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P3 Agreement

Key components of the P3 Agreement are outlined in the Policy Guide table below

1. Overall	
P3 Agreement / Technical Provisions	The Purple Line P3 is governed by a set of integrated contract documents that includes a P3 Agreement setting forth legal and business terms under which the concessionaire will develop, design, construct, equip, supply light rail vehicles (LRVs), finance, operate, maintain, rehabilitate the facility, as well as Technical Provisions (TPs) that include the project scope, design-build, operations, maintenance, rehabilitation, and other related requirements. Concessionaire will not have a leasehold or other real property interest in the project. (P3 Agreement, Article 2)
Owner	The Maryland Department of Transportation (MDOT) and the Maryland Transit Administration (MTA), jointly referred to as “Owner”.
Concessionaire	The private entity that has the right and obligation to finance, develop, design, construct, equip, supply LRVs for, operate, and maintain the Project.
Term	- The term of the agreement ends 30 years after Revenue Service Availability. Concessionaire will propose the Revenue Service Availability Deadline as part of the proposal. (P3 Agreement, Article 2) The Concessionaire is required to reach Revenue Service Availability within 2,125 days after Financial Close.
Governing Law	Maryland law will govern. (Throughout the documents.)
Federal Requirements	Concessionaire will be required to comply with applicable federal laws and other requirements. (P3 Agreement, Article 24)
Indemnity	- Concessionaire will indemnify, defend, protect and hold harmless MDOT/MTA against certain claims or losses resulting from the concessionaire’s responsibilities and liabilities under the P3 Agreement. (P3 Agreement, Article 11) - Indemnified Parties include 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, Indemnified Parties can include the Utility Owner or Third Party that is a party to that agreement, as long as it doesn’t expand the Utility Owner’s or Third Party’s rights to indemnity as set forth in the Utility Agreement or Third Party Agreement. (P3 Agreement, Exhibit 1)
Contracting	Concessionaire may contract with others, but the contracts will not relieve concessionaire of responsibility under the Agreement or for the quality of the Work or materials or services provided by it. (P3 Agreement, Article 9)
Owner Right To Direct Changes	Owner will have the right to modify the scope of the concessionaire’s work through a Change Order. If Owner desires to initiate or evaluate whether to initiate a Change Order, then Owner may issue a Request for Change Proposal. (P3 Agreement, Article 14)
Changes Proposed By Concessionaire	Concessionaire may propose changes to the scope of work through a Modification Request; Owner will have sole discretion to accept or reject any proposed changes. (P3 Agreement, Article 14)

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Change in Ownership Composition	<p>Any change in the ownership composition must comply with the requirements under the P3 statute, including any necessary Board of Public Works approvals, unless explicitly indicated as pre-approved in Article 22.</p> <p>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. (P3 Agreement, Article 22)</p>
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2. Key Concepts Between Commercial Close and Financial Close	
Financial Model	Updates to the Financial Model will be generated for Financial Close and as needed throughout the Term. (P3 Agreement, Article 3)
Funding Sources	Public funding sources include the Maryland Transportation Trust Fund (TTF), Federal Transit Administration (FTA) funds (including a New Starts grant), and local government contributions. Private funding will be a combination of borrowed funds and equity provided by Concessionaire.
Project Financing	Concessionaire is responsible for all financing necessary for the Work that is Concessionaire's responsibility. (P3 Agreement, Article 4)
Financing Tools	<ul style="list-style-type: none"> - Owner is working to secure a direct TIFIA loan on behalf of the Concessionaire and has provided the Proposers with an indicative TIFIA term sheet. This term sheet provides assumptions, terms, and conditions for Proposers to use in developing their plan of finance. The loan sizing assumptions in the indicative TIFIA term sheet requires that the maximum original principal amount of the TIFIA Loan shall not exceed 33 percent of reasonably anticipated Eligible Project Costs. Owner has received a provisional \$1.3 billion USDOT Private Activity Bonds (PABs) allocation for the Project. The use of PABs in a plan of finance is optional and entirely the decision of the Proposer. Concessionaire may use other financing mechanisms.
Equity Requirements	During the time between the Financial Close and Revenue Service Availability, Concessionaire must maintain Committed Investments (equity) not less than 10% of the sum of Committed Investments and the post-Revenue Service Availability debt principal outstanding. (P3 Agreement, Article 4.7)
Processes and Conditions For Financial Close	The P3 Agreement contains conditions precedent to Financial Close and specific excuses from the obligation to achieve Financial Close by the Financial Close Deadline. (P3 Agreement, Article 4)
Financial Close Deadline	The date by which Concessionaire is obligated to achieve Financial Close, which occurs 180 days after the Proposal Date, unless certain extensions are granted. (Definitions)
Equity Investment	<ul style="list-style-type: none"> - The Financial Plan submitted as part of the Financial Proposal describes the extent to which the Proposer sought or intends to seek participation from public sector and labor-sponsored pension funds and minority-owned investment funds in the equity of the Project, including direct participation as an Equity Member and/or indirect investment (i.e. investment in the Equity Member). - A public notice was submitted to a broad range of investment industry publications to inform potential participants of the Project.
Project Management Plan	Upon execution of the P3 Agreement, Concessionaire will prepare a detailed project management plan for approval by Owner which details specifics of the development, design, construction, testing and commissioning, operation and

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	maintenance of the project. The detailed requirements for the Project Management Plan are in Part 2A, Section 1 of the Technical Provisions.
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3. Key Concepts During the Design and Construction Period	
Maintenance of Traffic	Concessionaire shall maintain traffic (pedestrian, bicycle, and vehicular) and shall pay liquidated damages for reduced roadway traffic capacity and for any failure to restore full traffic capacity. (P3 Agreement, Article 5)
QA/QC	The Concessionaire will provide and implement a quality assurance/quality control (QA/QC) plan. Owner will provide quality assurance oversight. (P3 Agreement, Article 5)
Payments to Concessionaire (Design-Build Period)	<ul style="list-style-type: none"> - During the Design-Build period, construction progress payments will be made by Owner to the Concessionaire. - Progress Payments will be paid monthly during the Design-Build Period based on 85% of earned value. (P3 Agreement, Article 13) - The Progress Payments will not total more than \$860 million, with the annual amounts available as follows: \$190 million for FY 2016; \$220 million for FY 2017; \$220 million for FY 2018; \$180 million for FY 2019; and \$50 million for FY 2020.
Third Party Commitments	<ul style="list-style-type: none"> - Third Parties include Montgomery County, Prince George’s County, University of Maryland College Park, WMATA, MDSHA, the Maryland-National Capital Park and Planning Commission, and the CSX Corporation. - Owner is entering into Agreements with each Third Party that outline the specific work and requirements related to that Third Party. The Technical Provisions include the Third Party commitments that are explicitly the responsibility of Concessionaire. (Definitions)
Relief Events during the Design-Build Period	<ul style="list-style-type: none"> - These include Owner Changes and key events that materially and adversely affect performance of Concessionaire’s Design-Build Period obligations. - Specific Relief Events are outlined in the Relief Event definition. Examples of Relief Events that may occur during the Design-Build Period include discovery of site conditions that differ from those expected, discovery of unexpected hazardous waste, and certain changes in law. - Concessionaire may seek time extensions and/or compensation for certain costs related to a Relief Event during the Design-Build Period. The calculation of potential compensation is outlined in Exhibit 13A. <p>(P3 Agreement Article 15, Definitions, Exhibit 13A)</p>
Force Majeure Events during the Design-Build Period	<ul style="list-style-type: none"> - The occurrence of certain events, in each case beyond the control of the either the Owner or the Concessionaire, to the extent that the event delays the Critical Path of the Design-Build Work. - Specific Force Majeure events are outlined in the Force Majeure definition. Examples of Force Majeure events that may occur during the Design-Build Period include act of war, certain natural disasters, or acts of terrorism. - Concessionaire may seek time extensions related to a Force Majeure event during the Design-Build Period. <p>(P3 Agreement Article 15, Definitions)</p>
Labor – Construction Trades	Proposer has set out a plan for the implementation of the Owner’s goal of deploying Nationally Targeted Workers in a meaningful manner to achieve employment stability during the Construction Work as well as future employment through skills training and career advancement opportunities; Proposer has set an approach to providing an adequate and stable supply of

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	labor for the Project, risk management strategies for labor shortages, integration of union and non-union contractor employees, and specific efforts to mitigate work stoppages.
Light Rail Vehicles	Concessionaire will supply light rail vehicles (LRVs) meeting specified requirements from a pre-approved supplier identified in the Proposal. Concessionaire will be responsible for assuring quality of LRVs. The Owner will provide quality assurance oversight, including assembly and production facility inspections.
Buy America / US Manufacturing Plan	<ul style="list-style-type: none"> - The RFP is subject to the “Buy America Requirements”, 49 U.S.C. 5323(j) and 49 CFR Part 661, and regulations and/or guidance implementing this statutory provision issued by the Federal Transit Administration. - The Technical Proposals were evaluated for any commitment to exceed the rolling stock provisions of the federal Buy America requirements. - As part of the Proposal process, each Proposer is required to submit a U.S. Manufacturing Employment Plan for the Light Rail Vehicles. The Plan must identify any U.S. location that will be used in the final assembly and/or manufacturing of the Light Rail Vehicles, along with descriptions of planned job creation and total compensation.
Economic Empowerment Programs (Design-Build)	<ul style="list-style-type: none"> - The DBE participation goal(s) for the Design-Build Period of the Project (excluding supply of LRVs) are 26% for Design Work and 22% for Construction Work. (P3 Agreement, 9.10.1.5) - Concessionaire shall make good faith efforts to assure that: <ul style="list-style-type: none"> (a) not less than 33% of all Construction Work Hours are performed by Nationally Targeted Workers; (b) not less than 10% of all the Construction Work Hours under (a) above are performed by Nationally Targeted Workers of Social Disadvantage; and, (c) not more than 50% of the aggregate Construction Work Hours performed pursuant to (a) and (b) above may be worked by Helpers or other Unskilled Laborer position as defined in the Davis-Bacon Act. (P3 Agreement, 9.11.1)

4. Key Concepts for Revenue Service Availability (RSA)	
Revenue Service Availability (RSA)	<ul style="list-style-type: none"> - All required Design Work & Construction Work is complete, except for Punch List items that do not affect normal and safe use and operation of the System. - All other prerequisites for start of Revenue Service have been met. - RSA occurs when all the RSA conditions are satisfied, as outlined in 7.10.2, and when confirmed by the Independent Engineer’s issuance of a Certificate of RSA. (P3 Agreement, Article 7)
RSA Deadline	The date by which Concessionaire must achieve Revenue Service Availability, proposed as a number of days from Financial Close. (Definitions)
Independent Engineer	An independent engineering consultant will be selected by Owner and Concessionaire through a competitive solicitation process to verify whether the conditions to RSA (specified in Section 7.10.2) have been met. (P3 Agreement 5.10)
RSA Payment	<ul style="list-style-type: none"> - The RSA Payment will be made after the Independent Engineer’s issuance of a Certificate of RSA. - The RSA will be \$100 million
Final Completion & Final	<ul style="list-style-type: none"> - The conditions for Final Completion are listed in 7.10.4 and generally include punch list items that do not affect the safety, use or operability of the System.

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Completion Payment	- After achievement of Final Completion, the Owner will pay a \$30 million Final Completion Payment. (P3 Agreement, Article 7)
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5. Key Concepts During Operations & Maintenance Period (30-year period after RSA)	
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Operating Plan	<p>The Operating Plan is the highest-level description of the Concessionaire’s approach to performing the Operations Work during the Term. Key requirements for the annual Operating Plan are in Part 3, Section 1 of the Technical Provisions. These include, but are not limited to:</p> <ul style="list-style-type: none"> - description of the Concessionaire’s approach to operating Revenue Service, including the delivery of Normal Service, Special Event Service operations and response to Service Interruptions - description of Concessionaire’s operations organization including the organization hierarchy and functional organization; and - A Fleet Management Plan meeting FTA requirements and a Maintenance Plan is also required that describes the Concessionaire’s approach to maintenance of the Purple Line System, so as to minimize impacts to Revenue Service, Normal Service and Special Events. <p>(Technical Provisions, Part 3, Section 1)</p>
Noncompliance with operating standards & requirements	<p>Noncompliance with operating standards and requirements will result in reductions in availability payments and may result in termination. Standards and requirements for operations, maintenance, workforce training, reporting, and other activities are included in the P3 Agreement (Exhibit 4D) and Technical Provisions (Part 3, Section 2).</p>
Availability Payments	<ul style="list-style-type: none"> - The obligation of Owner to make monthly 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. All obligations of Owner and the State are subject to all applicable law and appropriations by the Maryland General Assembly. (P3 Agreement, Section 13) - Availability Payments are calculated and earned by Concessionaire according to the methodology in Exhibit 4D of the P3 Agreement, with appropriate monetary deductions made for Operations Availability Noncompliance Events (such as late trains) and Performance Criteria Noncompliance Events (such as snow and ice build-up at stations), as outlined in Exhibit 4D.(P3 Agreement, Exhibit 4D)
Operations Availability (vehicle availability)	<ul style="list-style-type: none"> - For Service Level 1, service is to be provided every 7.5 minutes during peak commuting periods and between 10-15 minutes during off-peak commuting periods. (Part 3, Section 3 of the Technical Provisions) - Concessionaire is expected to maintain vehicle schedules and minimize late/missed trains. Specific requirements are outlined in Appendix D, Exhibit 4D of the P3 Agreement and in Part 3 of the Technical Provisions. - In the event that vehicles are not available as required, deductions to the Availability Payments and accumulation of Non-Compliance Points may occur. <p>(P3 Agreement, Exhibit 4D)</p>
Performance Criteria	<ul style="list-style-type: none"> - Approximately 80 Performance Criteria are listed in Part 3, Section 2 of the Technical Provisions. These are grouped in the categories of Management, Operations, Cleaning, Maintenance, Infrastructure, Station/Station Facilities, Landscaping, Fire Detection/Alarms, Security Systems, Fire Protection, Stray Current/Corrosion Control, Fare Collection, EMI, Asset Management

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	<p>Performance, and Handback Performance.</p> <ul style="list-style-type: none"> - For some criteria, a maximum Response / Rectification Time may be indicated. - In the event that the minimum Performance Criteria requirements are not met, deductions to the Availability Payments and accumulation of Non-Compliance Points may apply. <p>(Technical Provisions, Part 3, Section 2)</p>
Non-Compliance Points	<p>In addition to Availability Payment deductions for Operations Availability Non-Compliance Events (such as late trains) and Performance Criteria Noncompliance Events (such as snow and ice build-up at stations), the Concessionaire will also accumulate Noncompliance Points, which can eventually result in Owner remedies including increased oversight, a remedial plan, step-in rights, replacement of the O&M Contractor, and Concessionaire default.</p> <p>(P3 Agreement, Exhibit 4D)</p>
Relief Events during the O&M Period	<ul style="list-style-type: none"> - These include Owner Changes and key events that materially and adversely affect performance of Concessionaire's O&M obligations. - Specific Relief Events are outlined in the Relief Event definition. Examples of Relief Events that occur during the O&M Period may include certain changes in operating standards and certain changes in transitway signal timing. - Concessionaire may seek excuses from compliance and/or compensation for certain costs related to a Relief Event during the O&M Period. The calculation of potential compensation is outlined in Exhibit 13A. <p>(P3 Agreement Article 15, Definitions, Exhibit 13A)</p>
Force Majeure Events during the O&M Period	<ul style="list-style-type: none"> - The occurrence of certain events, in each case beyond the control of the Parties, to the extent that the event adversely impacts Concessionaire's ability to meet its O&M obligations. - Specific Force Majeure events are outlined in the Force Majeure definition. Examples of Force Majeure events that occur during the O&M period may include act of war, certain natural disasters, or acts of terrorism. - Concessionaire may request to be excused from compliance related to a Force Majeure event during the O&M Period. <p>(P3 Agreement Article 15, Definitions)</p>
Non-Concessionaire Caused Disruptions during the O&M Period	<ul style="list-style-type: none"> - The interruption, slowdown or partial or complete shutdown of service on the System that leads to a reduction in the Monthly Operations Performance Factor component of the Availability Payment. - Specific cases are detailed in the definition. Examples of Non-Concessionaire Caused Disruptions may include a disabled car in the transitway or disruptions due to trespassers in the transitway. - Concessionaire may request to be excused from compliance or obtain relief from Availability Payment deductions related to a Non-Concessionaire Caused Disruption. <p>(P3 Agreement Article 15, Definitions)</p>
Displaced Workers – O&M	<p>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). (P3 Agreement, Article 9)</p>
Wages/ Benefits – O&M	<ul style="list-style-type: none"> - The Technical Proposals must describe staffing plans for the O&M Period, including the approach to recruitment, training, retention, wages and benefits for non-management personnel. The Owner encourages that the wage and benefit levels offered are comparable with the levels provided by heavy rail and light rail operators in Maryland. The Owner will evaluate how well each

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	Proposer understands how to attract and retain a qualified workforce capable of ensuring system reliability, system performance, and safety.
Labor Peace Agreement – O&M	Concessionaire shall, and shall cause the O&M Contractor and all Contractors that will perform O&M 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 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. (P3 Agreement, Article 9)
Taxes	Concessionaire will be responsible for payment of all applicable taxes and assumes the risk of future changes in tax laws, except for those that are discriminatory (directed specifically at the Concessionaire). (P3 Agreement, Article 26, Definition of Discriminatory Change in Law)
Fare Policy	MDOT/MTA will retain responsibility for fare policy.
Fare Collection	Concessionaire is responsible for operations, maintenance, monitoring, and renewal of fare collection and fare support systems. This includes 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. (P3 Agreement, Article 8)
Enforcement	The Maryland State Police or other State law enforcement services will provide law enforcement services, including enforcement of applicable laws and the fare policy. (P3 Agreement, Article 8)
MBE Goals during O&M	For the O&M Period, the decision on whether and to what extent a participation goal for the O&M Work will be set may not be determined by the Owner until three years prior to the start of Revenue Service Availability or later.

6. Key Concepts Regarding Dispute Resolution (During all Phases of the P3 Agreement Term)	
Dispute Resolution Board (DRB)	<ul style="list-style-type: none"> - Concessionaire and Owner 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 or both of the DRBs, depending on the nature of the issues in dispute. Each 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. - The decision of the DRB is not binding. Referral of a matter to the DRB is not mandatory and does not waive the requirements to file timely notice of Claim(s). (P3 Agreement, Article 20)
Dispute Resolution Process	<ul style="list-style-type: none"> - Non-mandatory, non-binding review by DRB - Concessionaire submits Claim to the Contracting Officer - Initial Decision by Contracting Officer - Concessionaire may appeal the Initial Decision to the MDOT Secretary - MDOT Secretary decision shall be the final decision of MDOT and shall be a prerequisite to any judicial review of any Claim by Concessionaire against Owner

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	<ul style="list-style-type: none"> - Within 30 days after receipt of the MDOT Secretary decision, Concessionaire may commence an action in law against Owner in any court of competent jurisdiction. <p>(P3 Agreement, Article 20)</p>
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7. Key Concepts Regarding Default (During all Phases of the P3 Agreement Term)	
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Default Events/ Conditions	<ul style="list-style-type: none"> - Concessionaire Defaults are listed in detail in P3 Agreement, 17.1.1. These include both a number of specific events (such as failure to achieve certain deadlines) and the accumulation of Non-compliance Points. - Owner Defaults (P3 Agreement, 17.3.1) include: <ul style="list-style-type: none"> o failure to make any payment due to Concessionaire under this Agreement when due, provided that such payment is not subject to a Dispute o Subject to P3 Agreement, 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.
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8. Key Concepts Regarding Early Termination (During all Phases of the P3 Agreement Term)	
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Early Termination Categories	<p>The P3 Agreement may be terminated early for:</p> <ul style="list-style-type: none"> - Owner Convenience or Condemnation - Extended Force Majeure or Owner-Caused Delay - Insurance Unavailability - Concessionaire Default - Owner Default - Court Ruling - Failure to achieve Financial Close <p>(P3 Agreement, Article 19)</p>
Early Termination Processes and Compensation	<p>The specific processes and compensations amounts for Early Termination will vary depending on the grounds for Termination. Processes are outlined in P3 Agreement Article 19 and compensation calculations are outlined in Section 4 of Exhibit 13B.</p>