accordance with the Financial Plan, as the same may be amended from time to time with the consent of the TIFIA Lender, unless the Borrower demonstrates to TIFIA's satisfaction that (A) the Borrower shall commence actions reasonably designed to achieve Substantial Completion [●] months on or prior to the Long Stop Date and shall diligently pursue such actions until Substantial Completion is achieved [●] months on or prior to the Long Stop Date; (B) if the then applicable Long Stop Date shall have been extended due to a compensation event, relief event or force majeure event or otherwise, provided that the Borrower is diligently performing the work so as to achieve Substantial Completion by no later than the [●] months prior to the Long Stop Date, as extended.

**Distribution Account** – the distribution account established pursuant to the Collateral Agency Agreement into which funds shall be deposited following the satisfaction of Restricted Payment Conditions. The Distribution Account shall not be subject to the security interest granted in favor of the secured parties.

**Distribution Lock-up Account** – the lock-up account established pursuant to the Collateral Agency Agreement into which funds shall be deposited following a failure to meet the any Restricted Payment Test. Funds held by the Collateral Agent in the Distribution Lock-up Account may be released to the Distribution Account upon the satisfaction of the Restricted Payment Conditions by the Borrower for two (2) consecutive Calculation Dates.

**Effective Date** – the date of the execution of the TIFIA Loan Agreement.

**Federal Fiscal Year** – the fiscal year of the Government, which currently commences on October 1 of each calendar year and ends on September 30 of the following calendar year.

**Financing Documents** – inter alia, the Senior Loan Documents, the TIFIA Loan Agreement, the Intercreditor Agreement, the Hedging Agreements, any bonds or notes associated therewith, and any other document or instrument required to be executed and delivered by or in connection with the aforementioned agreements.

**Hedging Agreements** – (i) the ISDA Master Agreement(s) and the related schedules and confirmations, to be entered into by the Borrower and a Hedging Bank on or about the Effective Date and (ii) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging transaction, in each case either similar in form and substance in all material respects, with the Hedging Agreement entered into with the initial Hedging Bank, or otherwise acceptable to the TIFIA Lender.

**Hedging Bank** – any Qualified Hedge Provider that becomes a party to a Hedging Agreement.

**Hedging Obligations** – (i) all scheduled amounts payable to the Hedging Banks by the Borrower under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceedings with respect to the Borrower) net of all scheduled amounts payable to the Borrower by such Hedging Banks, and (ii) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedging Banks to the Borrower under such Hedging Agreements; provided, that Hedging Obligations shall not include Hedging Termination Obligations.

**Hedging Termination Obligations** – the aggregate amount payable to the Hedging Banks by the Borrower upon the early unwind of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks upon the early unwind of all or a portion of such Hedging Agreements.

**Intercreditor Agreement** – Subordination and Intercreditor Agreement, dated as of [●], among the Collateral Agent, the agent for the Senior Lenders, the TIFIA Lender, [the intercreditor agent], [the Hedging Banks] and any other lender that becomes a party thereto (by accession or otherwise) and any amendment or supplement thereto.

**Lifecycle Deficit Amount** – starting on the 10<sup>th</sup> anniversary of Substantial Completion Date, or such earlier date as may be required and on a scheduled basis thereafter (to be set in conjunction with the IE), the IE will be instructed to review the current Lifecycle Expenditure Budget (covering Renewal Expenditures through the Term) and:

- (i) Opine on the completeness of the budget to cover the remaining scheduled Renewal Work in order to meet the handback requirements set forth in the Public-Private Partnership Agreement; and
- (ii) Confirm that the remaining Lifecycle Payments, in addition to the amounts on deposit in the Rehabilitation Reserve Account, will be sufficient to pay the projected remaining Renewal Work and hand-back costs as verified under (i) above.

Any additional amounts identified through this process will be the Lifecycle Deficit Amount. The Lifecycle Deficit Amount will be funded in the waterfall after debt service to the Rehabilitation Reserve Account. (Alternatively a Letter of Credit from an Acceptable Bank can be provided.)

The Borrower shall be entitled to withdraw funds from the Rehabilitation Reserve Account to pay Renewal Expenditures (to the O&M contractor) in accordance with the Lifecycle Expenditure Budget as approved and as the work is done.

**Long Stop Date** - the outside deadline for achieving Revenue Service Availability; as such deadline may be extended from time to time pursuant to the Public-Private Partnership Agreement. The initial Long Stop Date is 12 months after the Revenue Service Availability Deadline.

**Material Adverse Effect** – (a) a material adverse change in: (i) the Project, (ii) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower or its affiliates, (iii) the ability of the Borrower to perform or comply with any of its material obligations under the documents to which it is a party, (iv) the legality, validity or enforceability of any material provision of a Senior Loan Document, the TIFIA Loan Agreement or any Material Project Document, (v) the ability of the Borrower, or any Material Project Party to perform or comply with any of its material obligations under any Senior Loan Document, the TIFIA Loan Agreement or any Material Project Document to which it is a party, (vi) the validity, perfection or priority of the liens provided under the security documents on the collateral in favor of the secured parties or (vii) the TIFIA Lender’s rights or remedies available under the TIFIA Loan Agreement (or related documents) or (b) the occurrence and continuance of an uncured and unwaived default by the Design Build Contractor under the Design-Build Contract or the O&M Contractor under the Operations and Maintenance Contract.

**Material Project Documents** – shall include inter alia, the Public-Private Partnership Agreement, the Design-Build Contract, [Light Rail Vehicle Agreement (if applicable),] the Operations and Maintenance Contract, the Interface Agreement, and any performance support or parent guaranties related to the aforementioned documents.

**Material Project Party** – any person (other than the Borrower) party to a Material Project Document and any surety or guarantor of such a person with respect to such person’s obligations under such Material Project Document, for so long as such Material Project Document remains in effect.

**Nationally Recognized Rating Agency** – Standard & Poor’s Rating Group, Moody’s Investors Services, Inc., Fitch Ratings or any other nationally recognized statistically rating organization identified as such by the Securities and Exchange Commission.

**Operations and Maintenance Expenses** – all actual cash maintenance and operation costs (excluding management and other fees payable to affiliates under non-arm’s length arrangements) incurred and paid in connection with the operation and maintenance of the Project including: Renewal Expenditures and other amounts incurred pursuant to the Public-Private Partnership Agreement, taxes, insurance, consumables, advertising, marketing, payments under real property agreements, management costs, fees paid to any Governmental Authority, environmental mitigation costs, general and administrative expenses, but exclusive in all cases of noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

**Permitted Hedging Termination Obligations** – obligations resulting from the early termination, in whole or in part, of a qualified hedging agreement resulting from an illegality or a tax event.

**Project Accounts** – the accounts subject to the Collateral Agency Agreement.

**Project Life Coverage Ratio** – for any Calculation Date the ratio of (i) the net present value of the Net Cash Flow for the remaining Term of the Public-Private Partnership Agreement, discounted at the weighted average cost to (ii) the sum of: (a) the outstanding balance of the Senior Obligations and (b) the outstanding balance of the TIFIA Loan.

**Public-Private Partnership Agreement** – the Public-Private Partnership Agreement relating to the Project, dated as of [●], by and between Maryland Department of Transportation / Maryland Transit Administration and the Borrower.

**Qualified Hedge Provider** – any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States or any state thereof that has an Acceptable Credit Rating.

**Qualified Issuer** – any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States or any state thereof that has an Acceptable Credit Rating.

**Rehabilitation Reserve Account** – the secured Rehabilitation Reserve Account established pursuant to the Collateral Agency Agreement and funded to a minimum balance of the sum of (i) all Lifecycle Payments received by the Borrower from the Authority and (ii) Lifecycle Deficit Amount.

**Renewal Expenditures** – all the reasonable and budgeted expenditures incurred by the Borrower to satisfy its Renewal Work obligations under the Public-Private Partnership Agreement.

**Renewal Work** – as set forth in the Public-Private Partnership Agreement.

**Revenue Service Availability Date** - the date Revenue Service Availability, as defined in the Public-Private Partnership Agreement, for the Project has been achieved.

**Revenue Service Availability Deadline** - the date by which Concessionaire must achieve Revenue Service Availability, as such date may be extended from time to time pursuant to the Public-Private Partnership Agreement, initially [\_\_\_\_\_] days following the Effective Date.

**Revenue Service Availability (RSA) Payment** – as set forth in the Public-Private Partnership Agreement.

**Revenue Service Availability Payment Date** - the date the Revenue Service Availability Payment is made by the Owner pursuant to the Public-Private Partnership Agreement.

**Secured Obligations** – all present and future indebtedness and other obligations of the Borrower incurred pursuant to the Financing Documents.

**Senior Debt Service** – with respect to any payment date, the principal of and interest on the Senior Obligations due and payable on such payment date.

**Senior Debt Service Coverage Ratio** - for any Calculation Period, the ratio of Net Cash Flow for such Calculation Period to the Senior Debt Service (excluding the portion of the Senior Debt Service applicable to Senior Obligations repaid from the RSA Payment) for such Calculation Period.

**Senior Lender(s)** – collectively, the financial institution or institutions or governmental authority (or any agent or trustee acting on behalf of any of the foregoing) providing the Senior Obligations or any other obligations under a Senior Loan Agreement.

**Senior Loan Agreement** – the loan agreement or similar document entered into by the Borrower in connection with the incurrence of Senior Obligations.

**Senior Loan Documents** – the Senior Loan Agreement, the security documents, any agreements and documents entered into by the Borrower in connection with hedging arrangements entered into pursuant to, or in connection with, the Senior Loan Agreement, and all other agreements, instruments and documents executed and delivered pursuant to or in connection with any of the foregoing.

**Senior Obligations** – obligations of the Borrower that rank ahead of the TIFIA Loan in priority of payment as defined in the [Intercreditor Agreement].

**TIFIA Debt Service** – with respect to any payment date, the principal of and interest on the TIFIA Loan due and payable on such payment date.

**TIFIA Debt Service Reserve Account** – the secured debt service reserve account in respect of the TIFIA Loan established and created pursuant to the Collateral Agency Agreement and funded to a minimum balance of [next succeeding 6 months of debt service of TIFIA Tranche B Loan] (the “**TIFIA Debt Service Reserve Required Balance**”).

**Total Debt Service Coverage Ratio** – for any Calculation Period, the ratio of Net Cash Flow for such Calculation Period to the sum of (i) the Senior Debt Service (excluding the portion of the Senior Debt Service applicable to Senior Obligations repaid from the RSA Payment), and (ii) the TIFIA Debt Service (excluding the portion of the TIFIA Debt Service applicable to the TIFIA Loan repaid from the RSA Payment), in each case for such Calculation Period.



**EXHIBIT 5I**

**FORM OF MARYLAND ATTORNEY GENERAL LETTER**

*[AGENCY LETTERHEAD]*

\_\_\_\_\_, 2015

[Concessionaire]

[Collateral Agent]

[Lenders]

Re: Purple Line Project ("Project")

Ladies and Gentlemen,

This opinion is rendered with respect to the Public-Private Partnership Agreement dated \_\_\_\_\_, 2015 ("P3 Agreement") entered into by the Maryland Transit Administration ("MTA") and Maryland Department of Transportation ("MDOT") (collectively referred to as the "Owner") and [Concessionaire] ("Concessionaire"). Owner entered the P3 Agreement pursuant to Title 10A of the State Finance and Procurement Article of the Annotated Code of the State of Maryland (2009 Replacement Volume, as amended) (the "Act") and approval of the Board of Public Works of the State of Maryland (the "Board") on \_\_\_\_\_ (the "Board Approval"). Terms used herein and not otherwise defined shall have the meaning set forth in the P3 Agreement.

The Owner has also entered into the Direct Agreement, dated \_\_\_\_\_, 2016 ("Direct Agreement") with [Collateral Agent].

This Office has reviewed the Act, the Board Approval, and such other legal opinions and the originals or certified copies of such resolutions, documents, records and other proofs as we deemed pertinent.

As to questions of fact material to this opinion, without undertaking to verify the same by independent investigation, this Office has relied upon the record of the proceedings of the Board and representations made by the pertinent public officials at such proceedings. This examination has been limited to the foregoing as they exist or are in effect as of the date hereof. This opinion is limited to the matters expressly set forth herein, and I express no opinion concerning any other matters.

In rendering the opinions set forth herein, I have also examined and relied on originals or copies, certified or otherwise identified to my satisfaction, of the following documents and such other documents, certificates and opinions as I have deemed necessary or appropriate as a basis for such opinions, and to which Owner is a party:

- (a) P3 Agreement;
- (b) Direct Agreement [Note to Draft: may be more than one Direct Agreement]; [and]

(c) [Date] Board Agenda Item [xx]; [and]

[(d)] [List other documents executed by the Owner].

The documents listed in (a) and (b) above are collectively referred to as the "Opinion Documents."

In giving this opinion, I have assumed (A) that all items submitted to me or reviewed by me are genuine, accurate, and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine; (B) the authenticity of all other documents and records examined by me; and (C) the conformity to authentic original documents and records of all documents and records provided to me as certified, conformed, photostatic or electronic copies. I have also relied, without independent investigation or verification of any kind, on the representations and warranties of the parties contained in each of the Opinion Documents (each such party to an Opinion Document being, individually, a "Transaction Party") and in the certificates delivered pursuant to the terms thereof with respect to the accuracy of factual matters contained therein (which were not independently established by me), all of which certificates are listed above.

I have also assumed that:

(i) Except with respect to the Owner, each Transaction Party has been duly organized and is validly existing in good standing under the laws of its jurisdiction of incorporation or organization and has the power and authority (corporate, partnership and other) to execute, deliver and perform its obligations under the Opinion Documents to which it is a party;

(ii) Except with respect to the Owner, each Opinion Document has been duly authorized, executed and delivered by each Transaction Party that is a party thereto;

(iii) Except with respect to the Owner, each Opinion Document constitutes the valid and legally binding obligation of each Transaction Party that is a party thereto, enforceable against such Transaction Party in accordance with its terms;

(iv) Except with respect to the Owner, the execution, delivery and performance by each Transaction Party of each Opinion Document to which it is a party does not violate, contravene or conflict with (a) the certificate or articles of incorporation and by-laws or similar organizational and internal governance documents of such Transaction Party; (b) any agreement (other than the Opinion Documents solely in respect of the Owner) to which it is a party or by which its properties or assets are bound; (c) any judgment, injunction, order or decree that is binding upon such Transaction Party or its properties or assets; or (d) the provisions of all laws and governmental rules and regulations that may be applicable to such Transaction Party;

(v) All of the representations and warranties with respect to factual matters made by each such Transaction Party in any Opinion Document were true and correct as and when made or deemed made or repeated;

(vi) Except with respect to the Owner, all relevant and necessary consents required by or from any Transaction Party in connection with any of the Opinion Documents have, as a factual matter, been obtained;

(vii) With respect to the Opinion Documents, value has been given;

(viii) No undue influence, duress, fraud, or deceit exists with respect to the transactions contemplated in the Opinion Documents and there has not been any mutual mistake of fact with respect to same; and

(ix) To the extent the opinions herein are based on currently effective statutes, I have assumed that such statutes were validly enacted and are constitutional.

Based upon and subject to the foregoing, subject to the assumptions, exceptions and qualifications herein stated, and as of the date of this letter, I am of the opinion as of the date hereof and under existing law that:

(A) Owner has the authority to execute, deliver and perform its obligations under the Opinion Documents and to perform each and all of the obligations of Owner provided for therein;

(B) The Opinion Documents were each duly executed and delivered by Owner to Concessionaire and [Collateral Agent]/[Lender];

(C) The Opinion Documents are each valid and enforceable against Owner in accordance with their respective terms;

(D) Except for those matters identified in Exhibit A attached hereto, there is no action, suit, proceeding, investigation or litigation pending and served on Owner, or to my knowledge threatened against Owner, that challenges Owner's authority to execute, deliver or perform, or the validity or enforceability of, the Opinion Documents or if adversely determined could materially and adversely affect the legality, validity, or enforceability against the Owner of the Opinion Documents;

(E) There is no current or potential conflict, default or a violation, as applicable, of the Act or any agreement, judgment or decree to which Owner is a party or is bound due to the execution and delivery of the Opinion Documents or the consummation of the transactions contemplated thereby, respectively;

(F) There is no conflict of any laws due to the execution and delivery by Owner of the Opinion Documents, and the performance of its obligations thereunder, respectively, nor is there any violation of any applicable law by Owner that would have a material adverse effect on the performance of any of Owner's obligations under the Opinion Documents; and

(G) There are no additional consents or governmental approvals required to be made in connection with the execution and delivery of and performance by Owner of Owner's obligations under the Opinion Documents.

The opinions contained herein are subject to the following additional limitations, qualifications and exceptions:

(1) The foregoing opinions are based on and limited to the laws of the State of Maryland (except as set forth in paragraph (5) below), and I render no opinion with respect to the law of any other jurisdiction.

(2) The validity, binding effect, and enforceability of the Opinion Documents may each be limited by applicable bankruptcy, insolvency, reorganization, receivership, moratorium, liquidation, conservatorship, fraudulent conveyance, or other similar statutes, regulations or laws affecting creditor's rights and remedies generally.

(3) The enforceability of the Owner's obligations under the Opinion Documents may each be limited by the effects of generally applicable rules of law that: (a) limit or affect the enforcement of provisions of a contract that purport to (i) require waiver of the obligations of diligence and reasonableness, (ii) impose limitations or restrictions on assignment or transfer of rights, interests or property, (iii) impose limitations or restrictions, or waiver of, legal or equitable rights or remedies, or (iv) restrict access to courts or affecting the jurisdiction or venue of courts; (b) provide that forum selection clauses in contracts are not necessarily binding on the court(s) in the forum selected or in which suit is filed; (c) limit the availability of a remedy under certain circumstances where another remedy has been elected; (d) limit the enforceability of provisions releasing, exculpating or exempting any person from, or requiring indemnification of any person for, strict liability or liability for its own action or inaction; (e) may, where less than all of a contract is enforceable, limit the enforceability of the balance of the contract to circumstances in which the unenforceable portion is not an essential part of the agreed exchange; (f) govern and afford judicial discretion regarding the determination of damages and entitlement to attorneys' fees and other costs; (g) may permit a party who has materially failed to render or offer performance required by contract to cure that failure unless (i) permitting a cure would unreasonably hinder the aggrieved party from making substitute arrangements for performance or (ii) it was important in the circumstances to the aggrieved party that performance occur by the date stated in such contract; (h) limit or affect the enforceability of provisions for damages and "penalties"; or (i) require mutuality of parties' obligations.

(4) I express no opinion with respect to the validity or enforceability or unenforceability of provisions of the Opinion Documents which (a) constitute or relate to (i) the rights or obligations of third parties, (ii) evidentiary standards, (iii) waiver of rights to notice or the obligations of good faith, fair dealing, diligence or reasonableness, (iv) self-help, subrogation, delay or omission to enforce rights or remedies, contribution or severability, (v) the availability of specific performance, injunctive relief, mandamus, receivership or any other equitable right or remedy (regardless of whether such question is considered in a proceeding in equity or at law), (vi) agreements to agree, (vii) liability of any person for payment of any amount payable under the Opinion Documents to the extent such amounts (A) allow the recipient of any such payment to recover more than the "benefit of its bargain" or (B) exceed the amount of the actual damages of the recipient of any such payment; (b) render inapplicable any otherwise applicable law (other than those laws which by their terms may be rendered inapplicable); or (c) release, exculpate or exempt a party from, or require indemnification of a party for, liability for its own action or inaction, to the extent that (i) such provisions are inconsistent with public policy or are otherwise prohibited by applicable federal or state laws, or (ii) such action or inaction involves strict liability, gross negligence, recklessness, willful misconduct, unlawful conduct, fraud or illegality.

(5) I express no opinion as to (a) federal or state securities laws or regulations; (b) the Maryland Commercial Code and similar laws; (c) federal or state banking, insurance or tax laws or regulations; (d) federal or state laws, regulations or policies relating to national or local emergencies; (e) administrative decisions, rules or regulations applicable to the Owner (whether created or enabled through legislative action at the Federal, state or regional level); (f) any other laws to the extent not customarily applicable to transactions of the type contemplated by the Opinion Documents or (g) judicial decisions to the extent that they deal with any of the foregoing clauses (a) through (f).

(6) I express no opinion as to the effect of any fact or circumstance occurring subsequent to the date of this letter. I assume no responsibility to advise you of any such facts or circumstances of which I become aware, regardless of whether or not they affect the opinions herein.

(7) I express no opinion as to any provisions of the Opinion Documents providing for forfeitures or the recovery of, or securing, amounts deemed to constitute penalties, or in the nature of liquidated damages or late charges.

(8) I express no opinion as to the effect on the opinions set forth herein of any failure by any Transaction Party to comply with laws and regulations.

(9) I express no opinion as to compliance with the procedural requirements of Maryland law relating to the exercise of remedies by a secured lender.

(10) I express no opinion as to the effect of conflicts or inconsistencies, if any, between the provisions of any of the Opinion Documents.

(11) I express no opinion as to the effect of the unenforceability under certain circumstances of contractual provisions permitting various self-help or summary remedies without notice or opportunity for hearing or correction.

(12) I express no opinion as to the effect of the unenforceability under certain circumstances of provisions to the effect that failure to exercise or delay in exercising rights or remedies will not operate as a waiver of that right or remedy.

(13) I express no opinion as to the priority or perfection of any liens and the validity or enforceability of any penalty provided for in the Opinion Documents, or whether any provision would be deemed to be a penalty.

I represent the Owner for the purpose of rendering the opinions expressed in this letter, but I caution you that I am not the sole counsel to the Owner. The Owner has in the past used, and continues to use, other Assistant Attorneys General and counsel to represent them in connection with other matters, including without limitation, administration, litigation, securities, regulatory, and compliance matters. No inference with regard to other matters should be drawn from my representation of the Owner for the purpose of rendering the opinions expressed in this letter.

This opinion is delivered to you solely in connection with the Opinion Documents and may not be relied upon by you for any other purpose and may not be used or relied upon by, or published or communicated to, any person other than the addressee hereof for any purpose whatsoever without my prior written consent.

Very truly yours,

---

[ ]

## **PRO FORMA EXHIBIT A**

*[The following pro forma list will be updated and the updated list will be attached to the final opinion prior to issuance]*

1. *Fitzgerald v. Federal Transit Administration*, No. 14-1471 (D.D.C. filed Aug. 26, 2014).
2. *[any other actions, suits, proceedings, investigations or litigation pending and served as of Commercial Close to be added prior to execution of P3 Agreement]*

## **EXHIBIT 6**

### **PAYMENT AND PERFORMANCE SECURITY**

**Exhibit 6A: Financial Close Security**

**Exhibit 6B: Form of Payment Bond \***

**Exhibit 6C: Form of Performance Bond \***

**Exhibit 6D: Form of Multiple Obligee Rider for Payment Bond \*\***

**Exhibit 6E: Form of Multiple Obligee Rider for Performance Bond \*\***

**Exhibit 6F: Form of Performance Letter of Credit**

**Exhibit 6G: Form of LRV Performance Security**

**Exhibit 6H: Form of O&M Performance Security**

\*If the bond is provided by Concessionaire rather than the Design-Build Contractor or other prime Contractor, then the form of bond shall be revised to reflect Concessionaire as the "Principal" or "Contractor", Owner in place of Concessionaire as the bond obligee, and the Agreement as the "Contract", and the bond shall be approved as to form by the Attorney General's Office.

\*\* If the bond is provided by Concessionaire rather than the Design-Build Contractor or other prime Contractor, then the form of multiple obligee rider shall be revised to reflect Owner as the "Primary Obligee" and the Collateral Agent as the "Additional Obligee".

**EXHIBIT 6A**

**FINANCIAL CLOSE SECURITY**

*[copy of executed bond (ITP Form U-1) or letter of credit (ITP Form U-2), as applicable, to be attached]*



**EXHIBIT 6B**

**FORM OF PAYMENT BOND**

Payment Bond No. \_\_\_\_\_

For

**The Maryland Purple Line Project**

Principal: [Insert Contractor Name]		Business Address of Principal:	
Name of Co-Surety: _____			
A corporation of the State of _____			
Name of Co-Surety: _____			
A corporation of the State of _____			
Name of Co-Surety: _____			
A corporation of the State of _____			
Name of Co-Surety: _____			
A corporation of the State of _____			
each authorized to do business in the State of Maryland			
<b>PENAL SUM OF THIS PAYMENT BOND</b> (express in words and figures)		<b>DESCRIPTION OF CONTRACT</b> Contract Number: _____	
<b>DATE OF BOND</b> (Shall be no later than date on Contract)		<b>DATE OF CONTRACT</b> (To be filled in)	
<b>OBLIGEE</b>			
Purple Line Transit Partners, LLC			

**KNOW ALL WHO SHALL SEE THESE PRESENTS:**

**THAT WE**, the Principal named above and Co-Sureties named above, being duly authorized to do business in Maryland, and having a business address as shown herein, are by these presents held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves and our successors and assigns, jointly and severally with the Principal and other Co-Sureties.

**WHEREAS**, the Maryland Transit Administration ("MTA") and the Maryland Department of Transportation ("MDOT") each a state agency of the State of Maryland (collectively the "Owner") have awarded to Obligee a Public-Private Partnership Agreement (the "Agreement") to design, build, finance, operate and maintain the Maryland Purple Line Project through a public-private partnership.

**WHEREAS**, the Principal has entered into a contract (the "Contract") with Obligee bearing the date of \_\_\_\_\_, related to the performance of design and construction work for the Maryland Purple Line Project, which Contract and all items incorporated into the Contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the Contract or to the work to be performed thereunder shall hereafter be referred to as the "Contract".

**AND WHEREAS**, Title 10A of the State Finance and Procurement Article of the Annotated Code of Maryland requires a payment bond to be provided in connection with the Agreement, and it is one of the conditions precedent to the award of the Agreement and the Contract that this Payment Bond shall be executed.

**NOW THEREFORE**, We the undersigned Principal and \_\_\_\_\_

\_\_\_\_\_  
(the "Co-Sureties") are firmly bound and held unto the Obligee, in the penal sum of \_\_\_\_\_ Dollars

(\$\_\_\_\_\_) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, we bind ourselves and our successors and assigns with the Principal and other Co-Sureties firmly by these presents.

The condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereafter defined in accordance with the Contract, for all labor and materials furnished, supplied, and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying labor and materials (including lessors of the equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and suppliers (at all tiers) in the prosecution of the work provided for in the Contract.
2. The above named Principal and Co-Sureties hereby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been paid in full as provided for in the Contract may sue on this Payment Bond for the use of such claimant, prosecute the suit to

final judgment for such sum or sums as may be justly due claimant and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

3. The Co-Sureties hereby stipulate and agree that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the \_\_\_\_\_ *[insert title of document identifying scope of work and technical provisions for the Contract]* (the "Technical Provisions") accompanying the same shall in any way affect its obligation on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Technical Provisions.

4. The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be \_\_\_\_\_.

5. This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland. Any reference herein to Principal or Co-Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Co-Surety heading below.

**IN WITNESS WHEREOF**, Principal and Co-Surety have set their hands and Co-Sureties have affixed their seals to this Payment Bond. If any corporation or limited liability company is a signatory under the Principal or Co-Surety heading below, then each such corporation and company has caused the following: the corporation's or company's name to be set forth below, if applicable, a duly authorized representative of the corporation or company to affix below the corporation's or company's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation or company. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

---

Attest:

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
Secretary

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

---

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

---

[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

**EXHIBIT 6C**

**FORM OF PERFORMANCE BOND**

Performance Bond No. \_\_\_\_\_

For

**The Maryland Purple Line Project**

Principal: [Insert Contractor Name]		Business Address of Principal:	
Name of Co-Surety: _____			
A corporation of the State of _____			
Name of Co-Surety: _____			
A corporation of the State of _____			
Name of Co-Surety: _____			
A corporation of the State of _____			
Name of Co-Surety: _____			
A corporation of the State of _____			
each authorized to do business in the State of Maryland			
<b>PENAL SUM OF THIS PERFORMANCE BOND</b> (express in words and figures)		<b>DESCRIPTION OF CONTRACT</b> Contract Number: _____ Contract Name or Description: MTA/MDOT Purple Line Project	
<b>DATE OF BOND</b> (Shall be no later than date on Contract)		<b>DATE OF CONTRACT</b> (To be filled in)	
<b>OBLIGEE</b>			
Purple Line Transit Partners, LLC			

**KNOW ALL WHO SHALL SEE THESE PRESENTS:**

**THAT WE**, the Principal named above and Co-Sureties named above, being authorized to do business in Maryland, and having business addresses as shown herein, are by these presents held and firmly bound unto the Oblige named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves and our successors and assigns jointly and severally with the Principal and other Co-Sureties.

**WHEREAS**, the Maryland Transit Administration ("MTA") and the Maryland Department of Transportation ("MDOT") each a state agency of the State of Maryland (collectively the "Owner") have awarded to Oblige a Public-Private Partnership Agreement (the "Agreement") to design, build, finance, operate and maintain the Maryland Purple Line Project through a public-private partnership.

**AND WHEREAS**, Principal has entered into a contract (the "Contract") with Oblige bearing the date of \_\_\_\_\_, related to the performance of design and construction work for the Maryland Purple Line Project, which Contract and all items incorporated into the Contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the Contract or to the work to be performed thereunder shall hereafter be referred to as the "Contract".

**AND WHEREAS**, it is one of the conditions precedent to the award of the Contract and the Agreement that this Performance Bond (or equivalent performance security) be secured.

**NOW THEREFORE**, We the undersigned Principal and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(the "Co-Sureties") are firmly bound and held unto the Oblige, in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Oblige, we bind ourselves and our successors and assigns, jointly and severally with the Principal and other Co-Sureties, firmly by these presents.

During the original term of said Contract, during any extensions thereto, and during the guarantee and warranty period(s) required under the Contract, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract and of any and all modifications to the Contract that may hereafter be made; and
2. Principal and Co-Sureties shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared to be in default under the Contract, the Co-Sureties shall, within 30 days after notice of default, notify the Oblige of their intention to promptly proceed to remedy the default or promptly proceed to complete the Contract, as applicable, in accordance with and subject to its terms and conditions or to deny liability in whole or in part and notify the Oblige citing reasons therefor. In the event the Co-Sureties fail to notify the

Obligee within this 30-day period as noted above or deny liability in whole or in part, then the Obligee thereupon may remedy the default or compete the Contract, as applicable, without prejudice to other remedies the Obligee may have under the Contract, this Bond or applicable law, Co-Sureties to remain liable hereunder for all expenses of correction and/or completion up to but not exceeding the penal sum stated above.

The Co-Sureties hereby stipulate and agree that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the \_\_\_\_\_ *[insert title of document identifying scope of work and technical provisions for the Contract]* (the "Technical Provisions") shall in any way affect its obligation on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Technical Provisions.

The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be \_\_\_\_\_.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Co-Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Co-Surety heading below.

This Bond specifically guarantees the performance of each and every obligation of Principal under the Contract, as such obligations may be amended and supplemented, including but not limited to Principal's liability for liquidated damages and warranties as specified in the Contract, but not to exceed the bonded sum.

The guarantees contained herein shall survive the final completion of the design and construction called for in the Contract with respect to those obligations of Principal which survive such final completion.

**IN WITNESS WHEREOF**, Principal and Co-Surety have set their hands and seals to this Performance Bond. If any corporation or limited liability company is a signatory under the Principal or Co-Surety heading below, then each such corporation and company has caused the following: the corporation's or company's name to be set forth below, if applicable, a duly authorized representative of the corporation or company to affix below the corporation's or company's seal and to attach hereto a notarized corporate resolution of power of attorney authorizing such action, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation or company. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

---

Attest:

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
Secretary

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

---

Attest:

(SEAL)

\_\_\_\_\_  
(Co-Surety)

\_\_\_\_\_  
Signature  
Bonding Agent's Name: \_\_\_\_\_

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest:

(SEAL)

\_\_\_\_\_  
(Co-Surety)

\_\_\_\_\_  
Signature  
Bonding Agent's Name: \_\_\_\_\_

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest:

(SEAL)

\_\_\_\_\_  
(Co-Surety)

\_\_\_\_\_  
Signature  
Bonding Agent's Name: \_\_\_\_\_

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest:

(SEAL)

\_\_\_\_\_  
(Co-Surety)

\_\_\_\_\_  
Signature  
Bonding Agent's Name: \_\_\_\_\_

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Co-Surety)

---

[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]



**EXHIBIT 6D**

**FORM OF MULTIPLE OBLIGEE RIDER**

(Payment Bond)

**MULTIPLE OBLIGEE RIDER**

This Rider is executed concurrently with and shall be attached to and form a part of Payment Bond No. \_\_\_\_\_.

WHEREAS, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, (hereinafter called the "Principal"), entered into a written agreement bearing the date of \_\_\_\_\_, 20\_\_\_\_ hereinafter called the "Contract") with Purple Line Transit Partners, LLC (hereinafter called the "Primary Obligee") for the performance of design and construction work for the Maryland Purple Line Project; and

WHEREAS, the Primary Obligee requires that Principal provide a payment bond and that both the Maryland Transit Administration ("MTA") and the Maryland Department of Transportation ("MDOT"), each a public agency of the State of Maryland (collectively, the "Additional Obligees"), be named as additional obligees under the payment bond; and

WHEREAS, Principal and the Co-Sureties identified below have agreed to execute and deliver this Rider concurrently with the issuance of Payment Bond No. \_\_\_\_\_ (hereinafter referred to as the "Payment Bond"), upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

1. MTA and MDOT are hereby added to the Payment Bond as named obligees.
2. The aggregate liability of the Co-Sureties to the Primary Obligee and the Additional Obligees is limited to the penal sum of the Payment Bond.
3. The Additional Obligees' rights under the Payment Bond are subject to the same defenses that the Principal and/or the Co-Sureties have against the Primary Obligee.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
Secretary

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

---

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

---

Approved as to legal form and sufficiency this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Asst. Attorney General

---

[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

**EXHIBIT 6E**

**FORM OF MULTIPLE OBLIGEE RIDER**

(Performance Bond)

**MULTIPLE OBLIGEE RIDER**

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No. \_\_\_\_\_.

WHEREAS, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, (hereinafter called the "Principal"), entered into a written agreement bearing the date of \_\_\_\_\_, 20\_\_\_\_ (hereinafter called the "Contract") with Purple Line Transit Partners, LLC, (hereinafter called the "Primary Obligee") for the performance of design and construction work for the Maryland Purple Line Project; and

WHEREAS, the Primary Obligee requires that Principal provide a performance bond and that both the Maryland Transit Administration ("MTA") and the Maryland Department of Transportation ("MDOT"), each a public agency of the State of Maryland (collectively, the "Additional Obligees"), be named as additional obligees under the performance bond; and

WHEREAS, Principal and the Co-Sureties identified below have agreed to execute and deliver this Rider concurrently with the issuance of Performance Bond No. \_\_\_\_\_ (hereinafter referred to as the "Performance Bond"), upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

MTA and MDOT are hereby added to the Performance Bond as named obligees.

The Co-Sureties shall not be liable under the Performance Bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Co-Sureties arrange for completion of the Contract, to the Co-Sureties) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

The aggregate liability of the Co-Sureties under this Performance Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Performance Bond. The Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Co-Sureties have against the Primary Obligee, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract. The total liability of the Co-Sureties under the Contract shall in no event exceed the amount recoverable from the Principal by the Primary Obligee.

The Co-Sureties may, at their option, make any payments under the Performance Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

Attest:

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
Secretary

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

---

Attest:

(SEAL)

\_\_\_\_\_  
(Co-Surety)

\_\_\_\_\_  
Signature  
Bonding Agent's Name: \_\_\_\_\_

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest:

(SEAL)

\_\_\_\_\_  
(Co-Surety)

\_\_\_\_\_  
Signature  
Bonding Agent's Name: \_\_\_\_\_

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest:

(SEAL)

\_\_\_\_\_  
(Co-Surety)

\_\_\_\_\_  
Signature  
Bonding Agent's Name: \_\_\_\_\_

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Co-Surety)

---

Attest:

(SEAL)

\_\_\_\_\_  
(Co-Surety)

\_\_\_\_\_  
Signature

Bonding Agent's Name: \_\_\_\_\_

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

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Co-Surety)

---

Approved as to legal form and sufficiency this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Asst. Attorney General

---

[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

**EXHIBIT 6F**

**FORM OF PERFORMANCE LETTER OF CREDIT**

\* If the letter of credit is to secure the performance obligations of the Design-Build Contractor or other prime Contractor rather than Concessionaire, then the attached form will be modified as described in Section 11.2.1.4 of the Agreement.

(Letter of Credit Form continued on following pages)

**IRREVOCABLE STANDBY LETTER OF CREDIT**

**ISSUER:** \_\_\_\_\_

**PLACE FOR PRESENTATION OF DRAFT:**

\_\_\_\_\_  
(Name and Address of Bank/Branch -- **MUST** be a United States Bank/Branch)  
\_\_\_\_\_

**APPLICANT:** [Name of Concessionaire]

**BENEFICIARY:** MARYLAND TRANSIT ADMINISTRATION (acting on its own behalf and on behalf of the Maryland Department of Transportation)

Address: Maryland Transit Administration, Transit Development & Delivery  
100 S. Charles Street, Tower II, Suite 700, Baltimore, Maryland 21201

Contact Person: Contracting Officer (Purple Line Project)

Phone No. 443-451-3723

**LETTER OF CREDIT NUMBER:** \_\_\_\_\_

**PLACE AND DATE OF ISSUE:** \_\_\_\_\_

**AMOUNT:** \_\_\_\_\_ United States Dollars (US\$\_\_\_\_\_)

**EXPIRATION DATE:** \_\_\_\_\_, 20\_\_

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of the Maryland Transit Administration ("MTA") for any sum or sums up to the aggregate amount of

\_\_\_\_\_ United States Dollars (US\$\_\_\_\_\_), available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. State one of the following:

"This drawing is due to the failure of Purple Line Transit Partners LLC ("Concessionaire") to perform certain obligations under the certain Public-Private Partnership Agreement, Purple Line Project between MTA, Maryland Department of Transportation and Concessionaire dated as of [\_\_\_\_], 201\_\_ (the "Agreement").

or

"This drawing is due to the failure of Purple Line Transit Partners LLC ("Concessionaire") to deliver to MTA a new or replacement letter of credit, on the

same terms, by the deadline set forth in the certain Public-Private Partnership Agreement, Purple Line Project between MTA, Maryland Department of Transportation and Concessionaire dated as of [\_\_\_\_], 201\_\_ (the "Agreement").

or

"This drawing is due to the fact that the Issuer does not meet the requirements set forth in the certain Public-Private Partnership Agreement, Purple Line Project between MTA, Maryland Department of Transportation and Purple Line Transit Partners LLC ("Concessionaire") dated as of [\_\_\_\_] (the "Agreement") and Concessionaire has failed to provide a substitute letter of credit issued by a qualified institution within the deadline set forth in the Agreement".

or

[Include another withdrawal condition if established under agreement or applicable law]".

All drafts will be honored if the original sight draft is physically presented to \_\_\_\_ (United States Bank/Branch - Name & Address) on or before \_\_\_\_ (Expiration Date) or any extended expiration date. Drawings by facsimile to facsimile number ( ) \_\_\_\_ are acceptable (each such drawing, a "Fax Drawing") provided however that a Fax Drawing will not be effectively presented until you confirm by telephone our receipt of such Fax Drawing by calling us at telephone number ( ) \_\_\_\_\_. For purposes of this Letter of Credit, a "Business Day" means a day other than a Saturday, Sunday or other day on which banking institutions in the State of Maryland are authorized or required by law to close for business.

This Letter of Credit shall be automatically extended for successive periods of one year, without amendment, from the stated expiration date and each extended expiration date unless we send Owner written notice of our intent not to extend the credit; which notice must be sent at least 30 days prior to the expiration date of the original term hereof or any extended one year term, by registered or certified mail or overnight courier, to Owner at the address for Owner stated above or any other address specified in writing from an executive officer of Owner to the Issuer at the Issuer's address stated above.

This Irrevocable Letter of Credit is governed by the laws of the State of Maryland and is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590 [ISP]. In the event of any conflict between Maryland law and the ISP, Maryland law shall prevail. This credit shall be deemed to be a contract made under the laws of the State of Maryland, and the parties expressly agree that the courts of the State of Maryland shall have exclusive jurisdiction to decide any questions arising hereunder.

Issuer:

By: \_\_\_\_\_  
(Authorized Signature of Issuer)



**EXHIBIT 6G**

**FORM OF LRV PERFORMANCE SECURITY**

*[form of performance security to be attached, identifying Owner as a secondary beneficiary or including a rider identifying Owner as a secondary beneficiary.]*

**EXHIBIT 6H**

**FORM OF O&M PERFORMANCE SECURITY**

*[form of performance security to be attached, identifying Owner as a secondary beneficiary or including a rider identifying Owner as a secondary beneficiary]*

**EXHIBIT 7**  
**INSURANCE**

**Exhibit 7A: Required Insurance**

**Exhibit 7B: Table of Base Relevant Insurance Costs**

## **EXHIBIT 7A**

### **REQUIRED INSURANCE**

#### **GENERAL INSURANCE COVERAGE COMMENTS**

- Except as expressly provided otherwise in this Exhibit 7A (*Required Insurance*), no exclusion shall be included in any Insurance Policy furnished under this Exhibit 7A for losses resulting from a Certified or Non-Certified Terrorism Event, except that no such coverage is required for a Certified or Non-Certified Terrorism Event involving the release of pollutants, radiation, or other regulated substances. If any Insurance Policy includes such an exclusion, Concessionaire must provide a “stand-alone” Terrorism Insurance Policy/ies with no less than \$150,000,000 per occurrence and aggregate in limits, including coverage from any Certified or Non-Certified Terrorism Event covering first- or third-party Losses, except that no such coverage is required for a Certified or Non-Certified Terrorism Event involving the release of pollutants, radiation or other regulated substances. A combination of one or more policies specified herein and one or more “stand-alone” Terrorism Insurance Policies meeting all of the foregoing requirements is acceptable to satisfy this obligation. Insurance Policies that do not contain exclusions for a terrorism event shall comply with this paragraph.
- All limits, deductibles and payments under Insurance Policies and other amounts described herein are in United States Dollars (\$), and all payments under these policies shall be made in United States Dollars (\$).
- All limits (and durations, if limits are denominated in time) for Insurance Policies shall meet the minimum requirements provided in this Exhibit 7A unless Owner approves a reduced limit (or duration, if limits are denominated in time). Owner will consider lower limits based on a maximum probable loss analysis conducted by an independent third-party acceptable to Owner following the Effective Date, subject to Owner’s review and approval of such analysis, if such analysis demonstrates to Owner’s satisfaction, determined in Owner’s sole discretion, that the maximum probable loss is less than the insurance limits otherwise set forth in this Exhibit 7A. If Owner approves, the parties will execute a Change Order to account for the reduced premium based upon such reduced policy limit under Section 14.6.2 of the Agreement.
- Any Insurance Policy or Insurance Policy limits specified in this Exhibit 7A shall not limit the liability of Concessionaire and are minimum insurance limits only. They do not cap or otherwise impact Concessionaire’s liability to Owner in any form or manner.
- Under all Insurance Policies, unless explicitly stated otherwise below, Concessionaire shall be solely and fully responsible for all deductibles, self-insured retentions (“SIRs”), co-insurance or similar payments of any nature. However, all Insurance Policies shall provide that any deductible or SIR may be paid by any insured thereunder and shall be deemed to fully satisfy the deductible or SIR for all insureds.
- All Insurance Policies specified in this Exhibit 7A shall insure and cover, and may not preclude, exclude, limit or restrict coverage with respect to, in whole or in part, or contain

a sub-limit of liability with respect to, losses, costs, claims or expenses caused by or associated with any or all of the following: mayhem, civil unrest, civil strife, sabotage, commotion, riots, protests or vandalism.

## **PART A – INSURANCES FOR D&C WORK**

### **PART A (I): CONCESSIONAIRE INSURANCES FOR D&C WORK**

Except as set forth in Section 1.3 of this Part A, the suite of insurances for the D&C Work must have multi-year term (with the exceptions of Worker's Compensation and Commercial Automobile Liability Insurance Policies), with an effective date at or before Financial Close and ending at the O&M Commencement Date, subject to any tail or completed operations coverage required under the Agreement. However, if the foregoing term is not commercially available, the initial term shall be the longest commercially-available term and be effective at or before Financial Close. Thereafter, equivalent coverage shall be maintained continuously and without interruption through renewals or policy replacements until and through the O&M Commencement Date, subject to any "tail" or "completed operations" coverage required under the Agreement. Concessionaire shall provide pro forma or exemplar "specimen" copies of Insurance Policies and all endorsements thereto that conform to all the terms specified herein to Owner with bindable proposals from insurers at least 15 business days prior to the date the insurance is required to be in force and effect. Thereafter, binders, with copies of all actual policy forms and endorsements attached, shall be provided on or within three Business Days after binding and in all cases prior to the date the insurance is required to be in force and effect under the terms of the Contract Documents, and prior to renewal (if the insurance is a renewal). Thereafter, Concessionaire shall provide true and certified signed copies of all Insurance Policies and all endorsements, as placed, to Owner as soon as reasonably possible and, in any case, no later than 60 days after the insurance is required to be in full force and effect.

#### **1. CONTROLLED INSURANCE PROGRAM (CIP)**

##### **1.1. Eligibility and Enrollment**

- (a) Concessionaire shall procure, or cause to be procured, a Controlled Insurance Program (the "CIP"), which shall provide the insurance coverages described in Section 1.2 ("CIP Insurance Coverages") of this Part A(I) to the Enrolled Parties in connection with the Eligible Work. The Insured Parties shall be named insureds under the CIP's Additional Excess Liability, Excess Liability, and Commercial General Liability Insurance Policies.
- (b) Participation in the CIP is mandatory for all eligible Contractors that are providing direct labor on the Covered Site including Project-Specific Locations in the vicinity of the Project ROW. Temporary labor services and employee leasing companies are to be treated as eligible contractors. Concessionaire may add additional Contractors to the CIP, with Owner's approval, at no additional cost to Owner. Concessionaire may elect not to include covered Contractors in the CIP but only with Owner's advance written approval.
- (c) Concessionaire shall provide evidence of insurance coverage for any Contractors not enrolled in the CIP as specified in Section 1.3 ("Non-enrolled Contractors - Contractor Furnished Insurance") of this Part A(I).

- (d) A \$1,000,000 per occurrence deductible is the maximum permitted deductible under the CIP and Owner requires and reserves the right to approve, subject to security review, an aggregate deductible cap over the CIP.
- (e) Reserved
- (f) The Commercial General Liability and Excess Liability Insurance Policies in the CIP shall provide coverage on an occurrence basis resulting from an occurrence during D&C Work, including “Ongoing Operations” or “Completed Operations,” as defined by ISO. Any third-party liability (including liability to Owner) arising from a product defect that contributes or causes loss shall be included under the Commercial General Liability and Excess Liability coverages.
- (g) For insurance placed during the Design-Build Period, the application of coverage provided by the policy shall be in accordance with the broadest commercially-available interpretation of an “occurrence,” as acceptable to Owner and must be stated and confirmed by endorsement for the life of the policy including the 10-year extended reporting period (tail).
- (h) Refer to Exhibit 1 to the Agreement for definitions of capitalized terms used but not defined herein. The following terms used in this Exhibit 7A (*Required Insurance*) shall have the meanings set forth below:

***Additional Excess Liability*** has the meaning given to it in Section 1.2(c) of this Part A(I).

***Certified Terrorism Event*** means a terrorist act that is eligible for coverage under the Terrorism Risk Insurance Act (TRIA). Such acts are certified by the Secretary of the Treasury, applying criteria spelled out in TRIA. A certified event is as defined under TRIA, as it may be amended or replaced. Insurers paying claims in response to certified acts of terrorism qualify for federal reimbursement.

***CIP*** has the meaning given to it in Section 1.1(a) of this Part A(I).

***CIP Administrator*** means the third party representative providing CIP services including contractor enrollment, program administration, claims management, and program close-out activities.

***CIP Manual*** means the Controlled Insurance Program Manual Purple Line Project.

***Consequential Loss*** means a loss that arises as a result of direct damage to property—for example, loss of rent. Some types of consequential loss are insurable under standard direct damage or time element coverage forms; others are not.

***Covered Site*** means the Site (excluding Project-Specific Locations that are not in the vicinity of the Project ROW) and any other locations that Concessionaire, with Owner’s approval, adds to the CIP. The term “Covered Site” shall not include a location at which LRVs are assembled, if that location is not proximate to or in the vicinity of the Project ROW.

**Eligible Work** means all D&C Work performed by eligible Contractors (with exceptions for asbestos, lead and other hazardous materials remediation work and work performed by demolition contractors), subject to exclusions specified in the Owner-approved CIP Manual.

**Enrolled Parties** means (i) Concessionaire, (ii) the Design-Build Contractor, (iii) the O&M Contractor and (iv) any other Contractors of any tier or level that are performing Eligible Work, and, in each case, to the extent such Person is enrolled in the CIP in accordance with the requirements of the CIP Manual. Enrolled Parties are named insureds with full separation of insureds provisions and severability of interests with no cross liability restrictions in the CIP.

**Excluded Activities** means any activities which are not Eligible Work. All Excluded Activities must be specifically approved by Owner in writing.

**Highly-Sensitive Personal Information** means an (i) individual's government-issued identification number (including social security number, driver's license number or state-issued identified number); (ii) financial account number, credit card number, debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account.

**LRV Equipment** means all parts, spares or related equipment required for operation and maintenance of the LRVs.

**Non-Certified Terrorism Event** means a terrorist act that does not meet the criteria for a certified act of terrorism and does not trigger the federal reimbursement provisions of the Terrorism Risk Insurance Act (TRIA), as it may be amended or replaced.

**Personal Information** means information provided to Concessionaire by or at the direction of a customer, or to which access was provided to Concessionaire by or at the direction of a customer, in the course of Concessionaire's performance under the Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers), in case of both subclauses (i) and (ii), including, without limitation, all Highly-Sensitive Personal Information.

**Security Breach** means any privacy violation, informational theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security, including: (i) any act or omission that compromises either the security, confidentiality or integrity of Personal Information or the physical, technical, administrative or organizational safeguards put in place by Concessionaire or its authorized personnel that relate to the protection of the security, confidentiality or integrity of personal information, or (ii) receipt of a complaint in relation to the privacy practices of Concessionaire or a breach or alleged breach of the Agreement relating to such privacy practices.

## **1.2. CIP Insurance Coverages**

Concessionaire shall procure, or cause to be procured, the following insurance coverage for the benefit of each Enrolled Party pursuant to the CIP:

(a) **Worker's Compensation/Employer's Liability**

- (i) Coverage A: Worker's Compensation coverage providing statutory coverage in the State of Maryland and comprehensive All Other States coverage
- (ii) Employer's Liability coverage with the following limits:
  - (A) \$1,000,000 Bodily Injury by Accident, Each Accident;
  - (B) \$1,000,000 Bodily Injury by Disease, Policy Limit; and
  - (C) \$1,000,000 Bodily Injury by Disease, Each Employee.
- (iii) An individual Worker's Compensation policy in the name of the Enrolled Party shall be issued to each Enrolled Party.
- (iv) Federal Employers' Liability Act (FELA) coverage shall be provided, as required.
- (v) Notwithstanding anything to the contrary in this Exhibit 7A (Required Insurance), the CIP Worker's Compensation policy need not cover the LRV Supplier, the Lead Design Firm or Subcontractors of the LRV Supplier and Lead Design Firm that are not performing Construction Work, so long as compliant worker's compensation insurance coverage for each is otherwise in place and fully in effect for all such Contractors.

(b) **Commercial General Liability**

- (i) Commercial General Liability coverage on ISO form CG 00 01 or equivalent on an occurrence basis with defense outside of the limits provided. Concessionaire will maintain Commercial General Liability insurance covering the Insured Parties and all Enrolled Parties as named insureds. Such insurance shall be written on an occurrence basis, against claims for liability arising from bodily injury and property damage. This Commercial General Liability coverage shall list CSX Transportation, Inc. as an additional insured and waive subrogation against CSX Transportation, Inc. Coverage shall at a minimum contain provisions for the following:
  - Premises/Operations.
  - Limited design exclusions for the lead contractor including means and methods of construction – ISO form CG 2280 shall be attached to the coverage. Should CG 2280 be unavailable, ISO form CG 2279 is acceptable.
  - Annual or reinstated renewable aggregates are required for the \$4,000,000 general aggregate limit (as described in Section 1.2(b)(ii)) and the first



\$25,000,000 of the excess liability limits (as described in Section 1.2(c)) during the period from Financial Close to the O&M Commencement Date (for a total annual renewable aggregate limit of \$29,000,000). If there are claims or reserves in excess of the first \$25,000,000 of Excess Liability coverage in any annual period, Concessionaire shall purchase additional excess liability limits to preserve the required excess liability limits of \$150,000,000 in the following annual period. The reinstatement requirement need not extend to the "Completed Operations" period.

- Products and Completed Operations for a period of no less than ten years following the O&M Commencement Date. This coverage shall be purchased in conjunction with the multi-year Commercial General Liability and Excess Liability Insurance Policies in Sections 1.2(b) and (c) of this Part A, if commercially available. If not commercially available, by purchasing the longest coverage commercially available and then extending such coverage in the future as necessary, such that the coverage in total is in place for no less than ten years following the O&M Commencement Date.
- To the broadest extent commercially available, Contractual Liability in support of those risks specified in the indemnity provisions of the Agreement. The policies may not contain any exclusions for contractual and for indemnification obligations, and Concessionaire shall seek the broadest coverage commercially available for indemnity obligations.
- Personal Injury Liability with employee and contractual exclusions removed.
- Advertising Injury Liability.
- There shall be no exclusions related to rail operations, terrorism, collapse, explosion and underground property damage hazards, or any other aspect of the work or services in the Contract Documents.

(ii) Such Commercial General Liability coverage in accordance with the following limits:

- (A) \$2,000,000 Each Occurrence Limit;
- (B) \$4,000,000 General Aggregate\* Limit;
- (C) \$4,000,000 Products/Completed Operations Aggregate; and
- (D) \$2,000,000 Personal and Advertising Injury Limit.

\*Any aggregate noted must be reinstated annually. This requirement need not extend to the "Completed Operations" period.

(iii) Commercial General Liability limits are shared. The Insured Parties and all Enrolled Parties shall be named insureds on the Commercial General Liability

policies described above and will therefore share the limits specified above.

- (iv) The CIP shall provide coverage for any call-back or warranty work performed by Enrolled Parties for a period of two years. This coverage extension must be clearly confirmed in the policy to be provided.
- (v) Operations of an Enrolled Party off of the Covered Site, including product manufacturing or product assembly, shall be covered only if Concessionaire and Owner both agree to coverage, and only if all such operations are: (1) solely dedicated to the performance of the Work; (2) approved in writing by Owner; and, (3) coverage thereof has been approved by the Insurer. It is the sole responsibility of Concessionaire to secure coverage for specified operations off of the Covered Site.

**(c) Excess Liability**

Concessionaire shall procure, or cause to be procured, the following Excess Liability insurance coverage for the benefit of each Enrolled Party and the Insured Parties pursuant to the CIP:

- (i) Excess Liability coverage with limits of not less than:
  - (A) \$150,000,000 per occurrence and in the aggregate; and
  - (B) \$150,000,000 Products/Completed Operations in the aggregate.
- (ii) Excess Liability coverage shall be provided with respect to the coverages described in Sections 1.2(a) and 1.2(b) of this Part A(I). The total limit of liability is per occurrence and in the aggregate regardless of the number of insureds under the policy.
- (iii) Completed Operations coverage for ten years from the O&M Commencement Date.
- (iv) The first \$25,000,000 must be annual renewable aggregates, with additional coverage purchased as described above to allow for an unimpaired limit of the remainder of the Excess Liability coverage.
- (v) This Excess Liability coverage shall list CSX Transportation, Inc. as an additional insured and waive subrogation against CSX Transportation, Inc.

In addition to procuring the Commercial General Liability and Excess Liability Insurance Policies required by the Contract Documents, Concessionaire shall procure, or cause to be procured additional Excess Liability insurance coverage, from an Eligible Insurer, insuring Owner, naming Owner as the sole insured and otherwise not insuring any other Person ("Additional Excess Liability"). Limits of \$350,000,000 per occurrence and in the aggregate and \$350,000,000 Products/Completed Operations in the aggregate shall apply to the Additional Excess Liability policy. The Additional Excess Liability policy shall be excess coverage to the CIP insurance coverages and the \$150,000,000 CIP Excess Liability coverage. In all other respects, the Additional Excess Liability policy shall comply with the requirements in the Contract Documents

applicable to the Excess Liability insurance referenced in paragraphs (ii) through (iv) of this Section 1.2(c). Permission is granted for quota share limits in the placement of the Additional Excess Liability limits in order to afford Owner the most efficient cost structure for these limits, so long as participants are Eligible Insurers and all shared policy terms otherwise conform to the requirements specified in the immediately preceding sentence. Notwithstanding the foregoing or anything to the contrary herein, Owner reserves the right, in its sole and exclusive discretion, to elect at any time to place such Additional Excess Liability coverage and, in the event Owner elects to do so, Concessionaire shall not place the Additional Excess Liability coverage nor receive any payment or reimbursement of any kind for or in relation to any Additional Excess Liability coverage not already finally and irrevocably placed, and not subject to cancellation, at the time of Owner's election.

### **1.3. Contractor Furnished Insurance - Non-Enrolled Contractors; Insurance Prior to Financial Close**

If Owner authorizes Concessionaire to proceed with elements of the D&C Work during the period after Commercial Close and prior to Financial Close by limited NTP under Section 7.4.3 of the Agreement, then with respect to any such D&C Work authorized during such period and in addition to any insurance required by other property owners as a condition to entry onto their property, the Design-Build Contractor or another Person selected by Concessionaire and acceptable to Owner shall provide worker's compensation, employer's liability and commercial general liability insurance in an amount not less than \$25,000,000 each occurrence or in the aggregate in excess of any additional valid and collectible insurance, if any, placed by Contractors performing Construction Work and not enrolled in the CIP. These limits must be project-specific and may be established through coverages afforded through the CIP or through a combination of umbrella or excess policies that may be used to achieve the required policy limit. This requirement is extended only to provide coverage for non-CIP-enrolled Contractors performing Construction Work. The obligation to place worker's compensation insurance under this Section 1.3 excludes an obligation to place, or cause to be placed, worker's compensation insurance for, or covering, the Lead Design Firm, if applicable.

The terms of such coverage must be as broad as the coverage specified in Sections 1.2(a) and 1.2(b) of this Part A(I) and must name the Insured Parties and all Concessionaire parties as an additional insured with coverage at least as broad as ISO forms CG 2010 and CG 2037. If any blanket additional insured endorsement is used it must be ISO form CG 2038.

Notwithstanding the foregoing, if Owner authorizes Concessionaire to proceed with elements of the D&C Work during the period after Commercial Close and prior to Financial Close by limited NTP under Section 7.4.3 of the Agreement, for field activities but excluding Construction Work, , then in addition to any insurance required by other property owners as a condition to entry onto their property, Concessionaire shall maintain, or cause to be maintained, and shall ensure that all Contractors performing Work involving entry onto the Project ROW or other property owned by Owner maintain, whether by separate insurance policies or under existing corporate insurance programs or practice policies (with dedicated limits for the Project):

- (a) worker's compensation insurance meeting statutory requirements,
- (b) automobile liability insurance with minimum limits of \$2,000,000 combined single limit per accident for Bodily Injury and Property Damage,

- (c) commercial general liability insurance with limits of \$2,000,000 Each Occurrence; \$2,000,000 General Aggregate; and \$2,000,000 Products/Completed Operations Aggregate, and
- (d) excess liability insurance with a minimum occurrence and aggregate limit of \$5,000,000.

In addition, if any Design Work will be performed during said period, evidence of professional liability coverage (whether by separate insurance policies or under existing corporate insurance programs or practice policies (with dedicated limits for the Project) with limits of at least \$5 million per claim and aggregate shall be provided for the prime Design Contractor. Owner may prescribe additional coverage based upon the scope of work under any limited release/notice to proceed or otherwise. Concessionaire shall provide evidence of insurance and endorsements with respect to such coverages as reasonably requested by Owner. The foregoing limits and policies must otherwise comply substantively with the requirements for the corresponding policies required to be in place at and after Financial Close (including ensuring the Insured Parties' status as named insureds).

The foregoing insurance shall waive subrogation against CSX Transportation, Inc.

## **2. Additional Concessionaire Procured Insurance for D&C Work**

In addition to the CIP, Concessionaire shall procure, or cause to be procured, insurance coverage for the D&C Work as described below:

### **2.1. Professional Liability Insurance**

Concessionaire shall provide or, from and after Financial Close, cause the Lead Design Firm to provide, Project Professional Insurance coverage that covers all architects, engineers and other professionals performing Design Work or other professional services, with a per claim limit of \$50,000,000 per claim/\$50,000,000 aggregate. When placed, to the extent commercially available, the policy shall have a term, including an extended reporting period, equal to the greater of (a) the Maryland statute of repose applicable to services by design professionals or (b) 10 years following the O&M Commencement Date. If the foregoing term is not commercially available when the Insurance Policy is placed, the initial term shall be the longest commercially available term, in no case less than 10 years. Thereafter, before expiration of the Insurance Policy, Concessionaire shall extend coverage such that a project-specific policy continues in effect, equivalent to the protection provided by the initial policy, or may instead require design professionals performing Design Work or other professional services to include the Project in their practice policies, ensuring that coverage is in effect for all such professionals for no less than the greater of (a) 10 years following the O&M Commencement Date and (b) the Maryland statute of repose applicable to services by design professionals. If practice policies are used to satisfy the extended reporting period described in the previous sentence, the policies covering professional liability for prime design Contractors (that is, Contractors with a direct contract either with Concessionaire or the Design-Build Contractor) must have limits of no less than \$10,000,000 per claim/\$10,000,000 aggregate, or otherwise as agreed, in writing and in advance, by Owner. With respect to Subcontractors to any prime design Contractor, Concessionaire shall have sole responsibility for determining the limits of coverage required to

be provided, which determination shall be made in accordance with reasonable and prudent business practices.

With respect to each policy provided under this Section 2.1, insurance responsive to these requirements shall have a continuity date (that is, retroactive date) no later than the date of Commercial Close with no exclusion for prior acts applying to any pre-award professional services provided by any insured, retroactive to the first date any such work was performed.

With respect to each policy provided under this Section 2.1, the policy shall not have deductibles/SIRs in excess of \$5,000,000 per claim.

This Section 2.1 does not require Concessionaire to obtain Project Professional Insurance coverage insuring the LRV Supplier or manufacturer of the LRVs for professional errors or omissions.

## **2.2. Contractor Pollution Liability (CPL) Insurance**

Contractor Pollution Liability Insurance for claims arising out of pollution conditions released by, transported by, disposed of by, or resulting from or exacerbated by the operations of Concessionaire (including the exacerbation of conditions already present), Design-Build Contractor and Contractors performing Construction Work or Design Work, naming the Insured Parties, Concessionaire, the Design-Build Contractor and the Contractors performing Construction Work or Design Work as named insureds with limits of not less than U.S. \$50,000,000 per claim and in the aggregate.

Contractor's Pollution Liability Insurance shall cover pollutants, on or off-site, including during transportation and disposal at non-owned locations, and covering cleanup-costs, natural resource damages, bodily injury and property damage that arise in the course of construction during the Design-Build Period.

The term of the policy (including any renewals thereof) shall be no less than ten years and shall be primary for any claim that arises from the exacerbation of conditions already present.

## **2.3. Builder's Risk Insurance**

- (a) Builder's Risk Insurance on an "All-Risk" completed value basis including permanent and temporary works, track and roadbed, overhead infrastructure and the cost of any tunnel, Station, signaling including excavation to repair the Work with a direct damage limit amount not less than the \$250,000,000 any one occurrence (no aggregate except as noted below). This is in addition to a \$100,000,000 soft cost per occurrence loss limit, unless Owner approves a reduced limit based on a maximum probable loss study as described on page 1 of this Exhibit 7A. Builder's Risk Insurance need not cover risk with respect to Rolling Stock, to the extent that this risk is covered under the insurance prescriptions under Section 2.6 of this Part A.
- (b) The general definition of Covered Property must include any element of the Project and/or the Work within 2,500 feet of the Covered Site including property that is in Concessionaire's care, custody and control and used in or in connection with or otherwise incidental to the Work

- Buildings and other structures being constructed.
  - All fixtures, materials, supplies, machinery, and equipment that are intended to become part of the Project while on or adjacent to the Covered Site.
  - Temporary structures and temporary buildings.
  - Cost of excavation, site works, site preparation, grading and filling.
  - Underground pipes, flues or drains and other underground work; All permanent, temporary works, preliminary works and demolition works constructed or in the course of construction, including materials, goods, parts, excavations, spare parts, inventory, consumables and all other things, equipment of whatsoever nature used for or intended to be used in the project.
  - Any paved surfaces including foundations, pilings and retaining walls.
- (c) The Builder's Risk Policy must name the Insured Parties and Concessionaire as named insureds and include all Contractors performing Construction Work as named insureds.
- (i) The policy must contain affirmative waivers of subrogation against any insured party and contain a separation of insureds clause.
  - (ii) There can be no Lender endorsements that would encumber or direct any Insurance proceeds for any other purpose other than reinstatement of the Assets insured and/or to indemnify Concessionaire or Owner for any soft costs or Consequential Loss sustained due to a direct property loss.
  - (iii) Any policy provided must be in a form acceptable to Owner and provide endorsements and limits that include, at a minimum, the extensions noted below.
- (d) Terms of the Builder's Risk must include: in accordance with the terms of the relevant policy, which policy shall include a LEG 3/06 Defects Exclusion. The policy shall provide full limits for mechanical breakdown.
- (e) There can be no restriction of limits for any "unintentional errors or omissions" (as such term is commonly used in the insurance industry) and any coverage-dependent warranties must be specifically noted and approved, in advance, by Owner.
- (f) The policy must expressly allow for a 6 month term extension at a pre-determined rate that the insured party/ies can exercise if the Project is delayed for any reason and an automatic 6 month extension if there is a single loss under the policy in excess of \$25,000,000 or combination of losses that total \$50,000,000. Except where specific relief is otherwise afforded under the Agreement (for Relief Events, Force Majeure Events or otherwise), Concessionaire shall bear all price changes caused by a delay.
- (g) The following sublimits are the minimum acceptable to Owner:

- \$100,000,000 Earthquake per Occurrence and Annual Aggregate Limit with deductibles of not greater than \$1,000,000;
  - \$100,000,000 Flood per Occurrence and Annual Aggregate Limit including excess coverage for any High Hazard zones with deductibles of not greater than \$1,000,000;
  - Policy shall permit both hot and cold testing;
  - \$25,000,000 for any material in transit or in temporary storage (off the Covered Site);
  - \$25,000,000 debris removal on an occurrence basis;
  - \$25,000,000 expediting expense on an occurrence basis;
  - \$2,500,000 Inventory, Appraisal & Loss Adjustment Expenses per Occurrence Limit;
  - \$25,000,000 Ordinance or Law per Occurrence Limit;
  - \$1,000,000 Pollutant Clean-up/Removal per Occurrence Limit; and
  - \$2,500,000 Valuable Papers & Records per Occurrence Limit.
  - Owner may allow sublimits (whether by monetary value or percentage of construction value) with respect to Work relating to tunneling, in Owner's discretion.
- (h) The policy must expressly cover losses and costs associated with operation of Laws with respect to the construction or repair of buildings or replacement of equipment which are in force at the time of loss and necessitate the demolition or removal of any portion of the insured property not damaged by insured perils.
- (i) The policy must expressly cover losses and costs associated with professional fees including legal and accounting (including bookkeeping) services to facilitate the expeditious repair or replacement of covered property from a covered loss or to assist the Insured in preparing records or evidence to substantiate the loss claimed.
- (j) The policy must expressly cover the broadest, commercially-available definitions of "losses," "costs" "charges" and "fees" (including "soft costs") incurred by the Insured for any Delay in Start Up (DSU) resulting from a covered cause of loss.
- (k) Soft costs included under the Builder's Risk Insurance shall be in an amount not less than the yearly soft cost on a per occurrence Limit. The definition of soft costs in the policy must include the following:
- Fees for any additional financing or refinancing, and costs to obtain additional bonds, letters of credit that may be required;
  - Design fees including additional fees for architects, engineers, consultants and other technical advisors, and engineers, including construction management fees;

- Permit fees arising out of a covered loss that the insured party incurs to renew or replace permits or other licenses necessary to continue construction;
- Additional commissions, professional fees, general fees and administrative expenses incurred as a result of a necessary negotiation or renegotiation of a loan, lease or leases;
- Additional interest expenses on any loans that are applicable to the Project including construction loans, loan origination fees or points, or any other money borrowed in the course of construction; and
- All additional insurance premiums including surety bonds in excess of what was incurred or purchased and any premiums, costs, charges or fees incurred by the insured due to a necessary extension to the Casualty Insurance Program resulting from a covered loss before a covered loss.

Alternatively, any of the items listed above as “soft costs” may be covered under the Builder’s Risk direct damage limit.

- (l) Delay In Startup (DSU) under the Builder’s Risk Insurance Soft Costs extension, with a minimum, separate limit of no less than 12 months, in an amount to be included in the Soft Costs Loss Limit on a per occurrence limit for the benefit of Concessionaire.
- (m) The policy may not exclude or restrict coverage with respect to terrorism. Concessionaire may, however, place a separate terrorism risk Insurance Policy with Owner’s prior, written consent, given in its sole discretion; if approved, Concessionaire’s Builder’s Risk Insurance Policy may exclude or restrict terrorism risk, so long as such terrorism risk Insurance Policy is placed and in effect.

## **2.4. Flood Insurance**

If applicable, to comply with Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area (A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AO, AR/AH, AR/A, VO, V1-30, VE, V, Shaded X) to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more. Flood coverage meeting these specifications may be provided under the Builder’s Risk policy.

## **2.5. Railroad Protective Liability Insurance**

Concessionaire shall procure, or cause to be procured, and maintain policies of Railroad Protective Liability coverage, which shall be for the sole benefit of CSX Transportation, Inc.. The Railroad Protective Liability coverage shall be (i) primary to the Commercial General Liability (and Excess Liability) policies placed in accordance with Sections 1.2(b) and (c) of this Part A and (ii) in an amount of not less than \$5,000,000 per occurrence combined single limit and \$10,000,000 annual aggregate. The Railroad Protective Liability coverage shall insure losses arising out of injury to or death of persons and physical loss of, damage to or destruction of property, including loss of use thereof. Coverage shall be provided in accordance with standard Railroad Protective policies (CG 0035). All insurers shall be authorized to do business



in the State. Railroad Protective Liability coverage satisfying all of the requirements of this Section 2.5 (including those set forth below) need not satisfy any other requirements for insurance under the Contract Documents.

The Railroad Protective Liability insurance shall satisfy each and all of the following requirements:

- (a) The Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
- (b) CSX Transportation, Inc. must be the named insured on the Railroad Protective Liability Insurance Policy. The named insured should be listed as:

CSX Transportation, Inc. ("CSXT")  
500 Water Street, C-907  
Jacksonville, FL 32202

- (c) The name and address of Concessionaire and of Owner must be shown on the Declarations page.
- (d) A description of operations and location must appear on the Declarations page.
- (e) Notwithstanding anything herein to the contrary, Terrorism Risk Insurance Act (TRIA) coverage must be included in the Railroad Protective Liability coverage.
- (f) Authorized endorsements must include:
  - (1) Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.
- (g) Authorized endorsements may include:
  - (1) Broad Form Nuclear Exclusion - IL 00 21
  - (2) Notice of Non-renewal or cancellation
  - (3) Required State Cancellation Endorsement
  - (4) Quick Reference or Index - CL/IL 240
- (h) Endorsements may not include any of the following:
  - (1) A Pollution Exclusion Endorsement except CG 28 31
  - (2) An endorsement that excludes TRIA coverage
  - (3) An endorsement that limits or excludes Professional Liability coverage
  - (4) A Non-Cumulation of Liability or Pyramiding of Limits Endorsement

- (5) A Known Injury Endorsement
  - (6) A Sole Agent Endorsement
  - (7) A Punitive or Exemplary Damages Exclusion
  - (8) "Common Policy Conditions" Endorsement
  - (9) Policies that contain any type of deductible
- (i) All insurance companies providing this insurance must be A. M. Best rated A- and Class VII or better.
- (j) Concessionaire shall submit the complete Railroad Protective Liability policy, certificates of insurance and all notices and correspondence regarding the insurance policies in an electronic format to Owner, under the notice provisions of the Agreement, and to CSX Transportation, Inc. at: [insurancedocuments@csx.com](mailto:insurancedocuments@csx.com).

Concessionaire may not begin work on or about CSX Transportation, Inc. property until written approval of the required insurance has been received from CSX Transportation, Inc. or its insurance compliance vendor, Ebix.

## **2.6. Marine Cargo/Insurance for LRVs and LRV Equipment**

Concessionaire shall procure or cause to be procured full replacement cost coverage for the LRVs and LRV Equipment, from the time the risk of loss for that LRV or item of LRV Equipment attaches or passes, whether in whole or in part, to Owner, Concessionaire or any other Insured Party (regardless of whether this occurs prior to delivery to any Covered Site or at Project-Specific Locations) until the O&M Commencement Date. Coverage shall be continuous and uninterrupted for each LRV or item of LRV Equipment from the time the risk of loss attaches or passes, whether in whole or in part, to Owner, Concessionaire or any other Insured Party (regardless of whether this occurs prior to delivery to any Covered Site or at Project-Specific Locations) until the O&M Commencement Date.

Such coverage shall be under an acceptable property or marine policy that provides all-risk insurance including coverage for systems performance demonstration, testing, run-up or other similar operations at the Covered Site, in transit or at locations other than the Covered Site including Project-Specific Locations. There shall be no geographical limitation of scope other than provided under OFAC regulations of the United States.

Such coverage shall afford all extensions of coverage that are commercially available, including Flood, Earthquake, Law and Ordinance and other coverage extensions specified under this Section 2.6. Concessionaire's insurance shall allow for a minimum of 12 months of Delay in Start Up coverage due to a covered cause of loss interrupting the delivery of any LRVs or LRV Equipment from the time the risk of loss attaches or passes, whether in whole or in part, to Owner, Concessionaire or any other Insured Party.

All Insurance Policies specified under this Part A shall insure as named insureds (and not additional insureds): the Insured Parties, Concessionaire, the Design-Build Contractor and

Subcontractors under the Design-Build Contract, the LRV Supplier and its Subcontractors, any other Enrolled Parties, the Lenders and, subject to Owner's prior written approval, others nominated by Concessionaire. The policy shall contain waiver of subrogation and separation of insureds clause in the event of a breach in policy terms by an insured. No acts or omissions of an insured shall cancel or diminish coverage of any other insureds.

- (a) Such policy shall provide the following minimum limits:
- Any Storage Endorsement shall include coverage on a "All-Risk" value basis for all LRVs and LRV Equipment in an amount not less than the \$100,000,000 any one occurrence (no aggregate except as noted below); such limit may be met with a combination of primary and excess limits;
  - \$25,000,000 sublimit for any property in transit, expediting expenses; and
  - \$50,000,000 sublimit for flood and earthquake (aggregate permitted).
- (b) Developer may place insurance under both Section 2.3 and this Section 2.6 for coverages relating to testing and off-site locations, with Owner's prior, written approval.

## **2.7. Commercial Automobile Liability Insurance**

Commercial Automobile Liability Insurance for bodily injury (including death) and property damage with limits of liability of not less than (i) \$20,000,000 combined (Primary Auto and Umbrella) single limit per occurrence applicable for all owned, non-owned and hired vehicles and (ii) \$10,000,000 per occurrence of Transport of Hazardous Materials including Hazardous Waste coverage applicable for all owned, non-owned and hired vehicles engaged in activities that may customarily be covered by such a policy. This coverage requirement shall apply to Concessionaire and the Design-Build Contractor. The \$20,000,000 of Automobile Liability can be met with a combination of Primary and Excess policies. This coverage shall list CSX Transportation, Inc. as an additional insured and waive subrogation against CSX Transportation, Inc.

## **3. General Requirements**

- (a) All insurances secured per this Exhibit 7A (*Required Insurance*) shall be primary and non-contributing with any other insurance, as required. The insurance limits may be provided through a combination of primary and excess policies. Other than the CIP requirement, and subject to review and written approval by Owner, the remainder of the insurance required herein may be provided in any combination of policies that provides the requested coverage, limits and otherwise satisfies the specified requirements.
- (b) Any excess policies must contain specific "broad as primary" or "follow-form" wording or specifically reference the terms, conditions and exclusions of the primary policy. Alternatively, if it is not possible to comply with the foregoing requirements, Concessionaire shall provide information to Owner allowing it to verify that the forms in the excess policies are not materially different from the forms in the corresponding primary policy. Any policy where multiple insurers share in the limits afforded must do so in a subscription policy format; multiple Insurance Policies covering a part of the

same limit (commonly referred to as quota share) is not permitted.

- (c) All Insurance Policies in Sections 1 and 2 (except Sections 2.4, 2.6 and 2.7) are to be written on a Project-specific basis. All Insurance Policies in Sections 1 and 2 (except Section 1.2(a), 2.4, 2.6, 2.7 and those insurances procured prior to Financial Close under Section 1.3 of this Part A) shall be written with non-cancellable endorsements, as described in Section 11.1.2.8 of the Agreement.
- (d) All insurances must be taken out with Eligible Insurers, Surplus Lines Insurers or with Insurers approved in writing by Owner.
- (e) All policies covering more than one insured (except Worker's Compensation/Employer's Liability and Professional Liability) must contain a separation of insureds clause, unless all of the insureds are directly affiliated with each other through common ownership and management.
- (f) All policies must contain affirmative waivers of subrogation, where applicable, against any Insured Party and, except as otherwise provided in Section 11.1.2.7 of the Agreement and in clause (e) just above, if there is more than one insured under the Insurance Policy in question, must contain a separation of insureds clause; no named insured can void or impair coverage for any other named insured.
- (g) All policies must provide that coverage will not be delayed or denied for allegedly late notice or reporting unless the insurance company proves that it is actually and materially prejudiced by the late notice, and in such case coverage may only be delayed or denied to the extent of such actual and material prejudice.
- (h) All Insurance Policies shall acknowledge Owner's, and certain Governmental Entities', rights with respect to its defense counsel under Section 11.1.2.8(d) of the Agreement,
- (i) All Insurance Policies shall be governed or authorized by Maryland law and any coverage or other disputes shall be subject to exclusive jurisdiction in the federal or state courts of the State of Maryland.
- (j) As a contract matter between Owner and Concessionaire (and not as a requirement within Insurance Policies), no changes to any policy shall be permitted without the approval of Owner, which it may grant, deny or condition in its discretion. Notices of enrollment of insureds are not considered "changes to any policy" for purposes of this paragraph.
- (k) Insurers shall provide all information reasonably requested by Owner, including at a minimum annual loss runs and loss reports.
- (l) All insurance prescribed under this Exhibit 7A (*Required Insurance*) shall be endorsed to affirm that (i) it is primary and no insurance or self-insurance of Owner, its officers, representatives, agents or employees will be called upon to contribute to a loss and (ii) project-specific coverage is primary to any other coverage available to any insured in the Project's insurance program.

## **PART B – INSURANCES FOR O&M WORK**

### **1. Required Insurances**

Throughout the O&M Period, Concessionaire shall procure and maintain, and/or shall ensure that all Contractors performing O&M Work procure and maintain, the insurances specified in this Section 1. This obligation includes placements required for any Construction Work conducted after commencement of the O&M Period.

Concessionaire shall provide copies of specimen Insurance Policies and all endorsements thereto that conform to all the terms specified herein to Owner at least 25 business days prior to the date the insurance is required to be in force and effect for review by Owner. Thereafter, binders, with copies of all Insurance Policy forms and endorsements attached, shall be provided on or within 10 calendar days prior to binding and in all cases prior to the date the insurance is required to be in force and effect and prior to renewal (if the insurance is a renewal). Thereafter, Concessionaire shall provide true and certified signed copies of all Insurance Policies and all endorsements, as placed, to Owner as soon as reasonably possible and, in any case, no later than 60 days after the insurance is required to be in full force and effect.

Concessionaire shall be a named insured on all Insurance Policies procured in accordance with this Section 1 (with the exceptions of Worker's Compensation, Commercial Automobile Liability, Professional Liability and Railroad Protective Liability Insurance Policies), without any insured versus insured or cross-liability exclusion, and the Insured Parties shall be named as an additional insureds for any ongoing or completed operations under such policies. Concessionaire shall be added as an additional insured on the Commercial Automobile Liability Policy.

All Insurance Policies procured in accordance with this Part B shall include a waiver of subrogation in favor of Owner and Concessionaire, including each of their directors, officers, representatives and agents.

#### **1.1. General Liability Insurance**

- (a) General Liability Insurance to cover operations under the Agreement with limits not less than \$150,000,000 (or such other limit as may be established by applicable Law. Any deductible or self-insured retention may not exceed \$5,000,000 per claim/incident and \$20,000,000 in the aggregate.
- (b) Policy form or endorsements shall include coverages for (i) Pollution Liability (unless provided in the stand-alone policy at the policy limits required under this Section 1.1 pursuant to the policy placement obligation under Section 1.6 below); (ii) Incidental Medical Malpractice Liability; (iii) Terrorism coverage for a Certified or a Non-Certified Terrorism Event covering Losses resulting from third-party claims, except that no such coverage is required for a Certified or Non-Certified Terrorism Event involving the release of pollutants, radiation or other regulated substances. A combination of one or more policies specified herein and one or more "stand-alone" Terrorism Insurance Policies is acceptable to satisfy this obligation.

## **1.2. Worker's Compensation and Employer's Liability Insurance**

Statutory Worker's Compensation and Employer's Liability Insurance with limits of not less than \$150,000,000 combinable with Primary and Excess insurance per incident for all employees engaged in services or operations under the Agreement. The policy shall include Broad Form All States/Other States coverage. FELA coverage shall be provided as applicable and coordinated with requirements in the General Liability Insurance coverage above.

## **1.3. Commercial Automobile Liability Insurance**

Commercial Automobile Liability Insurance for bodily injury (including death) and property damage with limits of liability of not less than \$20,000,000 combinable with Primary and Excess insurance combined single limit per occurrence applicable for all owned, non-owned and hired vehicles.

## **1.4. Property Insurance**

All Risk Property Insurance (or Marine/Cargo on an all risk basis) for all Project assets including Stations, track and roadbed, LRVs, LRV Equipment, overhead rail infrastructure, signaling and related property of Owner or Concessionaire that is part of the Project. The coverage shall insure the full replacement costs of the Project elements and have a minimum loss limit of \$250,000,000 for any one occurrence (no aggregates except as noted below) unless Owner approves a reduced limit based on a maximum probable loss study as described on page 1 of this Exhibit 7A. If Owner approves, the parties will execute a Change Order to account for the reduced premium based upon such reduced policy limit as a reduction in the costs of the Work under Section 14.6.2 of the Agreement. The coverage shall afford all extensions of coverage including Flood, Earthquake, Law and Ordinance, etc.

Concessionaire's insurance shall allow for at least 12 months of Business Interruption and extra expense with a minimum loss limit of \$120,000,000 for any one occurrence, unless Owner approves by Change Order a reduced limit or shorter period based on a maximum probable loss study as described on page 1 of this Exhibit 7A. If Owner approves, the parties will execute a Change Order to account for the reduced premium based upon such reduced policy limit under Section 14.6.2 of the Agreement. This policy shall be subject to a deductible not to exceed \$1,000,000 applicable to each and every occurrence for which coverage applies unless otherwise approved by Owner. The intent of the parties with respect to the Business Interruption coverage is, to the extent any claim is made due to a Relief Event, Concessionaire looks first to the Business Interruption Insurance Policy and then to Owner for relief, if any, under the terms of the Agreement.

- (a) The general definition of "Covered Property" under the policy must include any property of the insured within 2,500 feet of the Covered Site including property that is in Concessionaire's care, custody and control and used in or in connection with or otherwise incidental to the Work
- (b) Flood and Earthquake minimum sublimit acceptable \$100,000,000 per claim and in the aggregate applying separately.
- (c) The policy shall not have any other sublimits of insurance less than those specified for

the Builder's Risk Insurance Policy in Part A, Section 2.3 above, without notification to and approval of Owner. Owner may allow sublimits with respect to any tunnel, in Owner's discretion.

- (d) The All Risk Property Insurance Policy (or Marine/Cargo on an all risk basis) must name the Insured Parties and Concessionaire as named insureds.
  - (i) The policy must contain affirmative waivers of subrogation against any Owner and contain a separation of insureds clause. No acts or omissions of an insured shall cancel or diminish coverage of any other insureds.
  - (ii) There can be no Lender endorsements that would encumber or direct any insurance proceeds for any other purpose other than reinstatement of the assets insured and/or to indemnify Concessionaire or Owner for any Business Income/Extra Expense or Consequential Loss sustained due to a direct property loss. This clause does not prohibit standard Lenders Loss Payable Endorsements that reflect Lender's interest in the covered property and do not restrict any rights to reinstate the covered property or divert or encumber insurance proceeds in violation of the preceding sentence.
  - (iii) Any policy provided must be in a form acceptable to Owner and provide endorsements and limits that are approved by Owner.

#### **1.5. Professional Liability Insurance**

Any design professionals performing Design Work during the O&M Period must provide professional liability insurance coverage with limits of \$10,000,000 or otherwise as agreed by Owner.

#### **1.6. Operators Pollution Liability Insurance**

Concessionaire shall procure or cause to be procured Operators Pollution Liability Insurance for claims arising out of the operations of Concessionaire and any related parties during the O&M Period naming the Insured Parties as named insureds, subject to policy provisions and with limits of not less than \$50,000,000 per claim and in the aggregate.

Such coverage shall apply to any unknown or new pollutants, on or off-site, including during transportation and disposal, and covering cleanup-costs, natural resource damages, bodily injury and property damage) during the O&M Period with deductible limited to \$500,000 per claim maximum. Such coverage shall not include pre-existing conditions, unless exacerbated by any Concessionaire-Related Entity.

#### **1.7. Crime Insurance**

Concessionaire shall procure or cause to be procured crime insurance with an annual limit of a minimum of \$5,000,000. The management of the fare collection, including the handling of ticket media, cash and credit, shall include but not be limited to: employee dishonesty coverage; forgery or alteration coverage; computer fraud coverage; funds transfer fraud coverage; money and securities coverage; and money orders and counterfeit money coverage.

Such cover shall contain endorsements applying to any loss to third parties and include each director, officer, employee or agent of Concessionaire, the O&M Contractor-and each other Contractor involved with fare collection. The maximum permissible deductible shall be \$25,000.

#### **1.8. Cyber Insurance**

Concessionaire shall procure or cause to be procured insurance with a minimum annual limit of \$25,000,000 for any Security Breach, including privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security, including any act or omission that compromises either the security, confidentiality or integrity of personal information in Concessionaire's care, custody or control, or for which Concessionaire is responsible under this Agreement, or the physical, technical, administrative or organizational safeguards put in place by Concessionaire or its authorized personnel that relate to the protection of the security, confidentiality or integrity of Personal Information.

Such coverage shall apply for each director, officer, employee or agent of Concessionaire, the O&M Contractor and each other Contractor involved with fare collection as required under the Agreement. The maximum permissible deductible shall be \$1,000,000.

#### **1.9. Railroad Protective Liability Insurance**

Concessionaire shall procure, or cause to be procured, and maintain policies of Railroad Protective Liability coverage, which shall be for the sole benefit of CSX Transportation, Inc. The Railroad Protective Liability coverage shall be (i) primary to the Commercial General Liability policy placed in accordance with Section 1.1 of this Part B and (ii) in an amount of not less than \$5,000,000 per occurrence combined single limit and \$10,000,000 annual aggregate. The Railroad Protective Liability coverage shall insure losses arising out of injury to or death of persons and from physical loss of, damage to or destruction of property, including loss of use thereof. Coverage shall be provided in accordance with standard Railroad Protective policies (CG 0035). In addition to the foregoing, this Railroad Protective Liability coverage shall meet and satisfy each and all of the other requirements contained in Part A, Section 2.5, which are incorporated by reference into this Section 1.9, as though set forth in full herein. All insurers issuing this coverage shall be authorized to do business in the State. Railroad Protective Liability coverage satisfying all of the requirements of this Section 1.9 and of Section 2.5 of Part A hereof need not satisfy any other requirements for insurance in the Contract Documents.



**EXHIBIT 7B**

**TABLE OF BASE RELEVANT INSURANCE COSTS**

Insurance Line	Base Relevant Insurance Cost
<b>O&amp;M Period Insurance Policy</b>	
General Liability	\$1,336,137.00
Worker's Compensation and Employer's Liability	\$949,100.00
Auto	\$33,000.00
Property	\$2,130,653.00
Operators Pollution	\$253,895.00
Crime	\$31,500.00
Cyber	\$275,010.00
Railroad Protective Liability	\$133,900.00
Terrorism Insurance	\$77,250.00
<b>Total Annual O&amp;M Period Insurance Cost</b>	<b>\$5,220,445.00</b>

## **EXHIBIT 8**

### **OWNER-PROVIDED APPROVALS**

#### **Owner Provided Approvals**

1. Final Environmental Impact Statement/ Section 4(f) Evaluation (FEIS), dated August 28, 2013
2. Federal Transit Administration Purple Line Record of Decision, dated March 19, 2014
3. National Park Service Purple Line Record of Decision, dated July 16, 2014 (the "NPS ROD")
4. NPS Special Use Permit
5. Section 106 Programmatic Agreement, executed March 14, 2014
6. Maryland Department of Natural Resources, Department of Forestry, Forest Stand Delineation Approval, FCP #S14-07, dated May 05, 2014
7. Formal USACE Jurisdictional Determination, dated February 24, 2014
8. Plymouth Tunnel Discharge Permit (14-DP-3818), dated effective June 1, 2015
9. Conceptual approval by Montgomery County, WMATA and the Maryland-National Capital Park and Planning Commission (Montgomery County) with respect to the Silver Spring ATC Work
10. Revision to Owner-Provided Approval 1, 2 or 3 required for the Silver Spring ATC Work, except to the extent that (i) any such revision arose out of (A) any breach of contract by a Concessionaire-Related Entity, (B) any act or omission by a Concessionaire-Related Entity that is inconsistent with the Contract Documents or Governmental Approvals, or (C) any negligence, recklessness, willful misconduct, fraud or violation of Laws by any Concessionaire-Related Entity, or (ii) the need for the revision could reasonably have been avoided by Concessionaire or Design-Builder.

**EXHIBIT 9**

**PROPERTY ACQUISITION SCHEDULE**

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
1	02312	59197	7316 Wisconsin Avenue	
1	02253	59200	4332 Montgomery Avenue	
1	01390	59200	4400 Montgomery Avenue	
1	01376	59200	4330 Montgomery Avenue	
1	01377	59205	8505 Connecticut Avenue	
1	02311	59197	Elm Street Public ROW	
1	02076	59198	7272 Wisconsin Avenue	
1	01393	59199	Elm Street	
1	01371	59202	7112 Edgevale Street	
1	01372	59200	4328 Montgomery Avenue	
1	01379	59201	4306 Montgomery Avenue	
1	01380	59201	4308 Montgomery Avenue	
1	01381	59201	4314 Montgomery Avenue	
1	02128	59202	7919 Kentbury Drive	
1	01382	59207	3308 Jones Bridge Road	
1	01384	59207	3300 Jones Bridge Road	
1	01386	59207	8616 Jones Mill Road	
1	01400	59200 to 59207	Georgetown Branch Trail	
1	01388	59207	3310 Jones Bridge Road	
1	01389	59199	4600 Elm Street	
1	01391	59204	Connecticut Avenue	
1	01392	59200	Wisconsin Avenue	
1	02131	59199	Woodmont Avenue	
1	01399	59201	4300 Montgomery Avenue	
1	02306	59198	Elm Street	
1	02316	59198	Wisconsin Avenue ROW	
1	02080	59199	4550 Montgomery Avenue	
1	02077	59199	7313 Wisconsin Avenue	
1	01394	59203, 59204	7900 Connecticut Avenue	
1	01365	59200	4324 Montgomery Avenue	
1	02127	59202	7913 Kentbury Drive	
1	02277	59202	7114 Edgevale Street	
1	02278	59207	Coquelin Parkway Public ROW	
1	02317	59199	Georgetown Branch ROW	
1	59199	59199	Georgetown Branch ROW	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
2	01406	59210	2823 Terrace Drive	
2	01407	59210	8551 Grubb Road	
2	01408	59211	2501 Lyttonsville Road	
2	01404	59211	8800 Brookville Road	
2	01405	59210, 59211	8710 Brookville Road	
2	02132	59211	Brookville Road	
2	01409	59211	Brookville Road	
2	01366	59208	W. Coquelin Terrace	
2	01370	59208	8701 Susanna Lane	
2	02315	59208	Jones Mill Road	
2	02267	59210	Brookville Road Public ROW (1)	
2	02268	59210	Brookville Road	
2	02313	59208	8709 Susanna Lane	
3	01413	59213 to 59216	RAILROAD TRACKS	
3	01414	59217	8555 16th Street	
3	01415	59214	9000 Lanier Drive	
3	01416	59212	2445 Lyttonsville Road	
3	01417	59212	8909 Brookville Road	
3	01418	59218	1545 N Falkland Lane	
3	01419	59215, 59216	8600 16th Street	
3	01420	59215	1901 East West Highway	
3	01421	59213	9015 Brookville Road	
3	01422	59212	Stewart Avenue	
3	01427	59212	Brookville Road	
3	01429	59215	8484 16th Street	
3	01447	59220	8252 Georgia Ave	
3	01448	59214	2013 Grace Church Road	
3	01449	59213	9120 Talbot Avenue	
3	01452	59213	9130 Talbot Avenue	
3	01453	59214	2200 Michigan Avenue	
3	01454	59214	8906 Talbot Avenue	
3	01455	59213	2205 Kansas Avenue	
3	01456	59213	2217 Kansas Avenue	
3	01457	59214	8904 Talbot Avenue	
3	01458	59215	8813 Leonard Drive	
3	01459	59215	8815 Leonard Drive	
3	01460	59215	8810 Leonard Drive	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
3	01470	59214	8900 Talbot Avenue	
3	01471	59214	8902 Talbot Avenue	
3	01472	59219	1171 Bonifant Street	
3	01476	59218	8401 Colesville Road	
3	01477	59220	1110 Bonifant Street	
3	01480	59212	Brookville Road	
3	01481	59212	8951 Brookville Road	
3	01482	59213	2323 Stewart Avenue	
3	01483	59216 to 59219	8405 Colesville Road (Railroad Tracks)	
3	01484	59216, 59217	8627 16th Street	
3	01485	59217	16th Street	
3	01486	59218	1411 East West Highway	
3	02081	59213	2315 Stewart Avenue	
3	01411	59212	Georgetown Branch (Kansas)	
3	01424	59212	8717 Brookville Road	
3	01431	59219	Bonifant Street	
3	01437	59220	8402 Georgia Ave	
3	01440	59219	1160 Bonifant Street	
3	01443	59219	1055 Ripley Street	
3	01444	59219	1114 Bonifant Street	
3	01445	59219	1170 Bonifant Street	
3	01557	59220	8401 Georgia Avenue	
3	01580	59220	8315 Georgia Avenue	
3	02075	59214	Talbot Avenue	
3	02139	59220	1010 Wayne Avenue	
3	02245	59216	16th Street	
3	02248	59220	Bonifant Street	
3	02074	59214	2112 Hanover Street	
3	01425 / 01426	59212	8827 Brookville Road	
3	01442	59220	1100 Bonifant Street	
4	01493	59232	8619 Piney Branch Road	
4	01494	59232	8528 Piney Branch Road	
4	01495	59232	8550 Piney Branch Road	
4	01496	59231	8800 Garland Avenue	
4	01498	59230	8825 Arliss Street	
4	01499	59230	8750 Arliss Street	
4	01502	59233	8700 Barron Street	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
4	01504	59233	8680 Piney Branch Road	
4	01505	59233	Piney Branch Road	
4	01506	59233	8700 Piney Branch Road	
4	01507	59233	8700 Garland Avenue	
4	01508	59233	8714 Piney Branch Road	
4	01509	59233	8712 Piney Branch Road	
4	01510	59232	8547 Piney Branch Road	
4	01511	59232	8533 Piney Branch Road	
4	01512	59232	8533 Piney Branch Road	
4	01513	59232	8533 Piney Branch Road	
4	01514	59224	8505 Springvale Road	
4	01518	59230	8822 Flower Avenue	
4	01519	59230	206 Plymouth Street	
4	01520	59230	8818 Reading Road	
4	01521	59230	8813 Bradford Road	
4	01522	59225	700 Dartmouth Avenue	
4	01523	59225	610 Dartmouth Avenue	
4	01524	59225, 59226	602 Wayne Avenue	
4	01525	59225	313 Wayne Avenue	
4	01526	59222	804 Wayne Avenue	
4	01527	59222	808 Wayne Avenue	
4	01528	59224	624 Wayne Avenue	
4	01529	59223	704 Wayne Avenue	
4	01530	59224	628 Wayne Avenue	
4	01531	59223	712 Wayne Avenue	
4	01532	59224	618 Wayne Avenue	
4	01534	59225	603 Wayne Avenue	
4	01535	59224	630 Wayne Avenue	
4	01536	59222	806 Wayne Avenue	
4	01537	59225	600 Wayne Avenue	
4	01538	59221	943 Bonifant Street	
4	01539	59223	702 Wayne Avenue	
4	01540	59221	900 Wayne Avenue	
4	01541	59224	622 Wayne Avenue	
4	01542	59222	828 Wayne Avenue	
4	01543	59224	616 Wayne Avenue	
4	01544	59222	802 Wayne Avenue	
4	01545	59225	606 Wayne Avenue	
4	01546	59223	701 Wayne Avenue	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
4	01547	59224	634 Wayne Avenue	
4	01548	59224	613 Wayne Avenue	
4	01549	59225	501 Bonifant Street	
4	01550	59225	504 Wayne Avenue	
4	01551	59225	307 Wayne Place	
4	01552	59224	615 Wayne Avenue	
4	01553	59224	632 Wayne Avenue	
4	01556	59221	903 Bonifant Street	
4	01558	59221	924 Wayne Avenue	
4	01559	59223	709 Wayne Avenue	
4	01560	59223	711 Wayne Avenue	
4	01561	59222	826 Wayne Avenue	
4	01562	59222	810 Wayne Avenue	
4	01563	59222	803 Wayne Avenue	
4	01564	59222	824 Wayne Avenue	
4	01565	59222	822 Wayne Avenue	
4	01566	59225	608 Wayne Avenue	
4	01567	59223	710 Wayne Avenue	
4	01568	59221	8400 Fenton Street	
4	01569	59224	620 Greenbrier Drive	
4	01570	59223	707 Wayne Avenue	
4	01571	59223	706 Wayne Avenue	
4	01572	59221	941 Bonifant Street	
4	01573	59225	508 Wayne Avenue	
4	01574	59221	905 Bonifant Street	
4	01575	59221	939 Bonifant Street	
4	01576	59222	832 Wayne Avenue	
4	01577	59222	830 Wayne Avenue	
4	01578	59221	926 Wayne Avenue	
4	01579	59225	318 Wayne Avenue	
4	01581	59222	8412 Cedar Street	
4	01582	59223	708 Wayne Avenue	
4	01583	59223	703 Wayne Avenue	
4	01584	59223	705 Wayne Avenue	
4	01585	59224	617 Wayne Avenue	
4	01586	59225	316 Wayne Avenue	
4	01587	59224	611 Dartmouth Avenue	
4	01588	59225	604 Wayne Avenue	
4	01589	59221	8402 Fenton Street	
4	01590	59226	314 Wayne Avenue	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
4	01591	59221	935 Bonifant Street	
4	01592	59226	210 Wayne Avenue	
4	01593	59227	8800 Manchester Road	
4	01594	59226	306 Wayne Avenue	
4	01595	59226	312 Wayne Avenue	
4	01596	59227	152 Fleetwood Terrace	
4	01597	59227	200 Wayne Avenue	
4	01598	59226	204 Wayne Avenue	
4	01599	59226	208 Wayne Avenue	
4	01600	59226	310 Wayne Avenue	
4	01601	59227	202 Wayne Avenue	
4	01602	59226	302 Wayne Avenue	
4	01603	59226	300 Mansfield Road	
4	01604	59226	206 Wayne Avenue	
4	01605	59226	301 Mansfield Road	
4	01606	59226	308 Wayne Avenue	
4	01607	59226	304 Wayne Avenue	
4	01608	59229	8806 Plymouth Street	
4	01609	59229	8804 Plymouth Street	
4	01610	59229	8810 Bradford Road	
4	01611	59229	8802 Plymouth Street	
4	01612	59228	25 Wayne Avenue	
4	01613	59229	8809 Plymouth Street	
4	01614	59230	8821 Flower Avenue	
4	01616	59230	8831 Arliss Street	
4	01617	59231	8809 Arliss Street	
4	01618	59230	8829 Arliss Street	
4	01619	59231	8811 Arliss Street	
4	01620	59231	8805 Arliss Street	
4	01621	59231	8807 Arliss Street	
4	01622	59231	8813 Arliss Street	
4	01623	59230	8815 Arliss Street	
4	01624	59230	8833 Arliss Street	
4	01625	59231	8801 Arliss Street	
4	01626	59230	8827 Arliss Street	
4	01627	59230	8835 Arliss Street	
4	01628	59230	8837 Arliss Street	
4	01629	59230	8839 Arliss Street	
4	01631	59222	801 Wayne Avenue	
4	01632	59231 to 59233	8648 Piney Branch Road	



Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
4	01634	59222	833 Wayne Avenue	
4	01635	59221	921 Wayne Avenue	
4	01636	59225	601 Wayne Avenue	
4	01637	59230	Flower Avenue	
4	01638	59229	95 Wayne Avenue	
4	01639	59230	Arliss Street	
4	01640	59227	8718 Manchester Road	
4	01641	59227	Sligo Parkway	
4	02085	59229	99 Wayne Avenue	
4	02087	59229	8807 Plymouth Street	
4	02090	59229	100 Plymouth Street	
4	02091	59227	154 Fleetwood Terrace	
4	02140	59231	8803 Arliss Street	
4	02143	59221	901 Wayne Avenue	
4	02242	59232	8617 Piney Branch Road	
4	02243	59228	25 E. Wayne Avenue	
4	02244	59229	8810 Bradford Road	
4	02261	59221 to 59228	Wayne Avenue Public ROW	
4	02273	59232	Piney Branch Road Public ROW	
4	02274	59230	Arliss Street Public ROW	
4	02275	59229	Plymouth Street Public ROW	
4	02276	59230	Flower Avenue	
4	01516 01517	59228	5 Manchester Place	
5	01491	59234	635 University Blvd E	
5	01497	59234	8736 Piney Branch Road	
5	01500	59234	8716 Piney Branch Road	
5	01501	59234	8715 Piney Branch Road	
5	01503	59234	8728 Piney Branch Road	
5	01630	59234	701 University Blvd E	
5	01633	59234	649 University Blvd E	
5	01643	59235	8801 Piney Branch Rd	
5	01644	59235	8821 Piney Branch Road	
5	01645	59235	706 University Blvd E	
5	01646	59235	706 University Blvd E	
5	01647	59235	8823 Piney Branch Road	
5	01648	59235	642 University Blvd E	
5	01649	59236	727 University Blvd E	
5	01651	59236	720 University Blvd E	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
5	01652	59235	University Blvd E	[REDACTED]
5	01653	59236	734 University Blvd E	
5	01654	59237	831 University Blvd E	[REDACTED]
5	01655	59236	730 Seek Lane	
5	01656	59236	807 University Blvd E	[REDACTED]
5	01657	59236	725 University Blvd E	
5	01658	59238	1001 University Blvd E	[REDACTED]
5	01659	59238	925 University Blvd E 8616 Carroll Ave	
5	01660	59238	949 University Blvd E	[REDACTED]
5	01661	59238	914 University Blvd E	
5	01662	59237	906 University Blvd E	[REDACTED]
5	01663	59237	910 University Blvd E	
5	01664	59238	920 University Blvd E	[REDACTED]
5	01666	59237	8507 Carroll Avenue	
5	01667	59238	916 University Blvd E	[REDACTED]
5	01668	59237	904 University Blvd E	
5	01669	59237	8501 Carroll Avenue	[REDACTED]
5	01670	59237	8511 Carroll Avenue	
5	01671	59238	924 University Blvd E	[REDACTED]
5	01672	59238	922 University Blvd E	
5	01673	59238	918 University Blvd E	[REDACTED]
5	01675	59237	8503 Carroll Avenue	
5	01676	59237	908 University Blvd E	[REDACTED]
5	01678	59238	926 University Blvd E	
5	01679	59237	8505 Carroll Avenue	[REDACTED]
5	01680	59237	900 University Blvd E	
5	01681	59237	902 University Blvd E	[REDACTED]
5	01682	59237	8509 Carroll Avenue	
5	01683	59237	823 University Blvd E	[REDACTED]
5	01684	59237	821 University Blvd E	
5	01685	59237	816 Forston Street	[REDACTED]
5	01686	59237	815 Forston Street	
5	01687	59237	814 Forston Street	[REDACTED]
5	01688	59237	814 Bayfield Street	
5	01689	59237	825 University Blvd E	[REDACTED]
5	01690	59237	819 University Blvd E	
5	01691	59236	University Blvd E	[REDACTED]
5	01692	59236	Seek Court	
5	01693	59236	2 Seek Court	[REDACTED]
5	01694	59239	1101 University Blvd E	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
5	01695	59239	1167 University Blvd E	
5	01696	59238	1013 University Blvd E	
5	01697	59238	1009 University Blvd E	
5	01698	59239	1021 University Blvd E	
5	01699	59238	1011 University Blvd E	
5	01701	59240	7689 New Hampshire Avenue	
5	01702	59241	1355 University Blvd E	
5	01703	59238	1007 University Blvd E	
5	01704	59238	1015 University Blvd E	
5	01705	59239	1019 University Blvd E	
5	01706	59238	1017 University Blvd E	
5	01707	59240	1335 University Blvd E	
5	01709	59245	7900 Kreeger Drive	
5	01710	59240	8011 New Hampshire Avenue	
5	01711	59241	1401 University Blvd E	
5	01712	59243	7811 Riggs Road	
5	01713	59244	2200 University Blvd E	
5	01714	59249	3412 University Blvd	
5	01715	59244	2210 University Blvd	
5	01716	59238	1032 University Blvd E	
5	01717	59246	2317 University Blvd E	
5	01718	59246	2403 University Blvd E	
5	01719	59244	2082 University Blvd E	
5	01720	59245	University Blvd E	
5	01721	59245	2277 University Blvd E	
5	01723	59245	Cool Spring Road	
5	01724	59243	Jasmine Terrace	
5	01725	59246	2306 University Blvd E	
5	01726	59246	2419 University Blvd E	
5	01727	59247	2507 University Blvd E	
5	01728	59247	2505 University Blvd E	
5	01729	59246	7704 24th Avenue	
5	01730	59245, 59246	2301 University Blvd E	
5	01731	59243	2000 University Blvd E	
5	01734	59242	1606 University Blvd E	
5	01735	59246	2421 University Blvd E	
5	01736	59246	2407 University Blvd E	
5	01737	59243	2010 University Blvd E	
5	01738	59244	2020 University Blvd E	
5	01739	59246	7707 24th Avenue	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
5	01740	59246	2417 University Blvd E	
5	01741	59242	1500 University Blvd E	
5	01742	59243	7432 Riggs Road	
5	01743	59240	7900 14th Avenue	
5	01744	59246	2405 University Blvd E	
5	01745	59248	3324 Stanford Street	
5	01746	59247	7601 West Park Drive	
5	01747	59248	3400 Stanford Street	
5	01748	59247	University Blvd E	
5	01749	59248	University Lane (University Blvd.)	
5	01750	59247, 59248	University Lane (University Blvd.)	
5	01751	59246	2409 University Blvd E	
5	01752	59242	1600 University Blvd E	
5	01753	59244	2208 University Blvd E	
5	01754	59247	2520 University Blvd E	
5	01755	59246	2340 University Blvd E	
5	01756	59246	University Blvd E	
5	01757	59245	8600 Adelphi Road	
5	01758	59238	1020 University Blvd E	
5	01759	59247	2503 University Blvd E	
5	01760	59245	2300 University Blvd E	
5	01761	59246	2413 University Blvd E	
5	01762	59242	1804 University Blvd E	
5	01763	59242	1810 University Blvd E	
5	01764	59246	2415 University Blvd E	
5	01765	59249	3402 University Blvd E	
5	01766	59241	1400 University Blvd E	
5	01768	59244	2080 University Blvd E	
5	01770	59246	2311 University Blvd E	
5	01771	59248, 59249	3424 Tulane Drive	
5	01772	59248	University Blvd E	
5	01774	59249	3404 University Blvd E	
5	01775	59246	2344 University Blvd E	
5	01776	59244	2204 University Blvd E	
5	01777	59243	2001 University Blvd E	
5	01778	59246	2411 University Blvd E	
5	01779	59243	2025 University Blvd E	
5	01780	59244	2201 University Blvd E	
5	01782	59242	1825 University Blvd E	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
5	01783	59242	1535 University Blvd E	
5	01784	59242	1511 University Blvd E	
5	01785	59243	1835 University Blvd E	
5	01786	59247	2511 University Blvd E	
5	01787	59245	2302 University Blvd E	
5	01788	59244	2213 University Blvd E	
5	01790	59247	2501 University Blvd E	
5	01791	59238	1001 Merrimac Drive	
5	01792	59244	2074 University Blvd E / 2080 University Blvd E	
5	01793	59244	2065 University Blvd E	
5	01794	59247	2509 University Blvd E	
5	01795	59245	2216 University Blvd E	
5	01796	59245	2220 University Blvd E	
5	01797	59249	3408 University Blvd E	
5	01798	59241, 59242	1425 University Blvd E	
5	02092	59239	8050 New Hampshire Avenue	
5	02095	59237	809 Bayfield Street	
5	02097	59237	912 University Blvd E	
5	02246	59234 to 59249	University Blvd E Public ROW	
5	02250	59240	1329 University Blvd E	
5	02262	59246	7705 24th Avenue	
5	01650	59236	820 University Blvd E	
5	01700	59240	7663 New Hampshire Ave	
5	01732 01733	59240	University Blvd E 1348 University Blvd	
5	02252	59245	7701 23rd Avenue	
5	02251	59245	7705 23rd Avenue	
5	02249	59238	8121 Lockney Avenue	
5	02309	59236	4 Seek Court	
6	01799	59307	University Lane (Campus Drive)	
6	01800	59307	Adelphi Road	
6	01801	59307	3617 Campus Drive	
6	01802	59307 to 59314	3841 Campus Drive/ University of Maryland	
6	01804	59307	University Lane (Campus Drive)	
6	01805	59307	University Lane (Campus Drive)	
6	01806	59307	University Lane (Campus Drive)	
6	01808	59307	University Lane (Campus Drive)	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
6	02152	59307	3515 Campus Drive	
6	02264	59312	US Route 1 Public ROW	
6	02265	59313, 59314	Paint Branch Parkway Public ROW (1)	
6	02266	59313, 59314	Paint Branch Parkway Public ROW (2)	
7	01810	59323	5851 Rivertech Court	
7	01811	59324	4751 River Road	
7	01816	59318	4928 College Avenue	
7	01824	59319 to 59321	4931 Calvert Road	
7	01829	59324	Tuckerman Street	
7	01831	59321	4301 River Road	
7	01832	59323	River Road (3 Physics Ellipse)	
7	01833	59323	4700 River Road	
7	01836	59324	4800 River Road	
7	02161	59318	50th Avenue	
7	01820 01821	59317	4501 Paint Branch Parkway	
7	01822	59317	Rhode Island Avenue	
7	02295	59318	City of College Park	
7	02298	59318	CSX Transportation Inc.	
7	02299	59318	WMATA	
7	02300	59318	Prince George's County	
7	02296	59317	Former Columbia Avenue ROW	
7	02297	59317, 59318	Paint Branch Parkway State ROW	
7	02301	59318	College Avenue ROW	
7	02303	59323	Rivertech Court ROW	
7	02304	59324	Haiig Drive ROW	
7	02305	59317, 59318	Paint Branch Parkway State ROW	
8	01809	59325	5801 University Research Court	
8	01834	59325	4901 River Road	
8	01841	59330	5422 Quesada Road	
8	01842	59326	6500 Kenilworth Avenue	
8	01849	59335	6201 Riverdale Road	
8	01850	59336	6024 Mustang Drive	
8	01851	59329	5415 Quintana Street	
8	01852	59329	5417 Quintana Street	
8	01853	59329	6207 Riverdale Road	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
8	01855	59339	6200 Riverdale Road	
8	01856	59337	6002 Eastpine Drive	
8	01857	59329	5600 Patterson Road	
8	01858	59336	6003 63rd Avenue	
8	01863	59336	6215 Riverdale Road	
8	01864	59331	5411 Quesada Road	
8	01866	59331	5414 Quesada Road	
8	01867	59329	6120 Kenilworth Avenue	
8	01869	59336	6303 Riverdale Road	
8	01870	59326	6419 Kenilworth Avenue	
8	01871	59329	5414 Quintana Street	
8	01872	59326	6026 Mustang Drive	
8	01873	59327	6408 Kenilworth Avenue	
8	01874	59336	6202 Patterson Street	
8	01875	59337	6401 Riverdale Road	
8	01876	59338	6551 Riverdale Road	
8	01877	59338	6601 & 6611 Riverdale Road	
8	01878	59338	6631 Riverdale Road	
8	01879	59339	6739 Riverdale Road	
8	01880	59337	6313 Riverdale Road	
8	01881	59337	6403 Riverdale Road	
8	01883	59331	6207 54th Street	
8	01884	59331	5412 Quesada Road	
8	01886	59329	5416 Quintana Street	
8	01887	59336	6001 63rd Avenue	
8	01888	59329	6135 Kenilworth Avenue	
8	01890	59334, 59335	Riverdale Road	
8	01891	59331	6209 54th Avenue	
8	01892	59336	6200 Patterson Street	
8	01893	59329	6200 Kenilworth Avenue	
8	01894	59337	6317 Riverdale Road	
8	01895	59329	Kenilworth Avenue	
8	01896	59337	6321 Riverdale Road	
8	01897	59329	5419 Quintana Street	
8	01898	59337	6309 Riverdale Road	
8	01899	59326	6504 Kenilworth Avenue	
8	01900	59338	6630 Riverdale Road	
8	01906	59336	6211 Riverdale Road	



Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
8	01907	59331	5416 Quesada Road	
8	01908	59331	5410 Quesada Road	
8	01909	59328	6300 Kenilworth Avenue	
8	01910	59336	6030 Mustang Drive	
8	01911	59332	6111 Kenilworth Avenue	
8	01912	59327	6401 Kenilworth Avenue	
8	01913	59327	6407 Kenilworth Avenue	
8	01914	59327	6413 Kenilworth Avenue	
8	01916	59332	6121 Kenilworth Avenue	
8	01918	59328	6327 Kenilworth Avenue	
8	01920	59337	6315 Riverdale Road	
8	01922	59327	6329 Kenilworth Avenue	
8	01923	59332	6106 57th Avenue	
8	01924	59331	Quesada Road	
8	01926	59331	Quesada Road	
8	01927	59336	6033 Mustang Drive	
8	01931	59326	6417 Kenilworth Avenue	
8	01932	59328, 59331	6250 Kenilworth Avenue	
8	01933	59329	6213 Kenilworth Avenue	
8	01935	59326	Kenilworth Avenue	
8	01936	59326	Kenilworth Avenue	
8	01937	59325, 59326	6800 Paint Branch Parkway	
8	01938	59331	54th Avenue	
8	01939	59331	54th Avenue	
8	01940	59336	6301 Riverdale Road	
8	01942	59336	6028 Mustang Drive	
8	01943	59326,	6410 Kenilworth Avenue	
8	01946	59331	5409 Quesada Road	
8	01947	59331	Quesada Road	
8	01948	59329	6209 Kenilworth Avenue	
8	01949	59334	5811 Riverdale Road	
8	01951	59340	6285 Riverdale Road	
8	01952	59336	6203 Patterson Street	
8	01953	59329	6201 Kenilworth Avenue	
8	01954	59337	6311 Riverdale Road	
8	01955	59328	6322 Kenilworth Avenue	
8	01956	59333	5707 East West Highway	
8	01957	59327	6403 Kenilworth Avenue	
8	01958	59333	57th Avenue	



Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
8	01963	59329	Kenilworth Avenue	
8	01964	59337	6307 Riverdale Road	
8	01965	59336	6002 63rd Avenue	
8	01967	59329	6202 Kenilworth Avenue	
8	01968	59328	6328 Kenilworth Avenue	
8	01969	59333 to 59337	Riverdale Road	
8	01970	59332	5424 Powhatan Road	
8	01971	59336	6305 Riverdale Road	
8	01974	59337	6327 Riverdale Road	
8	01975	59330	6220 Kenilworth Avenue	
8	01976	59330	5420 Quesada Road	
8	01981	59336	6213 Riverdale Road	
8	01982	59336	6209 Riverdale Road	
8	01983	59329	5418 Patterson Road	
8	01984	59329	6203 Kenilworth Avenue	
8	01985	59337	6323 Riverdale Road	
8	01986	59337	6325 Riverdale Road	
8	01988	59325	4911 Riverdale Road	
8	01989	59325	River Road	
8	01990	59337	6015 64th Avenue	
8	01992	59327	6405 Kenilworth Avenue	
8	01993	59327	6411 Kenilworth Avenue	
8	02113	59332	6104 Kenilworth Avenue	
8	02218	59329	6128 Kenilworth Avenue	
8	02220	59326	6510 Kenilworth Avenue	
8	02240	59338 to 59340	Riverdale Road Public ROW	
8	02254	59326	River Road Public ROW	
8	02257	59330	Kenilworth Avenue Public ROW	
8	02258	59338	B-W Parkway (NPS ROW)	
8	01972 01973	59333	5710 Riverdale Road	
8	01977 01919	59330	6210 Kenilworth Avenue	
8	02112	59337	6319 Riverdale Road	
8	02255 02256	59326 to 59329, 59332	Kenilworth Avenue/East West Highway Public ROW	
9	01903	59340	6751 Riverdale Road	
9	01904	59340	6751 Riverdale Road	
9	01951	59340	6285 Riverdale Road	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
9	01994	59344 to 59346	4800 Veterans Parkway	
9	01995	59346	Ingraham Street	
9	01997	59341	Patterson Street	
9	01998	59347	7519 Annapolis Road	
9	01999	59347	7011 Chesapeake Road	
9	02000	59346, 59347	7520 Annapolis Road	
9	02001	59346	Ingraham Street	
9	02003	59350	Davenport Road	
9	02004	59350	Davenport Road	
9	02005	59350	Davenport Road	
9	02007	59351	Ellin Road	
9	02008	59351	Ellin Road	
9	02009	59354	Ellin Road	
9	02010	59354	Ellin Road	
9	02011	59354	Ellin Road	
9	02012	59354	Ellin Road	
9	02013	59354	Ellin Road	
9	02014	59354	85th Avenue	
9	02015	59354	Ellin Road	
9	02016	59354	Ellin Road	
9	02017	59354	Ellin Road	
9	02018	59353	Ellin Road	
9	02019	59353	Ellin Road	
9	02020	59353	Ellin Road	
9	02021	59353	Ellin Road	
9	02022	59353	Ellin Road	
9	02023	59353	Ellin Road	
9	02024	59353	Ellin Road	
9	02025	59353	Ellin Road	
9	02026	59347	Chesapeake Road	
9	02027	59349	7501 Buchanan Street	
9	02028	59353	Ellin Road	
9	02029	59350	7700 Decatur Road	
9	02031	59352 to 59354	Garden City Drive	
9	02032	59352	4901 Ellin Road	
9	02033	59350	Davenport Road	
9	02034	59353	Ellin Road	
9	02036	59350	4th Street	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
9	02039	59351,	Ellin Road	
9	02038	59354	Ellin Road	
9	02040	59351	Ellin Road	
9	02043	59343, 59344	Rosalie Lane	
9	02073	59340 to 59344 59346 to 59349	Route 410 - Veterans Parkway Public ROW	
9	02117	59340	6720 Riverdale Road	
9	02210	59340	6039 67th Place	
9	02231	59352, 59353	5000 Ellin Road	
9	02234	59352	Ellin Road	
9	02238	59352	Emerson Place	
9	02239	59353 & 59354	7920 Harkins Road / 5105 85th Avenue	
9	02269	59352	4931 78th Avenue	
9	02271	59350 to 59352	Ellin Road Public ROW	
9	02041 02236 02237 02235 02233 02232 02238	59351, 59352	Ellin Road	

Capital Crescent Trail Properties to be Acquired by Montgomery County

Work Area	Tax ID No.	Sheet No.	Property Owner	ROW Availability Date
3	00952550	1 / 3	CSX Transportation, Inc.	
3	02581871	1	The Park Sutton Condominium Association	
3	02581882	1	Woodside Mews Homeowners Association, Inc.	
3	00952548	2	CSX Transportation, Inc.	
3	00976657	3	State Roads Commission	
3	01734972	3	WMATA	
3	02064398	3	WMATA	
3	01734846	3	WMATA	

Work Area	MTA Item No.	Plat No.	Address	ROW Availability Date
3	03032811	3	WMATA	
3		4	Unknown Owner "Depot Lot" [Plat Book A No. 25]	
3	01041040	5	LDG Inc.	
Properties to be Acquired by Prince George's County***				
Work Area	Tax ID No.	Sheet No.	Property Owner	ROW Availability Date
9	02154136	59337***	Federal Home Loan Mortgage Corporation	
9	02129575	59337***	Charles C. Church, Trustee	

\* - The Georgetown Branch Trail right of way will be available on the dates indicated in Exhibit 9. Existing minor encroachments along the Georgetown Branch right of way will not be cleared until [REDACTED].

\*\* - The Columbia Country Club (MTA #01394) right of way will be available [REDACTED] but requires a 90-day notice prior to accessing the property for construction.

\*\*\* - Two residential properties to be acquired by Prince George's County for the construction of 64th Avenue between Riverdale Road and Patterson Street have not been designated on a plat but are visible on Plat 59337.

# - The University of Maryland campus right of way will be available on the date indicated in Exhibit 9. Building 212 located in the East Campus area will be available for demolition on [REDACTED].

## **EXHIBIT 10**

### **ITP EXCERPTS CONCERNING FINANCIAL MODEL**

For purposes of this Exhibit 10:

*“Assumptions Book” means the data book submitted with the Base Case Financial Model, as part of the Financial Proposal, which describes all assumptions underlying the financial projections within the Base Case Financial Model;*

*“Initial Project Schedule” means Initial Baseline Schedule;*

*“Model” means Financial Model or Financial Model Update, as context may require;*

*“Project Schedule Date” means Contract Deadline; and*

#### **Financial Model Inputs and Specifications**

Models shall be updated with reference to agreed changes to the following key inputs and assumptions:

- (a) Project Schedule Dates - All milestone dates in the Financial Model shall be consistent with the scheduled dates for Revenue Service Availability, Final Completion and other dates set forth in the Initial Project Schedule and shall use a 30<sup>th</sup> June reporting year end;
- (b) The Financial Close date to be used in the Proposal as the date for the start of the D&C Work is May 16, 2016;
- (c) The Base Date is the Financial Proposal Due Date;
- (d) For purposes of calculating the NPV, all monthly payments by the Owner during the O&M Period are assumed to be made on the last day of the Contract Month in which that payment occurs;
- (e) Revenues – All sources of revenue shall be clearly stated in the Financial Model, with supporting detail being provided in the supporting Assumptions Book. Revenues shall clearly identify the Progress Payments, Revenue Service Availability Payment, Final Completion Payment and Availability Payments, including a breakdown of the Monthly Availability Payment components and adjustments;
- (f) Payment Mechanism – The Payment Mechanism as described in the Contract Documents is to be used without exception;

- (g) Use of Proceeds – The use of the proceeds from the Revenue Service Availability Payment shall be left to the decision of Concessionaire;
- (h) Owner Payment Constraints – The Availability Payments, the Progress Payments and the Revenue Service Availability (“RSA”) Payment are subject to the following constraints:
  - 1. The average annual debt service (i.e. principal and interest) within the general portion of the Monthly Availability Payment cannot be above \$65 million or below \$40 million over the period of time debt continues to be outstanding during the O&M Period (the debt service may be sculpted) and cannot be above \$70 million per year or below \$30 million per year. If the first year of annual debt service is interest only, then the minimum debt service can be equal to the interest portion of the annual debt service in the subsequent year. For partial years, the maximum and minimum will be applied on a pro-rata basis;
  - 2. The RSA Payment cannot be above \$500 million or below \$100 million;
  - 3. The RSA Payment must be \$100 million; provided, however, that if the average annual debt service within the general portion of the Monthly Availability Payment would otherwise be above \$65 million over the period of time debt continues to be outstanding during the O&M Period, then the RSA Payment can be increased above \$100 million (but not above \$500 million) in an amount to enable the average annual debt service within the general portion of the Monthly Availability Payment to equal \$65 million over the period of time debt continues to be outstanding during the O&M Period.
  - 4. The total Progress Payments to be modeled must be \$860 million, with the annual amounts available for the Progress Payments as follows: (i) \$190 million for Fiscal Year 2016; (ii) \$220 million for Fiscal Year 2017; (iii) \$220 million for Fiscal year 2018; (iv) \$180 million for Fiscal Year 2019; and (v) \$50 million for Fiscal Year 2020. Further, the following shall apply with respect to such annual amounts:
    - A. If any portion of the annual amount is not used in a given Fiscal Year, the remaining balance will be added to the following Fiscal Year’s amount;
    - B. Annual amounts are available to be invoiced on the first day of the Fiscal Year; and

- C. If Concessionaire achieves Revenue Service Availability prior to Fiscal Year 2020, the \$50 million of Progress Payments available for Fiscal Year 2020 will be paid on the same day as payment of the RSA Payment;
5. The cumulative Progress Payments shall not exceed 85% of the value of the D&C Work eligible for Progress Payments in any month and shall be subject to all other requirements and limitations set forth in Section 13.1 of the Agreement;
6. Concessionaire shall not exceed the available annual amounts of Progress Payments listed in item 4 above; provided, however, to the extent Concessionaire's modeled RSA Payment and the average annual debt service within the general portion of the Monthly Availability Payment are both in excess of their maximum constraints (i.e. in excess of \$500 million of RSA Payment and \$60 million average annual debt service), the amounts of Progress Payments may be adjusted in excess of the limits of the Progress Payments in an amount to enable the RSA Payment and the average annual debt service within the general portion of the Monthly Availability Payment to be at their maximum constraints. To the extent that Concessionaire adjusts the annual Progress Payments amount, each of the annual Progress Payments shall be adjusted in equal proportion; and
7. After achievement of Final Completion, the Owner will pay, within 30 days after receipt of an invoice, a \$30 million Final Completion Payment. The Final Completion Payment is in addition to the \$860 million in Progress Payments and the RSA Payment;
- (i) Monthly Availability Payments – Concessionaire shall provide monthly amounts for components of each Monthly Availability Payment category. All financing costs, including principal, interest and Distributions, shall be included either (1) within the general portion of the Monthly Availability Payment (MAPG), which will not be escalated or (2) the Special Lifecycle Payments, which will also not be escalated. The Insurance Payment (I), the operations portion of the Monthly Availability Payment for Operations (MAPO) and the maintenance portion of the Monthly Availability Payment (MAPM) will be subject to index escalation adjustment;
- (j) For the purposes of Section 4.4.8 of the Agreement the Base Case Financial Model shall assume Service Level 1 will be operated over the Term;

- (k) Lifecycle Payment – Based on Concessionaire’s Asset Management Plan, Concessionaire shall include all anticipated costs (and directly related contingencies and reserves) with respect to the capital replacement and/or refurbishment of the Fixed Facilities, Fixed Equipment, LRVs and other assets during the O&M Period as required under the Technical Provisions. In respect to LRVs, Concessionaire shall only include costs related to the lifecycle replacement, refreshment and/or refurbishment of the vehicle fleet that will be provided under Service Level 1 as specified in the Technical Provisions. Lifecycle Payments will be subject to index escalation adjustment;
- (l) Expenditure – All cost assumptions shall be clearly stated in the Financial Model, with additional detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual cost assumptions. Where aggregate costs are used as an input within the Financial Model, a detailed breakdown shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between costs and the price of the service to the Owner;
- (m) Insurance – Concessionaire shall include the costs of insurance as set forth in Exhibit 4D, Appendix A, Section 5. The insurance payments will be subject to index escalation adjustment;
- (n) Energy Costs – The Traction Power Electricity Costs and the Electricity Costs for Other Uses are a cost paid by the Owner in accordance with the Contract Documents. Traction Power Electricity Costs and Electricity Costs for Other Uses shall be calculated separately. The Financial Model shall assume a Base Date cost of \$0.07 per kWh for Traction Power Electricity Costs and \$0.14 per kWh for Electricity Costs for Other Uses;
- (o) Contingencies and profit margins at the Concessionaire level (and any subsidiaries) have been included;
- (p) Macroeconomic assumptions – All macroeconomic assumptions used within the Financial Model shall be clearly stated;
- (q) Escalation – An assumption of 2.5% per annum is to be used for Traction Power Electricity Costs, Electricity Costs for Other Uses, Lifecycle Payments and the escalating portions of the Monthly Availability Payment. For evaluation purposes, indexation will be applied on an annual basis starting on the first day of each Contract Year in accordance with Exhibit 4D of the Agreement;
- (r) Independent Engineer Cost Assumptions – Concessionaire shall include \$250,000 for the anticipated total expense related to the Independent



Engineer in its Financial Model. The Concessionaire shall assume that the Owner's 50% reimbursement is paid at Revenue Service Availability;

- (s) Generally Accepted Accounting Principles (GAAP) – The Financial Model shall be compliant with U.S. GAAP;
- (t) Taxation Rates – The Financial Model shall use the appropriate rates for tax in force at the submission date. Concessionaire shall assume that sales and use tax is owing with respect to the purchase of LRVs from the LRV Supplier; and
- (u) Tax Allowances – The Financial Model shall clearly show the assumptions regarding tax allowances being claimed.

## **EXHIBIT 11**

### **MAINTENANCE OF TRAFFIC PAYMENTS; INCENTIVES**

#### **PART A PAYMENTS RELATING TO MAINTENANCE OF TRAFFIC DURING DESIGN-BUILD PERIOD**

Concessionaire shall be subject to the cumulative liquidated damages as described in Sections 1 and 2 below, and to the requirement to make payments as described in Section 5 below.

1. If Concessionaire receives an Access and Mobility Rating of D or F during any one single day of the Design-Build Period per the requirements of Part 2A, Section 20.7 of the Technical Provisions, Concessionaire shall pay liquidated damages for that day with respect thereto, according to the following schedule:

Rating of D, immediately upon initial daily rating:	\$1,000
Rating of F, immediately upon initial daily rating:	\$2,500
Each additional day or any portion thereof, until the cause of the Rating D or F is remedied:	\$5,000

2. If during the Design-Build Period Concessionaire fails to restore full traffic capacity in a timely manner according to the schedule given in Part 2A, Section 20.6.1 of the Technical Provisions, Concessionaire shall pay liquidated damages for each occurrence according to the following schedule:

<b>Expressways or Freeways</b>	
Elapsed Time (Minutes)	Liquidated Damages
<b>For Complete Closures (all lanes blocked)</b>	
1 – 10	\$5,000.00
Over 10	\$2,500.00 per minute (in addition to the original 10 minute deduction)
<b>For Triple (3) Lane Closures</b>	
1 – 10	\$3,000.00
Over 10	\$1,500.00 per minute (in addition to the original 10 minute deduction)
<b>For Double (2) Lane Closures</b>	
1 – 10	\$2,000.00
Over 10	\$1,000.00 per minute (in addition to the original 10 minute deduction)
<b>For Single (1) Lane Closures</b>	
1 – 10	\$1,000.00
Over 10	\$500.00 per minute (in addition to the original 10 minute deduction)

<b>Arterial Roadways</b>	
Elapsed Time (Minutes)	Liquidated Damages
For More Than One Lane Closed or for Complete Ramp Closures	
1 – 10	\$600.00
Over 10	\$300.00 per minute (In addition to the original 10 minute deduction)
For Single (1) Lane Closures	
1 – 10	\$300.00
Over 10	\$ 150.00 per minute (In addition to the original 10 minute deduction)

<b>All other roadways</b>	
Elapsed Time (Minutes)	Deduction
For More Than One Lane Closed	
1 – 10	\$300.00
Over 10	\$150.00 per minute (In addition to the original 10 minute deduction)
For Single (1) Lane Closures	
1 – 10	\$150.00
Over 10	\$75.00 per minute (In addition to the original 10 minute deduction)

3. Owner may recover liquidated damages by deducting the damages from any moneys due or that may become due to Concessionaire, including Progress Payments, the Revenue Service Availability Payment, the Final Completion Payment and Monthly Availability Payments but not the Special Lifecycle Payments.
4. Concessionaire shall not pay liquidated damages to the extent that low traffic control ratings, as described in paragraph 1 above, or the failure to restore full traffic capacity is due to an Owner Caused Delay or Force Majeure Event.
5. Concessionaire has certain rights to close all lanes of the Spring Street Bridge and the Lyttonsville Place Bridge during specified time periods for each bridge in accordance with Part 2A, Section 20.6.3 of the Technical Provisions, subject to satisfaction of the conditions stated in said Section 20.6.3. Concessionaire shall have the right to extend the permitted closure period for each bridge by up to an additional three months at a cost of \$50,000 per bridge per month. Concessionaire shall notify Owner whether an extension is desired at least 45 days prior to the end of the existing period, accompanied by payment for the extension. If the requested extension is for less than a full month, the payment amount is subject to proration based on the total number of days in the month and the number of days in the extension period.

## **PART B: INCENTIVES DURING DESIGN-BUILD PERIOD**

### **1. Incentive Programs**

The following incentive programs have been established with respect to Construction Work performed during the Design-Build Period:

- Control of Odors and Dust (Part 2A, Section 5.4.7.1 of the Technical Provisions)
- Erosion and Sediment Control (Part 2A, Section 5.6.6 of the Technical Provisions)
- Public Notification (Part 2A, Section 13.4.1 of the Technical Provisions)
- Noise and Vibration (Part 2A, Section 17.6 of the Technical Provisions)
- Access and Mobility (Part 2A, Section 20.7 of the Technical Provisions)
- Cleaning (Part 2A, Section 24.5 of the Technical Provisions)

### **2. Rating Calculations**

Monthly ratings shall be calculated by averaging all daily ratings performed during the month using the numerical equivalents A=4, B=3, C=2, D=1, F=0. Standard rounding applies (for example, average of 2.5 equals B quarterly rating, average of 2.49 equals C quarterly rating). Any instance of an F rating during a month automatically generates an F rating for the entire month.

Quarterly ratings shall be calculated by averaging the monthly ratings using the numerical equivalents A=4, B=3, C=2, D=1, F=0. Standard rounding applies (for example, average of 2.5 equals B quarterly rating, average of 2.49 equals C quarterly rating). Any instance of an F rating during a quarter automatically generates an F rating for the entire quarter.

### **3. Incentive Payments**

Owner will notify Concessionaire regarding the amount payable under this Part B promptly following its determination regarding the amount payable. Following receipt of such notification Concessionaire may include the approved amount in its invoices.

#### **3.1 Quarterly Payments**

An incentive will be paid for each incentive program listed in Section 1 of this Part B on a quarterly basis starting on the first full quarter after commencement of construction according to the following schedule:

Quarterly Rating	Quarterly Incentive Payment					
	Control of Odors and Dust	Erosion and Sediment Control	Public Notification	Noise and Vibration	Access and Mobility	Cleaning
A	\$50,000	\$100,000	\$50,000	\$100,000	\$100,000	\$50,000
B	\$20,000	\$50,000	\$20,000	\$50,000	\$0	\$20,000
C	\$0	\$0	\$0	\$0	\$0	\$0
D	\$0	\$0	\$0	\$0	\$0	\$0
F	\$0	\$0	\$0	\$0	\$0	\$0

Payment of quarterly incentives is capped at 20 quarters for each incentive program. Reaching the cap for an incentive program does not relieve the Concessionaire from the obligation to continue performance of Construction Work in accordance with the requirements of the Contract Documents, and performance during subsequent quarters will be accounted for in determining the final incentive payment under Section 3.2 of this Part B.

### 3.2 Final Incentive Payment

Upon achievement of Revenue Service Availability, a final incentive will be paid for each incentive program listed in Section 1 of this Part B, based on the average of all quarters rated according to the following schedule:

Average of all Quarters	Final Incentive Payment					
	Control of Odors and Dust	Erosion and Sediment Control	Public Notification	Noise and Vibration	Access and Mobility	Cleaning
A	\$100,000	\$200,000	\$100,000	\$200,000	\$200,000	\$100,000
B	\$20,000	\$50,000	\$20,000	\$50,000	\$0	\$20,000
C	\$0	\$0	\$0	\$0	\$0	\$0
D	\$0	\$0	\$0	\$0	\$0	\$0
F	\$0	\$0	\$0	\$0	\$0	\$0

## **EXHIBIT 12**

### **D&C DESIGN SERVICES AND D&C CONSTRUCTION SERVICES**

<b>Type of Work</b>
<b>.01 Mobilization</b>
.01 Mobilization
<b>.02 Guideway &amp; Track Elements</b>
.01 Guideway: At-grade exclusive right-of-way
.02 Guideway: At-grade semi-exclusive (allows cross-traffic)
.03 Guideway: At-grade in mixed traffic
.04 Guideway: Aerial structure
.05 Guideway: Built-up fill
.06 Guideway: Underground cut & cover
.07 Guideway: Underground tunnel
.08 Guideway: Retained cut or fill
.09 Track: Direct fixation
.10 Track: Embedded
.11 Track: Ballasted
.12 Track: Green
.13 Track: Special (switches, turnouts)
.14 Track: Vibration and noise dampening
<b>.03 Stations, Stops, Terminals, Intermodal</b>
.01 At-grade station, stop, shelter, mall, terminal, platform
.02 Aerial station, stop, shelter, mall, terminal, platform
.03 Underground station, stop, shelter, mall, terminal, platform
.04 Other stations, landings, terminals: Intermodal, etc.
.05 Joint development
.06 Automobile parking
.07 Elevators, escalators
<b>.04 Support facilities: Yards, Shops, Admin, Bldgs</b>
.01 Administration building: office, sales, storage, revenue counting
.02 Light maintenance facility
.03 Heavy maintenance facility
.04 Storage or maintenance of way building
.05 Yard and yard track
<b>.05 Sitework &amp; Special Conditions</b>
.01 Demolition, clearing, earthwork

<b>Type of Work</b>
.02 Site utilities, utility relocation
.02a Drainage
.02a Paint Branch Pump Sta.
.03 Hazardous Materials Management not covered by the unit prices in Form O-4
.04 Environmental mitigation, e.g. wetlands, forest, parks
.05 Site structures including retaining walls, sound walls
.06 Pedestrian/bike access and accommodation (except costs in .05.06a)
.06a Pedestrian/bike access and accommodation along SHA-roadways
.07 Automobile, bus, van accessways including roads, parking lots
.07a SHA Roads
.07a1 M Square Road Improvements
.07b SHA Roads Mobilization
.07c SHA Roads Clearing Demo Earthwork
.07d SHA Roads Utilities
.07d SHA Roads Drainage
.07e SHA Landscaping
.07f SHA Other Indirects
.07g SHA Insurance
*.07h SHA Design
.07i SHA Project Management
.08 Temporary facilities including stormwater management and erosion & sediment Control
.09 Landscaping
.10 Other indirect costs during construction
<b>.06 Systems</b>
.01 Train control and signals
.02 Traffic signals and crossing protection
.03 Traction power supply: substations
.04 Traction power distribution: catenary and third rail
.05 Communications
.06 Fare system (other costs in addition to .13.09)
.07 Central control
.08 Fire and security systems
.09 Corrosion control
.10 Other technology
<b>.07 ROW, Land, Existing Improvements</b>
.01 Purchase or lease of real estate

<b>Type of Work</b>
.02 Relocation of existing households and businesses
<b>.08 [Reserved]</b>
<b>.09 Professional Services (Applies to .02 thru .11)</b>
DESIGN
*.01 Final design
*.02 Project management of design
*.03 Legal; permits; review fees by other agencies, etc.
*.04 Surveys, testing, investigation
CONSTRUCTION
.05 Project management of construction
.06 Construction administration & management
.07 Legal; permits; review fees by other agencies, etc.
.08 Surveys, testing, investigation, inspection
.09 Integration and testing
<b>.10 Insurance</b>
.01 Design-build insurance policies
<b>.11 O&amp;M Preparation Start Up</b>
.01 O&M integration in design and construction
.02 O&M procedural documents and staff training
.03 Pre-revenue maintenance and security
.04 Non-revenue tools and equipment
.05 Integrated testing/system-wide commissioning/rail activation
.06 Trial running
<b>.12 Third Party Items (Including all D&amp;C Work costs, including mobilization)</b>
*.01a MC: Bethesda South Entrance (excluding adjacent PEPCO vault relocation) – design
.01b MC: Bethesda South Entrance (excluding adjacent PEPCO vault relocation) – construction [Total amount from Items .01b00 through .01b13 below]
.01b00: Mobilization
.01b01: Demolition & clearing
.01b02: Earthwork
.01b03: Site utilities and utility relocation
.01b04: Drainage facilities/SWM/erosion and sediment control
.01b05: Structures
.01b06: Mechanical/electrical/plumbing systems, including communications and lighting
.01b07: Vertical circulation equipment/systems
.01b08: Architectural finishes, including signage
.01b09: Exterior work: paving



<b>Type of Work</b>
.01b10: Exterior work: landscaping
.01b11: Temporary facilities and maintenance of traffic/service/operations
.01b12: Other Indirects
.01b12: Insurance
.01b13: Construction Management
*.02a MC: Capital Crescent Trail (CCT) – design
.02b MC: Capital Crescent Trail (CCT) – construction [Total amount from Items .02b00 through .02b15 below]
.02b00: Mobilization
.02b01: Demolition & clearing
.02b02: Earthwork
.02b03: Site utilities and utility relocation
.02b04: Drainage facilities/SWM/erosion and sediment control
.02b05: Common Retaining Walls between the CCT and the Purple Line
.02b06: Structures (including Retaining Walls between the CCT and the Community)
.02b07: Mechanical/electrical/plumbing systems, including communications and lighting
.02b08: Vertical circulation equipment/systems
.02b09: Architectural finishes, including signage
.02b10: Exterior work: paving
.02b11: Exterior work: landscaping
.02b12: Temporary facilities and maintenance of traffic/service/operations
.02b13: Other Indirects
.02b14: Insurance
.02b15: Construction Management
*.03a MC: Silver Spring Green Trail – design
.03b MC: Silver Spring Green Trail – construction [Total amount from Items .03b00 through .03b14 below]
.03b00: Mobilization
.03b01: Demolition & clearing
.03b02: Earthwork
.03b03: Site utilities and utility relocation
.03b04: Drainage facilities/SWM/erosion and sediment control
.03b05: Structures
.03b06: Mechanical/electrical/plumbing systems, including communications and lighting
.03b07: Vertical circulation equipment/systems
.03b08: Architectural finishes, including signage

<b>Type of Work</b>
.03b09: Exterior work: paving
.03b10: Exterior work: landscaping
.03b11: Temporary facilities and maintenance of traffic/service/operations
.03b12: Other Indirects
.03b13: Insurance
.03b14: Construction Management
*.04a MC: Silver Spring Metro Mezzanine Connection – design
.04b MC: Silver Spring Metro Mezzanine Connection – construction [Total amount from Items .04b00 through .04b14 below]
.04b00: Mobilization
.04b01: Demolition & clearing
.04b02: Earthwork
.04b03: Site utilities and utility relocation
.04b04: Drainage facilities/SWM/erosion and sediment control
.04b05: Structures
.04b06: Mechanical/electrical/plumbing systems, including communications and lighting
.04b07: Vertical circulation equipment/systems
.04b08: Architectural finishes, including signage
.04b09: Exterior work: paving
.04b10: Exterior work: landscaping
.04b11: Temporary facilities and maintenance of traffic/service/operations
.04b12: Other Indirects
.04b13: Insurance
.04b14: Construction Management
*.05a UM: Campus Drive Bike Path MD 193 (University Blvd) to US 1 – design
.05b UM: Campus Drive Bike Path MD 193 (University Blvd) to US 1 – construction [Total amount from Items .05b00 through .05b14 below]
.05b00 : Mobilization
.05b01: Demolition & clearing
.05b02: Earthwork
.05b03: Site utilities and utility relocation
.05b04: Drainage facilities/SWM/erosion and sediment control
.05b05: Structures
.05b06: Mechanical/electrical/plumbing systems, including communications and lighting
.05b07: Vertical circulation equipment/systems

<b>Type of Work</b>
.05b08: Architectural finishes, including signage
.05b09: Exterior work: paving
.05b10: Exterior work: landscaping
.05b11: Temporary facilities and maintenance of traffic/service/operations
.05b12: Other Indirects
.05b13: Insurance
.05b14: Construction Management
*.06a WMATA: College Park Metro Kiss-n-Ride and Bus Loop – Services – design
.06b WMATA: College Park Metro Kiss-n-Ride and Bus Loop – Services – construction [Total amount from Items .06b00 through .06b14 below]
.06b00: Mobilization
.06b01: Demolition & clearing
.06b02: Earthwork
.06b03: Site utilities and utility relocation
.06b04: Drainage facilities/SWM/erosion and sediment control
.06b05: Structures
.06b06: Mechanical/electrical/plumbing systems, including communications and lighting
.06b07: Vertical circulation equipment/systems
.06b08: Architectural finishes, including signage
.06b09: Exterior work: paving
.06b10: Exterior work: landscaping
.06b11: Temporary facilities and maintenance of traffic/service/operations
.06b12: Other Indirects
.06b13: Insurance
.06b14: Construction Management
.07: Conduits and fiber optic cables for exclusive use of Owner
* .07b00: Design
.07b01: Mobilization
.07b02: Other Indirects
.07b03: Insurance
.07b04: Construction Management

**EXHIBIT 13**

**CHANGE-RELATED PROVISIONS; TERMINATION-RELATED PROVISIONS**

**Exhibit 13A: Compensation for Relief Events**

**Exhibit 13B: Termination Compensation**

## **EXHIBIT 13A**

### **COMPENSATION FOR RELIEF EVENTS**

Unless otherwise specified, all references in this Exhibit 13A to “Sections” are to the sections of this Exhibit 13A, and all references to “Exhibits” are to the exhibits to the Agreement to which this Exhibit 13A is attached.

As specified in the Agreement, compensation for Incremental Costs of Extra Work and changes in the Work due to certain Relief Events will be determined based on unit prices. Delay Costs, if allowed by the Agreement, are to be determined as specified in Section 2. In all other respects Incremental Costs for Extra Work and changes in the Work due to Relief Events shall be determined (a) as specified in this Exhibit 13A, on lump sum, unit price or force account basis, or (b) in accordance with Exhibit 4D. If insurance is available to cover costs of Extra Work, compensation for such Extra Work will be determined by the insurer and not payable by Owner.

In order to obtain the benefit of competitive pricing for Extra Work, Owner may require Concessionaire to seek bids or proposals from potential Contractors for such Work, with the Contract(s) to be awarded either on a best value basis or based on competitive bids from prequalified or shortlisted firms. Concessionaire may elect to have one of its prime Contractors conduct the competition. Owner’s right to require such competition is limited to Change Orders issued under Article 14, including any Change Order covering development of infrastructure required for a proposed Service Level change as well as Change Orders for Construction Work during the O&M Period. In such event, Concessionaire shall propose the specific procedures to be followed for the competition, subject to Owner’s approval.

#### **1. ADVANCE PRICING AND FORCE ACCOUNT PROVISIONS**

##### **1.1 Advance Pricing**

Except in circumstances for which unit prices are included in the Agreement, whenever Concessionaire is entitled to additional compensation for Relief Events under the Contract Documents, or Owner is entitled to credit for reductions in the Work, Owner and Concessionaire shall make every effort to come to an agreed-upon price for the performance of the Work in question, before performance commences.

**1.1.1** Lump sum or unit priced compensation shall be determined based on pricing received through a competitive procurement or negotiated by the Parties based on estimated Incremental Costs of:

- (a) Labor;
- (b) Material;
- (c) Equipment;
- (d) Third party fees and charges (e.g. permit fees, plan check fees, review fees and charges);

(e) Extra insurance costs and extra costs of bonds and letters of credit or similar instrument; and

(f) Other direct costs.

The compensation amount may also include a reasonable contingency for risk associated with the Work to be performed.

**1.1.2** Lump sum compensation or unit prices also may include (a) a reasonable negotiated markup for indirect costs, overhead and profit for Work performed, to be applied only at the tier at which the Work is performed, and (b) a reasonable negotiated markup for Concessionaire's indirect costs and overhead for Work performed by Contractors. The compensation shall not include any home office overhead of Concessionaire or Contractors. Indirect costs may not include cost of funds (whether debt or equity), or other Lender charges, damages or penalties.

**1.1.3** In negotiating lump sum or unit pricing for Change Orders, Owner may consider the original allocations of pricing to comparable activities, materials and equipment, as specified in the Cost and Pricing Data. If requested by Owner, price negotiations for lump sum Change Orders shall be on an Open Book Basis.

**1.1.4** Pricing may include sales or use taxes only to the extent that no exemption is available under applicable Law.

**1.1.5** When the Change Order deletes Work from Concessionaire's scope or otherwise reduces Concessionaire's costs, the amount of the reduction in compensation payable to Concessionaire shall be based upon Concessionaire's estimated price for such Work included in the Proposal, including a bill of material and a breakdown of labor and equipment costs, plus variable overhead and profit associated with the deleted work. The amount of risk associated with such Work as of the Proposal Date by Concessionaire shall be a factor in determining the markup for the deduction. The reduction in compensation shall exclude (a) costs incurred, including for mobilization of materials, prior to the date of the Directive Letter or other notification by Owner eliminating the Work and (b) any cancellation and restocking charges.

**1.1.6** When the Change Order concerns Work that the Parties agree is appropriate to be paid for through Availability Payments, the adjustment shall be based on cost estimates under Sections 1.1.1, 1.1.2, 1.1.3, 1.1.4 and 1.1.5 of this Exhibit 13A and denoted as an adjustment to MAPO, MAPM and/or LCP<sub>n</sub> as defined in Exhibit 4D, Part B, Section 1.1. Each such adjustment shall be allocated among the remaining Contract Years. The Change Order shall either (a) state the adjustment amount in Base Date dollars to enable escalation to be applied as stated in Exhibit 4D or (b) include information regarding an alternative process to be followed in escalating the adjustment amount.

## **1.2 Force Account**

If an agreement cannot be reached on a lump sum amount or unit prices, Owner may require Concessionaire to perform the Extra Work or changed Work on a force account basis, to be compensated for its Incremental Costs of performing such Work in accordance with the following:

A. Construction Labor. For all construction labor and for foremen in direct charge of the specific operations, Concessionaire shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such work. The number of laborers and foremen employed in the Work shall be subject to concurrence from Owner and the numbers employed shall not exceed the number Owner deems most practical and economical for the Work.

B. Materials. For materials accepted by Owner and used in the performance of the Work, Concessionaire shall receive the actual cost of such materials, including transportation charges it pays (exclusive of machinery rentals as set forth in this Exhibit 13A). Owner reserves the right to furnish materials as it deems appropriate and the Concessionaire shall have no claim for cost, overhead or profit on these materials.

C. Equipment. For machinery or equipment (other than small tools) used in the performance of Extra Work or changed Work, whether rented or owned, the use of which has been authorized by Owner's Authorized Representative, the rates specified in this Exhibit 13A will be applied. For purpose of definition, equipment with a new cost of \$1,000 or less will be considered small tools.

1. Hourly Rates (Listed Equipment). For Concessionaire-owned equipment, payment will be at hourly rates derived from the applicable edition of the Rental Rate Blue Book (RRBB) for Construction Equipment by Penton Business Media/Equipment Watch. The rate to be paid will be the Blue Book monthly ownership rate for the make and model of equipment multiplied by the appropriate rate adjustment factors, divided by 176, plus the RRBB hourly operating cost. The rental rate for each item of equipment will be the sum of the base machine rate, specialized attachment rate as applicable (common attachments are considered included in the base rate) and operating rate(s) established at the time the equipment is being used.

2. Hourly Rates (non-Listed Equipment). For owned equipment not listed in the RRBB, an equitable hourly rate shall be established by Owner's Authorized Representative based on Concessionaire furnished cost data and basic information concerning the equipment. Information required to determine rates includes manufacture, year, size, model, capacity, acquisition cost and operating costs, and shall be furnished to Owner's Authorized Representative prior to the use of the equipment.

3. Condition of Equipment. Equipment rates shall apply for equipment in good working condition. The equipment shall be of approved size and capacity to provide the production required for the work to be done. Equipment not meeting these requirements may be used only with the approval of Owner's Authorized Representative and at agreed reduced rates.

4. Equipment at the Construction Site. For use of owned equipment in operation on force account work, payment will be made in accordance with the following provisions:

a. The time to be paid for the use of equipment on the work shall be the number of hours the equipment is in operation on the force account work being performed. Less than 30 minutes will be considered 1/2 operation. The time shall include the time required on-site to move the equipment to the location of the force

account work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Loading and transportation costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. No payment will be made for moving time or loading and transporting costs if the equipment is used at the location of the force account work on other than such force account work.

b. For equipment listed in the RRBB the operational hourly rate shall be as follows:

Up to eight hours use in a day, the "Total Hourly Costs" shall be as listed in 1 above. Over eight hours in a day, use 70% of the monthly rate divided by 176 plus the hourly operating costs.

Idle or stand by rates for equipment brought in solely for the use of the force account work will be paid at 50% of the monthly rate, exclusive of the operating portion, divided by 176, for not more than 8 hours per day.

c. For equipment not listed in the RRBB the operational hourly rate shall be the rate determined by Owner's Authorized Representative, which rates shall include all costs of ownership, repair and operation, as determined by Owner's Authorized Representative in accordance with Section 1.2.C.2 above.

d. Under this provision payment will not be made for idle or standby time of existing equipment at the construction site.

5. Equipment Not at the Construction Site. For the use of owned equipment moved in from off the Site and used exclusively for force account Construction Work, payment will be made in accordance with the following provisions:

a. Payment will be made for the cost of transporting the equipment to the location of the work and its return to its original location including the cost of loading and unloading as agreed upon by Owner's Authorized Representative prior to the move. Should Concessionaire desire the return of the equipment to a location other than its original location, the Owner will pay the cost of transportation provided such payment shall not exceed the cost of moving the equipment to the work. Transportation costs will not be allowed for equipment brought to the site for force account work which is subsequently retained on the site and utilized for other work.

b. The equipment use period shall begin at the time the equipment is unloaded at the site of the force account work, shall include each day that the equipment is on the site exclusive of non-work days and will terminate at the end of the day on which the use of the equipment is no longer required for the force account work.

c. For those hours that the equipment is in operation on force account work, Concessionaire shall be paid in accordance with Section 1.2.C.4 above.



d. Idle or stand by time shall be the number of hours in a work day, up to a maximum of eight hours, less the number of operational hours paid for those days as provided in Section 1.2.C.5c above.

e. The standby rate for equipment listed in RRBB shall be 50% of the monthly rate, exclusive of the operating portion, divided by 176.

f. The standby rate equipment not listed in RRBB shall be 50% of the monthly rate, exclusive of the operating portion, divided by 176 as determined by Owner's Authorized Representative in accordance with Section 1.2.C.2 above.

6. Rented Equipment. When approved by Owner's Authorized Representative, the use of Concessionaire-rented equipment will be permitted in the performance of force account work. Concessionaire will be paid the actual costs incurred in the use of such equipment on the force account work. No transportation or idle time costs will be paid for the use of rental equipment not on the construction site exclusively for the force account work.

D. Contractors. Concessionaire shall receive the actual Incremental Cost of Extra Work or changed Work performed by a Contractor. For Construction Work, the Contractor's cost is to be determined as in items A., B., and C., above, plus the fixed amount for overhead and profit allowance computed as in item F, substituting "Contractor" for "Concessionaire" in said provisions.

E. Superintendence. No additional allowance shall be made for general superintendence, Quality Assurance, the use of small tools, or other costs for which no specific allowance is provided under this Exhibit 13A.

F. Other Compensation.

1. The adjustment in compensation shall be based on the following as documented and justified by Concessionaire.

a. Fringes. Costs paid to or on behalf of workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits, or other benefits required by collective bargaining agreement or other employment contract.

b. Insurance. The incremental increase in premium costs resulting from the work for workman's compensation, liability or risk insurance, but only in the event that such coverage has not been provided by Owner under the Contract.

2. Compensation for overhead and profit. Owner's Authorized Representative and Concessionaire shall negotiate a fixed amount for force account work performed pursuant to this Section 1.2 by its forces and by Contractors, but excluding Design Work, as compensation for overhead and profit for the work performed. Failure of Concessionaire and Owner's Authorized Representative to negotiate an amount consistent with cost principles under COMAR 21.09.01 applicable to MTA's design-build contracts shall be subject to the Dispute Resolution Procedures, and Concessionaire shall proceed diligently with the performance of the force account work to completion. The fixed amount shall not exceed

the sum of 35% of items A, F.I.a. and F.I.b. and 10% of items B. and C.6. The overhead portion of the markup on item A includes payroll taxes (including FICA, FUTA and SUTA), small tools and premiums for payment and performance security.

3. Additional Markup for Subcontract Administration. In addition, the fixed amount for the Prime Contractor performing the Work may include an amount not to exceed 5% of item D or \$500, whichever is higher, for the Prime Contractor's construction Subcontractors (but excluding the fixed amount for the Subcontractors). However there will not be any such markup for Subcontractors below the first tier.

G. Design Work.

1. When Relief Events require performance by factory or office-based design professional or technical personnel of Design Work directly attributable to the Relief Event, force account compensation will be provided based on the following as documented and justified by Concessionaire.

a. Labor - The cost of all design professional and/or technical labor computed on the basis of the actual hourly wage rate paid, not to exceed \$80.00/hr., to the individual(s) involved in the performance of the added or changed Design Work (excluding fringes and mark-ups for taxes, insurance, etc.)

b. Reimbursable Expenses for Relief Event Design Work

(1) Travel and Related Expenses - The cost of travel expenses of personnel in travel status required for the performance of added or changed Design Work, as provided in the then current standard Travel Regulations of the State of Maryland.

(2) Printing and Reproduction Costs - The cost of printing, binding, photographs, photostats, copier costs, reproduction and related expenses, the nature of which is uniformly charged as a project cost under the accounting practices of the Contractor responsible for the Design Work being performed.

c. Long Distance Telephone, Telegraph, Teletype, Freight, Postage and Shipping - These costs will be allowed only to the extent they related to the performance of the added or changed Design Work.

d. Mark-Up - The maximum allowable mark-up for general administrative expenses, supervision, overhead and profit for the added or changed Design Work performed, and computer/CAD costs, will be 140% of item G.1.a above. Only one such mark-up will be allowed for subcontracted Work. The Prime Contractor will be allowed a markup of 5% on the total Subcontractor's cost of the added or changed Design Work.

H. Statements. No payment will be made for work performed on a force account basis until Concessionaire has furnished to Owner's Authorized Representative duplicate itemized statements of the cost of such force account work detailed as to the following:

1. Name, classification, date, daily hours, total hours, rate, and extension for such laborer, or foreman;
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;
3. Quantities of materials, prices and extensions;
4. Transportation of materials; and
5. All other amounts payable.

Evidence of payment for items under Section 1.2.H.1 shall be accomplished by copies of certified payrolls. For items under Section 1.2.H.2, original receipted invoices for rentals must be provided if requested by Owner's Authorized Representative. Requests for payment of items under Sections 1.2.H.3 and 1.2.H.4 shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from Concessionaire's or Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit signed by an authorized representative of Concessionaire or the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that price and transportation of the material as claimed represent actual cost. Copies of invoices and other appropriate evidence shall be provided for Section 1.2.H.5. Any request for payment under this Section 1.2 shall be submitted in the order outlined by the above.

I. Items of Work Not Suitable for Force Account — If Owner's Authorized Representative and Concessionaire, by agreement, determine that (a) an item of force account cannot be performed by the forces of Concessionaire or any existing Contractor, and (b) it is not in accordance with the established practice of the industry involved to keep the records which the procedure outlined in this Section 1.2 would require, then compensation shall be determined at the fair market price for the good or service provided, or, if there is no market shall be a commercially reasonable price, allowing Owner a credit for any cash or trade discount offered or available. Concessionaire shall be required to justify any differences between the amount charged for such goods or services and the estimated costs for comparable goods or services included in the original Cost and Pricing Data. An additional 5% will be added to the amount determined as specified above, in lieu of the percentages provided in this Section 1.2. In no event will the price paid exceed the current fair market value of such work plus 5%. With respect to Relief Events affecting the scope of the O&M Work but not suitable for Force Account, the Parties will ensure that pricing accounts for escalation applied to Availability Payments under the terms of the Contract Documents.

J. Records. Concessionaire is responsible for providing evidence regarding costs incurred and establishing reasonableness of such costs. As provided in the Agreement, Concessionaire's records shall be made available to Owner at all reasonable times.

K. Affiliate Costs

1. The direct costs of an Affiliate's labor, materials, and equipment used in performing added or changed Work due to Relief Events shall be limited in accordance with Section 9.5.1 of the Agreement.

2. If an employee or worker of an Affiliate engages in work or tasks that duplicate or repeat work or tasks being performed by an employee or worker of Concessionaire, then none of the Affiliate's labor costs respecting the duplicated or repeated work or tasks will be compensable.

**2. DELAY COSTS**

**2.1 Circumstances for Which Delay Costs Are Allowed**

Delay Costs are subject to limitations as specified in Article 15 of the Agreement and this Section 2, and are payable only for delays to the Critical Path for Construction Work directly attributable to one or more Relief Events under items (a) through (g), (h)(1) and (n) of the definition of Relief Events (that is, for (a) Owner-Caused Delays and certain discoveries of (b) paleontological or cultural resources, (c) Hazardous Materials, (d) sudden third party spills of Hazardous Material, (e) Differing Site Conditions; (f) underground Utilities, (g) Threatened or Endangered Species, (h)(1) Discriminatory Changes in Law and (n) interlocutory relief). Limitations regarding recovery of Delay Costs shall not affect Concessionaire's entitlement to Incremental Costs incurred in performance of Extra Work and changes in the Work due to Relief Events.

If a Relief Event delays or disrupts the Work but does not delay the Critical Path, or if the Work is accelerated so that no extension to the Contract Deadlines is required, then no Delay Costs will be recoverable although acceleration costs may be payable by Owner under Section 3.

Furthermore, if any delay due to a Relief Event is concurrent with any other unrelated delay to a Critical Path that is due to a Force Majeure Event or that is Concessionaire's responsibility under the Contract Documents (including Utility Owner Delays), then no Delay Costs will be recoverable for the period of concurrent delay.

**2.2 Prerequisites for Claiming Delay Costs**

A. Strict compliance with the notice provisions and the recordkeeping provisions of Article 15 of the Agreement and this Exhibit 13A is an essential condition precedent under the Agreement to any recovery of Delay Costs by Concessionaire.

B. Refer to Section 15.2 of the Agreement regarding requirements to submit PCO Notices, supplemental PCO Notices and Requests for Change Order and provisions concerning waivers of the right to make Claims, including Claims for Delay Costs.

C. Not Used.

D. After giving Owner a Relief Event Notice contemplating Delay Costs, Concessionaire must keep daily records, certified by Concessionaire's Design Quality

Assurance Manager and/or the Construction Quality Assurance Manager (or an equivalent authorized representative of the O&M Contractor or Concessionaire, as applicable), of all costs for which reimbursement is sought, including labor, material, and equipment costs and hours incurred for the affected operations, and including overhead costs. These daily records must identify each operation affected and the specific locations where Work is affected. Costs that are incurred on a monthly or similar basis, such as field office expense, shall be submitted within one week following the week of receipt of invoices pertaining thereto. On a weekly basis, beginning the week following the date of giving a Relief Event Notice that contemplates Delay Costs, Concessionaire shall meet with Owner's Authorized Representative and present the daily records for the preceding week. If Owner's Authorized Representative disagrees with the accuracy, applicability, or reasonableness of any portion of Concessionaire's submission, he/she shall promptly notify Concessionaire who shall correct its records. The Dispute Resolution Procedures shall apply in the event of any Dispute regarding records.

E. After giving a Relief Event Notice that contemplates Delay Costs, Concessionaire shall prepare and submit to Owner's Authorized Representative, weekly written reports until complete resolution of the Claim, which shall be available at the next scheduled job meeting, providing the following information:

1. Potential effect to Concessionaire's schedule caused by the Relief Event;
2. Identification of all operations that have been affected or delayed, or are or may be affected or delayed;
3. If the Relief Event involves an Owner-Caused Delay, an explanation of how Owner's act or omission affected or delayed each operation and estimation of how much more time is required to complete the Project;
4. Itemization of all extra costs being incurred, including the following:
  - a. An explanation as to how those extra costs relate to the effect or delay and how they are being calculated and measured;
  - b. Identification of all Project employees for whom costs are being compiled; and
  - c. Identification of all manufacturer's numbers of all items of equipment for which costs are being compiled.

F. Following receipt of the materials described above and any other materials required by Article 15 of the Agreement, Owner's Authorized Representative shall make the initial determination in writing on the Claim.

G. If Concessionaire accepts the determination of Owner's Authorized Representative, Owner's Authorized Representative will process a Change Order, as appropriate, to implement his or her determination. Owner's Authorized Representative will notify Concessionaire in writing of the date upon which Owner has approved the Change Order.

If Concessionaire fails to appeal the Initial Decision of Owner's Authorized

Representative or otherwise fails to proceed in accordance with the Dispute Resolution Procedures, Concessionaire shall be conclusively deemed to have accepted the determination made by Owner's Authorized Representative.

## **2.3 Limitations on Recoverable Delay Costs**

Delay Costs will only be recoverable provided that they are actual and reasonable. Any adjustment for Delay Costs will be made through a Change Order. Recoverable Delay Costs are limited to unavoidable costs identified in this Section 2.3 related to performance of Construction Work. During the O&M Period, Delay Costs are only payable for delays to ongoing Construction Work under executed Major Construction Contracts for which Concessionaire has provided a notice to proceed to the Contractor, and then only with respect to delays to the critical path and schedule approved by Owner for the relevant Major Construction Contract).

A. Recoverable Prime Contractor Delay Costs for Construction Work. Only the following types of costs will be recoverable as Delay Costs. Escalated costs will include unanticipated higher or lower costs attributable, with appropriate credits, to the performance of Work or portions of Work in an extended time period due to extenuating circumstances beyond the control of any Concessionaire-Related Entity. If a time-related Dispute involves Extra Work or changes in the Work for which compensation is allowed under the Contract Documents, the Incremental Costs of such Work shall be accounted for and reimbursed in accordance with Section 1, less any appropriate credit.

1. Construction Labor. Documented increase in labor costs due to the delay, determined in accordance with Section 1.2.A.

2. Construction Materials. Documented increase in material costs due to the delay, determined in accordance with Section 1.2.B.

3. Construction Equipment. Documented increase in equipment costs due to the delay, less appropriate credits, determined in accordance with Section 1.2.C. In the case of Owner-Caused Delays only, idle or standby time of existing equipment at the construction site will be allowed at 50% of the rate set forth in Section 1.2.C; in no other case will idle time for such equipment be allowed. Idle time shall not exceed 8 hours per day, 40 hours per week, or the annual usage hours established in the RRBB. No operating costs will be paid for idle equipment.

4. Field Office Costs. Fees paid by the Design-Build Contractor to service provider(s) for required field office rental, utility charges, potable water, sanitation, cleaning, etc. Concessionaire will be paid the actual cost of the service fee plus 5% to cover contract supervision and overhead. This 5% will be applied once to the service fee regardless of the number of tiers between Concessionaire and the service provider.

5. Extended Contract Site Overhead. Documented additional or escalated contract site overhead costs during the extended period, including the Design-Build Contractor's superintendent, office engineer and clerical staff, but not including working foremen.

6. Home Office Overhead. Home office overhead equal to 10% of the total of items 2.3.A.1 and 2.3.A.2.

7. Profit. If the Delay Cost is directly attributable to an Owner-Caused Delay, profit of 10% will be allowed on the total of items 2.3.A.1 through 2.3.A.4. No profit will be allowed under any other circumstance.

8. Insurance and Costs of Payment and Performance Security. Documented additional or escalated premiums on required bonds, letters of credit and insurance for the extended period.

B. Recoverable Subcontractor Costs. When the Work is performed by a Subcontractor, the Prime Contractor's Delay Costs shall include the actual and reasonable cost of such subcontracted Work as outlined above in items 2.3.A.1 through 2.3.A.7 and an additional markup of 5% of the Subcontractor costs outlined in items 2.3.A.1 through 2.3.A.3 above to cover overhead. However, there will not be any such markup for Subcontractors below the first tier.

C. Recoverable Concessionaire Costs. Delay Costs payable to Concessionaire for delays in Construction Work shall not exceed 3% of the Delay Costs for which the Design-Build Contractor is entitled to reimbursement under Sections 2.3A and B.

Delay Costs exclude cost of funds (whether debt or equity) and any other Lender charges, damages or penalties. Refer to Sections 15.7 through 15.9 of the Agreement for information regarding reimbursement of debt service payments and payment of return on equity due to certain Critical Path delays.

#### **2.4. Non-Recoverable Costs**

The parties agree that, in any Claim for Delay Costs, Owner will have no liability for the following items and Concessionaire further agrees it shall make no claim for the following items:

A. Overhead in excess of that provided in items 2.3.A.4, 2.3.A.5, 2.3.A.6 and 2.3.B;

B. Profit in excess of that provided in items 2.3.A.7 and 2.3.B;

C. Loss of anticipated or unanticipated profit;

D. Labor inefficiencies and loss of productivity;

E. Consequential damages and indirect costs or expenses not specifically allowed under this Section 2, including interest which is paid on such monies; loss of bonding capacity, bidding opportunities, interest on investment; or any resultant insolvency;

F. Direct or indirect costs attributable to performance of the Work where Concessionaire, because of situations or conditions within the control of Concessionaire-Related Entities, has not progressed in accordance with requirements of the Contract Documents; and

G. Attorney's fees and dispute or claims preparation expenses.

## **2.5. Remedies Exclusive**

The parties agree that Owner shall have no liability to Concessionaire for indirect costs incurred by Concessionaire due to a delay, including extended overhead, unabsorbed home office overhead, idle labor and equipment costs, additional storage costs, and labor and material cost escalation, other than those which are specifically identified as payable under Section 2.3. In the event any legal action is instituted against Owner by Concessionaire on account of any dispute for such additional compensation, Concessionaire agrees that Owner's liability will be limited to those items which are specifically identified as compensable under Section 2.3.

## **3. ACCELERATION COSTS**

In addition to the requirements and limitations applicable to Change Orders and Claims specified elsewhere in the Contract Documents, costs associated with acceleration of the Work shall be compensable hereunder only to the extent Concessionaire establishes that (a) the acceleration is required to avoid a Critical Path delay for which Concessionaire is entitled to an extension of the RSA Deadline under the terms of the Contract Documents, and (b) the costs of workaround and other acceleration measures are justified by equal or greater savings in amounts otherwise payable by Owner for Incremental Costs, Delay Costs and Delay Interest. Any claim for a "constructive change" is subject to strict compliance with the requirements of Article 15 of the Agreement and this Exhibit 13A.



## **EXHIBIT 13B**

### **TERMINATION COMPENSATION**

Unless otherwise specified, all references in this Exhibit 13B to “Sections” are to the sections of this Exhibit 13B, and all references to “Exhibits” are to the exhibits to the Agreement to which this Exhibit 13B is attached.

All calculations under this Exhibit 13B shall be made without double counting and shall be made as of the Early Termination Date unless otherwise specified. Notwithstanding anything to the contrary in this Exhibit 13B, Termination Compensation payable to Concessionaire shall be reduced by the amount of any advance payments to Affiliates that Section 9.6.3 of the Agreement specifies will be excluded from Termination Compensation. If a termination occurs, the compensation provided for in this Exhibit shall constitute full and final payment and satisfaction of Owner’s obligations to Concessionaire under the Agreement. Except as otherwise specified in this Exhibit 13B, the Dispute Resolution Procedures shall apply with respect to any disagreement regarding amounts owing under this Exhibit 13B, and any additional payment that is determined to be owing shall be made within 30 days following final resolution of the Dispute.

#### **1. Defined Terms**

Capitalized terms shall have the meanings specified in Exhibit 1.

#### **2. Termination for Convenience; Termination for Owner Default; Payment of Termination Compensation**

##### **2.1 Termination for Convenience or Owner Default**

If Owner exercises its right of Termination for Convenience pursuant to Section 19.1 of the Agreement or a termination occurs under Section 19.4 of the Agreement, then the Early Termination Date shall be as specified in the notice of Termination for Convenience, but in no event earlier than 30 days after the date such notice is delivered.

##### **2.2 Calculation and Payment of Termination Compensation.**

**2.2.1** If Owner exercises its right of Termination for Convenience pursuant to Section 19.1 of the Agreement or a termination occurs under Section 19.4 of the Agreement, then Owner shall pay compensation to Concessionaire (or to Collateral Agent or Concessionaire’s Lenders, as applicable, when the right to receive such compensation has been duly pledged), in an amount equal to (a) the Project Debt Termination Amount plus the Termination for Convenience Amount plus Contract Termination Costs, less (b) available Credit Balances and Insurance Proceeds, to the extent not already taken account in calculating any of the amounts included in item (a).

**2.2.2** The Termination for Convenience Amount shall be calculated as the net present value of the anticipated future nominal Distributions (Post-Tax on the part of the Concessionaire but pre-tax on the part of the Equity Members) from drawn share capital and

payments on any Subordinate Debt as of the Early Termination Date based on an appraisal by an independent third party expert appraiser that is nationally recognized for the conduct of valuation exercises. The appraisal shall be provided within 90 days of the appointment by both Parties of such independent appraiser (provided that if the Parties fail to agree on the identity of such independent appraiser and fail to complete such appointment by the 15th business day following the Termination Date, either Party may request the financial DRB to select and appoint such independent appraiser within 15 business days of such request). For purposes of the calculation of such net present value, the Parties shall instruct the independent appraiser to:

(a) utilize a discount rate that is based on both (i) the performance of the Project and projects in the United States of America employing a similar approach to risk allocation (including credit risk) and a similar payment mechanism (including the absence of any transfer of usage risk to the Concessionaire) and (ii) the assumption that no event has occurred for which Termination Compensation is payable and the equity interests of the Equity Members of the Concessionaire are freely transferable and are being sold in the open market; and

(b) estimate the anticipated future nominal Distributions based on the performance of the project up to the Early Termination Date employing an approach that considers the most recent Financial Model Update and making any adjustments for positive or negative operating performance that is not yet reflected in the Financial Model Update.

The determination of the independent appraiser shall, except in the case of manifest error or fraud, be final unless either Party challenges such determination within 30 days of the date of the determination by submission to the financial DRB. If such a challenge is filed, the amount shall be determined in accordance with the Dispute Resolution Procedures.

**2.2.3** The Project Debt Termination Amount included in the Termination Compensation owing under Section 2.2.1 (including interest on the Project Debt, other than Subordinate Debt, that has accrued and remains unpaid as of the payment date) shall be due and payable by Owner within 90 days after Concessionaire (or Collateral Agent or Concessionaire's Lender(s), as applicable) provides Owner with a written statement as to the Project Debt Termination Amount and accounts held by the Concessionaire (or Collateral Agent or Concessionaire's Lenders, as applicable), with documentation reasonably required by and acceptable to Owner supporting such statement.

**2.3 Payment of Remaining Amount.** The remaining amount owing shall be due and payable by Owner within 60 days after Owner determines the amount payable. Concessionaire shall provide Owner with a written settlement proposal identifying all amounts relevant to calculation of Termination Compensation not covered under Section 2.2 above, accompanied by (a) a certification signed by Concessionaire's Authorized Representative stating that such amounts are owing under the terms of the Agreement and (b) a certification signed by the independent appraiser stating the net present value of the anticipated future nominal distributions and (c) back-up documentation, including the report of the independent appraiser that describes the basis for their recommendation, supporting the request as reasonably required by and acceptable to Owner. Owner shall promptly review all such information and determine the amount owing.

**3. Termination for Extended Delay, Termination by Court Ruling or Insurance Unavailability**

**3.1 Early Termination Date Under Section 19.2.** If a termination occurs under Section 19.2 of the Agreement, then the Early Termination Date shall be 60 days after the earlier to occur of:

- a. the date of acceptance by the other Party of a conditional election to terminate;
- b. the date Owner delivers notice of election to terminate pursuant to Section 19.2.1 or 19.2.2 of the Agreement (as applicable);
- c. the date either Party delivers notice of unconditional election to terminate pursuant to Section 19.2.5 of the Agreement; or
- d. the date Owner delivers notice of unconditional election to terminate pursuant to Section 19.2.9 of the Agreement.

**3.2 Early Termination Date under Section 19.5.** If the Agreement is terminated pursuant to Section 19.5 of the Agreement, then the Early Termination Date shall be ten business days after the date either Party delivers notice of unconditional election to terminate pursuant to Section 19.5 of the Agreement.

**3.3 Amount Payable.** If the Agreement is terminated pursuant to Section 19.2 or 19.5 of the Agreement, Owner shall pay compensation to Concessionaire (or to Collateral Agent or Concessionaire's Lenders, as applicable, when the right to receive such compensation has been duly pledged) in accordance with this Section 3.3. With respect to a termination under Section 19.2.9 of the Agreement, the payment shall be in an amount equal to the Project Debt Termination Amount. For terminations under any other provision of Section 19.2 or 19.5, the payment shall be in an amount equal to (a) the Project Debt Termination Amount plus the Outstanding Committed Investment plus Contract Termination Costs, less (b) available Credit Balances and Insurance Proceeds, to the extent not already taken account in calculating any of the amounts included in item (a).

**3.4 Payment of Project Debt Termination Amount.** The Project Debt Termination Amount included in the Termination Compensation owing under Section 3.3 (including accrued but unpaid interest to the payment date, on the Project Debt, other than Subordinate Debt) shall be due and payable by Owner within 60 days after Concessionaire (or Collateral Agent or Concessionaire's Lender(s), as applicable) provides Owner with a written statement as to the Project Debt Termination Amount and accounts held by the Concessionaire (or Collateral Agent or Concessionaire's Lenders, as applicable), with documentation reasonably required by and acceptable to Owner supporting such statement.

**3.5 Payment of Remaining Amount.** The amount owing (if any) in excess of the Project Debt Termination Amount shall be due and payable by Owner upon the later to occur of (a) the date the Project Debt Termination Amount is paid or (b) 30 days after Owner determines the amount payable. Concessionaire shall provide Owner with a written settlement proposal identifying all amounts relevant to calculation of Termination Compensation not covered under

Section 3.4, accompanied by (a) a certification signed by Concessionaire's Authorized Representative stating that such amounts are owing under the terms of the Agreement and (b) back-up documentation supporting the request as reasonably required by and acceptable to Owner. Owner shall promptly review all such information and determine the amount owing.

#### **4. Termination for Concessionaire Default**

**4.1 Early Termination Date.** If a termination occurs under Section 19.3 of the Agreement, then the Early Termination Date shall be the date of delivery of notice of termination to Concessionaire (or to Collateral Agent or Concessionaire's Lenders, as applicable) unless otherwise specified in the termination notice.

**4.2 Method of Calculating Termination Compensation During Design-Build Period.** Subject to Sections 4.4 and 4.5, if the Agreement is terminated before the Revenue Service Availability Date under Section 19.3 of the Agreement, and no Lender has duly exercised and consummated an option to obtain New Agreements from Owner under any Direct Agreement, then Owner shall pay compensation under this Section 4.2 to Concessionaire (or to Collateral Agent or Concessionaire's Lender(s), as applicable, if the right to receive such compensation has been duly pledged). Owner may determine the amount payable using the Market Re-Solicitation Method if a Liquid Market exists and otherwise will use the Desktop Method described below to make such determination.

##### **4.2.1 Market Re-Solicitation Method.**

**4.2.1.1** If Owner elects to remarket the Agreement, it will follow the Resolicitation Process, determine the Adjusted Resolicited Agreement Price and notify Concessionaire regarding the amount.

**4.2.1.2** If the Adjusted Resolicited Agreement Price is a positive amount, the Termination Compensation shall be equal to the Adjusted Resolicited Agreement Price. In such event, Owner will coordinate with Concessionaire to determine compensation owing to Concessionaire, with the goal of incorporating such compensation into the closing for the resolicited agreement. If the Parties are unable to reach agreement prior to such closing regarding any amounts payable at closing, closing shall proceed and the disputed amount(s) shall be subject to the Dispute Resolution Procedures and, upon closing, held in escrow pending resolution of the Dispute.

**4.2.1.3** If the Adjusted Resolicited Agreement Price is zero or is a negative amount, then Owner shall have no obligation to make any payment to Concessionaire. If the Adjusted Resolicited Agreement Price is a negative amount, then Concessionaire shall, within 30 days after receipt of an invoice from Owner, pay to Owner the dollar amount equal to the absolute value of the negative amount.

##### **4.2.2 Desktop Method.**

**4.2.2.1** The amount payable to Concessionaire under this Section 4.2 shall be determined using a desktop method if Owner elects not to remarket the Agreement or if, after seeking to remarket the Agreement, Owner (a) does not receive any Qualifying Proposals for such Agreement or, even though Owner has received at least one Qualifying

Proposal, it cannot come to terms with a selected counterparty so as to enter into a Resolicited Agreement or (b) the selected counterparty otherwise fails or refuses to enter into a Resolicited Agreement. In such event Owner shall promptly notify Concessionaire that Termination Compensation will be determined based on a Desktop Method and will proceed to determine the Estimated Fair Value of the Agreement as described below. Concessionaire is responsible for providing data to Owner to enable the calculation to be made, including backup information and certifications from Concessionaire (or from Collateral Agent or Concessionaire's Lenders, as applicable) and Collateral Agent stating that the data and information provided is complete and accurate. Within 60 days after receipt of all necessary data, Owner will complete the calculation and will notify Concessionaire in writing of the Adjusted Estimated Fair Value owing, with backup information regarding the calculation. If the transition plan developed under Section 19.7.2 of the Agreement requires Concessionaire to perform Work during the period between the Termination Date and the Termination Compensation Date, Owner will pay to the Concessionaire the Post-Termination Services Amount on a monthly basis in arrears until (i) Owner directs Concessionaire to stop Work or (ii) if no such direction is provided, completion of all remaining Work required to be performed by Concessionaire under Section 19.7 of the Agreement and the transition plan. Within 90 days after the date of delivery of the notice Owner will pay the Adjusted Estimated Fair Value.

**4.2.2.2** If the Agreement is terminated pursuant to the requirements in Section 4.2, the Adjusted Estimated Fair Value shall be the least of the following:

- a. the Adjusted Estimated Fair Value calculated by using an Estimated Fair Value that is equal to the Project Adjusted Costs;
- b. the Adjusted Estimated Fair Value calculated by using an Estimated Fair Value that is equal to the costs shown in Concessionaire's Work Breakdown Structure, multiplied by the percentage of completion minus the sum of Progress Payments, RSA Payments, Final Completion Payments and any unscheduled payments (including those related to Relief Events and Change Orders) previously paid for Work made by Owner to Concessionaire; and
- c. 80% of the Project Debt Termination Amount.

**4.3 Method of Calculating Termination Compensation During O&M Period.**

Subject to Sections 4.4 and 4.5, if a termination occurs under Section 19.3 of the Agreement on or after the Revenue Service Availability Date, and no Lender has duly exercised and consummated an option to obtain New Agreements from Owner pursuant to any Direct Agreement, then Owner shall pay compensation to Concessionaire (or to Collateral Agent or Concessionaire's Lenders, as applicable, if the right to receive such compensation has been duly pledged). Owner may determine the amount payable using the Market Re-Solicitation Method if a Liquid Market exists and otherwise will use the Desktop Method described below to make such determination.

**4.3.1 Market Re-Solicitation Method.** If Owner elects to use the Market Re-Solicitation Method pursuant to the requirements of this Section 4.3, then Termination

Compensation shall be determined and shall be due and payable as stated in Section 4.2.1 above.

**4.3.2 Desktop Method.** If Owner elects to use the Desktop Method pursuant to the requirements of this Section 4.3, then Termination Compensation shall be determined and shall be due and payable as stated in Section 4.2.2 above, except that the Adjusted Estimated Fair Value shall be the lesser of:

- a. Adjusted Estimated Fair Value calculated by using an Estimated Fair Value that is equal to the Project Adjusted Costs plus the sum of capitalized interest during the Design-Build Period minus (i) the total Project Debt principal repaid on the portion of Project Adjusted Costs funded with Project Debt (excluding principal repayments on the portion of the Project Debt that is repaid from the RSA Payment or the Final Completion Payment); minus (ii) the value of the Project Adjusted Costs funded with Committed Investment determined using a straight line amortization schedule over 30 years commencing on the RSA Date; and
- b. 80% of the Project Debt Termination Amount.

**4.4 Circumstances Under Which No Termination Compensation Is Payable.**

Notwithstanding anything to the contrary in the Contract Documents, termination of the Agreement shall not give rise to Termination Compensation if any Lender enters into New Agreements from Owner pursuant to Section 13 of any Direct Agreement.

**4.5 Method of Calculating Termination Compensation for Terminations Under Sections 9.9.2, 9.15 or 17.1.1(j) (regarding federal debarment only) of the Agreement.**

Owner shall pay compensation under this Section 4.5 only if (a) Owner terminates the Agreement under either Section 9.9.2, Section 9.15 or, for uncured Concessionaire Defaults relating solely to federal debarment, following expiration of applicable cure periods under Section 17.1.2 of the Agreement, (b) neither Collateral Agent nor any Lender participated in, or had knowledge of, the event giving rise to the termination (e.g., Concessionaire's failure to comply (Section 9.9.2) or improper act (Section 9.15), as applicable), (c) Collateral Agent and each Lender certifies in writing to Owner that it did not participate in or have knowledge of such event, (d) no Lender has duly exercised and consummated an option to obtain New Agreements from Owner under any Direct Agreement, and (e) Concessionaire has duly pledged the right to receive such compensation to Collateral Agent or Concessionaire's Lender(s), as applicable. Compensation owing under this Section 4.5 shall be payable directly to the Collateral Agent or Lender(s). The termination compensation payable under this Section 4.5 shall be in an amount equal to the Project Debt Termination Amount less available Credit Balances and Insurance Proceeds, to the extent not already taken account in calculating the Project Debt Termination Amount.

If the transition plan developed under Section 19.7.2 of the Agreement requires Concessionaire to perform Work during the period between the Termination Date and the Termination Compensation Date, then, in addition, Owner will pay to the Concessionaire the Post-Termination Services Amount on a monthly basis in arrears until (i) Owner directs Concessionaire to stop Work or (ii) if no such direction is provided, completion of all remaining

Work required to be performed by Concessionaire under Section 19.7 of the Agreement and the transition plan.

Any payment of compensation owing under this Section 4.5 will be made within 30 days after receipt of a proper invoice submitted to Owner, with certification of the amount claimed in the invoice, and backup information regarding costs as reasonably requested by Owner. Such invoice may not be submitted until one business day after termination occurs. If Owner terminates the Agreement under either Section 9.9.2 or Section 9.15 of the Agreement, and either the Collateral Agent or any Lender fails to comply with the conditions in Section 13.1(c) of the Direct Agreement, then Termination Compensation shall be determined under Section 4.2 or Section 4.3 of this Exhibit 13B, as applicable.

## **5. Termination for Failure to Reach Financial Close**

**5.1 Amount Payable.** If the Agreement is terminated pursuant to Section 19.6.1 of the Agreement, Owner will pay to Concessionaire an amount equal to the lesser of (a) \$4,000,000 and (b) Concessionaire's costs (without profit) incurred in response to the RFP (including, only in the case of successful completion by Concessionaire of the debt competition under Sections 4.4.12.3 and 4.4.12.2(b)(iv), costs (without profit) incurred in conducting such debt competition). In addition, if Owner has issued any limited Notice to Proceed under Section 7.4.3 of the Agreement, Concessionaire will wind down the Work, complete it, remove it or take other action as directed by Owner, and Owner will make any payments owing, following receipt of a proper invoice, with respect to Work authorized by the limited Notice to Proceed and subsequent Owner direction.

**5.2 Payment Due Date.** Any payment of compensation owing under Section 5.1 will be made within 30 days after receipt of a proper invoice submitted to Owner, with certification of expenditures of the amount claimed in the invoice, and backup information regarding costs as reasonably requested by Owner. Such invoice may not be submitted until one business day after termination occurs.

## **ATTACHMENT 1 TO EXHIBIT 13B**

### **MARKET RESOLICITATION PROCESS**

#### **1.1 Resolicitation Election**

- (a) If Owner elects to remarket the Agreement under Section 4.2.1 or 4.3.1 of Exhibit 13B, then the following resolicitation process will be used to determine the amount payable to Owner by the Replacement Concessionaire and used in calculating the Adjusted Resolicited Agreement Price.
- (b) Owner shall only be able to remarket the Agreement under this resolicitation process if a Liquid Market exists. Owner will notify Concessionaire in writing of Owner's determination that a Liquid Market exists and that Owner has decided to proceed with a resolicitation. Within 10 business days following receipt of such notification, if Concessionaire disagrees that a Liquid Market exists, Concessionaire shall notify Owner of the disagreement. If Concessionaire fails to timely provide such notice of disagreement, Concessionaire shall be deemed to have waived the right to contest Owner's determination regarding the existence of a Liquid Market. However, such waiver shall not preclude Concessionaire from subsequently notifying Owner regarding a change in market conditions and asking Owner to reconsider its prior determination regarding the existence of a Liquid Market based on such changes. In such event Owner will review current conditions and notify Concessionaire whether Owner continues to believe that a Liquid Market exists. Any Dispute regarding the existence of a Liquid Market or the effect of changed market conditions under this Section 1.1(b) shall be subject to resolution in accordance with the financial Dispute Resolution Procedures.
- (c) If Owner determines that a Liquid Market does not exist or if the Dispute Resolution Procedures result in a final determination that a Liquid Market does not exist, then Owner will determine the Termination Compensation via the "Desktop Method" set forth in Section 4.2.2 or 4.2.3 (as applicable) of Exhibit 13B.

#### **1.2 Resolicitation Process**

- (a) The objective of the Resolicitation Process is to enter into a Resolicited Agreement with a Qualifying Proposer.
- (b) Owner commences the remarketing of the Agreement by notifying Concessionaire, in writing, on or before 30 days after the Early Termination Date, of Owner's intent to remarket the Agreement.
- (c) Owner will commence the Resolicitation Process promptly thereafter and use commercially reasonable efforts to complete the Resolicitation Process as soon as practicable. The Resolicitation Process shall require consideration payable for the Resolicited Agreement to be in the form of a lump sum amount payable upon execution and delivery of the Resolicited Agreement.



- (d) Owner will, as soon as reasonably practicable, notify Concessionaire of the qualification criteria and the other requirements and terms of the Resolicitation Process, including the anticipated schedule for the Resolicitation Process.
- (e) Concessionaire authorizes the release of any information by Owner under the Resolicitation Process that is reasonably required, as reasonably determined by Owner, for the Resolicitation Process.
- (f) During the Resolicitation Process, both Owner and Concessionaire shall continue to perform their respective obligations under the Agreement, including in particular those specified under Section 19.7. If the transition plan developed under Section 19.7.2 of the Agreement requires Concessionaire to perform Work during the period between the Termination Date and the Termination Compensation Date, Owner will pay to the Concessionaire the Post-Termination Services Amount on a monthly basis in arrears until (i) Owner directs Concessionaire to stop Work or (ii) if no such direction is provided, completion of all remaining Work required to be performed by Concessionaire under Section 19.7 of the Agreement and the transition plan.
- (g) Concessionaire may, at its own cost, appoint a person (the "Resolicitation Process Monitor") to monitor the Resolicitation Process for the purpose of monitoring and reporting to Concessionaire and the Lenders (or Collateral Agent, as applicable) on Owner's compliance with the Resolicitation Process. The Resolicitation Process Monitor shall enter into a confidentiality agreement with Owner in a form acceptable to Owner and shall be entitled to attend all meetings relating to the Resolicitation Process, inspect copies of all the resolicitation and proposal documentation and make representations to Owner as to compliance with the Resolicitation Process. Owner shall not be bound to consider or act upon such representations. The Resolicitation Process Monitor shall not disclose confidential information to Concessionaire or the Lenders (or Collateral Agent), but shall be entitled to advise Concessionaire and the Lenders (or Collateral Agent) on whether it considers that Owner has acted pursuant to the Resolicitation Process and correctly determined the Adjusted Resolicted Agreement Price.
- (h) As soon as practicable after proposals have been received, Owner shall, acting reasonably, review and assess the Qualifying Proposals and shall notify Concessionaire of the highest Qualifying Proposal and the lump sum amount to be paid by the Replacement Concessionaire.
- (i) Concessionaire hereby agrees that Owner shall be entitled to enter into a Resolicted Agreement regardless of the existence of any Dispute between Concessionaire and Owner concerning the Adjusted Resolicted Agreement Price or the Resolicitation Process.
- (j) Owner may elect, by notice to Concessionaire at any time prior opening of bids in advance of award of the Resolicted Agreement, to abandon the Resolicitation Process and to proceed by the "Desktop" Method to determine Termination

Compensation that may be owed to Concessionaire. In addition, Owner shall abandon the Resolicitation Process and proceed by the “Desktop” Method if:

- (i) no Qualifying Proposal is received; or
  - (ii) a Resolicited Agreement has not been entered into and consideration paid for such agreement within 12 months after the Early Termination Date.
- (k) If Owner determines that a Liquid Market will not exist on the date for receipt of Qualifying Proposals, or if a final determination is made under the Dispute Resolution Procedures that a Liquid Market does not exist, as described in Section 1.1(b) of this Attachment, Owner will proceed to value the Agreement using via the “Desktop Method” under Section 4.2.2 or 4.3.2 (as applicable) of Exhibit 13B.

**EXHIBIT 14**

**CONTRACT AFFIDAVIT**

*[insert separate forms to be included for Concessionaire and each Equity Member]*

**CONTRACT AFFIDAVIT**

**PURPLE LINE TRANSIT PARTNERS LLC, a Delaware limited liability company**

**A. AUTHORITY**

**I HEREBY AFFIRM THAT:**

I, John M. Dionisio (print name), possess the legal authority to make this Affidavit.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

**I FURTHER AFFIRM THAT:**

PURPLE LINE TRANSIT PARTNERS LLC (the "Business") is a (check applicable box):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☒ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the Business is in good standing both in Maryland and in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: CSC-LAWYERS INCORPORATING SERVICE COMPANY;  
D03139227

Address: 7 St. Paul Street, Suite 820, Baltimore MD 21202

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: n/a

Address: n/a.

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the Business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the Business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the Business.

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the Business will comply with Sections 14-101 to 14-108 of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**E. DRUG AND ALCOHOL FREE WORKPLACE**

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

**I CERTIFY THAT:**

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the Business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the Business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;

- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by Section E(2)(b), above;
  - (h) Notify its employees in the statement required by Section E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under Section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under Section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of Section E(2)(a)—(j), above.
- (3) n/a.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

**F. CERTAIN AFFIRMATIONS VALID**

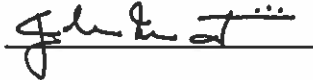
**I FURTHER AFFIRM THAT:**

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit for the above-named Business included in the Proposal, a true and correct copy of which is attached hereto, remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth in this affidavit.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: March 1, 2016

By: John M. Dionisio, as signatory for Purple Line Transit Partners LLC  
(printed name of Authorized Representative and Affiant)



(signature of Authorized Representative and Affiant)

Attachment: Proposal Affidavit



## **FORM C**

### **PROPOSAL AFFIDAVIT**

#### **A. Authority**

I HEREBY AFFIRM THAT:

I Terence M. Easton possess the legal authority to make this Affidavit.

#### **B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in Section 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### **C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to , §6-220 of the Criminal Procedure Article of the Annotated Code of Maryland, or has pleaded nolo

contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

None

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#### D. AFFIRMATION REGARDING OTHER CONVICTIONS

##### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)–(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

None

#### E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

None

#### F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

None

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#### G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

#### H. AFFIRMATION REGARDING COLLUSION I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

#### I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT: Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

#### K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

None

#### L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

#### M. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Contracting Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants

undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: November 11, 2015

Purple Line Transit Partners (a to-be-formed limited liability company)  
(print name of organization)

By: Terence M. Easton, Authorized Representative  
(print name of Authorized Representative and Affiant)



(signature of Authorized Representative and Affiant)

**CONTRACT AFFIDAVIT**

**PURPLE LINE TRANSIT PARTNERS LLC, a Delaware limited liability company**

**A. AUTHORITY**

**I HEREBY AFFIRM THAT:**

I, John M. Dionisio (print name), possess the legal authority to make this Affidavit.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

**I FURTHER AFFIRM THAT:**

PURPLE LINE TRANSIT PARTNERS LLC (the "Business") is a (check applicable box):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☒ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the Business is in good standing both in Maryland and in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: CSC-LAWYERS INCORPORATING SERVICE COMPANY;  
D03139227

Address: 7 St. Paul Street, Suite 820, Baltimore MD 21202

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: n/a

Address: n/a.

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the Business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the Business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the Business.

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the Business will comply with Sections 14-101 to 14-108 of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**E. DRUG AND ALCOHOL FREE WORKPLACE**

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

**I CERTIFY THAT:**

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the Business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the Business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;



- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by Section E(2)(b), above;
  - (h) Notify its employees in the statement required by Section E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under Section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under Section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of Section E(2)(a)—(j), above.
- (3) n/a.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

**F. CERTAIN AFFIRMATIONS VALID**

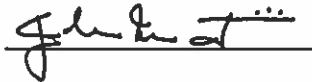
**I FURTHER AFFIRM THAT:**

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit for the above-named Business included in the Proposal, a true and correct copy of which is attached hereto, remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth in this affidavit.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: March 1, 2016

By: John M. Dionisio, as signatory for Meridiam Infrastructure Purple Line, LLC  
(printed name of Authorized Representative and Affiant)



(signature of Authorized Representative and Affiant)

Attachment: Proposal Affidavit

## **FORM C**

### **PROPOSAL AFFIDAVIT**

#### **A. Authority**

I HEREBY AFFIRM THAT:

I John M. Dionisio possess the legal authority to make this Affidavit.

#### **B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in Section 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### **C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to , §6-220 of the Criminal Procedure Article of the Annotated Code of Maryland, or has pleaded nolo

contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

N/A

---

#### D. AFFIRMATION REGARDING OTHER CONVICTIONS

##### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)–(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

N/A

#### E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

N/A

#### F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

N/A

---

#### G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

#### H. AFFIRMATION REGARDING COLLUSION I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

#### I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT: Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

#### K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

N/A

#### L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

#### M. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Contracting Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants



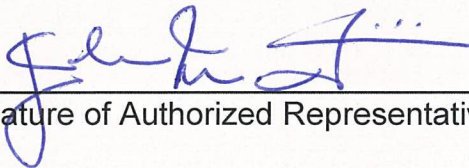
with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: November 11, 2015

Meridiam Infrastructure Purple Line, LLC  
(print name of organization)

By: John M. Dionisio, Authorized Signatory  
(print name of Authorized Representative and Affiant)

  
(signature of Authorized Representative and Affiant)

**CONTRACT AFFIDAVIT**

**PURPLE LINE TRANSIT PARTNERS LLC, a Delaware limited liability company**

**A. AUTHORITY**

**I HEREBY AFFIRM THAT:**

I, Terence M. Easton (print name), possess the legal authority to make this Affidavit.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

**I FURTHER AFFIRM THAT:**

PURPLE LINE TRANSIT PARTNERS LLC (the "Business") is a (check applicable box):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☒ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the Business is in good standing both in Maryland and in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: CSC-LAWYERS INCORPORATING SERVICE COMPANY;  
D03139227

Address: 7 St. Paul Street, Suite 820, Baltimore MD 21202

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: n/a

Address: n/a.

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the Business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the Business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the Business.

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the Business will comply with Sections 14-101 to 14-108 of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**E. DRUG AND ALCOHOL FREE WORKPLACE**

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

**I CERTIFY THAT:**

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the Business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the Business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;

- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by Section E(2)(b), above;
  - (h) Notify its employees in the statement required by Section E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under Section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under Section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of Section E(2)(a)—(j), above.
- (3) n/a.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

**F. CERTAIN AFFIRMATIONS VALID**

**I FURTHER AFFIRM THAT:**

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit for the above-named Business included in the Proposal, a true and correct copy of which is attached hereto, remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth in this affidavit.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: 2/25/16

By: Terence M. Easton (printed name of Authorized Representative and Affiant)

 (signature of Authorized Representative and Affiant)

Attachment: Proposal Affidavit

## **FORM C**

### **PROPOSAL AFFIDAVIT**

#### **A. Authority**

I HEREBY AFFIRM THAT:

I Terence M. Easton possess the legal authority to make this Affidavit.

#### **B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in Section 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### **C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to , §6-220 of the Criminal Procedure Article of the Annotated Code of Maryland, or has pleaded nolo

contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

None

---

#### D. AFFIRMATION REGARDING OTHER CONVICTIONS

##### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)–(5) above;



(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

None

#### E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

None

#### F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

None

---

#### G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

#### H. AFFIRMATION REGARDING COLLUSION I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

#### I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT: Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

#### K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

None

#### L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

#### M. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Contracting Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants

undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: November 11, 2015

Fluor Enterprises, Inc.  
(print name of organization)

By: Terence M. Easton, Vice President, Sales  
(print name of Authorized Representative and Affiant)



\_\_\_\_\_  
(signature of Authorized Representative and Affiant)

**CONTRACT AFFIDAVIT**

**PURPLE LINE TRANSIT PARTNERS LLC, a Delaware limited liability company**

**A. AUTHORITY**

**I HEREBY AFFIRM THAT:**

I, Christophe Petit (print name), possess the legal authority to make this Affidavit.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE  
DEPARTMENT OF ASSESSMENTS AND TAXATION**

**I FURTHER AFFIRM THAT:**

PURPLE LINE TRANSIT PARTNERS LLC (the "Business") is a (check applicable box):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☒ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the Business is in good standing both in Maryland and in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: CSC-LAWYERS INCORPORATING SERVICE COMPANY;  
D03139227

Address: 7 St. Paul Street, Suite 820, Baltimore MD 21202

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: n/a

Address: n/a.

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the Business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the Business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the Business.

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the Business will comply with Sections 14-101 to 14-108 of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**E. DRUG AND ALCOHOL FREE WORKPLACE**

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

**I CERTIFY THAT:**

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the Business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the Business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;

- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by Section E(2)(b), above;
  - (h) Notify its employees in the statement required by Section E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under Section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under Section E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of Section E(2)(a)—(j), above.
- (3) n/a.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

**F. CERTAIN AFFIRMATIONS VALID**

**I FURTHER AFFIRM THAT:**

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit for the above-named Business included in the Proposal, a true and correct copy of which is attached hereto, remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth in this affidavit.



I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: March 1, 2016

By: Star America Purple Line LLC

By: Christophe Petit (printed name of Authorized Representative and Affiant)

 (signature of Authorized Representative and Affiant)

Attachment: Proposal Affidavit

## **FORM C**

### **PROPOSAL AFFIDAVIT**

#### **A. Authority**

I HEREBY AFFIRM THAT:

I William A. Marino possess the legal authority to make this Affidavit.

#### **B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in Section 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### **C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to , §6-220 of the Criminal Procedure Article of the Annotated Code of Maryland, or has pleaded nolo

contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

None

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#### D. AFFIRMATION REGARDING OTHER CONVICTIONS

##### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)–(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

None

#### E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

None

#### F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

None

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#### G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

#### H. AFFIRMATION REGARDING COLLUSION I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

#### I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT: Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

#### K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

None

#### L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

#### M. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Contracting Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants

undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

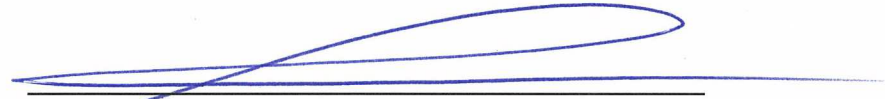
I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

*[signature page follows]*

Date: November 11, 2015

Star America Purple Line, LLC  
(print name of organization)

By: William A. Marino, Chief Executive Officer  
(print name of Authorized Representative and Affiant)

  
(signature of Authorized Representative and Affiant)



**EXHIBIT 15**  
**CERTIFICATES AND FORMS**

**EXHIBIT 15A**

**CERTIFICATE OF THIRD PARTY MILESTONE COMPLETION**

<b>Contract No:</b> _____	<b>Contract Name:</b> Purple Line Public-Private Partnership Agreement ("Agreement")
<b>Concessionaire:</b> Purple Line Transit Partners LLC	<b>Milestone Completion</b>
<u>Description of Third Party Work:</u> Contractor has completed all Work required by the Agreement for the following Milestone: _____. Contractor has ensured that such portion of the Project may be used without damage thereto or any other property on or off the Site, and without injury to any person.	
<u>Third Party Milestone Completion Date:</u> _____	
<u>Certification of Owner's Project Management Consultant:</u> The Milestone described above has been achieved in accordance with the Agreement and has passed all Owner inspections, surveys and tests. Check one of the following boxes: <input type="checkbox"/> The Work has been accepted by the Third Party. <input type="checkbox"/> The Work has not been accepted by the Third Party. The Third Party has identified the following conditions to acceptance: _____ _____ _____. This certification is provided for Owner's benefit and cannot be relied upon by Concessionaire.  Name: _____ Date: _____ Title: _____	
<u>Concessionaire Acceptance/Agreement:</u> Concessionaire accepts this Certificate. Concessionaire has submitted the Certification of Milestone Completion as required by the Agreement. A copy is attached. All warranties and guarantees for the Work identified in this certificate shall be in accordance with the Agreement. Concessionaire acknowledges that it is required to obtain acceptance of this Work from the Third Party as a condition to Final Completion of the Project.  Name: _____ Date: _____ Title: _____	
<u>Owner Acceptance/Release:</u> Owner agrees that Milestone Completion has been achieved for the Work described in this	

certificate. Owner's determination does not relieve Concessionaire of its responsibility to complete or correct all Work in accordance with the Contract Documents.

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

\_\_\_\_\_ Date

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

Attachment: Certification of Milestone Completion

**EXHIBIT 15B**  
**RSA CHECKLIST FOR USE BY INDEPENDENT ENGINEER**

Date and Signature		
Confirmation by Owner's Authorized Representative	Confirmation by Independent Engineer	
		<b>TECHNICAL PROVISIONS SUBMITTALS REQUIREMENTS</b>
		<b>Part 2A, Section 3 Design Submittals</b>
		Release for Construction Documents
		Interface Control Manual – Record Document
		Basis of Design Report Record Document
		<b>Part 2A, Section 5 Environmental Requirements</b>
		Final SWM Designs Plan and Calculations
		SWM As-Built Certification Package
		<b>Part 2A, Section 7 SYSTEM SAFETY</b>
		System Safety Plan (SSP)
		Safety and Security Management Plan (SSMP)
		Safety and Security Certification Plan (SSCP)
		Safety and Security Certification Specification Conformance Checklist
		Safety and Security Verification Tracking Log
		<b>Part 2A, Section 8 SYSTEM SECURITY</b>
		Concessionaire's Security Plan (SSP)
		Threat and Vulnerability Assessment (TVA)
		<b>Part 2A, Section 14 Quality Program</b>
		Concessionaire Quality Program
		Sources of Supply and Item Material Types Report
		<b>Part 2B, Section 1 Civil, Streets and Roadways</b>
		Roadway Plans - Final
		<b>Part 2B Section 2 Trackwork</b>
		Track Alignment and Trackwork Design Plans - Final
		<b>Part 2B Section 3 Structures</b>
		Structures Design Submittal - Final
		Structure Inventory
		<b>Part 2B Section 4 Drainage</b>
		Drainage Design - Final

		<b>Part 2B Section 5 Traffic</b>
		Traffic Operations System Concept of Operations Report – Trial Running
		Final Traffic Operations and Engineering Design Analysis Report – Intermediate Design
		Signing and Pavement Marking Plans – Final Design
		Traffic Signal Plans – Final Design
		Lighting Plans – Final Design
		ITS Plans – Final Design
		<b>Part 2B Section 7 Operations and Maintenance Facilities</b>
		OMF Site Plans - Final
		<b>Part 2B Section 8 Station and Guideway Architecture and Urban Design</b>
		Station Plans - Final
		<b>Part 2B Section 9 Mechanical, Electrical, Plumbing and Fire Protection</b>
		Mechanical Design - Final
		Electrical Design - Final
		Plumbing Design - Final
		Fire Protection Design - Final
		<b>Part 2B Section 10 Landscape and Streetscape</b>
		Landscape and Streetscape Plans - Final
		<b>Part 2B Section 11 Systems General</b>
		System Reliability Analyses – Final Design
		Electrical Circuit Failure Analyses – Final Design
		Test Report - Spectral Analysis of Radiation Levels – Trial Running
		<b>Part 2B Section 12 Light Rail Vehicles</b>
		LRV Intermediate Design
		LRV Mechanical, Electrical and Software Configuration Settings
		LRV Final Design
		LRV Factory Test Reports
		LRV On-Site Test Reports
		Car History Books
		<b>Part 2B Section 13 Train Control</b>
		Train Control Preliminary Design
		Train Control Intermediate Design
		Train Control Final Design
		Train Control Application Software Listings
		Train Control Factory Test Reports

		Train Control On-Site Test Reports
		Train Control Mechanical, Electrical and Software Configuration Settings
		<b>Part 2B Section 14 Traction Power Substations</b>
		TPSS Preliminary Design
		TPSS Intermediate Design
		TPSS Application Software Listings
		TPSS Final Design
		TPSS Protective Relay Coordination Studies
		TPSS Factory Test Reports
		TPS On-Site Test Reports
		TPSS Mechanical, Electrical and Software Configuration Settings
		<b>Part 2B Section 15 Overhead Contact System</b>
		OCS Preliminary Design
		OCS Intermediate Design
		OCS Final Design
		OCS Factory Test Reports
		OCS On-Site Test Reports
		<b>Part 2B Section 16 Communications</b>
		Communications Preliminary Design
		Communications Intermediate Design
		Communications Final Design
		Communications Application Software Listings
		Communications Factory Test Reports
		Communications On-Site Test Reports
		Communications Mechanical, Electrical and Software Configuration Settings
		<b>Part 2B Section 17 Control and Monitoring</b>
		Control and Monitoring Preliminary Design
		Control and Monitoring Intermediate Design
		Control and Monitoring Final Design
		Control and Monitoring Application Software Listings
		Control and Monitoring Factory Test Reports
		Control and Monitoring On-Site Test Reports
		Control and Monitoring Electrical and Software Configuration Settings
		<b>Part 2B Section 18 Fire and Security</b>
		FMS Preliminary Design
		FMS Intermediate Design
		FMS Final Design
		FMS Application Software Listings
		ACS Preliminary Design

	ACS Intermediate Design
	ACS Final Design
	ACS Application Software Listings
	CCTV Preliminary Design
	CCTV Intermediate Design
	CCTV Final Design
	CCTV Application Software Listings
	FMS, ACS and CCTV Factory Test Reports
	FMS, ACS and CCTV On-site Test Reports
	FMS, ACS and CCTV Mechanical, Electrical and Software Configuration Settings
	<b>Part 2B Section 19 Fare System</b>
	Fare System Preliminary Design
	Fare System Intermediate Design
	Fare System Final Design
	Fare system Application Software Listings
	Fare System Factory Test Reports
	Fare System On-Site Test Reports
	<b>Part 2B Section 20 Corrosion Control and Grounding</b>
	Stray Current Corrosion Control Preliminary Design
	Stray Current Corrosion Control Final Design
	Soil Corrosion Preliminary Design
	Soil Corrosion Intermediate Design
	Soil Corrosion Control Final Design
	Atmospheric Corrosion Control Preliminary Design
	Atmospheric Corrosion Control Intermediate Design
	Atmospheric Corrosion Control Final Design
	Grounding System Intermediate Design
	Grounding System Final Design
	<b>Part 2B Section 21 Safety and Security</b>
	Fire Hazard Analysis
	Ventilation Engineering Analysis for Critical Ancillary Ventilation
	Aerial Structure Blast Analysis
	Tunnel and Enclosed Guideway Blast Analysis
	<b>Part 2C, Section 1 Testing</b>
	Test Program Plans
	Integration Test Program Plan
	Test Procedures
	Test Reports
	Verification Cross Reference Matrix
	Test Audit Plan and Documents

		<b>Part 2C, Section 2 Safety and Security Certification</b>
		Certificates of System Element Compliance
		Certificate of System Integration Testing Compliance
		Safety and Security Certificate of Conformance
		Safety and Security Certification Verification Report
		<b>Part 2C, Section 3 Rail Activation</b>
		Rail Activation Program Plan
		Rail Activation Status Reports
		<b>Part 2C, Section 4 Operational Readiness</b>
		Operational Readiness Plan/Strategy
		Certificate of Operational Readiness – Trial Running
		Safety and Security Certification Certificate of Completion
		Completion of Rail Activation Activities for Revenue Service Certification
		Completion of Other Operational Readiness Plan/Strategy Activities for Revenue Service Certification
		Completion of O&M Preparatory Activities for Revenue Service Certification
		Completion of All Testing and Operational Preparedness Activities during Trial Running Certification
		<b>Part 3, Section 1 Project Management</b>
		Operating Plan
		Maintenance Plans
		Safety and Security Plan
		Monthly Performance Monitoring Report
		Exception and Emergency Notification and Incident Report
		Operations and Maintenance Quality Management Plan
		Preparations for Operations and Maintenance Report
		O&M Period Communications and Public Outreach Plan
		Communications Material
		<b>PUBLIC PRIVATE PARTNERSHIP AGREEMENT</b>
		Refer to Sections 7.10.1, 7.10.2, and 7.10.3
		Refer to Section 9.4.2 – If retainage is withheld, Concessionaire shall provide evidence to Owner that all retainage for Construction Work completed as of the RSA Date has been paid in full, or will be paid in full from the proceeds of the RSA Payment, within the relevant time period specified in Section 9.4.1.
		<b>PHYSICAL VERIFICATION BY THE INDEPENDENT ENGINEER</b>
		Stations and Facilities are ready for Revenue Service.
		Revenue fleet is available and ready for Revenue Service.
		Concessionaire has complied with the requirements of the



		approved Operations Phase Communications and Public Outreach Plan during the Trial Running period.
		<b>QUALITY RECORDS</b>
		Certificates of Compliance
		Contractor Quality Program
		Equipment and Instrumentation
		Calibration Test Reports
		Inspection and Test Plans
		Inspection and Test Records
		Internal and External Audit Reports
		Material Test Reports
		Non-Conformance Reports
		Preparatory Phase Session Minutes and Attendance Sheet
		Quality Work Plans (QWP)
		Training Records
		Corrective Actions
		<b>REGULATORY APPROVALS</b>
		State Fire Marshall Certificate
		DLLR Certificates for Elevators and Escalators
		MTA Administrator approval issued at the request of MTA Office of Safety, Quality Assurance and Risk Management: Safety and Security Certificates of Compliance; and Final Safety and Security Certifications for Revenue Service.
		<b>NOTES:</b>
	1	Confirm that all program plans identified in the Contract Documents for submittal have been submitted and that MTA has assigned a status of "Approved" or "Approved with Comments" to each one.
	2	Confirm that design documents identified in the Contract Documents for submittal have been submitted and that MTA has assigned a status of "Approved" or "Approved with Comments" to each one.
	3	Confirm that construction documents identified in the Contract Documents for submittal have been submitted and that MTA has assigned a status of "Approved" or "Approved with Comments" to each one.
	4	Confirm that testing identified in the Contract Documents for submittal has been submitted and that MTA has assigned a status of "Approved" or "Approved with Comments" to each one.
	5	Confirm that Concessionaire generated quality control and quality assurance records and audits applicable to design, construction and testing as identified in the Contract Documents and the Concessionaire's Quality Assurance and Quality Control Plans have been made available to MTA and that all identified deficiencies

		have been resolved.
	6	Confirm that identified deficiencies in MTA generated quality control and quality assurance records and audits applicable to design, construction and testing have been resolved.
	9	Confirm that Operations and Maintenance preparation plans identified in the Contract Documents for submittal prior to RSA have been submitted and that MTA has assigned a status of "Approved" or "Approved with Comments" to each one.
	10	Confirm by physical inspection that Operations and Maintenance preparation activities required to be completed prior to the start of Revenue Service have been completed in accordance with the approved plans.
	11	Confirm that all other contractual requirements specifically identified in the Contract Documents to be completed prior to RSA have been satisfactorily completed.
	12	For submittals that have not been assigned a status of "Approved" or "Approved with Comments", the Independent Engineer will evaluate the reasons for MTA's assigned status and make an independent evaluation as to whether or not the submittal should have been approved.
	13	For any Concessionaire or MTA generated quality assurance or quality control documentation that identifies an unresolved deficiency, the Independent Engineer will evaluate the described deficiency and make an independent evaluation as to whether or not the affected element of the Project is or is not in compliance with the Contract Documents

## **EXHIBIT 15C**

### **FORM H-6**

#### **MDOT MBE/DBE FORM E GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION PART 1 – GUIDANCE FOR DEMONSTRATING GOOD FAITH EFFORTS TO MEET MBE/DBE PARTICIPATION GOALS**

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE)/Disadvantaged Business Enterprise (DBE) participation goal (including any MBE subgoals) on a contract, the Concessionaire/Prime Contractor must either (1) meet the MBE/DBE Goal(s) and document its commitments for participation of MBE/DBE Firms, or (2) when it does not meet the MBE/DBE Goal(s), document its Good Faith Efforts to meet the goal(s).

#### **I. Definitions**

**MBE/DBE Goal(s)** – “MBE/DBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s) on a State-funded procurement and the DBE participation goal on a federally-funded procurement.

**Good Faith Efforts** – The “Good Faith Efforts” requirement means that when requesting a waiver, the Concessionaire/Prime Contractor must demonstrate that it took all necessary and reasonable steps to achieve the MBE/DBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE/DBE participation, even if those steps were not fully successful. Whether a Concessionaire/Prime Contractor that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the Concessionaire/Prime Contractor has made. The efforts employed by the Concessionaire/Prime Contractor should be those that one could reasonably expect a Concessionaire/Prime Contractor to take if the Concessionaire/Prime Contractor were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. The determination concerning the sufficiency of the Concessionaire’s/Prime Contractor’s good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the DBEs identified by the procuring agency during the goal setting process and listed in the federally-funded procurement as available to perform the Identified Items of Work. It also may include additional DBEs identified by the Concessionaire/Prime Contractor as available to perform the Identified Items of Work, such as DBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms or is a State-funded procurement, this term refers to all of the MBE Firms (if State-funded) or DBE Firms (if federally-funded) the Concessionaire/Prime Contractor identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the bid items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE/DBE Firms. It also may include additional portions of items of work the Concessionaire/Prime Contractor identified for performance by MBE/DBE Firms to increase the likelihood that the MBE/DBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Concessionaire/Prime Contractor identified as possible items of work for performance by MBE/DBE Firms and should include all reasonably identifiable work opportunities.

**MBE/DBE Firms** – For State-funded contracts, “MBE/DBE Firms” refers to certified **MBE** Firms. Certified MBE Firms can participate in the State’s MBE Program. For federally-funded contracts, “MBE/DBE Firms” refers to certified **DBE** Firms. Certified DBE Firms can participate in the federal DBE Program.

## **II. Types of Actions MDOT will Consider**

The Concessionaire/Prime Contractor is responsible for making relevant portions of the work available to MBE/DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/DBE subcontractors and suppliers, so as to facilitate MBE/DBE participation. The following is a list of types of actions MDOT will consider as part of the Concessionaire's/Prime Contractor's Good Faith Efforts when the Concessionaire/Prime Contractor fails to meet the MBE/DBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### **A. Identify Bid Items as Work for MBE/DBE Firms**

#### **1. Identified Items of Work in Procurements**

(a) Certain procurements will include a list of bid items identified during the goal setting process as possible work for performance by MBE/DBE Firms. If the procurement provides a list of Identified Items of Work, the Concessionaire/Prime Contractor shall make all reasonable efforts to solicit quotes from MBE Firms or DBE Firms, whichever is appropriate, to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE/DBE Firms to increase the likelihood that the MBEDBE Goal(s) will be achieved.

#### **2. Identified Items of Work by Bidders/Offerors**

(a) When the procurement does not include a list of Identified Items of Work, bidders/offerors should reasonably identify sufficient items of work to be performed by MBE/DBE Firms.

(b) Where appropriate, bidders/offerors should break out contract work items into economically feasible units to facilitate MBE/DBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Concessionaire/Prime Contractor of the responsibility to make Good Faith Efforts.

### **B. Identify MBE Firms or DBE Firms to Solicit**

#### **1. DBE Firms Identified in Procurements**

(a) Certain procurements will include a list of the DBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified DBE Firms, the Concessionaire/Prime Contractor shall make all reasonable efforts to solicit those DBE firms.

(b) Bidders/offerors may, and are encouraged to, search the MBE/DBE Directory to identify additional DBEs who may be available to perform the items of work, such as DBEs certified or granted an expansion of services after the solicitation was issued.

#### **2. MBE/DBE Firms Identified by Bidders/Offerors**

(a) When the procurement does not include a list of Identified MBE/DBE Firms, bidders/offerors should reasonably identify the MBE Firms or DBE Firms, whichever is appropriate, that are available to perform the Identified Items of Work.

(b) Any MBE/DBE Firms identified as available by the Concessionaire/Prime Contractor should be certified in the appropriate program (MBE for State-funded procurements or DBE for federally-funded procurements).

(c) Any MBE/DBE Firms identified as available by the Concessionaire/Prime Contractor should be certified to perform the Identified Items of Work.

### **C. Solicit MBE/DBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Concessionaire/Prime Contractor should:

(a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE/DBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE/DBE Directory, unless the Concessionaire/Prime Contractor has a valid basis for using different contact information; and

(c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE/DBE, and other requirements of the contract to assist MBE/DBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. “All” Identified Firms includes the DBEs listed in the procurement and any MBE/DBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE/DBE Firms who are no longer certified to perform the work as of the date the Concessionaire/Prime Contractor provides written solicitations.

3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE/DBE cannot access the information provided by electronic means, the Concessionaire/Prime Contractor must make the information available in a manner that is accessible by the interested MBE/DBE.

4. Follow up on initial written solicitations by contacting DBEs to determine if they are interested. The follow up contact may be made:

(a) by telephone using the contact information in the MBE/DBE Directory, unless the Concessionaire/Prime Contractor has a valid basis for using different contact information; or

(b) in writing via a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE/DBE Firms certified to perform the work of the contract. Examples of other means include:

(a) attending any pre-bid meetings at which MBE/DBE Firms could be informed of contracting and subcontracting opportunities;

(b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors’ groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website; and

(c) effectively using the services of other organizations, as allowed on a case-by-case basis and authorized in the procurement, to provide assistance in the recruitment and placement of MBE/DBE Firms.

#### **D. Negotiate With Interested MBE/DBE Firms**

Bidders/Offerors must negotiate in good faith with interested MBE/DBE Firms.

1. Evidence of negotiation includes, without limitation, the following:

- (a) the names, addresses, and telephone numbers of MBE/DBE Firms that were considered;
- (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
- (c) evidence as to why additional agreements could not be reached for MBE/DBE Firms to perform the work.

2. A Concessionaire/Prime Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

3. The fact that there may be some additional costs involved in finding and using MBE/DBE Firms is not in itself sufficient reason for a Concessionaire's/Prime Contractor's failure to meet the contract DBE goal, as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE/DBE Firm's quote is excessive or unreasonable include, without limitation, the following:

- (a) the dollar difference between the MBE/DBE subcontractor's quote and the average of the other subcontractors' quotes received by the Concessionaire/Prime Contractor;
- (b) the percentage difference between the MBE/DBE subcontractor's quote and the average of the other subcontractors' quotes received by the Concessionaire/Prime Contractor;
- (c) the percentage that the DBE subcontractor's quote represents of the overall contract amount;
- (d) the number of MBE/DBE firms that the Concessionaire/Prime Contractor solicited for that portion of the work;
- (e) whether the work described in the MBE/DBE and Non-MBE/DBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
- (f) the number of quotes received by the Concessionaire/Prime Contractor for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.

5. The Concessionaire/Prime Contractor may not use its price for self-performing work as a basis for rejecting a MBE/DBE Firm's quote as excessive or unreasonable.

6. The "average of the other subcontractors' quotes received by the" Concessionaire/Prime Contractor refers to the average of the quotes received from all subcontractors, except that there should be quotes from at least three subcontractors, and there must be at least one quote from a MBE/DBE and one quote from a Non-MBE/DBE.

7. A Concessionaire/Prime Contractor shall not reject a MBE/DBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE/DBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Concessionaire/Prime Contractor concludes is not acceptable, the Concessionaire/Prime Contractor must provide a written detailed statement listing the reasons for this conclusion. The Concessionaire/Prime Contractor also

must document the steps taken to verify the capabilities of the MBE/DBE and Non-MBE/DBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of a MBE/DBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.

(b) The MBE/DBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

#### **E. Assisting Interested MBE/DBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the Concessionaire/Prime Contractor:

1. made reasonable efforts to assist interested MBE/DBE Firms in obtaining the bonding, lines of credit, or insurance required by MDOT or the Concessionaire/Prime Contractor; and
2. made reasonable efforts to assist interested MBE/DBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

#### **III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE/DBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE/DBE and Non-MBE/DBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether a Concessionaire/Prime Contractor decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other bidders/offers in meeting the contract. For example, when the apparent successful Concessionaire/Prime Contractor fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Concessionaire/Prime Contractor could have met the goal. If the apparent successful Concessionaire/Prime Contractor fails to meet the goal, but meets or exceeds the average MBE/DBE participation obtained by other bidders/offers, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Concessionaire/Prime Contractor having made Good Faith Efforts.

#### **IV. Documenting Good Faith Efforts**

At a minimum, a Concessionaire/Prime Contractor seeking a waiver of the MBE/DBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 business days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

##### **A. Items of Work (Complete Good Faith Efforts Documentation Form E, Part 2)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE/DBE Firms in order to increase the likelihood of achieving the stated MBE/DBE Goal(s).



## **B. Outreach/Solicitation/Negotiation**

1. The record of the Concessionaire's/Prime Contractor's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a) through (e) and 49 C.F.R. Part 26, Appendix A. **(Complete Outreach Efforts Compliance Statement)**

2. A detailed statement of the efforts made to contact and negotiate with MBE/DBE Firms including:

(a) the names, addresses, and telephone numbers of the MBE/DBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Form E, Part 3, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and

(b) a description of the information provided to MBE/DBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

## **C. Rejected MBE/DBE Firms (Complete Good Faith Efforts Form E, Part 4)**

1. For each MBE/DBE Firm that the Concessionaire/Prime Contractor concludes is not acceptable or qualified, a detailed statement of the reasons for the Concessionaire's/Prime Contractor's conclusion, including the steps taken to verify the capabilities of the MBE/DBE and Non-MBE/DBE Firms quoting similar work.

2. For each certified MBE/DBE Firm that the Concessionaire/Prime Contractor concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Concessionaire's/Prime Contractor's conclusion, including the quotes received from all MBE/DBE and Non-MBE/DBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE/DBE Firms contacted but found to be unavailable. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE/DBE contractor or a statement from the Concessionaire/Prime Contractor that the MBE/DBE contractor refused to sign the Minority Contractor Unavailability Certificate.

## **D. Other Documentation**

1. Submit any other documentation requested by the Owner to ascertain the Concessionaire's/Prime Contractor's Good Faith Efforts.

2. Submit any other documentation the Concessionaire/Prime Contractor believes will help the Owner ascertain its Good Faith Efforts.

**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 2 – CERTIFICATION REGARDING GOOD FAITH EFFORTS DOCUMENTATION**

PAGE \_\_\_ OF \_\_\_

Prime Contractor	Project Description	Solicitation Number

**PARTS 3, 4, AND 5 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS  
SUPPORTING YOUR WAIVER REQUEST.**

I hereby request a waiver of (1) the Minority Business Enterprise (MBE) participation goal and/or subgoal(s), (2) the Disadvantaged Business Enterprise (DBE) participation goal, or (3) a portion of the pertinent MBE/DBE participation goal and/or MBE subgoal(s) for this procurement.<sup>a</sup> I affirm that I have reviewed the Good Faith Efforts Guidance MBE/DBE Form E. I further affirm under penalties of perjury that the contents of Parts 3, 4, and 5 of MDOT MBE/DBE Form E are true to the best of my knowledge, information and belief.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

\_\_\_\_\_  
<sup>a</sup> MBE participation goals and subgoals apply to State-funded procurements. DBE participation goals apply to federally-funded procurements. Federally-funded contracts do not have subgoals.

**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 3 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO MBE/DBE FIRMS**

PAGE \_\_\_\_ OF \_\_\_\_

Prime Contractor	Project Description	Solicitation Number

Identify those items of work that the bidder/offeror made available to MBE/DBE Firms. This includes, where appropriate, those items the bidder/offeror identified and determined to subdivide into economically feasible units to facilitate the MBE/DBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the bidder's/offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE/DBE Firms, and the total percentage of the items of work identified for MBE/DBE participation equals or exceeds the percentage MBE/DBE goal set for the procurement. Note: If the procurement includes a list of bid items identified during the goal setting process as possible items of work for performance by MBE/DBE Firms, the bidder/offeror should make all of those items of work available to MBE/DBE Firms or explain why that item was not made available. If the bidder/offeror selects additional items of work to make available to MBE/DBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the procurement?	Does bidder/offeror normally self-perform this work?	Was this work made available to MBE/DBE Firms? If no, explain why?
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
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	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
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☐ Please check if Additional Sheets are attached.

**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**  
**PART 4 – IDENTIFIED MBE/DBE FIRMS AND RECORD OF SOLICITATIONS**  
**PAGE \_\_\_ OF \_\_\_**

Prime Contractor	Project Description	Solicitation Number

Identify the MBE/DBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE/DBE participation. Include the name of the MBE/DBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE/DBE provided a quote, and whether the MBE/DBE is being used to meet the MBE/DBE participation goal. MBE/DBE Firms used to meet the participation goal must be included on the MBE/DBE Participation Schedule, Form B. Note: If the procurement includes a list of the MBE/DBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE/DBE Firms or explain why a specific MBE/DBE was not solicited. If the bidder/offeror identifies additional MBE/DBE Firms who may be available to perform Identified Items of Work, those additional MBE/DBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE/DBE Firms must be attached to this form. If the bidder/offeror used a Non-MBE/DBE or is self-performing the identified items of work, Part 4 must be completed.

Name of Identified MBE/DBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
<b>Firm Name:</b> <hr/> <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification <hr/>		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE/DBE <input type="checkbox"/> Used Non-MBE/DBE <input type="checkbox"/> Self-performing

Name of Identified MBE/DBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
<b>Firm Name:</b> <hr/> <b>MBE Classification</b> <b>(Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification <hr/>		Date:  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date:  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE/DBE <input type="checkbox"/> Used Non-MBE/DBE  <input type="checkbox"/> Self-performing

☐ Please check if Additional Sheets are attached.

**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**  
**PART 5 – ADDITIONAL INFORMATION REGARDING REJECTED MBE/DBE QUOTES**

PAGE \_\_\_\_ OF \_\_\_\_

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 3 indicates that a MBE/DBE quote was rejected because the bidder/offeror is using a Non-MBE/DBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE/DBE, and if applicable, state the name of the Non-MBE/DBE. Also include the names of all MBE/DBE and Non-MBE/DBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE/DBE (Include spec/section number from bid)	Self-performing or Using Non-MBE/DBE (Provide name)	Amount of Non-MBE/DBE Quote	Name of Other Firms who Provided Quotes & Whether MBE/DBE or Non-MBE/DBE	Amount Quoted	Indicate Reason Why MBE/DBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE/DBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE/DBE <input type="checkbox"/> Non-MBE/DBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE/DBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE/DBE <input type="checkbox"/> Non-MBE/DBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE/DBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE/DBE <input type="checkbox"/> Non-MBE/DBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE/DBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE/DBE <input type="checkbox"/> Non-MBE/DBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE/DBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE/DBE <input type="checkbox"/> Non-MBE/DBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE/DBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE/DBE <input type="checkbox"/> Non-MBE/DBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

☐ Please check if Additional Sheets are attached.

**EXHIBIT 16**  
**FEDERAL AND STATE REQUIREMENTS**

<b>Exhibit Description</b>	<b>No. of Pages</b>
Attachment 1 – Federal and State Requirements	25
Attachment 2 – Federal General Wage Decisions	
2-A General Decision Number: MD150034 10/02/2015 MD34	6
2-B General Decision Number: MD150035 10/02/2015 MD35	6
2-C General Decision Number: MD150057 10/09/2015 MD57	9
2-D General Decision Number: MD150058 10/09/2015 MD58	9
Attachment 3 – Use of Contract Funds for Lobbying Certification	1
Attachment 4 – Buy America Certificate	1
Attachment 5 – Equal Employment Opportunity Special Provision	5



**ATTACHMENT 1 TO EXHIBIT 16**  
**FEDERAL AND STATE REQUIREMENTS**

The Purple Line Project shall comply with, and Concessionaire shall perform its obligations and (where relevant) shall require each Contractor (including subcontractors) to perform their respective obligations under this Agreement, the other Contract Documents and the Contracts in accordance with the following requirements.

**1. SPECIFIED REQUIREMENTS APPLICABLE TO ALL CONTRACTS**

**1.1 General Requirements**

Concessionaire and Contractors shall comply with applicable requirements and provisions, in effect now or as hereafter amended, of (1) 49 U.S.C. chapter 53 and other procurement requirements of Federal laws; (2) 2 C.F.R. pt. 200; (3) all other applicable Federal regulations pertaining to federally-aided contracts; and (4) Federal Transit Administration (“FTA”) Circular 4220.1F, “Third Party Contracting Guidance”, March 18, 2013, and any later revision thereto, except to the extent FTA determines otherwise in writing; and

**1.2 Protection of Security Sensitive Information and Critical Infrastructure Information.**

Concessionaire and Contractors shall comply with all applicable provisions of 49 C.F.R. Part 1520 and 6 C.F.R. Part 29 and all applicable FTA guidance, including FTA Resource Document for Transit Agencies, “Sensitive Security Information (SSI): Designation, Markings, and Control, Resource Document for Transit Agencies” (March 2009), as may be amended, and all Department of Homeland Security (DHS) directives, including DHS Management Directive System MD Number: 11042.1, “Safeguarding Sensitive but Unclassified (For Official Use Only) Information” (January 6, 2005) as may be amended. Concessionaire also agrees to include these requirements in each Contract and to require each Contractor to include this clause in lower tier Contracts.

**1.3 Ethics**

(a) Bonus or Commission. Concessionaire affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain this Agreement.

(b) Lobbying Restrictions. Concessionaire agrees that:

(1) In compliance with 31 U.S.C. § 1352(a), it will not use the proceeds of this Agreement to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer or employee of Congress or employee of a member of Congress, in connection with making, extending or modifying the Agreement;

(2) In addition, Concessionaire will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

(3) It will comply, and will assure the compliance of each Contractor and other participant at any tier of the Project with USDOT regulations, "New Restrictions on Lobbying", 49 C.F.R. Part 20, to the extent consistent with 31 U.S.C. § 1352.

(4) Concessionaire will also comply and assure compliance of each Contractor and other participant at any tier of the Project with 31 U.S.C. § 3801, *et seq.*

(5) Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to Owner. See form entitled "Use of Contract Funds for Lobbying Certification," attached as Attachment 3 hereto.

(c) False or Fraudulent Statements or Claims. Concessionaire acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and USDOT regulations, "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to Concessionaire's activities in connection with the Project. By executing the Agreement, Concessionaire certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, Concessionaire also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation, directly or indirectly, to the Federal Government, the Federal Government reserves the right to impose on Concessionaire the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If Concessionaire makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation directly or indirectly to the Federal Government, the Federal Government reserves the right to impose on Concessionaire the penalties of 49 U.S.C. § 5323(l)(1), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

(3) Inclusion in Lower Tier Contracts. The Concessionaire agrees to include the clauses at Section 1.3(c)(1) and (2) in each lower tier contract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the lower tier contract that will be subject to the provisions.

(d) Trafficking in Persons. To the extent applicable, Concessionaire agrees to comply with, and assures the compliance of each Contractor with, the requirements of subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of said subsection (g) consistent with U.S. OMB guidance, "Award Term for Trafficking in Persons", 2 C.F.R. Part 175:

(1) Definitions. For purposes of this section, Concessionaire agrees that:

(A) Employee means an individual who is employed by Concessionaire or any Contractor (including subcontractors) under this Agreement.

(B) Forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(C) Private entity:

(i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

(ii) Includes a for-profit organization, and also a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(D) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(9). Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(4).

(E) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(2) Concessionaire agrees:

(A) To inform Owner immediately of any information it receives from any source alleging a violation of a prohibition in 22 U.S.C. § 7104(g).

(B) That Owner may unilaterally terminate this Agreement if Concessionaire, a Contractor, or other participant at any tier, or an employee of any of them, violates the provisions of 22 U.S.C. § 7104(g). Owner's right to terminate implements FTA's right to terminate unilaterally:

(i) Under subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and

(ii) Is in addition to all other remedies for noncompliance that are available to Owner under this Agreement and to the Federal Government.

(C) That:

(i) Neither it, its Contractors or other participants at any tier, or the employees of any of them, will engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect;

(ii) Neither it, its Contractors or other participants at any tier, or the employees of any of them, will procure a commercial sex act during the period of time that this Agreement is in effect; or

(iii) Neither it, its Contractors or other participants at any tier, or the employees of any of them, will use forced labor in the performance of this Agreement or any Contract;

(iv) The provision of this subsection will be included in all Contracts and any other arrangement under this Agreement at any tier,

(e) No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

## **2. SPECIFIED REQUIREMENTS APPLICABLE TO AGREEMENT, CONTRACTS FOR D&C WORK AND (IF FUNDED BY FTA) CONTRACTS FOR O&M WORK**

Except as otherwise specified below, the requirements of this Section 2 apply to Concessionaire throughout the Term. Certain requirements must be passed through to Contractors, including (a) Key Contractors and Contractors at lower tiers performing D&C Work, and (b) if funding for the O&M Work is obtained from FTA, Contractors performing O&M Work.

### **2.1 FTA Regulations and Policies**

Concessionaire and Contractors shall comply with all applicable FTA regulations, policies, procedures and directives, including those listed directly in or referred to in the current FTA Master Agreement.

### **2.2 Civil Rights**

Concessionaire agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. Concessionaire shall include the requirements of this Section 2.2 in every Prime Contract for performance of D&C Work, and shall require each Contractor performing D&C Work, at all tiers, to include the requirements of this Section 2.2 in any lower tier Contracts. If funding for the O&M Work is obtained from FTA, Concessionaire shall include the requirements of this Section 2.2 in every Prime Contract for performance of O&M Work, and shall require each Contractor performing O&M Work, at all tiers, to include the requirements of this Section 2.2 in any lower tier Contracts.

These include:

(a) Nondiscrimination in Federal Public Transportation Programs. Concessionaire agrees to comply, and assures the compliance of each Contractor or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, disability, or age, and prohibit the exclusion or discrimination in employment or business opportunity and/or denial of program benefits in employment or business opportunities, as identified in 49 U.S.C. § 5332. The Concessionaire shall follow, and require its Contractors and other participants at any tier of the Project to follow, the most recent version of the FTA's Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients" (October 2012) to the extent required by the FTA.

(b) Nondiscrimination — Title VI of the Civil Rights Act. Concessionaire agrees to comply, and assures the compliance of each Contractor or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*; with USDOT

regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act of 1964”, 49 C.F.R. Part 21; and with federal transit law, 49 U.S.C. § 5332. Except to the extent FTA determines otherwise in writing, Concessionaire agrees to follow all applicable provisions of FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients” (October 2012); USDOT “Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and any other applicable Federal directives that may be issued.

(c) Equal Employment Opportunity. Concessionaire agrees to, and assures that each Contractor and other participant at any tier of the Project agree to, prohibit discrimination on the basis of race, color, religion, sex, or national origin. Concessionaire agrees to comply, and assures the compliance of each Contractor or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332; with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e; with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note; and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, Concessionaire also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. Concessionaire agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. Concessionaire agrees to take affirmative action that includes employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as “construction”, Concessionaire agrees to comply and assures the compliance of each Contractor and other participant at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor”, 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, “Equal Employment Opportunity”, as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity”, 42 U.S.C. § 2000e note, and also with any Federal laws and regulations in accordance with applicable Federal directives affecting construction undertaken as part of the Project.

Specifically, during the performance of this Agreement, Concessionaire agrees as follows:

(A) Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Concessionaire will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(B) Concessionaire will, in all solicitations or advertisements for employees placed by or on behalf of Concessionaire, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(C) Concessionaire will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Concessionaire's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) Concessionaire will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(E) Concessionaire will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(F) In the event of Concessionaire's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Concessionaire may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(G) Concessionaire will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Contractor and subcontractor at all tiers. Concessionaire will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event Concessionaire becomes involved in, or is threatened with, litigation with a Contractor or subcontractor at any tier as a result of such direction by the administering agency Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

(3) Additional Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246). See Attachment 5 for additional provisions applicable to this Contract.

(d) Disadvantaged Business Enterprise. To the extent authorized by Federal law, Concessionaire agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each Contractor or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

(1) Concessionaire agrees and assures that it shall comply with section 1101(b) of MAP-21, 23 U.S.C. § 101 note; USDOT regulations, "Participation by Disadvantaged Business

Enterprises in Department of Transportation Financial Assistance Programs”, 49 C.F.R. Part 26; and federal transit law, 49 U.S.C. § 5332.

(2) Concessionaire agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the performance of this Agreement and the award and performance of any Contract, subcontract or other arrangement under this Agreement in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. Concessionaire agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all Contracts, subcontracts, and other arrangements under this Agreement.

(e) Nondiscrimination on the Basis of Sex. Concessionaire and Contractor agree to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*; with implementing U.S. Department of Transportation regulations at 49 C.F.R. Part 25 that prohibit discrimination on the basis of sex that may be applicable; and federal transit law, 49 U.S.C. § 5332.

(f) Nondiscrimination on the Basis of Age. Concessionaire and Contractor agree to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance”, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age;

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act”, 29 C.F.R. Part 1625; and

(3) Federal transit law, 49 U.S.C. § 5332.

(g) Access for Individuals with Disabilities. To the extent applicable, Concessionaire and Contractor shall comply with 49 U.S.C. § 5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing the services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. Concessionaire and Contractor also shall comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with Titles I, II, and III of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; with federal transit law, 49 U.S.C. § 5332, which includes disability as a prohibited basis for discrimination; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, Concessionaire and Contractor agree to comply with applicable implementing Federal regulations and any later amendments thereto, and agree to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
  - (2) USDOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;
  - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/USDOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
  - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;
  - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;
  - (6) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630;
  - (7) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities", 47 C.F.R. Part 64, Subpart F;
  - (8) U.S. ATBCB regulations, "Electronic and information Technology Accessibility Standards", 36 C.F.R. Part 1194;
  - (9) FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609; and
  - (10) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.
- (h) Drug and Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, Concessionaire and Contractor agree to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.
- (i) Access to Services for Persons with Limited English Proficiency. Concessionaire and Contractors shall facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency", 42 U.S.C. § 2000d-1 note, and follow applicable provisions of USDOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons", 70 Fed. Reg. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.
- (j) Environmental Justice. Concessionaire shall facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 42 U.S.C. § 4321 note; USDOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority



Populations and Low-Income Populations”, 62 Fed. Reg. § 18377 *et seq.*, April 15, 1997; and the most recent edition of FTA’s Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients” (August 2012), except to the extent that the federal government determines otherwise in writing.

(k) Other Nondiscrimination Laws. Concessionaire agrees to comply with all applicable provisions of other Federal laws and regulations, and follow applicable Federal directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

(l) Veterans Employment. Owner has submitted for review and approval, in accordance with FTA Circular 4220.1F, Chapter IV.2.c.(1)(c) a “Veterans Employment” program. As of the Proposal Date, such program has not been approved by FTA.

## **2.3 Not Used**

## **2.4 Prohibited Interest**

No member, officer, or employee of Owner or of any local public body during his tenure and for a period of one year thereafter shall have any interest, direct or indirect, in the Agreement or the proceeds thereof.

## **2.5 Termination**

If the Federal Government suspends or terminates all or any part of the Federal assistance for this Agreement, Owner may suspend work under or terminate the Agreement, in whole or in part, under the suspension or termination provision of the Agreement that are applicable in the circumstances.

## **2.6 Labor Provisions**

(a) To the extent that the Agreement or any Contract involves construction activities, Concessionaire shall comply with, and assure the compliance of each Contractor and other participant at any tier of the Project with, the following federal laws and regulations providing protections for construction employees:

(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)”, 29 C.F.R. Part 5. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference;

(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)”, 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, “Safety and Health Regulations for Construction”, 29 C.F.R. Part 1926; and

(3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States", 29 C.F.R. Part 3.

(b) To the extent that the Agreement or any Contract concerns activities that do not involve construction, Concessionaire shall comply and assure the compliance of each Contractor and other participant at any tier of the Project with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)", 29 C.F.R. Part 5.

(c) Concessionaire shall comply with, and assure the compliance of each Contractor and other participant at any tier of the Project with, the following provisions:

(1) Minimum Wages

(A) All laborers and mechanics employed or working upon the site of the Work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor included in Attachment 2 and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor(s) and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics, are considered wages paid to such laborers or mechanics, subject to the provisions of Section 2.6(c)(1)(D); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Section 2.6(c)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under Section 2.6(c)(1)(B)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Concessionaire and Contractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.

(B) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. Owner shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

b. The classification is utilized in the area by the construction industry; and

c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If Concessionaire and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), Owner will send a report of the action taken to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. Said Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.

(iii) In the event Concessionaire and laborers or mechanics to be employed in the classification or their representatives, and Owner do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Owner shall refer the questions, including the views of all interested parties and the recommendation of Owner to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (i) and (ii) above, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

(C) Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Concessionaire or Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(D) If Concessionaire or Contractor, as appropriate, does not make payments to a trustee or other third person, Concessionaire may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of Concessionaire, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Concessionaire or any Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## (2) Withholding

Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Concessionaire under this Agreement or any other Federal contract with the same entity, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same entity, so much of the accrued payments or advances as may be considered necessary to pay laborers

and mechanics, including apprentices, trainees, and helpers employed by Concessionaire or Contractors the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work, all or part of the wages required by the Agreement, Owner may, after written notice to Concessionaire, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and Basic Records

(A) Payrolls and basic records relating thereto shall be maintained by Concessionaire and each Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b) (2) (B) of the Davis-Bacon Act, Concessionaire shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Concessionaire and any Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(B) (i) Concessionaire and each Contractor shall submit weekly for each week in which any Work is performed under the Agreement two copies of all payrolls to Owner within seven days after the regular payroll date for transmission to the USDOT. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 2.6(c)(3)(A), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf> or successor site. Concessionaire is responsible for the submission of copies of payrolls by all Contractors. Concessionaire and Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Owner, as the case may be, for transmission to the USDOT, Concessionaire or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for Concessionaire to require a Contractor, or for a Contractor to require a lower tier Contractor, to provide addresses and social security numbers to Concessionaire or Contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by Concessionaire, Contractor or its agent who pays or supervises the

payment of the persons employed under the Agreement or Contract and who shall certify the following:

a. That the payroll for the payroll period contains the information required to be provided under Section 5.5 (a)(3)(ii) of Regulations, 29 C.F.R. Part 5, the appropriate information is being maintained under Section 5.5 (a)(3)(i) of Regulations, 29 C.F.R. Part 5, and that such information is correct and complete;

b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulation, 29 C.F.R. Part 3;

c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(iii) The weekly submission of a properly executed certification set forth the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by this Section 2.6(c)(3)(B)(ii).

(iv) The falsification of any of the above certifications may subject Concessionaire, Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(C) Concessionaire, Contractor or subcontractor shall make the records required under this Section 2.6(c)(3)(A) available for inspection, copying or transcription by authorized representatives of the USDOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Concessionaire, Contractor or subcontractor fails to submit the required records or to make them available, the Federal Agency may, after written notice to Concessionaire, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

#### (4) Apprentices and Trainee

(A) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the

Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, Contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Trainees. Except as proved in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeymen wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(C) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this Section 2.6(c) shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 20 C.F.R. Part 30.

(5) Compliance with Copeland Act Requirements

Concessionaire and any Contractors at any tier shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Agreement.

(6) Subcontracts

Concessionaire and any Contractors at any tier shall insert in any subcontracts the clauses contained in this Section 2.6(c) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Concessionaire shall be responsible for the compliance by any Contractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

(7) Contract Termination: Debarment

A breach of this Section 2.6(c) may be grounds for termination of the Agreement and/or any Contract under the Agreement, and for debarment of the Concessionaire or any Contractor at any tier as provided in 29 C.F.R. § 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.

(9) Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Agreement or any Contract under the Agreement shall not be subject to the general disputes clause of the Agreement or Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between Concessionaire (or Contractor) and Owner, the U.S. Department of Labor, or Concessionaire's/ Contractor's employees or their representatives.

(10) Certification of Eligibility

(A) By entering into this Agreement, Concessionaire certifies that neither it (nor he or she) nor any person or firm who has an interest in Concessionaire is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12 (a) (1).

(B) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3 (a) of the Davis-Bacon Act or 29 C.F.R. § 5.12 (a) (1).

(C) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

(d) Contract Work Hours and Safety Standards Act

Concessionaire shall comply with, and assure the compliance of each Contractor and other participant at any tier of the Project with, the following provisions:

(1) Overtime Requirements

No Concessionaire or Contractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violations; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in this Section 2.6(d)(1), Concessionaire and any Contractor responsible therefor shall be liable for the unpaid wages. In addition, Concessionaire or such Contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this Section 2.6(d)(1), equal to the liquidated damages established by the Department of Labor pursuant to the Contract Work Hours and Safety Standards Act as of the date of execution of each Contract involving Construction Work (currently \$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in this Section 2.6(d)(1).

(3) Withholding for Unpaid Wages and Liquidated Damages

Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by Concessionaire or Contractor under the Agreement or any Contract under the Agreement or any other Federal contract with the same entity, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same entity, such sums as may be determined to be necessary to satisfy any liabilities of such entity for unpaid wages and liquidated damages as provided in the clause set forth above.

(4) Subcontracts

Concessionaire and each Contractor shall insert in any lower tier Contracts the applicable clauses set forth in this Section 2.6(d)(1) through (4) and also a clause requiring each lower tier Contractor to include these clauses in any lower tier Contracts. Concessionaire and each Contractor shall be responsible for compliance by any lower tier Contractor with said clauses.

(The text of Section 2.6, paragraphs (a) - (d), has been taken from 29 C.F.R. Part 5 as amended through December 19, 2008. Numbering of paragraphs and defined terms have been changed to agree with the format for this Agreement. In the event of conflict, the provisions of the Code of Federal Regulations shall prevail.)

(e) For information regarding appropriate use of Building Construction or Heavy Construction wage rates, refer to U.S. Department of Labor All Agency Memorandum Nos. 130 and 131 entitled "Application of the Standard of Comparison 'Projects of a Character Similar' Under the Davis-Bacon and Related Acts". Following Commercial Close, Owner will assist Concessionaire in determining the appropriate prevailing wage rate application.



## **2.7 Delinquent Certified Payrolls**

If Concessionaire is delinquent in submitting its payroll records or those of any Contractor required under Section 2.6, processing of invoices may be held in abeyance pending receipt of the payroll records. In addition, if Concessionaire is delinquent in submitting its payroll records or those of any Contractor, Concessionaire shall be liable to Owner for liquidated damages. The liquidated damages shall constitute the sum of \$10 for each day that the payroll records are late.

## **2.8 Cargo Preference – Use of United States-Flag Vessels**

- (a) To the extent applicable, Concessionaire shall comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, “Cargo Preference-U.S.-Flag Vessels”, 46 C.F.R. Part 381.
- (b) Concessionaire agrees to utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessel.
- (c) Concessionaire agrees to furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in Section 2.8(a) to the FTA Administrator and Owner (through the Contractor(s) in the case of subcontractor(s) bills-of-lading) and to the Office of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, marked with appropriated identification of the Project.
- (d) Concessionaire agrees to insert the substance of the provisions of this clause in all Contracts issued pursuant to this Agreement.

## **2.9 Buy America**

- (a) Concessionaire shall comply with 49 U.S.C. § 5323(j) and FTA regulations, “Buy America Requirements”, 49 C.F.R. Part 661, and any amendments thereto, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA or the product is subject to a general waiver. General waivers are listed in Appendix A to 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Concessionaire is responsible for ensuring lower tier Contractors and subcontractors are in compliance with this Section 2.9, including submission of appropriate certifications from contractors and subcontractors on Attachment 4.
- (b) In addition to provision of the certifications in Proposal documents incorporated by reference into in Exhibit 17 and the certifications under Section 2.9(a), Concessionaire shall submit material source documentation throughout the Term to demonstrate compliance with Buy America, at such times and in such form as is required by Owner. The material source documentation shall include, at a minimum, the name of Contractor supplying the material, location and contact information of manufacturer, project name and number, date and location

material shipped, material description, material quantity, and means of identifying the product (such as label marking, product model number or serial number).

(c) Owner may undertake investigations as it deems appropriate to confirm compliance with this provision by Concessionaire and Contractors, including the right to inspect all Project Work, materials, payrolls, and data; and opportunity to audit all Project-related information in accordance with Section 2.16. Concessionaire shall cooperate with any such investigation.

## **2.10 Compliance with Environmental Standards**

Concessionaire agrees and understands that environmental and resource laws, regulations, and guidance, now in effect or that may become effective in the future, may apply to the Project.

### **(a) National Environmental Policy Act**

Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, the following federal laws, regulations, executive orders, and guidance, to the extent applicable:

- (1) Federal transit laws, specifically 49 U.S.C. § 5323(c)(2), as amended;
- (2) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 through 4335, as limited by 49 U.S.C. § 5159;
- (3) U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508;
- (4) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622;
- (5) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note;
- (6) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 *Fed. Reg.* 66576, November 15, 2006, especially guidance on implementing 23 U.S.C. § 139 pertaining to environmental procedures and 23 U.S.C. § 326 pertaining to state responsibility for categorical exclusions; and
- (7) Other federal environmental protection laws, regulations, executive orders, or guidance applicable to the Project.

### **(b) Use of Certain Public Lands**

Concessionaire agrees to comply, and assures that its Contractors at every tier will comply with the following, to the extent applicable:

- (1) U.S. DOT laws, specifically 49 U.S.C. § 303, which requires certain findings be made before an FTA-funded Project may be carried out that involves the use of any publicly owned land that Federal officials authorized under law have determined to be a:
  - (A) Park of national, State or local significance,

- (B) Recreation area of national, State or local significance,
- (C) Wildlife refuge of national, State or local significance, or
- (D) Waterfowl refuge of national, State or local significance, and

(2) Joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.

(c) Wild and Scenic Rivers

Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, protections for the national wild and scenic rivers system, including the following, to the extent applicable:

(1) The Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287;

(2) U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297; and

(3) U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

(d) Wetlands

Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, protections for wetlands provided in Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note, to the extent applicable.

(e) Floodplains

Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note, facilitating compliance with the flood hazards protections in floodplains, to the extent applicable.

(f) Endangered Species and Fishery Conservation

Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, the following protections for endangered species, to the extent applicable:

(1) The Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544; and

(2) The Magnuson Stevens Fishery Conservation and Management Act, as amended, 16 U.S.C. § 1801 *et seq.*

(g) Waste Management

Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k, to the extent applicable.

(h) Hazardous Waste

Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, establishing requirements for the treatment of areas affected by hazardous waste, to the extent applicable.

(i) Historic Preservation

Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, the following, to the extent applicable:

- (1) 49 U.S.C. § 303;
- (2) § 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f;
- (3) Executive Order No. 1593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note;
- (4) Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. § 469a through 469c;
- (5) U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. Part 800, including consultation with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project and notification of the FTA of affected properties.

(j) Indian Sacred Sites

Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, the following, to the extent applicable:

- (1) Federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians;
- (2) The American Indian Religious Freedom Act, 42 U.S.C. § 1996; and
- (3) Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note.

(k) Mitigation of Adverse Environmental Effects

If the Project causes or results in any adverse environmental effect, Concessionaire agrees to, and agrees to assure that its Contractors:

- (1) Comply with all environmental mitigation measures that may be identified as commitments in the environmental documents that apply to the Project, such as environmental assessments, environmental impact statements, memoranda of agreement, documents required

under 49 U.S.C. § 303, any other environmental documents, and any conditions the Federal Government imposes in a finding of no significant impact or record of decision; and

(2) Assure that any mitigation measures agreed on are incorporated by reference and made a part of this Agreement, that any deferred mitigation measures will be incorporated by reference and made a part of this Agreement as soon as agreement with the Federal Government is reached, and that any mitigation measures agreed to will not be modified or withdrawn without the written approval of the Federal Government.

## **2.11 Energy Conservation**

The Agreement shall comply with mandatory standards and policies relating to energy efficiency which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321 *et seq.* To the extent applicable, Concessionaire agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, “Requirements for Energy Assessments”, 49 C.F.R. Part 622, Subpart C. Concessionaire is responsible for ensuring lower tier Contractors and subcontractors are in compliance with this Section 2.11.

## **2.12 Certification Regarding Debarment**

Concessionaire agrees that it will comply with the following requirements of 2 C.F.R. Part 180, subpart C, as adopted and supplemented by USDOT regulations at 2 C.F.R. Part 1200:

(a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Contractor at any tier that is debarred or suspended, except as authorized by:

(1) USDOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200;

(2) U.S. OMB, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180, as amended; and

(3) Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note.

(b) It will review the U.S. GSA “System for Award Management,” <https://www.sam.gov>, or successor site, if required by USDOT regulations, 2 C.F.R. Part 1200.

(c) It will include, and require each of its Contractors at every tier to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Contractor will:

(1) Comply with Federal debarment and suspension requirements; and

(2) Review the “System for Award Management” at <https://www.sam.gov>, or successor site, if necessary to comply with USDOT regulations, 2 C.F.R. Part 1200.

## **2.13 Fly America Requirements**

Concessionaire shall comply with 49 U.S.C. § 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. §§ 301-10.131 through

301-10.143, which provide that Concessionaire and its Contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of individuals and their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Concessionaire shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Concessionaire agrees to include, and to require Contractors to include, the requirements of this Section 2.13 in all Contracts that may involve international air transportation.

## **2.14 Recycled Products/Recovered Materials**

Concessionaire agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247. To the extent applicable, Concessionaire shall include these requirements in each Contract and require each Contractor to include this clause in lower tier Contracts.

## **2.15 Seismic Safety Requirements**

Concessionaire shall comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction", 42 U.S.C. § 7704 note, and comply with USDOT regulations, "Seismic Safety", 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117). Concessionaire shall include this clause in each Contract issued under the Agreement for architectural and engineering services and construction related to new buildings or additions to new buildings, and shall require each Contractor to include this clause in similar lower tier Contracts.

## **2.16 Access to Records and Reports**

(a) Concessionaire shall retain, and cause Contractors at any tier to retain, complete and readily accessible records related in whole or in part the Project, including, but not limited to, data, documents, reports, records, statistics, Contracts and subagreements, leases, arrangements, and supporting materials related to those records.

(b) Concessionaire shall provide, and shall cause Contractors at any tier to provide, to the U.S. Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, and Owner access to all third party contract records as required by 49 U.S.C. § 5325(g) and 2 C.F.R. pt. 200; opportunity to inspect all Project Work, materials, payrolls, and data; and opportunity to audit all Project-related information.

(c) Concessionaire shall provide, and shall cause Contractors at any tier to provide, Owner and the FTA Administrator or their authorized representatives, including any project management oversight contractor, access to the contract records and construction sites.

(d) Concessionaire shall permit, and cause Contractors to permit, any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(e) Concessionaire shall maintain, and shall require Contractors to maintain, all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date final payment is made under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Concessionaire agrees to maintain same until Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 C.F.R. pt. 200.

(f) Concessionaire shall include, and cause its Contractors at any tier to include, the provisions of this Section 2.16 in each Contract under this Agreement.

## **2.17 No Obligation by the Federal Government**

(a) Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, Contract or other arrangement at any tier, absent its express written consent, the Federal Government has no obligations or liabilities to Concessionaire or any other participant at any tier of the project.

(b) Concessionaire shall include this clause in each Contract issued under the Agreement and shall require each Contractor to include this clause in lower tier Contracts. It is further agreed that the clause shall not be modified, except to identify the parties who will be subject to its provisions.

## **2.18 Clean Water Requirements**

Concessionaire agrees to comply with, and agrees to assure that any Contracts exceeding \$100,000 at every tier comply with, the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, and its implementing regulations and guidance, except as the federal government determines otherwise in writing. Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, the following:

(a) Protection of underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f through 300j-6;

(b) Notice of violating facility provisions in Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368 to Owner, understanding that Owner will in turn report each violation as required to FTA and EPA's Regional Office; and

(c) Executive Order No. 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

## **2.19 Federal Requirements**

(a) Concessionaire shall at all times comply with the requirements in this Exhibit 16 and all applicable FTA regulations, policies, procedures and directives, including 49 C.F.R. Part 26, as these regulations, policies, procedures, and directives may be amended and promulgated from time to time, including those listed directly or by reference in the Master Agreement between Owner and FTA. Concessionaire's failure to so comply shall constitute a material breach of this Agreement, which may result in termination of this Agreement or other remedies in accordance with Articles 9, 17 and 19 of the Agreement.

(b) Concessionaire shall include this clause in each Contract issued under the Agreement and shall require each Contractor to include this clause in lower tier Contracts, modified as appropriate to identify the parties and relevant terms of the Contract

## **2.20 Clean Air**

Concessionaire agrees to comply with, and agrees to assure that any Contracts exceeding \$100,000 at every tier comply with, the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q, and its implementing regulations and guidance, except as the federal government determines otherwise in writing. Concessionaire agrees to comply with, and agrees to assure that its Contractors at every tier comply with, the following:

(a) U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Emissions from New and In-Use Highway Vehicles and Engines," 40 C.F.R. Part 86; "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 C.F.R. § 93, subpart A; and Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles," 40 C.F.R. Part 600;

(b) State Implementation Plans (SIP), including implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project, assuring if the Project is identified as a Transportation Control Measure in the SIP it will be wholly consistent with the design concept and scope described in the SIP, and complying with § 176(c) of the Clean Air Act, 49 U.S.C. § 7506(c) and U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23, U.S.C. or the Federal Transit Laws," 40 C.F.R. Part 93, subpart A; and

(c) Notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 49 U.S.C. § 7414 and Executive Order No. 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

## **2.21 FTA Terms**

The preceding provisions include, in part, certain standard terms and conditions required by the USDOT, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, as amended and updated, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Concessionaire shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests which would cause Owner to be in violation of the FTA terms and conditions. Concessionaire agrees to include these requirements in each Contract and to require each Contractor to include this clause in lower tier Contracts.

## **2.22 Changes in Requirements**

Federal requirements cited above may change and the changed requirements shall be applicable to this Agreement as required. It is understood by Concessionaire and each Contractor that all limits or standards set forth above to be observed in the performance of the Agreement services are minimum requirements.



## **2.23 Pre-Award and Post-Delivery Audit Requirements (applicable only to supply of LRVs)**

Concessionaire agrees to comply with 49 U.S.C. § 5323(m) and FTA regulations “Pre-Award and Post Delivery Audits of Rolling Stock Purchases” at 49 C.F.R. Part 663 regarding pre-award and post-delivery audits of rolling stock acquisitions.

Specifically, Concessionaire agrees to comply with 49 U.S.C. § 5323(m) and FTA’s implementing regulation at 49 C.F.R. Part 663 and to complete and submit documentation which lists (a) component and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin, and costs; and (b) the actual location of the final assembly point for the rolling stock, including a description of the activities which took place at the final assembly point and the cost of the final assembly.

## **3. SPECIFIED REQUIREMENTS APPLICABLE TO CONTRACTORS PERFORMING OPERATIONS WORK**

The following requirements apply to Concessionaire and Contractors with respect to the O&M Work even if FTA funding is not obtained for such Work.

### **3.1 Privacy Act**

(a) Concessionaire agrees to comply with, and assure the compliance of Contractors at any tier and their respective employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 522a. Among other things, Concessionaire agrees to obtain the express consent of the Federal Government before the Concessionaire or its employees (or, a Contractor at any tier or its employees) operate a system of records on behalf of the Federal Government. Concessionaire understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

(b) Concessionaire agrees to include these requirements in each Contract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **3.2 Background Checks, Redress and Immigration Status**

Concessionaire shall comply with all applicable provisions contained in 49 C.F.R. Parts 1570, 1572, and 1580, as well as all relevant FTA, Department of Homeland Security (DHS) and Transportation Security Administration (TSA) guidance, including FTA guidance, “Transit Agency Security and Emergency Management Protective Measures” (November 2006), and joint FTA/TSA guidance, “TSA/FTA Security and Emergency Management Action Items for Transit Agencies” (December 2006), each as supplemented by TSA guidance “Additional Guidance on Background Checks, Redress and Immigration Status”.

### **3.3 Transit Employee Protective Agreements**

*General Transit Employee Protective Requirements* - To the extent that FTA determines that transit operations are involved, Concessionaire agrees to carry out the transit operations work on the underlying Agreement in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under

this Agreement and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the Project from which Federal assistance is provided to support work on the underlying Agreement. Concessionaire agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this Section 3.3, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Concessionaire agrees to include these requirements in each Contract and to require each Contractor to include this clause in lower tier Contracts.

**ATTACHMENT 2 TO EXHIBIT 16**  
**FEDERAL WAGE DECISIONS**

**ATTACHMENT 2-A: General Decision MD34**

General Decision Number: MD150034 10/02/2015 MD34

Superseded General Decision Number: MD20140034

State: Maryland

Construction Type: Heavy

County: Montgomery County in Maryland.

HEAVY CONSTRUCTION PROJECTS (including sewer/water construction).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/02/2015
1	05/01/2015
2	06/26/2015
3	07/17/2015
4	08/14/2015
5	09/11/2015
6	10/02/2015

CARP0132-016 05/01/2015

	Rates	Fringes
CARPENTER (Including Form Work).....	\$ 27.56	9.08

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ELEC0026-019 06/01/2015

	Rates	Fringes
ELECTRICIAN.....	\$ 42.80	15.33+a

a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day.

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ENGI0077-014 05/01/2015

	Rates	Fringes
OPERATOR: Bulldozer.....	\$ 29.30	8.65+a
OPERATOR: Crane		
35 ton Cranes and Above.....	\$ 34.36	8.65+a
Cranes Below 35 tons.....	\$ 32.71	8.65+a
Tower and Climbing Cranes...	\$ 35.91	8.65+a
Tower Cranes and Cranes		
100 tons and Over.....	\$ 35.91	8.65+a
OPERATOR: Drill.....	\$ 34.36	8.65+a
OPERATOR: Excavator.....	\$ 29.30	8.65+a
OPERATOR: Mechanic.....	\$ 36.75	8.65+a
OPERATOR: Piledriver.....	\$ 32.71	8.65+a

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day, Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving and Christmas Day.

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IRON0201-006 05/01/2015

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 27.50	18.58

-----  
LABO0657-019 06/01/2015

	Rates	Fringes
LABORER: Mason Tender - Cement/Concrete.....	\$ 24.06	7.31

-----  
PAIN0051-020 06/01/2013

	Rates	Fringes
PAINTER: Steel.....	\$ 32.66	8.91

-----  
PLAS0891-006 02/01/2014

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 27.15	9.61

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\* TEAM0639-008 06/01/2015

	Rates	Fringes
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TRUCK DRIVER, Includes Dump  
 Truck.....\$ 21.15          2.30+a  
 TRUCK DRIVER: Lowboy Truck.....\$ 23.15          2.30+a

a.VACATION: Employees will receive one (1) week's paid vacation after one (1)year of service.

-----  
 SUMD2010-073 07/08/2010

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 24.00	10.16
LABORER: Common or General.....	\$ 14.01	0.00
LABORER: Flagger.....	\$ 15.71	8.58
LABORER: Grade Checker.....	\$ 14.62	3.08
LABORER: Landscape.....	\$ 17.72	8.58
LABORER: Mason Tender - Brick...	\$ 15.93	7.83
LABORER: Pipelayer.....	\$ 15.50	0.00
OPERATOR: Backhoe.....	\$ 22.00	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 16.41	5.15
OPERATOR: Gradall.....	\$ 20.50	8.89
OPERATOR: Grader/Blade.....	\$ 19.00	5.00
OPERATOR: Loader.....	\$ 17.50	0.00
OPERATOR: Mechanic.....	\$ 22.12	6.22
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 17.53	9.07
OPERATOR: Piledriver.....	\$ 19.95	4.50
OPERATOR: Roller.....	\$ 16.50	5.34
OPERATOR: Trackhoe.....	\$ 18.98	7.32
PAINTER: Brush, Roller and Spray.....	\$ 24.32	6.91

PIPEFITTER.....\$ 22.51                      6.47

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

## Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are  
final.=====

END OF GENERAL DECISION



## ATTACHMENT 2-B: General Decision MD35

General Decision Number: MD150035 10/02/2015 MD35

Superseded General Decision Number: MD20140035

State: Maryland

Construction Type: Heavy

County: Prince George's County in Maryland.

HEAVY CONSTRUCTION PROJECTS (including sewer/water construction).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number      Publication Date

0	01/02/2015
1	05/01/2015
2	06/26/2015
3	07/17/2015
4	08/14/2015
5	09/11/2015
6	10/02/2015

CARP0132-016 05/01/2015

	Rates	Fringes
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CARPENTER (Including Form Work).....	\$ 27.56	9.08
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ELEC0026-019 06/01/2015

	Rates	Fringes
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ELECTRICIAN.....	\$ 42.80	15.33+a
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a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day.

ENGI0077-015 05/01/2015

	Rates	Fringes
OPERATOR: Bulldozer.....	\$ 29.30	8.65+a
OPERATOR: Crane		
35 ton Cranes and Above.....	\$ 34.36	8.65+a
Cranes Below 35 tons.....	\$ 32.71	8.65+a
Tower and Climbing Cranes...	\$ 35.91	8.65+a
Tower Cranes and Cranes		
100 tons and Over.....	\$ 35.91	8.65+a
OPERATOR: Drill.....	\$ 34.36	8.65+a
OPERATOR: Excavator.....	\$ 29.30	8.65+a
OPERATOR: Loader		
Front End Loaders.....	\$ 29.30	8.65+a
OPERATOR: Mechanic.....	\$ 36.75	8.65+a
OPERATOR: Piledriver.....	\$ 32.71	8.65+a

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day, Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving and Christmas Day.

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IRON0201-006 05/01/2015

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 27.50	18.58

-----  
LABO0657-020 06/01/2015

	Rates	Fringes
LABORER (Common or General).....	\$ 23.67	7.31
LABORER: Mason Tender -		
Cement/Concrete.....	\$ 24.06	7.31

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PAIN0051-020 06/01/2013

	Rates	Fringes
PAINTER: Steel.....	\$ 32.66	8.91

-----  
PLAS0891-006 02/01/2014

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 27.15	9.61

-----  
\* TEAM0639-009 06/01/2015

	Rates	Fringes
TRUCK DRIVER (DUMP TRUCK).....	\$ 21.15	2.30+a

a.VACATION: Employees will receive one (1) week's paid vacation after one (1)year of service.

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SUMD2010-074 07/08/2010

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 24.00	10.16
LABORER: Flagger.....	\$ 15.71	8.58
LABORER: Grade Checker.....	\$ 14.62	3.08
LABORER: Landscape.....	\$ 17.72	8.58
LABORER: Mason Tender - Brick...	\$ 15.93	7.83
LABORER: Pipelayer.....	\$ 15.50	0.00
OPERATOR: Backhoe.....	\$ 19.15	4.05
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 16.41	5.15
OPERATOR: Gradall.....	\$ 20.50	8.89
OPERATOR: Grader/Blade.....	\$ 19.00	5.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 17.53	9.07
OPERATOR: Roller.....	\$ 16.95	5.61
OPERATOR: Trackhoe.....	\$ 18.98	7.32
PAINTER: Brush, Roller and Spray.....	\$ 24.32	6.91
PIPEFITTER.....	\$ 21.25	5.31
TRUCK DRIVER: Lowboy Truck.....	\$ 17.17	9.98

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal

number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

## ATTACHMENT 2-C: General Decision MD57

General Decision Number: MD150057 10/09/2015 MD57

Superseded General Decision Number: MD20140057

State: Maryland

Construction Type: Building

County: Montgomery County in Maryland.

**BUILDING CONSTRUCTION PROJECTS** (does not include single family homes or apartments up to and including 4 stories).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

### Modification Number      Publication Date

0	01/02/2015
1	01/09/2015
2	03/06/2015
3	04/03/2015
4	05/08/2015
5	05/22/2015
6	06/26/2015
7	07/03/2015
8	07/17/2015
9	08/14/2015
10	09/11/2015
11	09/18/2015
12	10/09/2015

ASBE0024-007 10/01/2013

### Rates      Fringes

ASBESTOS WORKER/HEAT & FROST  
INSULATOR.....\$ 33.13      13.76

Includes the application of all insulating materials,  
protective coverings, coatings and finishes to all types of  
mechanical systems

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ASBE0024-010 10/09/2013

Rates      Fringes

ASBESTOS WORKER: HAZARDOUS  
MATERIAL HANDLER (Removal of  
hazardous material from  
ceilings, floors, mechanical  
systems, and walls).....\$ 20.86      5.46

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BRMD0001-006 05/03/2015

Rates      Fringes

TILE SETTER.....\$ 26.75      10.68

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BRMD0001-009 05/03/2015

Rates      Fringes

TILE FINISHER.....\$ 21.96      9.50

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BRMD0001-011 05/03/2015

Rates      Fringes

BRICKLAYER (Excluding  
Pointing, Caulking and  
Cleaning).....\$ 30.36      9.69

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BRMD0001-012 05/03/2015

Rates      Fringes

MASON - STONE.....\$ 35.19      16.17

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CARP0132-017 05/01/2015

Rates      Fringes

CARPENTER (Including  
Acoustical Ceiling  
Installation, Drywall  
Hanging, Metal Stud  
Installation and Form Work).....\$ 27.56      9.08

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CARP1831-002 04/01/2013

Rates      Fringes



MILLWRIGHT.....\$ 31.59            8.58

-----  
ELEC0026-021 09/01/2014

Rates            Fringes

ELECTRICIAN (Communication  
and Sound Equipment).....\$ 27.05            8.58

-----  
ELEC0026-022 06/01/2015

Rates            Fringes

ELECTRICIAN (Including low  
voltage wiring for and  
installation of alarms, HVAC  
controls).....\$ 42.80            15.33+a

a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday,  
Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after  
Thanksgiving Day and Christmas Day.

-----  
ELEV0010-001 01/01/2015

Rates            Fringes

ELEVATOR MECHANIC.....\$ 41.09            28.385+a+b

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day,  
Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service;  
6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

-----  
ENGI0077-018 05/01/2013

Rates            Fringes

OPERATOR: Bulldozer.....\$ 31.65            8.45+a

OPERATOR: Loader

Front End Loaders 3 1/2  
cubic yards and above.....\$ 32.40            8.45+a

Front End Loaders Below 3  
1/2 cubic yards.....\$ 31.65            8.45+a

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day,  
Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after  
Thanksgiving and Christmas Day.

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IRON0005-005 06/01/2015

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 30.65	18.135

---

IRON0201-006 05/01/2015

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 27.50	18.58

---

LABO0657-017 06/01/2015

	Rates	Fringes
LABORER: Mason Tender - Cement/Concrete.....	\$ 22.63	7.31
LABORER: Pipelayer.....	\$ 22.63	7.31

---

PAIN0051-014 06/01/2014

	Rates	Fringes
GLAZIER		
Glazing Contracts \$2 million and under.....	\$ 24.77	9.85
Glazing Contracts over \$2 million.....	\$ 28.61	9.85

---

PAIN0051-019 06/01/2014

	Rates	Fringes
PAINTER		
Brush, Roller, Spray and Drywall Finisher/Taper.....	\$ 24.89	9.05
Industrial.....	\$ 29.60	9.05

---

PLAS0891-005 07/01/2013

	Rates	Fringes
PLASTERER.....	\$ 28.33	5.85

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PLAS0891-006 02/01/2014

	Rates	Fringes
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CEMENT MASON/CONCRETE FINISHER...\$ 27.15 9.61

-----  
PLAS0891-008 08/01/2014

Rates Fringes

PLASTERER (Fireproofing  
Including Sprayer, Mixer, and  
Handler)

Handler.....	\$ 16.50	4.24
Mixer/Pump.....	\$ 18.50	4.24
Sprayer.....	\$ 23.00	4.24

-----  
PLUM0005-010 08/01/2015

Rates Fringes

PLUMBER.....\$ 39.67 16.60+a

a. PAID HOLIDAYS: Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day and the Fourth of July.

-----  
\* PLUM0602-011 08/01/2015

Rates Fringes

PIPEFITTER (Including HVAC

Pipe and System Installation)....\$ 38.89 19.97+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.

-----  
ROOF0030-016 05/01/2015

Rates Fringes

ROOFER.....\$ 28.50 11.04

-----  
SFMD0669-001 04/01/2015

Rates Fringes

SPRINKLER FITTER (Fire

Sprinklers).....\$ 32.40 18.12

-----  
SHEE0100-015 07/01/2015

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct Installation).....	\$ 39.79	16.77+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day

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SUMD2010-091 08/04/2010

	Rates	Fringes
LABORER		
Common or General.....	\$ 14.15	2.30
Grade Checker.....	\$ 16.00	2.90
Landscape.....	\$ 9.23	
Mason Tender - Brick.....	\$ 13.00	0.00
Mason Tender - Stone.....	\$ 14.03	0.00
Mason Tender for Pointing, Caulking and Cleaning.....	\$ 13.21	
Mortar Mixer.....	\$ 16.61	9.08

POINTER, CAULKER, CLEANER,  
Includes pointing, caulking,  
cleaning of existing masonry,  
brick, stone and cement  
structures (restoration  
work); excludes pointing,  
caulking, cleaning of new or  
replacement  
masonry, brick, stone or  
cement.....

\$ 19.19	0.00
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POWER EQUIPMENT OPERATOR:		
Asphalt Roller.....	\$ 21.35	5.38
Backhoe.....	\$ 19.82	5.02
Bobcat/Skid Loader.....	\$ 18.05	8.78
Boom.....	\$ 21.44	8.29
Crane.....	\$ 20.95	6.18
Excavator.....	\$ 20.00	0.00
Forklift.....	\$ 16.00	5.12
Gradall.....	\$ 20.50	8.42
Grader/Blade.....	\$ 14.50	5.18
Paver.....	\$ 17.47	6.36
Roller excluding Asphalt....	\$ 17.60	3.88

TERRAZZO WORKER/SETTER.....	\$ 19.94	6.54
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TRUCK DRIVER

Dump Truck.....	\$ 15.90	1.12
Tractor Haul Truck.....	\$ 17.87	9.98

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

---

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

## Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

---

## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

## ATTACHMENT 2-D: General Decision MD58

General Decision Number: MD150058 10/09/2015 MD58

Superseded General Decision Number: MD20140058

State: Maryland

Construction Type: Building

County: Prince George's County in Maryland.

**BUILDING CONSTRUCTION PROJECTS** (does not include single family homes or apartments up to and including 4 stories).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
---------------------	------------------

0	01/02/2015
1	01/09/2015
2	03/06/2015
3	04/03/2015
4	05/08/2015
5	05/22/2015
6	06/26/2015
7	07/03/2015
8	07/17/2015
9	08/14/2015
10	09/11/2015
11	09/18/2015
12	10/09/2015

ASBE0024-007 10/01/2013

Rates	Fringes
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ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 33.13	13.76
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Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems



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ASBE0024-010 10/09/2013

Rates      Fringes

ASBESTOS WORKER: HAZARDOUS  
MATERIAL HANDLER (Removal of  
hazardous material from  
ceilings, floors, mechanical  
systems, and walls).....\$ 20.86      5.46

-----  
BRMD0001-006 05/03/2015

Rates      Fringes

TILE SETTER.....\$ 26.75      10.68

-----  
BRMD0001-011 05/03/2015

Rates      Fringes

BRICKLAYER (Excluding  
Pointing, Caulking and  
Cleaning).....\$ 30.36      9.69

-----  
BRMD0001-012 05/03/2015

Rates      Fringes

MASON - STONE.....\$ 35.19      16.17

-----  
BRMD0001-013 05/03/2015

Rates      Fringes

TERRAZZO WORKER/SETTER.....\$ 26.75      10.68

-----  
CARP0132-017 05/01/2015

Rates      Fringes

CARPENTER (Including  
Acoustical Ceiling  
Installation, Drywall  
Hanging, Metal Stud  
Installation and Form Work).....\$ 27.56      9.08

-----  
CARP1831-002 04/01/2013

Rates      Fringes

MILLWRIGHT.....\$ 31.59            8.58

-----  
ELEC0026-021 09/01/2014

Rates            Fringes

ELECTRICIAN (Communication  
and Sound Equipment).....\$ 27.05            8.58

-----  
ELEC0026-022 06/01/2015

Rates            Fringes

ELECTRICIAN (Including low  
voltage wiring for and  
installation of alarms, HVAC  
controls).....\$ 42.80            15.33+a

a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday,  
Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after  
Thanksgiving Day and Christmas Day.

-----  
ELEV0010-001 01/01/2015

Rates            Fringes

ELEVATOR MECHANIC.....\$ 41.09            28.385+a+b

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day,  
Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service;  
6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

-----  
ENGI0077-017 05/01/2013

Rates            Fringes

POWER EQUIPMENT OPERATOR:

Backhoe.....\$ 32.40            8.45+a  
Bulldozer.....\$ 31.65            8.45+a

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day,  
Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after  
Thanksgiving and Christmas Day.

-----  
IRON0005-005 06/01/2015

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 30.65	18.135

-----  
IRON0201-006 05/01/2015

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 27.50	18.58

-----  
LABO0657-021 06/01/2015

	Rates	Fringes
LABORER (Common or General).....	\$ 14.93	7.31
LABORER: Mason Tender - Cement/Concrete.....	\$ 22.63	7.31
LABORER: Pipelayer.....	\$ 22.63	7.31

-----  
PAIN0051-014 06/01/2014

	Rates	Fringes
GLAZIER		
Glazing Contracts \$2 million and under.....	\$ 24.77	9.85
Glazing Contracts over \$2 million.....	\$ 28.61	9.85

-----  
PAIN0051-019 06/01/2014

	Rates	Fringes
PAINTER		
Brush, Roller, Spray and Drywall Finisher/Taper.....	\$ 24.89	9.05
Industrial.....	\$ 29.60	9.05

-----  
PLAS0891-005 07/01/2013

	Rates	Fringes
PLASTERER.....	\$ 28.33	5.85

-----  
PLAS0891-006 02/01/2014

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 27.15	9.61

PLAS0891-008 08/01/2014

	Rates	Fringes
PLASTERER (Fireproofing Including Sprayer, Mixer, and Handler)		
Handler.....	\$ 16.50	4.24
Mixer/Pump.....	\$ 18.50	4.24
Sprayer.....	\$ 23.00	4.24

-----  
PLUM0005-010 08/01/2015

	Rates	Fringes
PLUMBER.....	\$ 39.67	16.60+a

a. PAID HOLIDAYS: Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day and the Fourth of July.

-----  
\* PLUM0602-011 08/01/2015

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe and System Installation)....		
	\$ 38.89	19.97+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.

-----  
ROOF0030-016 05/01/2015

	Rates	Fringes
ROOFER.....	\$ 28.50	11.04

-----  
SFMD0669-001 04/01/2015

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....		
	\$ 32.40	18.12

-----  
SHEE0100-015 07/01/2015

	Rates	Fringes
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SHEET METAL WORKER (Including  
HVAC Duct Installation).....\$ 39.79      16.77+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day,  
Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day

-----  
SUMD2010-092 08/04/2010

Rates      Fringes

LABORER

Grade Checker.....	\$ 16.00	2.90
Landscape.....	\$ 9.23	0.00
Mason Tender - Brick.....	\$ 13.28	2.95
Mason Tender - Stone.....	\$ 14.03	0.00
Mason Tender for Pointing, Caulking and Cleaning.....	\$ 14.15	0.00
Mortar Mixer.....	\$ 16.61	9.08

POINTER, CAULKER, CLEANER,  
Includes pointing, caulking,  
cleaning of existing masonry,  
brick, stone and cement  
structures (restoration  
work); excludes pointing,  
caulking, cleaning of new or  
replacement  
masonry, brick, stone or  
cement.....\$ 19.14

POWER EQUIPMENT OPERATOR:

Asphalt Roller.....	\$ 21.35	5.38
Bobcat/Skid Loader.....	\$ 18.05	8.78
Boom.....	\$ 21.44	8.29
Crane.....	\$ 20.95	6.18
Excavator.....	\$ 20.00	0.00
Forklift.....	\$ 16.00	5.12
Gradall.....	\$ 20.50	8.42
Grader/Blade.....	\$ 14.50	5.18
Loader.....	\$ 24.00	5.40
Paver.....	\$ 17.47	6.36
Roller excluding Asphalt....	\$ 17.60	3.88

TILE FINISHER.....\$ 17.87      7.32

TRUCK DRIVER

Dump Truck.....	\$ 15.90	1.12
Tractor Haul Truck.....	\$ 17.87	9.98

-----

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

---

## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION



### **ATTACHMENT 3 TO EXHIBIT 16**

#### **USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an officer or employee of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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

By: \_\_\_\_\_  
(Signature of Company Official)

\_\_\_\_\_  
(Title of Company Official)

Note: If Joint Venture, each Joint Venture member shall provide the above information and sign the certification.

**ATTACHMENT 4 TO EXHIBIT 16**

**BUY AMERICA CERTIFICATE**

MARYLAND TRANSIT ADMINISTRATION

(Federally-assisted Contract)

SECTION (1); Certify only for IRON, STEEL, or MANUFACTURED PRODUCTS: **(Mark One)**

- ☐ **CERTIFICATE OF COMPLIANCE WITH 49 U.S.C. § 5323(j)(1).** The offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 5323(j)(1) and the applicable regulations of 49 CFR Part 661.5;

– OR –

- ☐ **CERTIFICATE FOR NONCOMPLIANCE WITH 49 U.S.C. § 5323(j)(1).** The offeror hereby certifies that it will not meet the requirements of 49 U.S.C. § 5323(j)(1) and 49 C.F.R. § 661.5, but it may qualify for an exception to the requirement pursuant to 49 U.S.C. §§ 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D) and regulations in 49 CFR Part 661.7.

SECTION (2); Certify only for ROLLING STOCK and ASSOCIATED EQUIPMENT: **(Mark One)**

- ☐ **CERTIFICATE OF COMPLIANCE WITH 49 U.S.C. § 5323(j)(2)(C).** The offeror hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) and the applicable regulations of 49 CFR Part 661.11;

– OR –

- ☐ **CERTIFICATE FOR NONCOMPLIANCE WITH 49 U.S.C. § 5323(j)(2)(C).** The offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11, but it may qualify for an exception to the requirement pursuant to 49 U.S.C. §§ 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D) and regulations in 49 CFR Part 661.7.

SECTION (3); OFFEROR'S SIGNATURE: (*Sign, date and enter your title and the name of your company*)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Company/Offerer

## **ATTACHMENT 5 TO EXHIBIT 16**

### **EQUAL EMPLOYMENT OPPORTUNITY SPECIAL PROVISION**

#### **Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)**

(A) The goals and timetables for minority and female participation, expressed in percentage terms for the Concessionaire's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

<b>Timetables</b>	<b>Goals for minority participation for each trade</b>	<b>Goals for female participation in each trade</b>
Duration of the contract	28.0%	6.9%

These goals are applicable to all the Concessionaire's Construction Work (whether or not it is federal or federally assisted) performed in the covered area. If the Concessionaire performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Concessionaire also is subject to the goals for both its federally involved and non-federally involved construction.

The Concessionaire's compliance with the Executive Order and the regulations in 41 C.F.R. Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 C.F.R. § 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Agreement, and in each trade, and the Concessionaire shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Concessionaire to another contractor or from project to project for the sole purpose of meeting the Concessionaire's goals shall be a violation of the Agreement, the Executive Order and the regulations in 41 C.F.R. Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(B) As used in the Agreement, the "covered area" is Montgomery and Prince Georges Counties, Maryland.

#### **Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)**

(A) As used in these specifications:

- (i) "Covered area" means Montgomery and Prince Georges Counties, Maryland;
- (ii) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- (iii) "Employer identification number" means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941;

(iv) "Minority" includes:

a. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(B) Whenever Concessionaire, or any Contractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each Subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.

(C) If Concessionaire is participating (pursuant to 41 C.F.R. § 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Concessionaire must be able to demonstrate its participation in and compliance with the provisions of any such Hometown Plan. Concessionaire and each Contractor at any tier participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse the Concessionaire's or any covered Contractor's failure to take good faith efforts to achieve the plan goals and timetables.

(D) Concessionaire shall implement the specific affirmative action standards provided in paragraphs (G)(i) through (xvi) of these specifications. The goals set forth in the Notice are expressed as percentages of the total hours of employment and training of minority and female utilization Concessionaire should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Concessionaire and covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. Concessionaire is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(E) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Concessionaire has a collective bargaining agreement, to refer either minorities or women shall excuse the Concessionaire's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(F) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Concessionaire during the training period, and the Concessionaire must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(G) Concessionaire shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of Concessionaire's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. Concessionaire shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Concessionaire's employees are assigned to work. The Concessionaire, where possible, will assign two or more women to each construction project. The Concessionaire shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Concessionaire's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Concessionaire or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Concessionaire by the union or, if referred, not employed by the Concessionaire, this shall be documented in the file with the reason therefor, along with whatever additional actions the Concessionaire may have taken.

(iv) Provide immediate written notification to the Director when the union or unions with which Concessionaire has a collective bargaining agreement has not referred to Concessionaire a minority person or woman sent by Concessionaire, or when Concessionaire has other information that the union referral process has impeded Concessionaire's efforts to meet its obligations.

(v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to Concessionaire's employment needs, especially those programs funded or approved by the Department of Labor. Concessionaire shall provide notice of these programs to the sources compiled under Section (G)(ii) above.

(vi) Disseminate Concessionaire's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting Concessionaire in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least

once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(vii) Review, at least annually, Concessionaire's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(viii) Disseminate Concessionaire's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing Concessionaire's EEO policy with other Contractors at any tier with whom Concessionaire does or anticipates doing business.

(ix) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Concessionaire's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, Concessionaire shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Concessionaire's work force.

(xi) Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R. Part 60-3.

(xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(xiii) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and Concessionaire's obligations under these specifications are being carried out.

(xiv) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(xv) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(xvi) Conduct a review, at least annually, of all supervisors' adherence to and performance under Concessionaire's EEO policies and affirmative action obligations.

(H) Concessionaire is encouraged to participate in voluntary associations which assist in fulfilling one or more of its affirmative action obligations (Section (G)(i) through (xvi)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which Concessionaire is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section (G)(i) through (xvi) of these specifications provided that Concessionaire actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in Concessionaire's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of Concessionaire. The obligation to comply, however, is Concessionaire's and failure of such a group to fulfill an obligation shall not be a defense for Concessionaire's noncompliance.

(I) A single goal for minorities and a separate single goal for women have been established. Concessionaire, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, Concessionaire may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though Concessionaire has achieved its goals for women generally, Concessionaire may be in violation of the Executive Order if a specific minority group of women is underutilized).

(J) Concessionaire shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

(K) Concessionaire shall not enter into any Subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

(L) Concessionaire shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing Subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. If Concessionaire fails to carry out such sanctions and penalties, it shall be in violation of these specifications and Executive Order 11246, as amended.

(M) Concessionaire, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Section (G) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If Concessionaire fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. § 60-4.8.

(N) Concessionaire shall designate a responsible official to monitor all employment related activity to ensure that Concessionaire's EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and

retrievable form; however, to the degree that existing records satisfy this requirement, Concessionaire shall not be required to maintain separate records.

(O) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).



## **EXHIBIT 17**

### **PORTIONS OF CONCESSIONAIRE'S PROPOSAL INCORPORATED BY REFERENCE**

- Proposer Information
  - Technical Proposal Letter
  - Financial Proposal Letter
  - Letter accepting joint and several liability, if applicable
  - Certification Regarding Labor Peace Agreement for On-Site Operations and Maintenance Employees
  - Personnel Work Assignment Form and Commitment of Availability
  - Non-Collusion Affidavit
  - Buy America Certification – Light Rail Vehicles
  - Buy America Certification – Steel, Iron, and Manufactured Products
  - MDOT DBE Forms H-1, H-2 (D&C Design Services), H-2.1 (D&C Design Services) and H-3 (D&C Design Services)
  - Conflict of Interest Disclosure Statement (Federal)
  - Conflict of Interest Affidavit and Disclosure (Maryland)
  - Equal Employment Opportunity Certification
  - Use of Contract Funds for Lobbying Certification
  - Living Wage Affidavit of Agreement
  - Drug and Alcohol Free Workplace Certification
  - Confidentiality Agreement
  - Certification of Approved Disadvantaged Business Enterprise Annual Goal (LRV Supplier)
  - Information About Major Participants and Other Identified Contractors
  - The Owner-approved “Pre-Proposal Submittal” pertaining to the location(s) for manufacturing and final assembly of LRVs, delivered under Section 2.8 of the ITP.
- Preliminary Technical Solutions
  - Operations Technical Solutions
  - Project Management Technical Solutions
  - Design and Construction Technical Solutions
  - Maintenance, Rehabilitation, and Handback Technical Solutions
  - Systems Integration Technical Solutions
- Schematic Drawings
- Financial Plan (“Financial Proposal”) and the table “Payment Allocation” within the Base Case Financial Model